

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**RECEIVED**

FEB 19 2003

JUDGE RUBEN CASTILLO  
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA )

v. )

MICHAEL SEGAL )

No. 02 CR 112

Judge Ruben Castillo

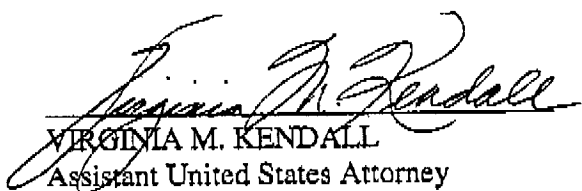
UNDER SEAL

**NOTICE OF MOTION**

To: Daniel E. Reidy  
Jones, Day, Reavis & Pogue  
77 West Wacker Drive, Suite 3500  
Chicago, IL 60601


Thomas P. McNulty  
Jones, Day, Reavis & Pogue  
77 West Wacker Drive, Suite 3500  
Chicago, IL 60601

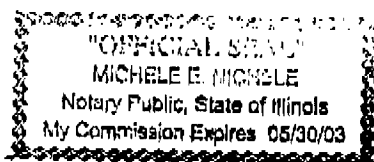
PLEASE TAKE NOTICE that on Friday, February 28, 2003 at 10:00 a.m. at the opening of Court or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present GOVERNMENT'S MOTION TO RECONSIDER COURT'S DISCOVERY ORDER REQUIRING THE GOVERNMENT TO RETURN ALLEGED "PRIVILEGED" DOCUMENTS, at which time and place you may appear, if you see fit.

  
VIRGINIA M. KENDALL  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 886-7627

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

CAROLL. BLUE being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 19th of February, 2003, she caused a copy of the foregoing Notice, together with a copy of the above-described Motions, to be mailed to the above listed individual on said date.

  
SUBSCRIBED AND SWORN TO before me  
this 19th day of February, 2003.



  
NOTARY PUBLIC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )

vs. )

MICHAEL SEGAL )

No. 02 CR 112  
Judge Ruben Castillo  
UNDER SEAL**RECEIVED**  
FEB 19 2003  
JUDGE RUBEN CASTILLO  
UNITED STATES DISTRICT COURT**GOVERNMENT'S MOTION TO RECONSIDER COURT'S DISCOVERY ORDER  
REQUIRING THE GOVERNMENT TO RETURN ALLEGED "PRIVILEGED"  
DOCUMENTS**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, the United States Attorney for the Northern District of Illinois, Eastern Division, respectfully requests that this Court reconsider its previous order requiring the government to return allegedly privileged documents which were seized pursuant to a valid search warrant and are part of an on-going criminal investigation. The government respectfully requests that this Court allow the government to maintain the documents within its control for the following reasons:

**I. Factual Background**

During the status of this matter on February 5, 2003, the defense sought the return of allegedly privileged documents. Without distinguishing between the items seized from Segal's residence and personal office from those seized from the corporate counsel's office of Near North Insurance Brokerage, the defense alleged that all documents that are within the government's control that the defendant believes may be attorney/client privileged materials ought to be returned to the defendant immediately. Further, without indicating what, if any, documents, or even categories of documents, the defense might seek to exclude as privileged from the trial, the defense

sought a blanket return of materials. By clumping the various seized documents into one nebulous category, the defense incorrectly left the Court with the impression that the Government had accessed and viewed potential attorney/client privileged material pertaining to the defendant's representation in this matter. This is not true. By accusing the government of failing to comply with the United States Attorney Manual's guidance<sup>1</sup> regarding the searching of a subject attorney's offices, specifically Guideline 9-13.420, and based on the government's reluctance to discuss its strategy for dealing with future grand jury presentations, the defense argued to this Court that privileges were violated. The defense has left the Court with the understandable, but incorrect, impression that the attorney/client privilege has been violated. Not only is this inaccurate, the documents that defendant seeks to recover are documents to which he has no right to seek the return

