

THE GOVERNMENT VS MICHAEL SEGAL – MANUFACTURING A FINANCIAL CRIME

Carol Marin, a well-respected reporter for NBC News and *Chicago Sun-Times* columnist, once compared the saga of Michael Segal and Near North Insurance Brokerage (NNIB) versus the U.S. Attorney's Office to a Hollywood movie, one that she would "pay to see."

She got her wish, though she did not need to purchase a ticket. The titanic bout between William Hogan a controversial prosecutor from the U.S. Attorney's office, and Michael Segal, a successful, self-made Chicago businessman, is probably fodder for such an exhibition. The story is an incredible one and, like most real life dramas, contains twists and turns that put a fictitious court thriller to shame.

The story of the federal prosecutors as commonly understood is well-known and easy to find. The media, ever more interested in a melodrama that ends with the downfall of a powerful man than in the strange circumstances surrounding his demise, made sure of that. There is a second side to the story, though; one based on documented facts that were buried, or simply not told loud enough. It is a tale of the damage done by a few in the U.S. Attorney's Office's scorched earth campaign, a course of action that affected thousands of people and annihilated multiple companies, all to punish a man for supposedly violating a non-criminal Illinois statute – a charge which the state in question had already refused to levy – from which the District Court ruled no party suffered an economic loss.

All of this was done to take down a man with no criminal history, running a company that, in its 40 year existence, had never been the subject of customer complaints or regulatory violations. This farce would engulf Mr. Segal and his company Near North. It resulted in Mr. Segal's harassment, conviction and imprisonment. It also brought about the indictment, a legal fiction, and the destruction of NNIB. Near North Insurance Brokerage was one of the only companies to be treated in this manner since the Arthur Andersen debacle brought about a self-imposed DOJ ban on such tactics as a material DOJ violation of procedures in itself.

This is Michael Segal's story, a story backed up with reams of court documents and the work of legal scholars, computer experts and certified forensic accountants.

Over the course of decades, Segal transformed his enterprise, Near North Insurance Brokerage, from a small storefront operation to the fifth largest independent insurance brokerage in the United States. This juggernaut employed almost 1,000 people spread through seven states and the United Kingdom. During the 1990s, NNIB was earning roughly 50 million dollars a year according to the Seventh Circuit Court's opinion. In 2000, NNIB placed 1.1 billion in premiums through its insurance company partners. Its leading markets included AIG, Fireman's Fund, Chubb, Hartford, St. Paul and Zurich. NNIB had a strong and diversified customer base, market niches and an impressive client list including leading Fortune 100 companies such as BP Amoco,

Disney, Exxon Mobil, General Electric, McDonald's, Sears and Sony as well as a cross-section of niche specialties.

Powerful men are not without enemies. Indeed, it seems they breed them. And while there is no doubt that Michael Segal did battle with numerous adversaries to build his insurance empire, it would be an enemy from within that would play the opening bars in the overture of his downfall.

Cyberhackers Target Near North Insurance Brokerage at Time of Employees Leaving or Being Terminated

Documents uncovered during the years of pre-trial activity, would give this cadre of employees, their self-labeled chilling name of the Takeover Group to take over Segal's company. These men and women had a simple goal: to take control of Michael's company. They concocted a scheme – outlined in what they labeled and called the Takeover Memo -- wherein they reported, as it turns out, falsely, that NNIB's Premium Fund Trust Account (PFTA) was out of balance. This fund, which contains money encumbered by a fiduciary obligation to remit premium payments to insurance providers, must be maintained under strict Illinois regulatory guidelines. The Takeover Group claimed to be able to fix this alleged PFTA problem, in exchange for control of Michael's company. Meanwhile they stalled a major computer conversion correction at Near North to support their misrepresented accounting claims. They also began cyberhacking thousands of Near North documents and personal emails to aid their effort, which they would share with the government and a competitor of NNIB.

The ludicrous offer of the group to take over management of Near North was, of course, rejected. NNIB went about the business of making sure its PFTA reconciliation was in compliance, requesting a regulatory interpretation and review, including self-report any accounting issues to the State of Illinois where, under the state's Regulatory Self-Help provisions, a proper outcome could be reached. In January of 2002, the Illinois Department of Insurance, which spent 10 months looking into NNIB's PFTA, declined to charge NNIB or Michael Segal with any criminal wrong-doing, despite interference and pressure from federal prosecutors who stalled the investigation and suppressed exculpatory accounting and regulatory evidence.

