

Prosecutorial Misconduct in Segal Case Led Directly to Unjust Verdicts

The prosecution of Michael Segal in Chicago Federal District Court demonstrates how egregious violations of law and procedure by a few in the U.S. Attorney's Office lead directly to unjust verdicts, the loss of liberty, along with the destruction of livelihoods and assets. There is extensive documentation of multiple violations of due process in the court record and post-trial filings, including the recent DOJ letters filed by Segal's lawyers in 2010 and 2011. Attachments which describe and *prove* violations of law and due process are included here. The 2010 filing was researched and drafted by one of Mr. Segal's post-conviction attorneys, James Cole and Will Olsen who later became, respectively, First Deputy of DOJ and a top Justice official.

In June of 2010, a 150-page letter detailing how agents of the Government illegally seized documents, improperly monitored defense review of documents, failed to turn over exculpatory evidence, violated attorney-client privilege multiple times including taping of defense counsel, leaked inflammatory rhetoric to the media, supported and protected a cybercrime spree while deliberately misrepresenting accounting and regulatory evidence at trial and forfeiture hearings/filings. The letter was addressed to Lanny Breuer, former Assistant Attorney General for the Criminal Division of the U.S. Department of Justice, who had publicly stated in USA Today: "Even one example of real misconduct is too many. ... If you've engaged in misconduct, the response of the department has to be swift and strong."

Unfortunately, the one and a half page response to the June 2010 letter, by an assistant to Mr. Breuer, erroneously claimed that the district and appellate courts had already ruled on the well documented violations of law, Justice Department regulations and constitutional due process. A November 2011 follow up letter from Segal's attorney respectfully points out the substantial unresolved issues which make this case a grave injustice. **This letter, which responded to the multiple violations of DOJ regulations has not been answered by DOJ a year and a half later nor has Segal's attorney's request to meet with Department to present further evidence as to these issues.**

The Segal case has multiple proven DOJ violations of misconduct along with substantial 1st, 5th, 6th and 8th Amendment violations which were never addressed by the trial or appellate courts. The only legal theory presented to the district court was a "classical" Fourth Amendment exclusionary rule theory. The misconduct of the government, however, extended far beyond a Fourth Amendment violation that could be neatly addressed by the application of the Exclusionary Rule. The collateral constitutional violations included:

- 1) Violation of the Sixth Amendment right to effective assistance of counsel by intercepting and monitoring attorney-client privilege communications; taping of defense attorneys, ignoring the attorney client privilege status of corporate counsel and outside regulatory counsel.
- 2) Violation of the First Amendment right to access to the courts with respect to pursuit of civil remedies against the hacker and the Takeover Group to obtain relief in the state courts of Illinois;
- 3) Violation of the Sixth Amendment right to compulsory process and access to witnesses by using the fruits of the hacked attorney-client privilege documents to short-circuit defense attempts to interview witnesses and collect exculpatory documentary evidence;
- 4) Violation of the Fifth Amendment right to due process by interfering with defense's ability to obtain exculpatory evidence that would have otherwise been available through the exercise of due diligence including the non-disclosure of material benefits and leveraging of government witnesses;
- 5) Violation of the Eighth Amendment prohibition of excessive punishment by "piling on" additional counts of the indictment, specifically the RICO count, in retaliation for attempting to exercise the constitutional right of access to redress of grievances in the Illinois state courts. In other words, the totality of the violations perpetrated by the government

The essence is that the totality of the violations perpetrated by the Government far exceeds the typical narrow scope of the exclusionary rule. Given the plethora of collateral constitutional and DOJ regulatory violations, the cumulative impact of those violations establishes an additional constitutional violation: a violation of substantive due process through the right to a fair trial.

Manufacturing Insurance Fraud

Beyond the constitutional violations of due process that denied Mr. Segal a fair trial, prosecutors engaged in clear forensically proven misrepresentation of accounting evidence and regulatory compliance, effectively manufacturing a non-existent financial crime. The Federal courts were never the proper venue for an alleged violation of state insurance law. The McCarran-Ferguson Act exempts the insurance business from most forms of federal regulation, leaving enforcement to the states.

