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02: Attachments in support of Filing to Department of Justice, June 8, 2010. 60pp. Attachments 1-25 [Separate PDF]

03: Attachments in support of Filing to Department of Justice, June 8, 2010. 38pp. Attachments 26-33 [Separate PDF]

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November 4, 2011

FIRST CLASS MAIL

Robin C. Ashton, Esq.
Counsel
Office of Public Responsibility
Department of Justice
Washington, D.C. 20503

Re: United States v. Michael Segal

Dear Ms. Ashton

On May 5, 2011 you wrote to me in response to a letter that I had sent to the Department of Justice ("DOJ") relating to certain alleged conduct by the office of the US Attorney for the Northern District of Illinois in the above-referenced matter. The essence of your response was that issues about which we were concerned were still in litigation or had been finally resolved by the courts. I respectfully do not agree with that statement. While the issues presented in my letter to the DOJ are related to previous litigation, the precise issues have never been before or resolved by any court. It is true that in pretrial proceedings the district court considered and rejected Mr. Segal's allegation that the government benefited from the fruits of the criminal computer hacking enterprise conducted by former Near North employees The court's analysis of the hacking was limited to the 4th Amendment implications of the conduct. The violation of Mr. Segal's 6th Amendment rights by the hacking theft of attorney-client privileged documents which existed in significant numbers within the hacked documents was never considered.

Also never addressed are the DOJ policy implications associated with the government's participation in the hacking of attorney-client-privilege documents and its use of those documents. The essence of our concern relates to a violation of Mr. Segal's attorney-client privilege by the U.S. Attorney's office when they wiretapped and recorded the conversations of Harvey Silets, the attorney retained by Mr. Segal to defend him against charges in this case. The FBI recorded and 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. These tapes were only discovered after the trial.

We believe this conduct by the U.S. Attorney violated Mr. Segal's constitutional rights and deprived him of a fair trial. It is this matter that I wanted to call to your attention and to have reviewed by your office. Documentary support of these issues is available in the trial record.

Thank you for your consideration of these matters.

Sincerely,

Stanley M. Brand SMB:mob

5. WASN'T THIS DECIDED IN THE APPELLATE COURT?

'The issue before the Seventh Circuit was "Vindictive Prosecution." The "hacking" was a small factual component of the argument and the fact that the materials involved attorney-client-privilege documents was not the basis for the argument. To establish "vindictive" prosecution, the defendant must establish that "vindictiveness" is the exclusive reason for bringing the prosecution. The Seventh Circuit failed to find that the hacking was the exclusive reason for bringing the prosecution. However, the Segal Court did not find that the hacking didn't happen and did not address other potential prejudice to Segal (especially ACP prejudice.) -- simply because it wasn't raised.

The attorney-client-privilege hacking misconduct (which, remember, rises to the level of criminal conduct) was the proximate cause of a series of prejudicial acts (and omissions) by the Government:

- The civil suits against the hacker triggered the RICO indictment and the indictment of NNIB
- The only viable reason for the FBI not aggressively pursuing an investigation and prosecution of the hackers was that the dragnet would have ensnared their own agents and ultimately Assistant U.S. Attorneys.
- The Federal Government contacted the Illinois authorities and told them to lay off the investigation and prosecution -- that the federal government was going to handle it -- effectively stopping a state criminal investigation.
- The U.S Attorney's office & the trustee blocked two escrowed sales of NNIB pretrial (see the Winston & Strawn memorandum).
- In the need to steam-roller the prosecution, the government engaged in multiple instances of evidence manipulation and misrepresentation so as to ensure that their cybercrime activity got "buried."

Our DOJ filing does not specifically address the "materiality" of the specific prejudice resulting from the ACP hacking. While some of the prejudice is difficult to quantify, we do have several that demonstrate very specific prejudice.

Closely related to the ACP "hacking" is the ACP "taping" of Harvey Silets the act which is parallel to the Miama case dismissed over the taping of defense counsel. The taping of Silets has never been raised in any forum. Although the taping is touched in our DOJ memorandum, the presentation of that aspect could certainly be strengthened in followup discussions and/or filings. I.have attached some relevant material.

The "hacking" violations and "taping" violations demonstrate synergistic prejudice in that it is clear from the evidence, on its face that the Government manipulated the tapes and generated false FBI 302 statements (i.e. two "almost identical" FBI 302 statements) as part of their coverup and deflection activities. The taping of Silets also demonstrates the Government's interference with Segal's right to investigate (through counsel) and obtain statements from witnesses -- we have the FBI on tape attempting to convince Watkins to change his statement to make it fit the Government's version of events. The FBI involvement in tampering with Watkins' statement would never have happened but for the ACP hacking and taping violations.

The fact that the credibility of David Grossman, with his 26 years of experience with the FBI, went to the TOP FBI man in Chicago with the cybercrimes and laid everything out for.them -- but ended up with a stonewalled investigation is compelling. With all of the statements made by President Obama and AG Holder with respect to the importance of cyber security (see attached media reports), the involvement of AON, a Fortune 500 corporation, in the hacking of ACP documents from Segal and NNIB -- is just wild. Then add to that the trustee's dismissal of the civil suits against AON and Kemper -- there was a giant crime, which generated huge tort liability for AON and Kemper, related to the ACP hacking activities. The inaction by the FBI relative to that separate crime makes a mockery of the President and Attorney General's statements about the importance of cyber security -- it is certainly contrary to current public policy.

6. POTENTIAL GOVERNMENT HACKING DEFLECTIONS

The line of defense that the government throws up is that the matter has already been adjudicated and that they won. The doctrine of res judicata is only applicable when both the facts and the legal theory are identical. The district court considered only a subset of the facts.

The appellate court considered the hacking only as a remote parenthetical to an allegation of vindictive prosecution. In other words, this matter has not actually been litigated. The district court prevented the full litigation of the matter when it refused to hold an evidentiary hearing to develop the record.

The district court acknowledged and accepted all of the facts set forth by Segal with respect to the hacking. However, in making its ruling the district court made two errors: 1) instead of considering whether the facts presented by Segal established a prima facie case to develop the record at an evidentiary hearing, the Court jumped to the question of whether Segal had offered proof sufficient to reach the ultimate question that was not yet properly before the court; and 2) in making its ruling, the Court took an exceptionally narrow view of the conduct of which Segal complained -- looking only at the search activities of the government as related to late-stage hacking by Cheley rather than evaluating whether Segal, over the course of multiple evidentiary submissions, had established that there was a need to fully develop the record to establish the existence/ nonexistence of an agency relationship between the hacker, the Takeover Group, and the United States.