But that did not stop the federal government from indicting Mr. Segal on ignoring the rules of the Illinois Department of Insurance -- which was the sole misconduct alleged by Segal's unlawful prosecution.

Segal Arrested -- Government Sides With Near North Takeover Group and Competitor

It was out of the blue when the U.S. Attorney's Office of the Northern District of Illinois, aided by the Takeover Group, most of whose members were now working for Near North's competitor, AON Corp., (which rewarded them with unusually large grants of stock) struck against Segal. It began with an ambush meeting. Lured to this rendezvous under false pretenses by a former employee, Michael Segal was approached by the FBI. A zealous agent by the name of Murphy threatened Mr. Segal with arrest unless he immediately proceeded to a hotel room. In that room, seated was Assistant United States Attorney Dean Polales, who initially wanted to have a talk about NNIB's PFTA transactions, but later made apparent their real motivation. Having no reason to suspect he was guilty of any regulatory misconduct, Michael entertained the bizarre questions of the AUSA without counsel present.

Here Mr. Segal was told the fantastic story related to the FBI and U.S. Attorney's office by his former employees. While he knew the tall tales to be false, it was clear that AUSA Polales took them very seriously.

Either that, or the AUSA saw a serious opportunity.

Because there was a deal to be had. It quickly became clear that all of Mr. Segal's troubles would go away if he would wear a wire. The strange part about this request was that the wire was not intended to record specific conversations. Instead, the AUSAs and FBI Agent Murphy wanted Mr. Segal to wear the wire as directed, effectively recording all his private conversations. Perhaps Michael Segal could be used as bait to catch an even bigger fish.

Such an offer might be tempting to someone involved in wrongdoing, but Segal, who had nothing to hide, did not bow to the pressure. Carol Marin may have said it best: "Mr. Segal refused to flip. Ever since, it has been war." (Attachments)

Widespread Harassment of Segal, Family, and Business

The AUSAs did not get what they wanted. At the end of this first impromptu interrogation, Agent Murphy informed Segal that he was under arrest, a strange turn of events considering there had been no full investigation done yet or ongoing criminal activity alleged. He was also told that a swarm of FBI agents were currently executing search warrants at Mr. Segal's home, office and storage sites. **These searches would provide a cover for thousands of documents the U.S. Attorney's office already had in their possession from criminal hacking by members of the Takeover Group.**

While executing the search warrant at Mr. Segal's home, federal agents harassed Michael's wife, Joy. A psychologist, Joy was in the process of conducting a pro bono group therapy

session with several clients when the FBI burst in. Mrs. Segal was detained and told that she could not make a phone call. When she attempted to discover exactly what was going on, the agents taunted her by saying it would be a long time before she would see her husband again. In the end, Segal's wife was essentially imprisoned for more than two and-a-half hours before being allowed to leave to care for her daughter, who suffers from lupus.

The supported conduct illustrated by events and violations of DOJ regulations and other misconduct like this amply shows that Mr. Segal's prosecution was motivated by retribution, plain and simple. Because he would not play ball and wear that wire, the AUSAs initially deemed him hostile, despite his later participation in three proffer sessions with the FBI, the opinion stuck. **Eventually, the prosecution took on a life of its own and the excuse for the obsession of Segal would be used to cover up their prosecutor's fear that their collaboration in hacking crimes would come to light.**

Initially the Government filed a complaint charging Mr. Segal with making false statements and misappropriation of insurance funds and mail fraud. A preliminary hearing was scheduled for February 15, 2002. Mr. Segal subpoenaed several members of the Takeover Group - the Government's prime accusers - to testify at the hearing. Conveniently, the arrest warrant was dismissed and an indictment was returned on February 14, 2002, rendering the preliminary hearing moot and precluding the examination of the former employees.

Many of the members of the Takeover Group would never appear in a courtroom, despite the fact that they formed the basis of the Government's initial case.