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<sup>1</sup>At the status hearing, counsel for the defense claimed that government was violating the United States Attorney's Manual ("USAM"). In truth, there is only one section of the manual that references the search of an attorney's office, U.S. Attorneys' Manual 9-13.420, and that reference covers searches of *subject* attorney's offices. In spite of the fact that the government cautiously segregated the documents that might fall within the attorney/client privilege, the defense claimed a right to the return of the documents based on the government's alleged failure to properly follow the USAM procedure. First, the Department of Justice's and United States Attorney's Office's policies are just that, policies, and do not create any enforceable right, claim or benefit on an accused. *See United States v. Caceres*, 440 U.S. 741 (1979); *Sullivan v. United States*, 348 U.S. 170 (1954) (The Supreme Court, in analogous contexts, concluding that Department policies governing its internal operations do not create rights which may be enforced by defendants against the Department). Second, the government has acted cautiously and prudently in handling materials that have been seized during the execution of the search warrants in order to avoid possible taint of the defendant's prosecution were this Court and the Court of Appeals to decide the issue of derivative use adversely to the government. Indeed, the government has not permitted the prosecution team or the case agents to be exposed to any materials seized that appear to give rise to potential attorney client privilege issues. Instead, the government has always intended and has, in fact, segregated the materials for future review and presentation to the Chief Judge supervising the grand jury investigation of additional crimes and subjects. Thus, the Court's expressed concern about the possibility that the fairness of this defendant's prosecution might be jeopardized by review of privileged materials by the prosecution team and its agents, while understandable given the Court's foresight, has been guarded against by the foresight of the prosecution team.

of and for which he has failed to make even the slightest of showing that he is entitled.

#### **A. The Searches**

The following narrative constitutes the facts of the search and as more fully described in the attached affidavits of the team of case agents assigned to this matter, Special Agents Pat Murphy, Jane Higgins, Bill Peregord, and that of Special Agents Jennifer Smith and Douglas Seccombe who segregated the majority of materials obtained during the searches. *See Gov. Ex. A - E.*

On January 26, 2002, the government searched four locations pursuant to four separate federal search warrants reviewed and issued by a Magistrate Judge. *See Gov. Exhibits F through I.* The facts alleged in the affidavits indicate probable cause to believe that the operation of NNIB was pervasively fraudulent on a multi-year basis with respect to the misappropriation of funds from a continuously deficit PFTA. The locations included: the defendant's personal residence in Highland Park ("the residence"); the defendant's second personal residence on Lake Shore Drive ("the condo"); the corporate offices of Near North Insurance Brokerage located on multiple floors of the John Hancock Building ("Near North"); and the off-site storage facility that maintains closed files for Near North ("R4 Services")(collectively "the search locations"). Four separate search teams were organized by the Federal Bureau of Investigation and were dispatched simultaneously to the four locations to conduct the search of the respective locations.

Prior to the search of the four locations, the team of agents was briefed regarding the potential location of evidence at each site including evidence that may be subject to attorney-client privilege. Agents were instructed to segregate any materials falling within the scope of the warrant and deemed by the searching agent to be potential attorney/client information, and to mark the

materials as such. The materials were reviewed by the search team for basic information such as correspondence between the defendant and an attorney and letters with law firm letterheads. As a result of the search briefing, one agent, Special Agent Doug Seccomb, was assigned to search the office of Sheri Stanton, the legal counsel of Near North at the time of the search. As part of his duties, SA Seccomb segregated six boxes of documents from his search of the corporate legal counsel's office and labeled those boxes potential attorney/client privilege. To date, the government agents assigned to this case and the prosecutors working this case have not reviewed the documents contained in those boxes.

SA Seccomb also segregated the potential attorney/client privileged documents at the condo. SA Seccomb segregated one box of materials from the condo. Altogether, the government has obtained seven boxes of allegedly privileged documents from two locations: the condo and Near North. Six of those boxes were obtained from Near North and the other was obtained from the condo. No documents seized during the search of the residence were marked by agents as potentially attorney/client materials. As to the six thousand boxes currently maintained at R4 Services, no attempt at reviewing potential attorney/client material has been made to date. Although inventories of such boxes provided by Near North indicate certain items that are labeled as legal, and those boxes have not been reviewed by the prosecution team or agents assigned to this case. The boxes maintained at R4 are in the government's control pursuant to the warrant and have been seized by the government. The government is maintaining the boxes at R4 pursuant to a rental agreement for the materials. When parties seek to have access to the documents, they are allowed to do so by contacting an agent assigned to the R4 Services aspect of the case and are permitted access and the ability to copy documents.

As to the seized documents from Near North, twice during the time since the search of Near North, Ms. Stanton requested and received access to those boxes to make photocopies of various documents contained within them. No other individual has had access to those documents nor have the agents or attorneys on this case reviewed them.

Other communications may have been retrieved when the government, pursuant to a valid search warrant, made a mirror image of the network computer drives at Near North. Those drives have been transferred to a "snap server" which enables the government to search the seized material by posing search queries to the server and then obtaining responses to those queries. To date, whenever the government has accessed the network computers searching for correspondence between the defendant and other parties, the government has always *excluded* the names of attorneys Harvey Silets and Dick Lipton (an outside counsel for Near North) from its searches. In an abundance of caution, the government has also excluded the name of former Near North corporate secretary and general counsel Sheri Stanton from those searches. As such, the government has never attempted to review arguably privileged correspondence maintained on Near North's computers. Naturally, because the search was conducted on January 26, 2002, the day that the defendant was arrested, the government only has computer correspondence dating prior to the defendant's representation.