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 First Amendment right to access to the courts with respect to pursuit of civil remedies against Cheley and the Takeover Group to obtain relief in the state courts of Illinois;

2) Violation of the Sixth Amendment right to effective assistance of counsel by intercepting and monitoring attorney-client privilege communications;

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;

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 far exceed the typical narrow scope of the Exclusionary Rule.

Given the plethora of collateral constitutional violations listed above, the cumulative impact of those violations additionally constitutes an additional constitutional violation: a violation of substantive due process through the right to a fair trial.

The facts underlying the hacking claims are well developed. Because these facts have been pled by reputable counsel (i.e. Reidy, Cognetti, Brier) in district court filings they can be considered well-vetted. We will provide further discrete linkages between events, documents, actions, communications, and reactions.

On Segal's Motion for Reconsideration in the district court, the government successfully twisted the Court's response to focus on a "taint team" analysis of the stolen materials. (In spite of the fact that everything that was stolen from Near North was per se "tainted.") The Government's defense centered on affidavits from FBI Agent Murphy (and one or more other FBI agents) disavowing personal conduct with respect to the taint team's activities. A careful and technical reading of the affidavits will reveal that they are exceptionally narrow in scope. After all, attorney Branfonbruner, representing the Takeover Group in civil litigation, stated on the record in open court that the members of the Takeover Group did not use any of the stolen materials for personal or business purposes -- they obtained the-materials for the exclusive purpose of furnishing them to the Federal Bureau of Investigation. In other words, the FBI played a "shell game" with the district court -- fraudulently concealing the identity of the FBI recipients of the hacked materials provided by the hacker and the Takeover Group. Effectively, the government provided affidavits from "nonresponsive" witnesses - they hid the identities of the witnesses who would have the actual knowledge of the full extent and nature of the relationship between the FBI, the Takeover Group, and hacker Cheley. (That's the charitable position -- the alternative is that Agent Murphy simply lied.)

Our potential "smoking gun" witness is ex-FBI Grossman who was engaged by Segal/Near North. Grossman was intimately involved in the investigation of the hacking. Grossman personally interacted with the FBI cybercrimes agents and with the FBI Station Chief in this matter. Because Grossman was recently-retired FBI, he was intimately familiar with FBI protocols with respect to cybercrimes and other investigative procedures.

In the prosecution of ex-Senator Ted Stevens, it was an FBI Agent who was disgusted with the government's behavior who became impossible to ignore. In Segal's case, Grossman's FBI pedigree makes him a "whistleblower" who is difficult to ignore -- his reputation and integrity are first rate, as is his specific knowledge of what happened here. It is also highly unlikely that the ·FBI agents with whom he interacted would dispute his account of the events (i.e. the FBI stonewalling) that pervaded the FBI cybercrimes non-investigation of Cheley. Grossman is likely to be highly cooperative in this matter.

7. PRIVATE AGENCY ENTANGLEMENTS

When the e-mail communications between the parties, the telephone calls between the parties, and the hacking activities of Cheley are overlaid on a single timeline, it is apparent that the activities of Cheley are not independent from the activities of the other parties. The content of certain e-mail messages confirms that the parties are related.

The federal government provided hacker David Cheley with considerable benefits including:

- immunity from federal prosecution;
- federal influence in nonprosecution by Illinois prosecutors;
- federal influence (both directly with the Illinois court and indirectly through the RICO indictment of Segal) to thwart Illinois civil litigation against Cheley.

The federal government provided benefits to AON and the Takeover group including:

- immunity from federal prosecution for conspiracy to breach the security of a secure computing system;
- federal influence (both directly with the Illinois court and indirectly through the RICO indictment of Segal and Near North) to thwart Illinois civil litigation against AON and members of the Takeover Group;
- advance knowledge of court filings & Segal's arrest to allow AON and the Takeover group to leverage that knowledge for competitive business advantage.

The Takeover Group provided benefits to the government including:

- a "prepackaged" prosecution of Segal and Near North;
- access to confidential and privileged documents held by Near North and Segal without the hassles of obtaining a search warrant;
- a "managed leak" of government-supportive case .information to the press -- avoiding having the government's "fingerprints" on confidential information provided to the media;

Each provision and receipt of consideration between the parties was not an independent act. The parties' entanglement was so complete that it is impossible to determine that a specific act by one party resulted in a quid pro quo with another specific act. Rather, each party to the conspiracy contributed and, received a "package" of consideration from their participation in the conspiracy. In other words, this was not a two-party

contract arrangement -- this was a conspiracy in which each member of the conspiracy committed overt acts in support of the aim of the conspiracy -- and each member of the conspiracy received benefits from the conspiracy of a different sort. Although the conspiracy had a common purpose, it was founded on the premise of "from each according to their abilities, to each according to their needs." Everybody involved got what was important to them -- in addition to their common purpose of the destruction of Segal and Near North.

The public disclosure of the hacking activity marked a major decision-point in the hacking conspiracy. At that point, the government needed to either: 1) pursue the criminal prosecution of the hackers; or 2) close ranks with the hacking conspirators and become a full-partner in the hacking conspiracy. Prosecution of the hackers and his primary co-conspirators would have severely damaged the prosecution of Segal and Near North. However, the government went far beyond the mere "nonprosecution" of the hacker and his co-conspirators. The government instead reconfirmed its full membership in the conspiracy - interfering with criminal and civil processes of the sovereign State of Illinois Courts. Through such interference, the government precluded Segal and Near North from exercising their constitutional privilege of seeking redress in the courts -- a privilege which applies to both federal and state forums. As a "full" member of the hacking conspiracy, each government attorney and law enforcement agent became criminally culpable for the illegal penetration of Near North's computer systems and the theft of information from those systems.

8. HACKING OF MICHAEL SEGAL TO JOY SEGAL E-MAIL

Although the "privileged" status of spousal communications is subtly different from attorney-client privilege, the privilege is recognized in the federal courts nonetheless. This should be especially true when the contents of the communication directly address the core strategic elements of what will become a criminal prosecution.

On September 3, 2001, months before the arrest of Mike Segal, he sent an e-mail message to his wife, Joy Segal. Although there was no pending criminal action (at least as far as Segal knew), the contents of the message clearly contain strategic, confidential, and privileged information that was directly relevant to ongoing civil litigation at Near North.

The e-mail message lays out strategic legal negotiating positions that Near North will take with respect to ongoing and potential future litigation. The e-mail additionally contemporaneously memorializes multiple legal..and factual defenses that Segal will ultimately rely on in defending himself and Near North against the future federal criminal charges. Specifically:

1) impact of the computer conversion on trust accounting issues;
2) inability of McGladrey & Pullen to meet their assigned tasks;
3) attempts by Berry, et. al to purchase or otherwise take control of Near North;
4) ongoing disparaging statements by Walsh, Berry, Ludwig, etc.;
5) accounts receivable and accounts payable control to detail and aging;
6) extortive pay demands by Walsh, Berry, Gallagher;
7) infusion of cash into Near North pending availability of good accounting numbers; and
8) numerous details surrounding the above and related themes.