On February 14, 2002, the Special Grand Jury returned an indictment charging Mr. Segal with a single count of making a false statement to the Illinois Department of Insurance. The indictment alleged that Mr. Segal falsely represented in his application for an insurance broker license that he properly maintained a PFTA accounting balance as required by Illinois state law. Noteworthy, after the conviction, the district court under its Rule 29 opinion, ruled that there was an absence of any evidence of a material misrepresentation to any insurance regulatory. It should also be noted, that half of the U.S. states have no requirement for licensed insurance brokers, which also creates the legal standard of dishonest standards in the Supreme Court's Skilling ruling.

The Government was simply biding its time, though. An avalanche of charges was waiting in the wings, triggered by Mr. Segal's continued unwillingness to play along with federal prosecutors. Michael's refusal to wear a wire angered them before, but it would be Michael and NNIB's decision to pursue a legal remedy against a hacker in their midst that would drive the AUSAs over the edge.

Massive Cyber Hacking Against Near North Discovered by Former FBI Supervisor

Immediately after the arrest, Michael resigned his management role at NNIB and an independent board of directors was established. The board consisted of the former United States Attorney, a retired CEO of an insurance company, a retired FBI supervisor and a past vice-chairman of a media company. Around the same time, Mr. Segal and the board discovered that the NNIB computer and electronic mail system, including private and confidential communications between Segal and his counsel, had been unlawfully accessed by a computer hacker. An investigation revealed that the hacker was a former employee of NNIB who was working with Takeover Group. The investigation later led to the disclosure of extended wiretapping of Segal's attorney.

The hacker methodically scrolled through lists in order to access e-mail messages between Mr. Segal and various lawyers, including NNIB's general counsel. A number of the privileged communications that were unlawfully accessed by the hacker related to the federal criminal case or the civil suit against the Takeover Group employees, which was filed six days before Michael's arrest.

Initially, the hacker exclusively targeted documents created and stored before Mr. Segal's January 26, 2002 arrest. Hacking done later was almost entirely concerned with documents created after this date. It is important to note that as of the arrest, the Government had seized all those old records. The only thing that might be useful to them at that point would be newer documents. The timing of the hacker's activities is eerily synchronized to the Government's actions. Areas of computer-based documentation that the Government did not have access to, suddenly became the target of the hacker. **The hacking ended three and half months after Segal's arrest. By then, a nexus had been created that enabled the government to coordinate some of the searches post-arrest.**

Could it be that the Government was aware of this hacker's activities? Could it be that they were even directing the hacker? Sadly, the evidence bears this conclusion out.

The materials produced by the Government to the defense prior to trial suggest that the Government's key witnesses against Mr. Segal, his former employees, received unlawfully hacked materials and passed those materials on to the Government, thereby implicating the Government in the hacking scheme, which the court accepted facts of receipt in the court's opinion. This sequence of events raises important First, Fourth and Sixth Amendment issues which warrant close review, much of which is supported in the Government's own investigation. It is undeniable that the pre-trial record developed in the district court amply demonstrates that Near North and Mr. Segal were the victims of thousands of unlawful intrusions into NNIB's computer systems, and many of those records were used by prosecutors

providing them with knowledge of trial strategies, that allowed them to interfere with exculpatory evidence.

FBI Agent Murphy and AUSA Hogan Protect the Hackers

Although the Government denied having knowledge that the e-mail messages in its possession were accessed unlawfully, the interception of e-mail messages is documented in several FBI 302 reports. Moreover, the private and privileged nature of the communications is readily apparent. In pre-trial evidence, a hacked email from NNIB that was sent to Matt Walsh, a prime mover in the Takeover Group and a Government witness, is sent directly to FBI Agent Murphy's home email account which stated "As in the past" referring to other emails. Agent Murphy denies receiving the February 8, 2002 transmission, but the proof is irrefutable that the message was received.

As Mr. Segal and his company worked to defend themselves from the federal prosecutors and the hacker threat, AUSA Hogan offered dire warnings of future pain for pursuing cybercrime spree involving and protected by the government. Since the Board of Directors and Mr. Segal insisted in protecting themselves from the hacker in his company's midst further raised the ire of the Northern Illinois U.S. Attorney's Office. Both Segal and his company were directly threatened with the inclusion of a RICO count in charges if they pursued this matter further.

How could they have known, that every step they were taking to uncover the hacker, they moved a little closer to proving that the Government had been involved in the whole mess?