As to the documents seized from the condo, the defendant requested access to the documents, including those marked potential attorney/client privilege, and through his previous attorneys, reviewed all seized items from both the residence and the condo.

As to the documents seized from R4 Services, Near North representatives have requested and received access to the documents on numerous occasions and were permitted to photocopy the

documents requested.

### **B. Defendant's Allegations**

In spite of his complete access to all documents seized during the searches, the defendant sought a blanket order from his Court requiring the government to return unidentified documents that he claims should not be viewed. Without identifying a single document, material, or subject area that the defendant believes constitute privileged materials, the defendant sought to have this Court order the government to return all privileged materials to him.<sup>2</sup> This Court then ordered the government to prepare a log of privileged materials and turn the documents over to the defense. Upon objection to this Court's order, the Court invited the government to file this Motion to Reconsider.

The government respectfully requests that this Court reconsider its previous ruling for the following reasons. First, the materials which the defendant has standing to seek to have this Court review (the materials seized from his personal residence and condo), have been made available to him. Through his attorneys, he has reviewed these materials and is now in a position to assert whatever privilege he believes may exist regarding the use of the documents at trial. Defendant is uniquely in a position to review the material, assess it for potential attorney/client privilege and then move this Court to prevent its use at trial. Something he has failed to do to date. There is absolutely no support in the law for the proposition that defendant can simply yell privilege and then shift to the government the obligation to go through documents attempting to determine what

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<sup>2</sup>Citing to a case pertaining to the return of defendant's property in a Rule 41 context, *National City Trading Corp. v. United States*, 635 F.2d 1020, 1026 (2d Cir. 1980), the defense sought the return of documents legally within the government's control as part of an on-going investigation. The case does not stand for the extreme proposition that material covered by an evidentiary privilege must be immediately returned to the defendant.

the defendant deems to be privileged and then make a determination as to what exceptions apply to the documents and then determine what the *defendant* will seek to exclude at trial. If that were the law, then every defendant after every document search warrant would claim privilege solely to shift the burden to the government to delay and disrupt the investigatory use of the documents.

Second, the defendant is not entitled to the return of documents that were seized from the offices of Near North's corporate counsel. Defendant has failed to claim that documents maintained at the corporate legal counsel's office are documents containing potential attorney/client privilege materials pertaining to the defendant and his personal legal representation. Sheri Stanton was not a personal legal representative of the defendant, she was the legal representative of Near North and acted in a dual capacity not only as general counsel but as corporate secretary. Without presenting a claim to this Court that Stanton represented Segal personally in matters before this Court, or that Stanton maintained records of Segal's personal representation regarding matters before this Court, the documents are not privileged. Those records were seized pursuant to an on-going grand jury investigation into the alleged illegal practices of the corporation, Near North. Near North's communications with its corporate counsel pertain to a potential privilege held by Near North, not Segal. If Segal wants to claim that there are documents contained within those boxes that refer to his personal representation, then the burden is upon him to do so. *See United States v. First State Bank*, 691 F.2d 332, 335 (7th Cir.1982). He, of course, has not done so to date.

Third, the government has carefully treated the documents, has not viewed them, and has segregated them for a privilege team to review as part of the grand jury investigation. Segal has no right to interfere with that grand jury investigation by using this case as a means to avoid a Rule 41 procedure before the Chief Judge supervising the grand jury. Finally, upon a review of the



documents by the privilege team, they may very well be admissible at a future trial or in a grand jury proceeding because they may fall within the crime fraud exception to the attorney client privilege or simply not be privileged communications. As such, ordering their premature return to the defense without allowing the government to ascertain their status as potential evidence in the government's ongoing investigation of both Segal and others, including Near North would subvert the orderly conduct of the investigation and the grand jury proceeding.

Fourth, the government has segregated the boxes within its control and a separate team will be necessary to review those documents to determine what materials are arguably privileged and to create a log of what each box contains. This log will take weeks to prepare and is part of the government's on-going grand jury investigation. As to the computer correspondence, the government team assigned to this case has not reviewed correspondence that may have occurred between the defendant and his personal attorneys relating to this or other matters. As such, the government has properly maintained control of the documents, has exercised extreme caution in its handling of the documents and records.