This e-mail message literally provided the Takeover Group and the Government with a "blueprint" of Segal's defense strategy. The Takeover Group's unsent letter to Segal (Government Exhibit #216), provided the Government with a roadmap for prosecuting Segal. The hacked e-mail message from Segal to his wife provided the Takeover Group (who were acting as "private agents" of the government) and the government with the blueprint showing the weaknesses of their case. As a result of receiving this e-mail, the government knew: 1) which witnesses the government needed to leverage to get the witnesses to conform their testimony to the government's theory of the case; 2) which weaknesses of their exhibits needed to be deflected to effectively blunt defense attempts at impeachment; and 3) what holes in their case (including the very fact of the extensive hacking itself) needed to be covered up and kept from the jury.

This is certainly not the only hacked e-mail message that compromised Segal's ability to defend himself against the charges brought by the government -- but the wide-ranging scope of the issues addressed in the message provide an exceptionally clear picture of the breadth and depth of the detailed strategic and factual information upon which Segal would ultimately unsuccessfully defend himself at trial.

Rather than provide the government with a blueprint for blunting Segal's defense, the government's receipt of this illegally hacked document should have raised red flags and set off alarm bells in the U.S. Attorney's Office. Segal's e-mail was sent prior to the initiation of any federal investigation of Segal and Near North. It therefore could not possibly be construed as Segal's response to an "investigation." Segal's contemporaneous memorialization of serious management issues with Walsh, Berry, Gallagher, and Berry should have put the government on notice to treat their receipt of a "pre-packaged" prosecution case against Segal by those individuals as highly suspect -- requiring extraordinary accounting due diligence before moving forward. However, rather than pay attention to the obvious interest and bias of the Takeover Group in bringing down Segal and Near North to advance their own personal and financial interests (through benefits to be received from their new employer, AON), the Government simply adopted the Takeover Group's theory of prosecution, embellished the facts, covered up misconduct (such as the hacking), and deflected consideration of the interest and bias of their cooperating witnesses. In the end, the U.S.

Attorney's Office was duped into becoming the political and business tool of Segal and Near North's political and business rivals.

The pretrial record and defendant's case amply demonstrates that NNIB and Segal were victims of thousands of unlawful intrusions onto Near North's computer systems. The hacker unlawfully accessed NNIB's computer network on an almost daily basis from Aug. 17, 2001 to April 23, 2002. The hacker was pervasive and targeted.

When the hacker accessed Segal's email account, the first screen that he accessed was the "in box ' which contained an alphabetical list of all messages. The hacker methodically scrolled through the the list in order to access email messages between Segal and various lawyers, including Near North's general counsel.

The privledged nature of the communications we was apparent on their face. None the less, the hacker accessed those communications and delivered copies to government's cooperating witnesses. The government was aware as early as Jan. 14, 2002, 2 weeks prior to Segal's arrest that co-conspirators had received and were continuing to receive confidential

information provided by the hacker. The government later obtained copies of hacked material from cooperating witnesses as documented in several FBI (302) reports. Persons referenced in the hacked electronic messages and documents were called before the grand jury or were interviewed in connection with the government's investigation. It also must be noted, the number of frequent contacts between the take-over conspirators during the period of the hacking that were never documented.

PARAMOUNT TO THE TAKEOVER CONSPIRATOR PROVEN KNOWLEDGE IS THE SINGLE-SPACED 4-PAGE EMAIL FROM MICHAEL SEGAL TO JOY SEGAL ON 9/3/01 AT 8:04 p.m. AT THIS EARLY POINT IN TIME BEFORE SEGAL'S ARREST, OR ANY KNOWLEDEGE OF A POTENTIAL ARREST, SEGAL LAID OUT BROAD PERSPECTIVE OF FACTS AS TO HIS BELIEF AND FINAL INTUITION IMMEDIATELY AFTER THE DEPARTURE OF BERRY, GALLAGHER, WALSH AS TO HOW HE WAS GOING TO BE SET-UP BY THE CO-CONSPIRATORS. IT IS UNCANNING THAT THESE FACTS RELATE TO SEGAL'S DEFENSE OVER THE NEXT FOUR YEARS, AND FACTS OF CONTENTION AS TO THE UNPRECENDENTED FALSE SETUPS AS TO THE DESTRUCTION OF SEGAL, NNIB, 900 JOBS, AND A $200 MILLION COMPANY BASED ON THE SELFISH GREED AND FALSE ENTICEMENT OF OTHERS TO HELP IN THIS DESTRUCTION. THIS DOCUMENT, PLUS OTHERS, IS PROVIDED BY VERIFIED EVIDENCE ON AON'S SERVERS AND BASICALLY LAYS OUT SEGAL'S DEFENSE, WHICH AT A MINIMUM, ALLOWS FOR THE CO-CONSPIRATORS, WITH THE HELP FROM OTHERS, TO DESIGN AN INVESTIGATIVE CASE WITH FULL KNOWLEDGE AS TO RENDER THE SPIN AND FACTS AS INCOMPLETE AND INACCURATE.

- facts as to strategy and justification for civil suit filed 6 days before Segal's arrest rebutting false Brandfonbrenner "whistle blower" allegations -background of accounting dept. and computer issues, and specific reference to $6 million dollars old accounts payable affecting PFTA.
- Mcgladrey & Pollen set-up, and incomplete work.
- proof of issues accomplished before in management operations sentreal control set-up.

9. HACKED NOTES

would be under "known information" as to an expiration date but the intricacies and details of the program are blatantly trade secrets. There is a bigger anti-trust issue that may be subject to class action. The wholesaler deals with many retail brokers. In the past, there has been communication internally disclosed that AON has a plan to take all of the information of the retail brokers and go after and compete for it on a direct basis. If other retail brokers who use K&K are aware of that, substantial legal issues could take place.

Part of their plan was to have AON's insurance company, Virginia Surety, make all the necessary filings that K&K /TIG had in order to steal and take the business from TIG and the retail brokers.