At trial and before the Seventh Circuit, the government regulatory law and accounting evidence while failing to use a certified independent accountant or the cash accounting method mandated by state law. Despite the stakes involved, prosecutors never conducted a base line forensic analysis by a certified public accountant. The US Attorney's Office misrepresented the state statute, leaving out key provisions.

The Segal prosecution as to the misapplication of U.S.C. 18-1346 dishonest services mail fraud indictment, which was also used as the predicate of the RICO indictment, was for a state regulatory insurance accounting alleged violation that resulted in Court records that stated there was no economic loss, no financial misrepresentation, and no fraudulent intent, yet in addition to the RICO and corporate indictment which destroyed Segal's company, was given a 10 year incarceration sentence.

Prosecutors' Interference Includes Failure to Provide Accounting Work Papers

It is proven from the trial records that there has been material failure to turn over accounting work papers or the misrepresentation of accounting work papers. The prosecutors' failure to turn over existing accountants' work papers, specifically including supporting schedules that back up accounting totals and methodology used to compute these accounting components which violates an absolute requirement of Generally Accepted Accounting Principles (GAAP) and Generally Accepted Audit Standards (GAAS). Instead of using independent objective certified accountants, the government relied on testimony and evidence originating from members of the Takeover Group who defected from Near North to a competitor and engaged in extensive cyber hacking of Near North, Segal and his family.

The ongoing pattern over six years of forfeiture remand filings by the government, accounting mischaracterizations continued. Segal provided comprehensive baseline forensic accounting reports and affidavits consisting of a recap of forensic reconstruction and testimony at the forfeiture trial by Andrew Lotts (possible attachment), an Illinois licensed CPA and Vice President of CJBS, LLC and Fanco Data Systems, which establishes the essential DNA of a financial case. In an affidavit, Lotts noted that not one Government exhibit during the time of the offense was possible or reliable as to the reconciliation and attachment of required working papers. Regarding the heart of the government manufactured crime alleged against Segal and Near North, Lotts' affidavit goes on to state:

"It is our professional opinion that there was no reliable accounting evidence presented to the jury and it is proven clear that the sole Government exhibits as to PFTA accounting computations presented as the sole evidence of the alleged regulatory crime are known to be impossible, incomplete and inaccurate and false and not corrected throughout the court records"

Through Lotts' testimony at the forfeiture hearing and the accounting reconstruction, Segal was able to prove known fatal flaws in the accounting exhibits proffered by the Government's witnesses and offered forensic recomputations of those exhibits which precluded reliance on

those exhibits for any purpose including the sole accounting evidence submitted to the jury in the forfeiture trial as to any legal proceed computation. According to Lotts' affidavit:

"forensic re-computation of the PFTA use reconciliation as of 6/30/2001 using the methodology prescribed by Illinois statutes and regulations shows a PFTA surplus of \$5,852,8961.00, as opposed to the \$24 million false and misleading deficit which we have re-computed urged by the Government on that date."

This \$24 million contrived deficit was further misrepresented by prosecutor Hogan who stated to the court that a \$10 million loan had to be added back to ratchet up the false PFTA reconciliation to support the alleged \$35 shortfall claimed by the government. (insert government transcript)

Hogan's own Exhibit 550 and other government exhibits flatly prove that Hogan knew his statement about the purpose of the loan was false. As Lotts' recalculation demonstrates, the government misrepresentations and failure to observe proper account procedures thereby created a \$30 million shortfall in the PFTA which had a positive balance. Yet, the uncorrected computation by the government was the sole basis of the legal proceedings at Mr. Segal's hearings on forfeiture and restitution.