Finally, any records obtained by the government, even through this careful screening process, were lawfully obtained through valid search warrants and potentially constitute evidence of crimes committed by Segal, Near North, and others. The burden is improperly placed on the government to catalog what the defense believes may be privileged materials. The defense is thoroughly aware of the materials seized, has obtained entire back up computer tapes from all of the computers, has had access to those materials seized, and has been provided with access to all bank records, audit records, and financial records reflecting the long-term scheme of diverting money from the trust account and customers. No further burden should be placed on the

government at this time.

## **II. The Defendant Has No Standing to Object to the Government's Seizure of Corporate Documents from Near North Insurance Brokerage**

Perhaps recognizing his inability to move to suppress the documents seized from Near North due to his lack of standing to assert a Fourth Amendment motion to suppress, or perhaps due to his inability to move pursuant to Rule 41 for the return of the documents for similar reasons, Segal attempts to have this Court enter an order requiring the government to return documents to him that are not his. Simply put, Segal has no right to any documents seized from Near North. Segal can not claim attorney client privilege for any communications between Segal as the CEO of Near North and Stanton as Near North's corporate counsel regarding the corporation's matters. *See In re Grand Jury Proceedings, Detroit, Michigan*, 434 F. Supp 648 (E.D.Mich. 1977), *aff'd* 570 F.2d 562 (6<sup>th</sup> Cir. 1978).

In spite of his lack of standing to assert the return of documents based on an alleged personal attorney client privilege, the government has never prohibited the defense from viewing the seized records. All records have been made available for review by the defense at a mutually agreed upon time. If Segal wanted to assert that documents seized from Near North are protected by the attorney client privilege he has had every opportunity to review the documents, identify the items he believes are protected, and to move this Court for an order prohibiting the government from using such documents at trial. Segal, however, faces an uphill battle when claiming such a privilege regarding the documents seized from Near North. Most Circuits apply the *Bevill* test to determine whether a corporate officer's communications with corporate counsel are protected under the attorney client privilege. *See In re Bevill, Bresler & Schulman Asset Management Corp.*, 805 F.2d 120, 125 (3<sup>rd</sup>

Cir. 1986). In order to claim that he has such a personal privilege, Segal must assert that 1) he approached corporate counsel with the purpose of seeking legal advice; 2) that he clearly informed the corporate counsel that he was seeking legal advice in his personal capacity rather than as a corporate officer; 3) that the corporate counsel was aware of the potential conflict of interest between the individual and corporation and still agreed to provide advice; 4) that the conversations were confidential; and 5) that the substance of the conversations with corporate counsel did not concern matters within the company or the general affairs of the company. *Id.*; see also *In re Grand Jury Subpoenas*, 144 F.3d 653, 659 (10<sup>th</sup> Cir. 1998)(Intervenor had personal attorney client privilege only regarding those matters in which he sought legal advice regarding his personal liability without regard to corporate considerations); *United States v. International Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 119 F.3d 210, 215 (2d Cir. 1997)(Any privilege of campaign manager's conversations with campaign counsel regarding campaign belonged to the campaign and not the campaign manager personally).

Further, defendant's subjective belief that the communications made to corporate counsel were privileged is not sufficient to change the communication into a personal one. Some objective indicia of reliability is necessary that includes either an express or implied agreement that the corporate counsel is acting as a personal representative of the corporate officer and is offering individual advice. See *i.e. United States v. Keplinger*, 776 F.2d 678, 699-701 (7<sup>th</sup> Cir. 1985), *cert. denied*, 106 S.Ct. 2919 (1986)(An individual attorney client relationship can not be inferred from employee seeking advice from corporate attorney absent showing of implied or express agreement showing that employee's reliance on attorney was reasonable).

Once again, the burden is on the defendant to identify what, if any, documents seeks to have

excluded from his impending trial. The government is in no position to ascertain the subjective belief of the defendant when he communicated with counsel.

**A. The Corporate Records Were Seized Pursuant to an On-Going Grand Jury Investigation into the Practices of Near North and Others**

As stated above, the records in the government's possession were seized pursuant to on-going grand jury investigation. It is completely within the government's control to present the charges to the grand jury that it sees fit, and it intends to do so as the investigation into those new charges continues. As the Supreme Court has stated: "In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *United States v. Hayes*, 434 U.S. 357, 363 (1978); *United States v. Goodwin*, 457 U.S. 368, 381 (1982)(The prosecutor has broad discretion to determine the extent of the societal interest in prosecution). Requiring the government to give back documents which are being reviewed for potential new charges is in improper encroachment upon the investigatory function of the Executive.