Memo - From: Michael Segal on 09/03/2001 08:04 PM

To: Joy Segal/NNIB/NNNG@NNNG
cc:

Subject: Practical steps and strategies
Tom to meet with Dana Berry's lawyer:
-Obtain as much time as to issues, discussion on non-competes.
-Lawyer may not be aware of Dana and others' conduct.
-Lawyer may say that he only represents Dana.
-Can use as example, Dana's wife's friend calling NNIB employee using the word "illegal".
-Bigger issue--what is their objective and why are they so worried about non-competes under Aon environment?
-Hold back but consider Sony bonus for resolution tied into non-disparaging court order and reduction of non-compete for six months for face-saving.

Lawyers Dave

Tom and Dave will forward on strategy and draft of multiple common law actions.
-If not enough evidence TRO go forward with accelerated discovery schedule.
-Obtain protective order based upon customers and trade secrets.
-Consider amendment to existing Aon litigation, if possible, to keep in venue.

Use strategy of noticing of attempt to file suit against second tier Tim Gallagher and Lori Shaw to put
peer pressure on Dana and Matt.

Trust accounting background issues:
-Total frustration of records and computer conversion over the last 3 years.
-Example of schedule including direct bill receivables showing in-trust at one time.
-Yes, there were technology investment issues waiting for venture capital and an inability to manage several
operations and have been these have been shut down.
-Halles has been hired for technology evaluation.
-Rebuilding of entire accounting and financial departments with the challenge of thousands of records needing
reconcilliation.
-Set back by accountants McGlandrey and Pullen--unable to complete the tasks assigned.
-Addressed smaller companies first--all in balance and in excess.
-Procedurals and mechanics setup i.e. DMI premium trust.
-In December 2000 with better numbers we went to strategic vendors for rebuilding capital structure as company
had no debt.
-Continued to prepare books to get handle on financials.
-Frustrated so called in Halles and Ernie Wish and discussed liquidity issue and have been working ever since.
-MS put in $12 million because financials were not available.
-Began re-engineering of administration departments.
-Discontinued and developed plan for unprofitable operations.

All agree Segal get back when audit starts

-Told by CFO and others of budget of 10% revenue increase, 5% expense decrease and two and one
half years to be in compliance without capital needed.
-Several times were told that plan would suffice.
- Was told by Managing Directors, indirectly, that they had gone to an attorney.
-Trust accounting is complicated and changes daily and there are different approaches to computation.

Dana Berry et al background:

-Dana sent Jeff Ludwig to provide a plan and subsequent resolution that addressed accounting,
operations, and compliance plans.
-Did not disclose until MS reviewed document that control of company would be placed in a self-controlled group.
-MS indicated that he was in agreement with the resolution except for turning over the control of his company to this group.
-The group over this time became very clandish and met almost daily and regularly at lunch excluding other Managing Directors not in the group.

-Dana twice told MS that he wanted to buy the company.
-Dana told MS that if Dana left the company, everyone would follow him and related that he had
talked to Diane Brinson at home the prior evening and would continue to work on her.
-MS told by Joe Messina, a partner in DMI, that Dana and Matt made an unannounced visit and
told him that something was about to go down and it would be ugly.
- a tax was sent to DMI ,of which we have a copy, containing their resolution to take control.
-Kept hearing that Dana was holding meetings with our non-brokerage companies talking negative and
disclosing financial information.
-Told that the group went to lawyers to develop strategy to put them into control of the company.
-Told that they had a plan to build the company up and sell it for a big multiple of gross revenue.
-There were many meetings and lunches about how to get Mike Segal.
-Dana, Matt, and Jeff Ludwig participated in compensation reviews and made up disparaging
and inaccurate statements as to compensation negotiations with MS.
-Other senior people kept telling that they were excluded from these meetings and that there
was a conspiracy to take over the company.
-Subsequent opportunity to see e-mails reflecting the group's disparagingcooments and lack of any
collaborative management with MS and other senior people.
-Industry source told MS that Matt and Dana said that MS is moving to California.
-MS was told that when they went to an attorney about takeover, the attorney told them that MS
probably won't sell because of capital gains tax.
-Berry and Walsh told Bill Bartholomay that MS has a tax problem (IRS.) implying that there was an
impending tax problem slanting the above.
-Time to time there were cash shortages but waiting for financial data for strategic vendors
and other debt lending.
-Other wholly owned companies had excess cash and it was felt that funds could be moved
once accounting issues could be addressed.
-Issues of financial and computations and other accounting matters such as capitalization and expenses
in technology were continually to be reviewed and reconcilled.

-Issues such as accounts receivable and accounts payable control to detail and ag
were presenting
challenges and were continuing to be discussed and reconcilled.
-One time MS independently reviewed old aged accounts payable to carriers
($6million).

Additional sequence of events:

-At one meeting with several Managing Directors, Dana was not present, and these
other directors told
that they wanted to help run the company.
-MS asked what their plans were and there was basic agreement as to issues in the
resolution.
-After that, Jeff Ludwig, came into MS and laid out the appointment for the
executive committee which MS
did not connect up with the control provision of the resolution.
-MS was told to make them officers or they would walk out.
-MS agreed to make them officers but would not give them control of the company.
-One of the executive committee came to MS at the beginning of the summer and
resigned and
hinted that she did not want to be involved and be in the middle of whatever was
going to happen.
-MS continued to express the following of the resolution, the good financial
performance and the
frustration of not getting the reconcilliation of financials for our strategic
partners, Fireman's Fund and
AIG.
-In midsummer MS asked Jeff Ludwig to resign for non-performance issues--i.e.
compensation and bonus
administration.
-Also, have notes from key employee reflecting Jeff Ludwig's desire to "get Mike
Segal" and reference to personal
issues.
- In February, Jeff Ludwig gave MS a list of five executive salary increases and
bonuses and said Matt, Dana, and
I believe, himself, would walk out tomorrow if not paid. There was not justificati
or computation for bonus and
demanded before usual company policy compensation date.
-Eight months ago, MS referred Sony to Matt or Dana as an insurance prospect. Over
period of time--the last
five months NNIB was successful with a team of 10 people to generate a large revenu
stream from Sony.
-MS told Dana and Matt that he would like to give them a special bonus and asked
them to tell him what they
thought was fair.
-The brokerage and the other companies were moving in the right direction and MS ha
put additional capital
in waiting for the completion of the financials to work with our strategic partners
-MS had a three hour lunch with Dana and Matt in an attempt to put things back
together and offered to be receptive
in any role they wanted to play. The only requirement would be the halting of
non-disparaging remarks and
a more inclusive managment team of all the senior people that Halles and Ernie Wish
suggested thatwould help us
structure the organizaiton.