As can be shown in the court record, respected ex-FBI Supervisor David Grossman, an NNIB Board member and other legal counsel were able to detect eight months of illegal hacking activities that affected all of NNIB's computer systems. Grossman went to the FBI himself and presented the ample evidence of wrong-doing. He was told that there was a strong case to pursue the hacker. Later he would be told that the AUSAs – the same ones prosecuting Mr. Segal - had taken the case out of those specific FBI agents' hands who put in the control of others at the FBI to delay and dilute, which failed to observe the "Chinese wall" to protect evidence.

Unknown Parties, FBI Agent and Takeover Group Interferes with Hacker before Impending Arrest

The lengths that these AUSAs would go to delay and dilute the investigation into these cybercrimes fairly boggles the mind. They delayed the investigation, refused to do a forensic examination of the systems in question, stonewalled attempts to scrutinize computers at the confessed hacker's home and interfered with the agreed arrest of the hacker who was employed at the time by Kemper Insurance. There was a suspicious non-documented by Agent

Murphy call on the morning of the NNIB's planned arrest with Lake County authorities. After all of this, the AUSAs had the nerve to tell the court that Mr. Segal waited seven weeks to make a complaint about the hacker.

When it was evident that Mr. Segal and NNIB would not relent in an effort to bring the hacker to justice, the AUSAs ordered local and state authorities not to "interfere" with a federal prosecution, thus denying Mr. Segal's right to his day in Illinois state court, proving the government's massive concern about protecting misconduct. The civil case, still in the pre-trial discovery phase, had already laid bare the bevy of stolen emails sent to former NNIB employees and shared with the federal Government. Suddenly discovery was suspended until after the criminal trial. Then after only one deposition had been conducted, the Government-appointed trustee for NNIB and Mr. Segal approached their attorney, the former head of the Chicago Bar Association, and told him that while he had a good suit, it must be dropped immediately. The trustee related that this was the will of the AUSAs.

The hacker would never be charged for the crimes he committed, nor would the accomplices that funneled the illegally-obtained documents to the federal prosecutors. News articles about these crimes written at the time seem to have had no effect on shaming the Government into action.

The only thing that would result from Michael's and NNIB's pursuit of the hacker was the addition of a RICO count to the ever swelling list of charges.

On October 31, 2002, the Government filed a Superseding Indictment against Mr. Segal. It contained 16 counts, including seven counts of mail fraud, one count of wire fraud, one count of violating the Racketeer Influenced and Corrupt Organizations Act and seven counts of making false statements.

The indictment charged that Near North and other entities owned and controlled by Mr. Segal constituted a RICO enterprise. The Government also sought forfeiture of Mr. Segal's interest in this alleged enterprise. All of the charges stemmed from the submission of applications for a State of Illinois insurance broker license and/or maintenance of accounting records and customer premiums under Illinois law.

On June 13, 2003, the grand jury returned a 17-count Second Superseding Indictment charging Mr. Segal with mail fraud and conspiracy to commit mail fraud, wire fraud and making false statements to the Illinois Department of Insurance. In addition to these charges, the Government sought forfeiture. Near North was charged for the first time with the same counts of mail fraud and making false statements. The Second Superseding Indictment also charged a former employee of Near North, Daniel E. Watkins, with mail fraud and a single count of embezzlement of petty cash funds.

On February 24, 2004, more than two years after Mr. Segal's arrest, the Government sought the return of a Third Superseding Indictment containing the same charges listed above, plus three counts charging Michael and Near North with misappropriating insurance premiums, a single count charging Mr. Segal with making false statements during the January 26, 2002 interrogation, and a single count charging Mr. Segal and Mr. Watkins with conspiring to commit tax fraud.

On May 18, 2004, the grand jury returned a Fourth Superseding Indictment which essentially reasserted the same litany of offenses. The multiple and repeated charges, overwhelmed Mr. Segal and his attorneys, dilute defense funds, prolong negative publicity assisting the takeover group with insurance competition, suggesting that NNIB not pay Segal's fees and waived the attorney client privilege status. This serves to underline the vindictiveness of the U.S. Attorney's Office during this matter.

Government Keeps Jury in the Dark about Destruction of Near North

As if that was not enough, federal prosecutors then filed a successful motion in limine to block Mr. Segal from showing to a jury that his companies were basically destroyed. This had the added effect of also barring mention of how the prosecutors essentially destroyed these companies by contacting and warning off clients at their policy renewal periods by Agent Murphy (such as Los Angeles Authority, H2O+ chain) and AUSA Hogan sabotaged sales to agreed escrow buyers which would have produced revenue for the government.