**B. The Defendant Was Permitted Access to Photocopy and Review the Documents Seized from his Personal Residence**

As described above, the documents that were seized were made available to the defense and remain available to the defense to review. It is not the government's burden to identify or "catalog" the potential attorney client material for the defense, as this Court has ordered. In fact, the party seeking to invoke the privilege has the burden of establishing all of its essential elements. *United States v. First State Bank*, 691 F.2d 332, 335 (7th Cir.1982). Instead of fulfilling their burden, the defense has made a blanket claim of privilege to all documents within the government's control and

seeks to shift the burden to the government to identify documents that are privileged. First, a blanket claim of privilege is unacceptable. *Id.* The scope of the privilege should be "strictly confined within the narrowest possible limits." 8 Wigmore, Evidence § 2291 (McNaughton rev. 1961). Second, the scope of the privilege must be made and sustained on a question-by-question or document-by-document basis. *See United States v. Lawless*, 709 F.2d 485 (7<sup>th</sup> Cir. 1983). The only party that has the ability to assert such a privilege is therefore the holder of the privilege, not the government.

The defense has had every opportunity to review the documents for privilege and preserve its right to assert the privilege to this Court but has failed to do so. That failure, in and of itself, should be reason enough to deny the defense's blanket request for the return of legally seized documents. *United States v. Gregg*, 414 F.2d 943 (7<sup>th</sup> Cir. 1969) *cert. denied*, 399 U.S. 934 (1970) (Denial of defendant's motion for discovery was not error where prosecution had voluntarily offered to allow inspection and copying of items seized from defendant and defendant failed to take advantage of offer).

Not only is the burden improperly shifted to the government to catalog allegedly privileged documents, the defense now hides behind that shifting burden by refusing to identify a single document that may be personally privileged, while the government in preparing for the trial of Mr. Segal has diligently sought to avoid exposure to such materials without a court ruling that derivative taint analysis should not apply. Without citing to any precedent for its request and demands the return of documents that are not the defendant's, were not communicated with the intent to gain personal legal advice, and even if they were, now refuses to identify such documents.

### **III. The Defendant is Not Entitled to the Return of the Documents**

As stated above, the defendant has no right to the return of documents that are not his. Nor does he have a right to the return of documents that are part of an on-going grand jury investigation. Nor does he have a right to the return of documents by claiming a blanket privilege. Defendant further can not cite to the Sixth Amendment as a reason for returning the allegedly privileged documents.

#### **A. No Sixth Amendment Right Could be violated by Government Review**

No Sixth Amendment right of Segal's is implicated by government review of the documents seized. As this Court knows well, an individual enjoys no protection provided by the Sixth Amendment until the instigation of criminal proceedings against him. *See McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). Segal was not charged with the criminal complaint until after the seizure of the records.

#### **B. The Documents May Not Be Privileged At All**

One fundamental flaw in Segal's argument that he is entitled to the return of records that are potentially privileged is that there may be exceptions to the privilege even if he were able to adequately assert privilege. For example, the communications may have been made to more than merely the defendant's attorney for the purpose of obtaining and seeking legal advice. It is possible that the defendant already waived his privilege through revealing privileged communications to others. *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir.1983) ("When information is transmitted to an attorney with the intent that the information will be transmitted to a third party ..., such information is not confidential."). It is further possible that an exception exists due to the

Seventh Circuit's recognition of a crime fraud exception to the attorney client privilege. *See e.g. United States v. Davis*, 1 F.3d 606 (7<sup>th</sup> Cir. 1993). It is also possible that many of the matters that are allegedly protected by the attorney client privilege are nothing more than business advice or business communications. A corporation could easily shield itself from the grand jury's inquiry by marking every document attorney client privileged even if they are not privileged. Labels on boxes and drawers do not a privilege make. *See e.g. Duplan v. Moulinage at Retorderie de Chavanoz*, 478 F.2d 480 (4<sup>th</sup> Cir. 1973)(Rule 16 of criminal discovery applies to criminal investigation before the Court and does not cover client's communications to other outside law firms regarding administrative matters). Many documents containing communications to and from lawyers may not be privileged at all such as tax preparation documents and business advice regarding the corporation.

Because the government is carefully using a separate prosecution team to screen the documents, the government will maintain its ability to assert these various exceptions to this Court and to future courts if necessary.