Events leading up Dana and Matt's departure (also, Tim Gallagher and Lori Shaw):

-MS found out about a disparaging and false comment attributed to MS told to the
Sony risk manager.
- MS gently confronted Dana on the phone and told him that he wanted to talk to him
about the situation.
-The next day, the first thing in the morning, Dana gave a prepared letter of

resignation and verbally said
that it is not fun anymore. That day Dana, Matt, and Tim Gallagher were observed
lunch. They were
also observed a second time at lunch.
-Tim Gallagher came in several days later and said that he was going to Aon--no
resignation letter.
-MS told Tim that he could not understand this change in him, because in recent
months he was "fired
up" and had taken on several new areas of responsibility. — get set up VIP
-MS told Tim that we were working with the Fireman's Fund as our strategic vendor
and offered to get
Harold Marsh, the treasurer, on the phone to confirm our strength.
-MS believes Tim was convinced to leave under Dana's need for his abilities for T
was not dissatisfied.
-The next morning, Matt came in very belicose and demanded to talk to Harold Mars
and he could have
only gotten that information from Tim Gallagher.
-MS indicated that the Halles consultants had talked to Harold Marsh and that it
been an excellent
conversation and offered for Walsh to talk to Dennis Podenberg who was in our off
at the time working on
financials.
-Walsh acted as a "bull-dog" with an aggressive attitude and was almost trying to
attempt to destroy the
image of the whole company, talking as an expert on agency and trust accounting.
-Walsh acted disappointed by some of the responses and comments from Dennis. Hall
was not impressed
with this hostile and unprofessional conduct.
-Walsh was complimentary to the Halles representative (Dennis).
-Dana and Matt Walsh were introduced to the Halles people two months before
informing them of their consulting
and financial capital role.
-MS had several conversations with Matt Walsh before he left to try to develop a
positive dialogue in requesting
that he stay and perhaps would not be influenced by Dana Berry.
-Matt Walsh was asked to sign by HR to renew parking in the Hancock building ten
days before he left and made
some excuse about how he wasn't interested in parking in the building in September
- Many people asked Matt Walsh for assistance and answers over the past summer
months and his answers
brief and at times no answers were forthcoming. He often cancelled meetings that
were important to operations of
which he had a leadership role.
-It seems that Walsh could have had a plan to destroy credability and place a spin
on Dana's departure by
staying in the company for a short period of time and negotiating the possibility
staying in order to carry
out the destruction and disparaging communication needed to get more people to
eventually leave the company
with him.
-The Thursday before Matt Walsh leaves, he has a conversation with MS saying that
Ernie Wish was not
aware and not working on the premium trust accounting which was totally inaccurate
-Prior to this conversation, Matt Walsh was aggressive in a conversation about the
company and the premium trust
with Ernie Wish. It is important to note that Halles was working on the financial
reporting and was meeting with
Ernie Wish.
-Walsh said that he was talking to a few people and perhaps gave out false signals
to others that he wasn't going
to Aon. Walsh interviewed at USI Brokerage and was negative and disparaging about
and NNIB and
supposedly they thought it was so distasteful, they immediately had no interest in

10. FOURTH AMENDMENT CONSIDERATION

The January 26, 2002, search of Near North's offices and Segal's residence, although based on warrants, were the "fruit of the poisonous tree" as set forth in Wong Sun. The applications for the warrants were tainted by the fruits of previous warrantless searches conducted in violation of the Fourth Amendment. Unfortunately, because the evidence of the predicate 4th Amendment violations trickled into the defense, the Court never considered the issue as a coherent whole. The evidence was divided into:

1) an initial batch of evidentiary materials with respect to hacking by David Cheley, et. al. that formed the basis for a Motion to Suppress;

2) a supplemental batch of evidentiary materials related to the hacking activity that formed the basis for a revised Government Response and the defense's Reply brief with respect to the Motion to Suppress;

3) tape recordings of Watkins and FBI Agent Murphy memorializing the transfer from Watkins to the FBI massive quantities of documents taken from Near North, which formed the basis of a Supplemental Memorandum to the Motion to Suppress; and

4) an FBI 302 statement of investigation of 11/24/2001 (transcribed 12/14/2001) memorializing the transfer from Watkins to FBI Agent Murphy of laptop computer and zip disk containing documents from Near North, which appears to have not been litigated.

The piecemeal consideration of these items deprived Segal of proper consideration of the cumulative effect of all of these illegally obtained materials as the foundation for the January 26, 2002 search warrant.

The facts surrounding the Cheley hacking documents and physical documents provided by Watkins to Murphy are thoroughly memorialized in the Motion to Suppress, the Reply, and the Supplement. The facts memorialized in the FBI 302 are not, however, well memorialized.

The FBI 302 states that the laptop in question was Watkins' "personally owned laptop computer." This is believed to be false -- the laptop actually belonged to Near North. However, in this circumstance, the legal title to the computer hardware is really an irrelevancy. What is relevant is the ownership of the information on the laptop hard disk and the associated zip disk.

Forensic analysis of Watkins' desktop computer at Near North demonstrates that for a period of time prior to providing the electronic

records to the FBI, Watkins was systematically obtaining documents going back several years and scanning them into his computer. These documents were not documents that "came across Watkins' desk" in the ordinary course of his job performance.

There was nothing “contemporaneous" about the scanning.

The FBI 302 statement memorializing the turnover of the computer is irregular. Although the computer and zip disk were ostensibly turned over on November 24, 2001, the FBI 302 memorializing the event was not dictated until December 12, 2001 -- weeks later. The 302 statement is uncharacteristically (for the FBI) imprecise with respect to the laptop -- the normal procedure for an FBI agent would include memorializing the make, model, and serial number of the laptop computer in question.

In the end, the search of Near North's offices was nothing more than a cover story for the documents that the FBI had already obtained illegally obtained through computer hacking and employee theft.

11. HACKING ATTORNEY-CLIENT PRIVILEGE

The Government admitted pretrial that they were aware that a "hacker sent stolen e-mail documents to three government witnesses even before Segal's arrest.

The evidence of the hacking was largely found through civil discovery in Segal's and Near North's lawsuit against AON and the Takeover Group -- located on AON's computer servers. Pretrial, Segal and the Government disputed the extent of the Government's involvement and direction of the hacking activity. What has never previously been considered is the Government's use of attorney-client privilege materials obtained through the computer hacking and covert surveillance.

Documents found on AON's servers, and ultimately provided to the FBI and the U.S. Attorney's Office included: 1) attorney-client-privilege work product pertaining to previous civil litigation between Near North and AON; 2) attorney- client-privilege work product relevant to the then-current civil suit between Near North and AON; and 3) attorney-client work product relating to Segal's criminal case.

The Government's perversion of attorney-client-privilege did not stop with computer hacking. The Government: 1) systematically set aside established procedures to identify and quarantine documents seized during the execution of search warrants; and 2) used Government witnesses as agents to record conversations with Segal's counsel on behalf of the FBI.