The real drama would come at the trial, though.

The core of the Government's attack was a fundamental mischaracterization of the proper function of an Illinois Premium Fund Trust Account. NNIB, a respected insurance broker, was transmogrified by prosecutors into a RICO enterprise by misrepresenting the true nature of the Illinois insurance regulatory environment. By fraudulently concealing selected provisions of the Illinois Insurance Code from both the grand and petit jury, prosecutors created the false impression that Illinois insurance brokers were required to segregate customer premium payments into a trust account, congruent to a real estate escrow account or a lawyer's trust account.

Nothing could be further from the truth. In this case Illinois law provides that the PFTA is a commingled, fungible account. It is in no way subject to the accounting procedures and requirements of a true trust account.

This did not stop the Government from using traditional trust accounting to prosecute Mr. Segal, however.

Prosecutorial witnesses were not certified professionals in the field of accounting. The Government never showed their compliance with GAAP (Generally Accepted Accounting Principles) or GAAS (Generally Accepted Auditing Standards). The Government's calculations totally lacked the standard accounting component reconciliations and aging schedules reflected in working papers. The court records vividly show the ASUA Hogan's blatant use of known false accounting evidence and methodology.

When it comes to accounting, there is only one right answer. Using the wrong rules to vet a company's accounts is like ignoring proper scientific procedure in a crime lab. The irrefutable DNA of the truth may be found, but even the slightest misstep in its reading may render it worse than useless.

The Real Financial Fraud

Had it been true that NNIB and Mr. Segal violated the rules governing the PFTA, the U.S. Attorney's Office never had jurisdiction. The McCarran-Ferguson Act, a Congressional mandate and affirmed by the Supreme Court, exempts the insurance business from most forms of federal regulation, leaving the creation and enforcement of such laws to the states. The Government used the now defanged 18 USC §1346 Honest Services Fraud statute to create an end run around McCarran-Ferguson, sending Mr. Segal to jail and obliterating his companies for an alleged violation of an Illinois law. Mind you, under Illinois law, were Segal found guilty of violating the rules governing a PFTA without causing his clients to suffer an economic loss, he would have been subject at best to a monetary fine - nothing more. If NNIB or Segal were located in any of the other 23 states, there would not have been regulatory action at all. But the law, both state and federal, was willfully and repeatedly ignored by the prosecution in these proceedings.

Government Multiple Attorney Client Violations Include Wiretapping Segal Defense Attorney – Clear Parallel with Infamous Miami Case

As the case progressed, the prosecution led by Hogan went forward using the fruits of multiple attorney-client privileged documents. It was at this point that Segal's attorneys found out that this serious violation went far deeper than the use of forensically discovered privileged emails.

Government parties wiretapped and recorded the conversations of Harvey Silets, an attorney retained by Mr. Segal to defend him against charges in this case. The FBI turned over to the U.S. Attorney conversations between Silets and his co-counsel in which they were discussing various defense strategies and the acquisition of exculpatory evidence. The Government also used these recordings to interfere with the defense's obtaining of exculpatory evidence in a specific and proven manner. For instance, prosecutors with access to the wiretaps of defense attorney Silets, learned that employee Daniel Watkins had been caught embezzling from Near

North and, by extension, its sole owner, Michael Segal. Segal's attorney had confronted the embezzler Watkins and he had submitted an affidavit acknowledging his responsibility for repeated thefts. By violating Segal's rights and attorney client privilege, the government was able to use these privileged communications to approach Watkins, and offer a deal. In exchange for false testimony against Segal, Watkins, who stole several hundred thousand dollars from NNIB, would escape prosecution for stealing hundreds of thousands of dollars.

There were several wiretapping tapes of Silets and Segal and NNIB's financial representatives and a controlled taping by Watkins, the government's private agent, which were not voluntarily disclosed by the government. They were found in a "missing file" only after former FBI Supervisor David Grossman alerted his former FBI colleagues to the illegal cyberhacking against Near North by government witnesses. The wiretaps of Segal's attorneys were part of over 700 hours of recordings the Government never used in court but aided their vindictive prosecution. The egregious taint they represent could never have been addressed during the initial proceedings, though defense attorneys should not have had to. It is plainly evident that the AUSAs should never have condoned the recording of defense attorneys, especially since the taping was controlled by Agent Murphy, let alone used the information in a trial.