**C. The Attorney/Client Privilege is an Evidentiary Privilege Only and Does not Prohibit the Government from Reviewing the Documents**

Finally, as the government stated in its original response and in open court, the privilege that Segal asserts is merely an evidentiary one and one that does not have the same import as a Constitutional privilege. As an evidentiary privilege embodied in Rule 501 of the Federal Rules of Evidence that prohibits the introduction of privileged communications at trial or in the grand jury over the objection of the privilege holder. Nothing in Rule 501 protects from investigative scrutiny the information contained in documents which on their face are properly seized pursuant to a search

warrant by investigators that might contain information which is plainly relevant and material to the investigation of federal crimes, and which might lead to the finding of admissible non-privileged evidence against the privilege-holder or others. By way of example, there is a marital communications privilege recognized by 501 and the prosecution's knowledge of the communications does not taint the prosecution team such as access to immunized testimony of the defendant would.

Because the documents are being handled in a cautious manner with an eye toward preserving the potential attorney client privilege that may or may not be asserted at a later date, the documents must remain in the control of the government and should not be ordered returned to the defense.



**D. Conclusion**

The government respectfully requests that the Court reconsider the extreme remedy outlined in its previous ruling requiring the government to both catalog and turn back materials that may be attorney client privileged materials. Based on the careful treatment of the documents, the defense's ability to assert the privilege if necessary, and the lack of any taint to the current prosecution team, this Court should deny the defendant's request for the return of privileged materials.

Respectfully submitted,  
**PATRICK J. FITZGERALD**  
United States Attorney

By: 

**WILLIAM HOGAN**  
**VIRGINIA KENDALL**  
**DEAN POLALES**

Assistant United States Attorneys  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312)886-7627

AFFIDAVIT

I, William Peregord, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Chicago, IL office. I have been a Special Agent with the FBI for over four years. I have a juris doctor degree and passed the Michigan bar exam in 1996. I am currently assigned to a division within the FBI that deals primarily with complex white collar crimes and public corruption. In this capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including mail fraud, wire fraud, insurance fraud, tax violations, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

2. I am one of the case agents on the investigation into alleged criminal violations committed by Mike Segal, Near North Insurance Brokerage Inc., and others. I did not participate in the searches of the business premises of Near North Insurance Brokerage Inc. ("Near North") located at 875 N. Michigan Avenue, Chicago, Illinois; the residence of Michael Segal located at 1040 North Lake Shore Drive, 32<sup>nd</sup> Floor and its corresponding storage space; the residence of Michael Segal located at 405 Sheridan Road, Highland Park, Illinois; and the Records of Near North maintained at R4 Services, Inc, a storage facility located at 1301 W. 35<sup>th</sup> Street, Chicago, Illinois that took place on January 26, 2002.

3. I have learned as part of my role as one of the case agents that during the searches various agents segregated boxes of materials and marked them as potential attorney client privileged material. These boxes have been segregated for a future team comprising an agent, prosecutor, and paralegal not associated with this case to review as part of the government's on-going grand jury investigation.

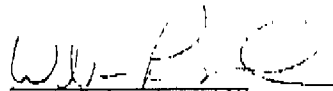


4. To date, I have not reviewed the materials that were segregated and marked attorney client privilege nor do I intend to do so.

5. To date, I have not discussed the materials contained within the segregated boxes with any of the agents who segregated the boxes or marked them attorney client privilege.

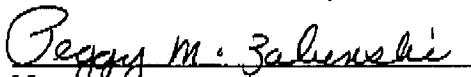
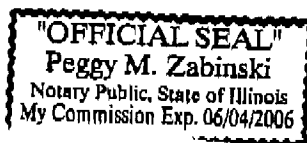
6. To date, I have not reviewed any other seized materials that appear to be protected by the attorney client privilege.

Further affiant sayeth not.



William Peregord  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn before me  
this 19th day of February 2003

  
Notary

AFFIDAVIT

I, Pat Murphy, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Western Regional Agency of the Chicago, IL office. I have been a Special Agent with the FBI for over sixteen years. I have a juris doctor degree and passed the Illinois bar exam in 1986. I am currently assigned to a division within the FBI that deals primarily with complex white collar crimes and public corruption. In this capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including mail fraud, wire fraud, insurance fraud, tax violations, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

2. I am one of the case agents on the investigation into alleged criminal violations committed by Mike Segal, Near North Insurance Brokerage Inc., and others. As one of the case agents, I participated in a briefing of the agents who searched the business premises of Near North Insurance Brokerage Inc. ("Near North") located at 875 N. Michigan Avenue, Chicago, Illinois; the residence of Michael Segal located at 1040 North Lake Shore Drive, 32<sup>nd</sup> Floor and its corresponding storage space; the residence of Michael Segal located at 405 Sheridan Road, Highland Park, Illinois; and the Records of Near North maintained at R4 Services, Inc, a storage facility located at 1301 W. 35<sup>th</sup> Street, Chicago, Illinois prior to the searches that took place on January 26, 2002. During this briefing, the agents were instructed to segregate materials that they believed in their experience were potentially protected by the attorney client privilege.