Since the forfeiture judgment was remanded, AUSA Hogan has consistently ignored the plain language and direction of the Seventh Circuit which stated that forfeiture should be based on any illegal proceeds determined as of June 30, 2001. As the comprehensive forensic analysis done by Andrew Lotts shows, **there were zero illegal proceeds** as of that date. As Andrew Lotts' affidavit states, the forensic report carried out under his supervision found ***"no direct evidence of any unauthorized or unexplained transactions that breached the Illinois insurance and accounting regulatory statutes."***

The identification of the assets owned by Segal has never been adjudicated by any court. Assets like the ownership of Segal's house and various partnership investments, retirement accounts, life insurance, contract plans and the Government's role in obfuscating and misrepresenting the record over seven years regarding these matters in Government filings.

Facts are supported and expanded in Attachment #2.

Use of a Tainted Prosecutor

It is troubling that William Hogan was assigned to be the trial prosecutor against Mike Segal and Near North Insurance. Hogan, had been suspended previously following an outrageous incident of misconduct in *US v Boyd*, an infamous case in which the Seventh Circuit Appeals Court overturned a verdict when it learned Hogan had allowed and covered up facts as to leaders of the El Rukn street gang of Chicago who were government witnesses, to use the prosecutor's office for sexual liaisons with prostitutes and permitted unsupervised phone calls

that were used to obtain illegal drugs. One of the street gang leaders made Hogan a legatee in his will.

Unfortunately, Hogan, whose reputation in the legal community makes it difficult to find a suitable position with a respected private law firm, managed to regain his position with the U.S. Attorney's Office. He remains the kind of prosecutor used by the U.S. Attorney's Office when evidence (as in the Segal case) was weak or non-existent, but desire for a conviction was very strong. In addition to his record of misdeeds in the Boyd and Segal cases, Hogan also served as trial prosecutor in the Palivos case, which the Illinois Criminal Defense Lawyers Association described as a case of *"serial prosecutorial misconduct."*

Hogan's win at all cost involvement in the Segal prosecution, a high profile case, provided him with an opportunity to clean up his past with the press in addition to protecting his current misconduct. In a meeting with Segal's attorney Edward Joyce, Hogan said Segal "made a mistake" by going forward with the June 2010 filing at Department of Justice as to Lanny Breuer regarding misconduct issues that led to Segal's unjust conviction and continues on with the forfeiture filings, Skilling filings, forfeiture negotiations and restitution filings.

AUSA Hogan, however, hardly acted alone in denying due process to Segal and Near North. There is substantial evidence that FBI agent Patrick Murphy colluded with former NNIB employees who sought a competitive advantage for their new employer, Aon Corp. In a controlled environment, Murphy controlled and permitted the taping through his witnesses of defense counsel Harvey Silets. Hundreds of FBI contacts with government witnesses were never documented in 302 reports. Murphy also attested to the validity of three documents that did not belong together in a crucial government financial exhibit misrepresenting financial evidence. Murphy was the recipient of a stolen email that referred to previous emails from government witnesses.

Around the same time that NNIB learned of the illegal cyber hacking against the firm's computers, respected former FBI supervisor David Grossman immediately visited the two FBI officials he had trained to provide evidence and request an investigation. The agents told Grossman there was a "good case" against the hackers. Subsequently, however, these agents informed Grossman that the AUSAs in the Segal case had halted and transferred the investigation. At a later point, Grossman met with the top FBI official in Chicago to tell him of the massive cyber hacking of Segal and Near North and other department violations that he had encountered. Grossman was told by another FBI official that NNIB could never prove the Takeover group was part of the hacking and made a slight comment as to Grossman going over to the Dark Side. Prosecutors in the case then switched tactics, acknowledging some hacking, but claiming, incredibly, that Near North had waited seven weeks to report the hacking. Shortly thereafter, the prosecutors claimed they now had found a "missing file" about the cyber

hacking that had been in their possession for 18 months! This flatly proves that the Government knew of their takeover government witnesses involvement in the hacking conspiracy.