When Segal first got wind of the fact that Near North's computer systems had been illegally penetrated by hacking, Segal began an investigation using private resources. The private investigation, contrary to later allegations by the Government, did not delay the reporting of the hacking activity to law enforcement. One of the independent experts, David Grossman, an ex-FBI supervisor of impeccable integrity, immediately went to the FBI cybercrimes unit and reported the hacking. Grossman was informed by members of the FBI cybercrimes unit, who he knew personally from his prior employment by the FBI, that they had been directed to "open a file" on the matter, but to not actually conduct an investigation.

Tracking and documenting the illegal activities of the Takeover Group was a key component of Segal's trial strategy. As a direct consequence of the compromised attorney-client privilege communications which found .their way into the hands of the prosecutors through illegal computer hacking, the Government was able to remediate and cover up the illegal conduct of its witnesses. The Government was privy to the details of Segal's exculpatory evidence, allowing the Government to blunt the

impact of the evidence.

Through the review of attorney-client privilege communications obtained by illegal computer penetration, the Government was forewarned to Segal's legal strategy of filing suit against the Takeover Group -- which had the potential to-disclose a mountain of exculpatory and impeachment evidence to Segal through civil discovery and seriously impugn the integrity of the Government's Takeover Group witnesses. Segal's defense strategy became an open book to Government prosecutors.

The existence of the cybercrimes "raised the stakes" in Segal's prosecution.

Once aware the Segal had discovered that his computer systems had been compromised, the Prosecutors were potentially exposed to massive repercussions in the court of public opinion. The Government was forced, because of their knowledge of the illegal activities, to interfere with Segal's private investigation of the crimes against Segal and Near North. The Government dispensed with the "public" investigation and prosecution of the hacking based on the outrageous legal theory that attorney-client-privilege does not apply to documents sent across the Internet -- even when encrypted.

Private investigator and ex-FBI Supervisor Grossman furnished an affidavit, which is part of the record in this case, memorializing his immediate report of the hacking activity to the FBI cybercrimes unit. Grossman additionally personally visited with the FBI Chicago Station Manager and related the cybercrimes to him -- stressing the inaction by the FBI cybercrimes unit. The FBI station manager agreed to personally follow up.

Shortly thereafter, the Government filed a motion to amend its answer in this Court with respect to the cybercrimes because they had "just recently discovered" a file of FBI lA notes that had been mysteriously unavailable for the preceding 18 months. In the lA notes of 1-14-2002, the identity of the computer hacker is disclosed with a misspelled name and a vague address -- giving the false impression that the Takeover Group didn't know the hacker.

Subsequently, when AUSA Hogan met with Near North's criminal attorneys, Hogan's statement was that his witnesses had no connection with the hacking. In the room at the time was FBI Agent Murphy, whom the record eventually shows received a copy of a stolen e-mail, the contents of which refers to the prior receipt of other stolen e-mails -- all sent to FBI Agent Murphy's personal e-mail account. See Hacking Timeline, lA Note, and modification of affidavit excerpt attached as

Exhibit A.

The Government agents became so involved in covering up the misdeeds of their agents and witnesses that they steamrollered Segal in court. While the appellate court declined to find that the cybercrimes had resulted in the "selective prosecution" of Segal, no court has ever addressed the due process violation of the undisclosed non-prosecution and coverup of the criminal conduct of the Takeover Group through their participation in a conspiracy to illegally penetrate Near North's computer systems. Also undisclosed was the full extent of the economic benefits that the Takeover Group would be allowed to retain, as the fruits of.their participation in an illegal computer hacking conspiracy, through their retention and provision of confidential documents to AON in violation of Illinois trade secrets law.

In Hoffa v. United States, 385 U.S. 293 (1966), the Supreme Court set out guiding principles for the use of testimony from compensated witnesses:

> *The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross examination, and the credibility of this testimony to be determined by a properly instructed jury.*

Id. at 311. As the Seventh Circuit has held:

> *The second way of invoking Brady is by showing that although there was no quid pro quo, the state, as in our Boyd and Williams cases, United States v. Boyd, 55 F.3d 239, 239-45 (7th Cir. 1995); United States V. Williams, 81 F.3d 1434, 1438 (7th Cir. 1996); see also United States v. Sipe, 388 F.3d 471, 488-90 (5th Cir. 2004); United States v. Soto-Beniquez, 356 F.3d 1, 41 (1st cir. 2004), had lavished benefits (sex, free long- distance calls, cash, or what have you) on its witnesses in the hope of making them feel part of the states' team and as a result inclined out of gratitude, friendship, or loyalty, to testify in support of the prosecution.*

Wisehart v. Davis, 408 F.3d 321 {7th Cir. 2005).

Not only was Segal's Fifth Amendment right violated through the Government's nondisclosure of the secret benefits provided to the Government Takeover Witnesses with respect to their conspiracy to illegally penetrate Near North's computer systems and steal and retain the benefits from attorney-client- privilege document not disclosed to Segal, Segal's Sixth Amendment right to effective cross examination of the Government's most important witnesses was compromised by the Government's nondisclosure of the full range of criminal and economic

benefits that were provided to the Takeover Group.

The benefit to the Government from the unrestrained use of attorney-client privilege materials was not limited to the fruits of the illegal penetration of Near North's computer systems. In January of 2002, Segal's attorney-client privilege was compromised as a result of the search of Segal's home and Near North's offices. During this search, documents were seized from the office of Near North's General Counsel, computer records were seized from Near North's offices containing privileged communications, and a personal laptop containing attorney client-privilege work product was seized from Segal's home. Contrary to DOJ and FBI guidelines, an appropriate "taint team" was not used to identify and sequester attorney-client privilege documents. After a series of pretrial motions, this Court eventually ordered the Government to make no further use of attorney-client-privilege documents. However, by the time the order was made, the horse had left the barn -- much of the damage was irreversible.

The Government had been able to review Segal's discussion of his defense strategy with counsel. Just as importantly, by analyzing the focus of the topics of discussion and inquiry, the Government could deduce the exact nature of Segal's defense strategy and take steps to counter the strategy. Through the identification of witnesses that Segal intended to call to his defense, the Government was able to use its superior resources to make first-contact and "conform" the testimony of these witnesses to the requirements of the Government's case.

Ten witnesses whose initial statements were beneficial to Segal, but eventually "conformed" their testimony to benefit the Government. For example, at Tr. 747, Pater denies that the condition of the books and records at Near North were not in proper reconciliation, testimony supportive of the Government's case. However, at Tr. 817, Pater was forced to admit that he had testified to the grand jury that the books were not in good shape. Somehow, in the intervening interval, Pater's testimony had been "conformed."