3. During the searches, the agents segregated five boxes of materials from Near North and one box of material from the 1040 N. Lake Shore Drive address. These boxes were marked as potential attorney client privileged material. These boxes have been segregated for a future team



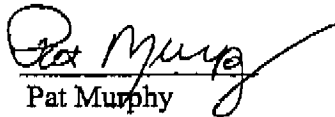
comprising an agent, prosecutor, and paralegal not associated with this case to review as part of the government's on-going grand jury investigation.

4. To date, I have not reviewed the materials that were segregated and marked attorney client privilege nor do I intend to do so.

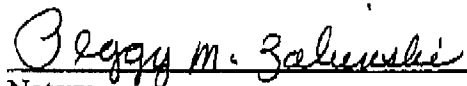
5. To date, I have not discussed the materials contained within the segregated boxes with any of the agents who segregated the boxes or marked them attorney client privilege.

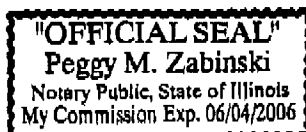
6. To date, I have not reviewed any other seized materials that appear to be protected by the attorney client privilege.

Further affiant sayeth not.

  
Pat Murphy  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn before me  
this 19th day of February 2003

  
Notary



AFFIDAVIT

I, Jane Higgins, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Chicago, IL office. I have been a Special Agent with the FBI for over thirteen years. I have a juris doctor degree and passed the California bar exam in 1988. I am currently assigned to a division within the FBI that deals primarily with complex white collar crimes and public corruption. In this capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including mail fraud, wire fraud, insurance fraud, tax violations, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

2. I am one of the case agents on the investigation into alleged criminal violations committed by Mike Segal, Near North Insurance Brokerage Inc., and others. As one of the case agents, I participated in a briefing of the agents who searched the business premises of Near North Insurance Brokerage Inc. ("Near North") located at 875 N. Michigan Avenue, Chicago, Illinois; the residence of Michael Segal located at 1040 North Lake Shore Drive, 32<sup>nd</sup> Floor and its corresponding storage space; the residence of Michael Segal located at 405 Sheridan Road, Highland Park, Illinois; and the Records of Near North maintained at R4 Services, Inc, a storage facility located at 1301 W. 35<sup>th</sup> Street, Chicago, Illinois prior to the searches that took place on January 26, 2002. During this briefing, the agents were instructed to segregate materials that they believed in their experience were potentially protected by the attorney client privilege.

3. During the searches, the agents segregated five boxes of materials from Near North and one box of material from the 1040 N. Lake Shore Drive address. These boxes were marked as potential attorney client privileged material. These boxes have been segregated for a future team



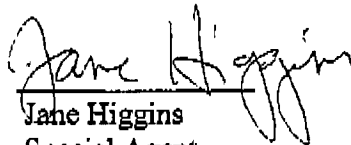
comprising an agent, prosecutor, and paralegal not associated with this case to review as part of the government's on-going grand jury investigation.

4. To date, I have not reviewed the materials that were segregated and marked attorney client privilege nor do I intend to do so.

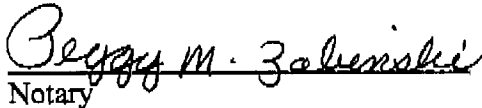
5. To date, I have not discussed the materials contained within the segregated boxes with any of the agents who segregated the boxes or marked them attorney client privilege.

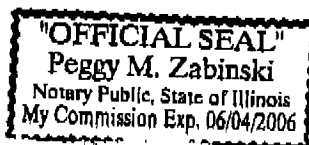
6. To date, I have not reviewed any other seized materials that appear to be protected by the attorney client privilege.

Further affiant sayeth not.

  
Jane Higgins  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn before me  
this 19th day of February 2003

  
Notary



AFFIDAVIT

I, Jennifer Smith, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Chicago, IL office. I have been a Special Agent with the FBI for over eight years. I am currently assigned to a division within the FBI that deals primarily with organized crime and I am also a member of the FBI's Evidence Response Team. In this dual capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including money laundering and extortion and I have also participated in numerous searches of both residences and corporate offices. In my capacity as a member of the Evidence Response Team, I have received special training regarding the location and recovery of evidence.