Equally concerning, government agents did not use a third party during search and seizure procedures, indiscriminately vacuuming up documents they had no right to possess, let alone read. The AUSAs ignored DOJ and Supreme Court professional regulations by conducting extra judicial communications and leaks to Government witnesses and the media, sometimes using members of the Takeover Group to do the dirty work for them. Clear forensic reports show the chain of massive phone communications between the takeover group, AUSAs and specific media personnel, with tied-in specific publishing of media articles. This libelous material poisoned the public's opinion of Mr. Segal and NNIB. These falsehoods, enshrined in the media as facts and other extra prejudicial communications, would be referenced by the prosecution as proof of Mr. Segal's imaginary misdeeds.

While they had no qualms about using privileged information, the AUSAs were suspiciously incomplete in their release of exculpatory evidence, including documents and interviews. In some cases the AUSAs refused to even admit some of these documents existed. Among the myriad of violations of this fundamental right to material include major Deloitte & Touché (D&T) work papers and the PricewaterhouseCoopers (PwC) lender's report, the latter of which exonerates Mr. Segal of specific accounting violations and false records. This also supports the backdrop of the true facts of the computer conversion which the takeover group to effect their misrepresentations. This second document proves the Government had in its possession and willfully withheld accounting evidence proving there were no problems with the PFTA. This

Brady violation alone could have ended the Government's case, as the PwC document represents clear cut evidence that the Government's irregular math was clearly wrong, and it is the duty of someone like AUSA Hogan to correct such errors.

Even though the appellate court denied Segal's honest services mandate, a year later a district court moved to reduce Segal's sentence by 7 months as to the spillover of the prejudice created by invoking the discredit honest services legal theory. Government prosecutors led by Hogan misrepresented opinions and facts from both the district and appellate courts to block the application of the unconstitutional Skilling's ruling to make claim that the government never argued dishonest services and Skilling was "harmless error," even though both the district and appellate court opinions clearly stated Segal was convicted for "dishonest services."

Misrepresentations in Investigations and Trial Record and Withholding Facts of Investigative Conduct

The prosecution made ample use of false, inaccurate and incomplete FBI 302 documentation. Falsifying a 302 report is, of course, a felony. Literally hundreds of conversations between Takeover Group witnesses and the FBI are entirely missing from the FBI's official 302s, yet phone and email records of these communications clearly exist through forensic support. There is substantial record evidence as to proof of altered Government exhibits that were known or should have been known to be impossible and incomplete and inaccurate.

The Government also gave closing misrepresentations from the record and continued the pattern in post-trial forfeiture remand and restitution filings. There can be no reason for this, aside from the fact that Michael had repeatedly refused to go along with the prosecution's agenda.

The Government clearly violated Segal's First, Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights during that trial and continued on for seven years, including the forfeiture and restitution matters. The Government attempted to not disclose that there was no evidence that NNIB failed to pay any premiums due to any insurance carrier or that Near North's clients did not receive all the insurance coverage that they had purchased. Moreover, the Court found at sentencing that no victim suffered a loss as a result of the supposed misuse and accounting violations from the PFTA funds. Equally appalling is the court's adoption that Segal and NNIB never intended to defraud any insurance carriers or insureds.

None of this ultimately mattered, though. After a lengthy trial fraught with the plethora of constitutional violations fleetingly covered above, Mr. Segal was convicted on a dizzying array of charges.

His sentencing hearing was delayed 17 months. During those months, rather than allowing him to post an offered \$4 million bail, Michael was incarcerated at Chicago's Metropolitan Correctional Center because he was considered a flight risk. On November 30, 2005, Mr. Segal was finally sentenced to a period of 121 months incarceration.

Under Illinois law, all Segal could have been penalized with was a fine. In a Federal Court, which lacks jurisdiction over state insurance laws, Segal lost everything. The outrageous disparity between these two punishments beggars the imagination.

As part of his sentence, a forfeiture judgment was entered against Mr. Segal and his interest in NNIB.