The Government did not limit its quest for privileged communications to documents and computer data. The Government's own cover surveillance audiotapes record conversations with Segal's attorney Harvey Silet. Tape ID 19 is a FBI recording made by Takeover Witness McNichols of a meeting with Silets on November 11, 2001. See transcript excerpt attached as Exhibit B. A second FBI recording, Tape ID 31, was made by Watkins on November 29,.2001 of a meeting between Watkins and Silets. See transcript excerpt attached as Exhibit C. The topic under discussion in each of these meetings was Near North's petty cash accounting -- the source of funds for Watkins' embezzlement from Near North. One of Segal's critical defense strategies at trial was showing that the problems

with petty cash at Near North resulted from Watkins' embezzlement -- both directly in terms of missing cash that went to Watkins and indirectly in terms of Watkins' miscoding and non-recording of Segal's withdrawals from petty cash -- which were used by Watkins as a smokescreen to cover up his own theft of funds from Near North.

While the tape recordings were an affront to attorney-client-privilege, at the same time, the contents of those recordings clearly demonstrate that Segal was not guilty of a Klien tax conspiracy at any time -- and most specifically at any time during November of 2001. The Government's eventual disclosure of the attorney-client-privilege breach, buried within 700+ hours of recordings which were never used at trial, could do nothing to dissipate the taint of the Government's intimate knowledge of Segal's defense strategy. Hiding the needle within the haystack, then disclosing the haystack without.mention of the needle's existence hardly constitutes disclosure."

Had there been an isolated incident of the violation of attorney-client-privilege in a case of the rmagnitude of the prosecution of Segal and Near North it might be found to be an oversight. However, when the violation of attorney-client-privilege is accomplished through multiple means: 1) illegal penetration , of the corporate computer system through computer "hacking;" 2) disregard-for , established procedures to sequester attorney-client-privilege materials obtained through a search warrant; and 3) multiple covert audio recordings made by ' government "private agents" of meetings with defense counsel -- it is apparent that the violation of attorney-client-privilege is willful and pervasive.

Whether any single instance of the violation of privilege requires reversal is not the issue -- jurists of reason could find it debatable that the cumulative impact of all of the attorney-client-privilege compromises, in combination with the other Fifth and Sixth Amendment violations, have denied Segal has right to a fair trial pursuant to the Fifth Amendment.

12. CONFLUENCE OF ISSUES IN KLEIN TAX CONSPIRACY

The Klein.Tax Conspiracy highlights a unique confluence of issues. There is a synergy created by this confluence that creates a far greater total impact on the prosecution of my case than any one of the issues by itself.

The three issues are:

1) The hacking of the 10/23/2001 e-mail from Segal to Wish provided the government with knowledge of Segal's efforts to uncover the nature of the petty cash anomalies vis. a vis. Watkins. (Aside from demonstrating Segal's repudiation of the anomalies.) As memorialized in the tapes, Wish refuses to share the 10/23 e-mail message with McNichols. However, McNichols and the government had immediate access to the e-mail message through David Cheley's hacking activities.

2) The taping of attorney Silets provided the government with two major benefits: A) Knowledge that Watkins had made exculpatory statements with respect to Segal not being responsible for certain petty cash anomalies; and B) Strategic information concerning counsel's efforts to memorialize Watkins' statements in a sworn affidavit allowed government agents to interfere with counsel's efforts to memorialize Watkins' statements and extended to the FBI instructing Watkins to modify certain portions of his statement to inculpate Segal.

3) Exhibit #5, the Watkins "postage" memo; is not genuine. On tape, Watkins is clear that he never put anything in writing to “protect" himself. Rogas' IRS Memorandum memorializes that Watkins has no recollection of having created Exhibit #5. At trial, Mayo (the only witness to examine the "squiggle" as to its maker) testified that the squiggle was not Segal's. Three other trial witnesses, who testified that Segal's initials looked like a "squiggle" were not asked to specifically testify about the "squiggle" on Exhibit #5. Although Exhibit #5 was submitted to both IRS and FEI forensic laboratory analysis, there is no record whatsoever of any laboratory report resulting from such examination. Although AUSA Hogan told defense counsel Reidy pretrial that "indentation analysis” of ' Exhibit #5 was inculpatory to Segal, no such analysis was presented at trial, and no report of such analysis was ever turned cover in the discovery materials.

13. GOVERNMENTS' OWN RECORD PROVIDE EVIDENCE IN THE FOLLOWING TIMELINE AS TO THE RECORDING OF DEFENSE ATTORNEY SILETS' AND FINANCIAL CONSULTANT WISH

November 16, 2001: Silets and Wish meet with Watkins as a follow up from the direction in the 10/23/01 email, and the agreement between Silets and Wish.

November 17, 2001: Government agent records Wish & Silets on a phone conversation discussing and revealing comments as to the draft of Watkins proposed statement, Wish further supports the referenced affidavit of Watkins as to Watkins statements from their meeting.

November 20, 2001: Tape recording, Attorney Silets & Wish meet in Watkins office. Watkins reviews his draft statement and several handwritten corrections are made. It was agreed that the statement was to be retyped and submitted back to Silets. The government tape recording proves no changes of major facts were made and Watkins object.

November 24, 2001: McNichols arranges for Watkins to meet with Murphy of FBI and confesses to embezzlement and becomes a government private agent. Government documentation is murky as to when Watkins becomes agent. Watkins is the only witness to the alleged tax conspiracy, but the government never put Watkins on stand to testify.

November 29, 2001: ID 31; Watkins as government private agent, records phone conversation with attorney Harvey Silets, and now states, "he does not agree with his prior agreed statements". Watkins states, "He is not comfortable and leaves Silets holding on the phone" Silets states, "everything in the statement is what you told me, what is in there that you don't agree with?" Watkins states, "he'll get back to Silets". Watkins excuse for refusing to sign is not credible, for the prior tape recordings of McNichols and Watkins confirm his original voluntary statement before McNichols and the FBI interfere.

13A. KLEIN TAX CONSPIRACY

The Klein tax conspiracy constitutes a "straddle crime" that is, responsible for an additional 34 months of my prison sentence. In other words, if the tax conspiracy "went away," Segal would be eligible for immediate release from prison of special interest in this regard is the linkage with the e-mail hacking through the common element of the violation of attorney-client privilege. With respect to the tax conspiracy, it is the secret recording of counsel representing Segal and Near North (in this context). The secret recording of attorney Harvey Silets allowed FBI Agent Murphy to later dissuade Watkins from signing an affidavit that Watkins had previously acknowledged as truthful--going so far as to suggest alterations that Watkins make in the affidavit. This is a clear case of using secretly-recorded attorney--client privilege to interfere with the collection of evidence favorable to Near North and Segal. Misleading as to time of offense.