Breaching Attorney-Client Privilege Enables Further Material Misconduct (See Attachment #1)

The prosecution knowingly used attorney-client privileged documents. They openly interfered with apprehending a cybercriminal that supplied them with some of those privileged documents. The taping of Segal defense attorney Harvey Silets is particularly frightening. The Government involved itself with recording a defense lawyer and interfering with trial strategies, exculpatory evidence and witness gathering. If the Government may wantonly record conversations between an attorney and his client, then what hope is there for a fair trial? Beyond that, prosecutors interfered with and sought to intimidate corporate counsel by not recognizing privilege status and this counsel took on medical issues, leading to her resignation which accomplished the prosecution's goal to eliminate the advice of counsel advice and facts. Also, an FBI team appeared at regulatory counsel's office and attempted to go through NNIB and Segal's files. Regulatory counsel had to call his own counsel to stop the action.

The hacking of emails and documents was useful to prosecutors, who were able to remediate and cover up the illegal conduct of its witnesses, manufacture false evidence and hide exculpatory evidence. By violating attorney-client confidentiality, prosecutors were able to learn of witnesses prepared to testify on behalf of the defense and seek to alter their testimony. In wiretaps of Segal's counsel Harvey Silets, the government learned that an employee named Watkins, who admitted to embezzling from Near North, had agreed to submit an affidavit acknowledging his crime and the fact that Segal (the man he was ultimately stealing from) was not responsible for petty cash anomalies that resulted from the theft. The record, including these tapes show that FBI Murphy arranged for Watkins to change his story and memorialize it in an affidavit. As a result of this conspiracy, facilitated by breaching of attorney-client privilege, Watkins was never prosecuted, but his affidavit and misrepresentations by Agent Murphy became the basis of a manufactured Klein tax conspiracy charged to Mike Segal which added three more years to his sentence. Such conduct would never be tolerated in a civil proceeding and these professional, ethical violations squarely come under the McDade Act, a congressional mandate.

The egregious wrongs done in the name of law and order by prosecutors in the Segal case tarnish the good reputation of the Department of Justice. The inability of the U.S. Attorney's Office of the Northern District of Illinois to address their outrageous deviations from the heart of the DOJ's mandate to promote and establish justice in the name of the citizens of the United States is a profound failure, one that affects many more people than Segal.

What Justice Now Requires

Perhaps the most compelling reason for the Washington DOJ's involvement in this complex matter is the chance to address core concerns of prosecutorial ethics standards. The prosecution's tactics used in this battle were (and continue to be) shocking, improper and violative of established Department of Justice policy and the defendant's constitutional rights. Accordingly, the Department of Justice should engage in a thorough review of the charges and the deliberative process that preceded the initiation of this investigation and prosecution. This review will not only aid Segal, it may assist others from the excesses of a few and unlawful interpretation which affects over three million insurance brokers. And in Segal's opinion, restore the reputation of his prosecution in the legal community of Chicago and the national insurance industry. Fundamental fairness and constitutional concerns compel nothing less.

No justice system can properly function if there are components within it that blatantly disregard the well-designed moral statues governing its internal structure, and this is the heart of why Segal continues to fight today. Segal is not attempting to retry his conviction. This is a heartfelt plea for the DOJ to address the ethical misconduct that has compromised his due process rights – rights without which no one can have a fair and just trial – and now more currently, continued excessive punishment and due process violations by AUSA Hogan in forfeiture and restitution proceedings and the concern of the resignation of the top three management personnel of the office. (Sal – check out)

Note: Attachments to be selected as to Sal Cognetti, transmittal letter suggests others

Documents which follow, provide further description of and support for the documented DOJ and ethical misconduct in the Segal case. These include:

--The government's May 2011 response to the June 2010 letter to Lanny Breuer, head of the DOJ Criminal Division, urging a review of apparent misconduct by the Chicago FBI field office and the United State Attorney's office of Northern Illinois in the investigation of Michael Segal.

--Mike Segal's November 2011 response outlining the incomplete and unresolved issues regarding constitutional violations that denied him a fair trial which were never litigated by the District court and Seventh Circuit.

--Attachment #1 citing specific violations of constitutional due process by the FBI and US Attorney's office at the trial, the appeal to the Seventh Circuit, as well as subsequent and ongoing forfeiture and restitution hearings.

--Attachment#2 citing evidence of government accounting fraud which was known, hidden and uncorrected by AUSA William Hogan and FBI Agent Patrick Murphy.