In 2010, the Supreme Court, under its Skilling mandate, struck down and redefined the constitutionality of the Honest Services Fraud statute, a move that should have resulted in the dissolution of the federal case against Mr. Segal. Instead the Government argued that the jury had actually convicted Michael of garden variety mail fraud. This would require intent to defraud, yet the District Court made clear from the findings that Mr. Segal or his company had no fraudulent intent as to any insurer or insured and ruled in a post 29 motion that there was no evidence of any material misrepresentation or nondisclosure to any insurance regulatory.

The appellate court sided with the U.S. Attorney's aberrant and unexplainable logic, allowing Michael's convictions to stand. The sum of these gross injustices and flagrant violations of law cited as "harmless errors" by the prosecution, had no effect on Mr. Segal's sentence, or the AUSAs' plan of total financial ruin.

Continued Official Misconduct Drives Forfeiture and Restitution Proceedings

Now Segal is in the forfeiture and restitutions stage of the proceedings and filings that have dragged on for more than six years. Even after the seizing of hundreds of millions of dollars, AUSA Hogan continues to misrepresent the law, the file record and forensic accounting DNA in his own filings, to further punish Segal by taking more of his personal family assets. The most damning omissions essential to the Government's continued denial of Segal's Eighth Amendment rights, are the lack of proper analysis of the amount of Segal's personal assets and money he is due from NNIB and the Government's continued interference with record accounting evidence as to the net proceeds of any benefit from the alleged illegal racketeering proceeds.

There are still numerous problems with this forfeiture number, though. The Government's refusal to use real benefit computation and the AUSAs' willful misrepresentation of the trial record's real finite accounting facts are the two most glaring errors in these proceedings.

The Appellate Court remand left open the possibility that there were no benefits to Segal which left the enterprise to benefit him personally and were therefore subject to forfeiture. The briefs already filed demonstrate that although Judge Castillo found on remand that \$15 million left the enterprise to benefit Segal, Segal infused more than \$15 million from personal sources into the enterprise, which should create a net forfeiture of \$0.

Based on the ruling of the Seventh Circuit that Segal would need to forfeit any "net benefits" he received as of June 30, 2001, **an honest accounting by the government would have acknowledged there was nothing all he would be required to forfeit** given that Mr. Segal had, in the normal course of business, infused more into the enterprise than he had received by the date of June 30, 2001.

Unfortunately, the Government ignored and interfered with the accounting records and their own record accounting data that show reinvested fungible money during the time of the offense.

A great deal of time, trouble and traveling was put in by Segal gathering all the original paperwork proving Segal's ownership of these assets. When Segal and his attorneys presented this ironclad evidence to federal prosecutors weeks before the forfeiture trial, the AUSAs casually mentioned that they already had all these ownership records, but thought they were too old to consider valid.

The forfeiture originated with the retaliatory RICO indictment created to punish Segal for pursuing the civil suits against the cyberhackers collaborating with the government. The three year delay in the district court on forfeiture remand by the government constituted additional, excessive punishment. The outrageous positions taken by the Government on both the law and facts demonstrate the government's desperation. Notably, the Government's various forfeiture theories are not only in conflict with each other, but are not supported by the accounting records.

After taking seven years of Mike Segal's life based on false representations and the trampling of his constitutional rights, prosecutors took vindictive and unlawful actions to deprive him of both his personal and company assets. Despite bona fide offers by parties who sought to purchase Near North, AUSA Hogan unlawfully interfered with a pretrial escrow sale that would have netted \$100 million plus for the RICO forfeiture. To protect the former NNIB employees who provided cyber-hacked documents to the government, Hogan instructed the court appointed trustee to dismiss Near North's suit against them and their new employer Aon Corp. While the circuit court's instructions called for joint and several forfeiture by Mr. Segal and his company, the prosecutors who depleted Near North, continue with malice and unlawful actions to destroy Segal's personal assets to satisfy forfeiture and restitution, contrary to the direction of the seventh circuit

The continued threatening and vindictive nature of these actions is self-evident, but AUSA Hogan made his intent doubly clear when he told Segal's attorney Ed Joyce, during forfeiture hearings, "It was a mistake for Segal to file with DOJ." Twelve years after his ordeal began, Segal is still awaiting answers

and an appropriate response from DOJ for the well documented evidence of prosecutorial misconduct that destroyed his company and now threatens his remaining family assets.