Then Watkins and Murphy created a substitute affidavit to give the impression that Watkins changes its wording. Wire taped conversation show that: Watkins receives something in writing from Murphy regarding the substitute affidavit; shows conversation of the changes in the affidavit between agent Murphy and Watkins; shows Watkins talk to his wife about the substitute affidavit and how he was "coached" by agent Murphy to entrap Segal by bringing to Segal the changed affidavit and recording by wire his conversation with Segal.

Moreover, Watkins reports to his wife about his attempted set-up of Segal and Segal's wife Joy, in which agent Murphy compliments Watkins. More concerning is the appearance of an incomplete (recordings are suspicious on January 7, 2002, the date of Watkins set-up of Segal, in that the recording was mistakenly turned off during the time Watkins attempted the set up, while spliced in with other recordings were parts of their recorded session) recording when Watkins attempts to record Segal, and when Segal is non-responsive as to Watkins set-up conversation the government ignores the results and uses the facts falsely and does not present any evidence in the tapes that support it.

All tape recording transcripts were prepared by the law firm of Jones Day from tapes provided by the government. Some of the tapes reflect inaudible portions as to potential sensitive subject matter and some of the tapes have been merged in non-sequential pairings.

13B. FORFEITURE AND DISMISSAL OF CIVIL SUITS

On Page 20 of the DOJ complaint, the "protection" of the computer hackers through non prosecution is explored. The "protection" of the hackers went beyond non prosecution, however. The Government's conduct with respect to the civil suits against the computer hackers did not just result in the protection of the perpetrators of the hacking from criminal prosecution. The Government's conduct directly impacted the ongoing forfeiture proceedings through the dissipation of assets that could have been used to satisfy Segal's personal forfeiture.

The private Government agents (a.k.a. the "hackers" or the "Takeover group") had significant civil liability exposure. The corporate backer of the Takeover Group, AON, had serious civil liability exposure. The hacker's employer, Kemper, had serious liability exposure. There was enough evidence (i.e. hacked e-mails sent to FBI Agent Murphy's e-mail account) to directly implicate Government agents in both criminal conduct and tortuous civil action.

The Government did not stop with the indictments in terms of interference with the civil proceedings. It is strongly believed (although not conclusively proven) that the FBI approached the Judge to stop the civil proceeding. What is of record is that attorney Brandfonbrener, representing the Takeover Group (and paid by AON), managed to convince the Court to discontinue all discovery until after Segal's trial.

When depositions in the case resumed, after the first member of the Takeover Group (Berry) was deposed, the Government Trustee overseeing the forfeiture of Near North contacted Near North's civil attorney, Prendergast, and instructed him to drop the suit. The Trustee told Prendergast: 1) the suit was a good suit; 2) the litigation was meritorious and likely to result in a financial recovery; but 3) the decision to discontinue the suit was out of his hands.

Prendergast told the Trustee that discontinuing the suit didn't make any sense. Prendergast told the Trustee that the bulk of the work on the suit was already completed and that maintaining the suit was not costing Near North any money because he was willing to continue prosecuting the suit purely on a contingency basis. The Trustee, however, was insistent, emphasizing that the decision was not his. When Prendergast questioned the Trustee about the source of the decision, the Trustee stated that he had been directed to discontinue the suit by the AUSA's office. Prendergast therefore contacted March McClellan, the AUSA handling the forfeiture with Hogan. McClellan told Prendergast that she had no knowledge of the instruction to discontinue the suit and the instruction to

discontinue had not come from the AUSA's office. A little investigation (i.e. an interview with the Trustee) should be able to establish where the instructions actually originated from.

Significantly, the civil recovery from this suit would have been enormous--likely satisfying Segal's civil forfeiture in its entirety. But that would have denied theGovernment the media blitz associated with seizing Segal's house and other assets to satisfy the forfeiture. See Prosecutor Misconduct section.

13C. PROSECTUTORS UNLAWFULLY BLOCK ESCROW PRE-SALE OF NNIB BLOCKING MULTI-MILLION DOLLAR FUNDS TO US TREASURY

At forfeiture, one of the arguments advanced by AUSA Hogan in support of Segal's $30 Million personal forfeiture was that Segal had raided the corporate assets of NNIB pretrial and that the $30 Million represented money that should be clawed back from Segal through personal forfeiture. Had prosecutors not torpedoed two proposed pretrial escrowed sales of NNIB, AUSA Hogan's claw back argument would have been foreclosed. The true value of NNIB would have been established through an arms-length sale to a disinterested third party.

Pretrial, prosecutors torpedoed two proposed escrowed sales of Near North. Although the "untainted" value of NNIB Near North would have been approximately $260 million (see Winston & Strawn Memorandum, attached at Tab____, p.4), the value of the company had decreased by over $100 million following Segal's indictment. At a meeting between the AUSA's and attorneys constructing the proposed sale of assets, the AUSA's made clear the Government's lack of interest in the economic value of the corporation. AUSA Polales stated that the Government would "go to war" (id. at p.3) if the company did not obtain permission for the proposed sale of assets. Prosecutors further stated that the "deterrent value [of proceeding against the Company] is hard to value" and that Mr. Segal needs to understand that, like Arthur Anderson, Segal can be made an example of if he chooses not to cooperate. Id. at p. 4. AUSA Polales reiterated that the Government was prepared to take a "scorched earth" approach to dealing with the Company. Id. at p. 5. AUSA Polales informed counsel that Fitzgerald is an aggressive minded prosecutor and that he "wouldn't bat an eye to do another Arthur Anderson." Id. at p.6. Although there were no ongoing plea negotiations, AUSA Hogan added that the chance for a sale of the Company was much higher if it was part of a package, i.e., with Mr. Segal's plea and full cooperation. [Footnote: Against the advice of counsel, Segal did participate in three 2 1/2 hour proffer sessions, answering a wide range of questions by four different Government parties on subjects having nothing to do with Segal's prosecution. Government attorneys informed Segal's counsel that they believed that Segal had been completely truthful in answers he provided to their questions.]

In blocking the escrowed sale of Near North, the Government passed up $90 million (according to contract documents provided to the Government by Winston & Strawn) in escrowed cash that would have been to the U.S. Treasury

through forfeiture in exchange for the publicity value of publicly destroying the corporation.

Blocking the escrowed sale of Near North pretrial furthermore allowed the Government to reinterpret Near North's accounting so as to support a false theory of Segal's improper pretrial raiding of Near North's assets. See Prosecutor Misconduct section.