2. I am not one of the case agents involved in the investigation into alleged criminal violations committed by Mike Segal, Near North Insurance Brokerage Inc., and others. I participated in the searches of the business premises of Near North Insurance Brokerage Inc. ("Near North") located at 875 N. Michigan Avenue, Chicago, Illinois and the residence of Michael Segal located at 1040 North Lake Shore Drive, 32<sup>nd</sup> Floor and its corresponding storage space on January 26, 2002. Prior to these searches, I was briefed on the investigation and the targets of the investigation and was instructed to segregate materials that I believed were potentially protected by the attorney client privilege based on my experience and professional judgment.

3. During the searches, I segregated materials from Near North and from the 1040 N. Lake Shore Drive address. The materials that I segregated, I marked as potential attorney client privileged material. These boxes have been segregated for a future prosecution team not associated with this case to review as part of the government's on-going grand jury investigation.



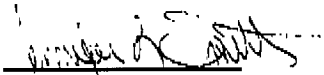


4. The only review of the materials that I segregated was the review necessary to make a preliminary determination, based on my experience, of whether the material may be privileged. I have not reviewed the material again since that day, January 26, 2002.

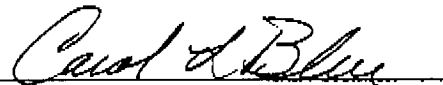
5. To date, I have not discussed the materials contained within the segregated boxes with Special Agents Pat Murphy, Jane Higgins, and Bill Peregord.

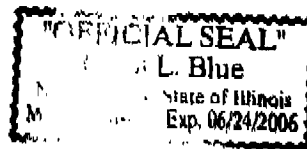
6. To date, I have not reviewed any other seized materials that appear to be protected by the attorney client privilege relating to the Near North/Segal investigation nor have I conveyed any information to SA Murphy, Higgins, and Peregord that I believe to be attorney client privileged material related to that investigation.

Further affiant sayeth not.

  
Jennifer Smith  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn before me  
this 19th day of February 2003

  
Notary



**AFFIDAVIT**

I, Douglas Seccombe, having been duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") assigned to the Chicago, IL office. I have been a Special Agent with the FBI for over twelve years. I am currently assigned to a squad within the FBI that deals primarily with complex white collar crimes and I am also a member of the FBI's Evidence Response Team. In this dual capacity, my duties and responsibilities have included conducting criminal investigations of individuals and businesses alleged to have violated federal criminal laws including mail fraud, wire fraud, insurance fraud, tax violations, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and also participating in numerous searches of both residences and corporate offices. In my capacity as a member of the Evidence Response Team, I have received special training regarding the location and recovery of evidence.

2. I am not one of the case agents on the investigation into alleged criminal violations committed by Mike Segal, Near North Insurance Brokerage Inc., and others. I participated in the searches of the business premises of Near North Insurance Brokerage Inc. ("Near North") located at 875 N. Michigan Avenue, Chicago, Illinois and the residence of Michael Segal located at 1040 North Lake Shore Drive, 32<sup>nd</sup> Floor and its corresponding storage space on January 26, 2002. Prior to these searches, I was briefed on the investigation and the targets of the investigation and was instructed to segregate materials that I believed were potentially protected by the attorney client privilege based on my experience.

3. During the searches, I segregated materials from Near North and from the 1040 N. Lake Shore Drive address. The materials that I segregated, I marked as potential attorney client privileged material. These boxes have been segregated for a future team comprising an agent, prosecutor, and



paralegal not associated with this case to review as part of the government's on-going grand jury investigation.

4. The only review of the material that I segregated was the review necessary to make a preliminary determination, based on my experience, of whether the material may be privileged. I have not reviewed the material again since that day.

5. To date, I have not discussed the materials contained within the segregated boxes with Special Agents Pat Murphy, Jane Higgins, and Bill Peregord.

6. To date, I have not reviewed any other seized materials that appear to be protected by the attorney client privilege nor have I conveyed any information to SA Murphy, Higgins, and Peregord that I believe to be attorney client privileged material.

Further affiant sayeth not.

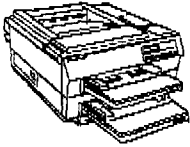


Douglas Seccombe  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn before me  
this 19th day of February 2003

*Gay Cruickshank, Notary Public*



**U. S. Department of Justice***United States Attorney  
Northern District of Illinois**Virginia M. Kendall  
Assistant United States Attorney**Dirksen Federal Building      Direct Line: (312) 886-7627  
219 South Dearborn Street, Fifth Floor      Fax: (312) 353-8298  
Chicago, Illinois 60604***FAX COVER SHEET**

To: Tom McNulty

Re: U.S. v. Michael Segal, 02 CR 112

Message:

Date: February 19, 2003

Pages: 28 including cover sheet

Fax #: (312) 782-8585