Section 6

PROSECUTORS IGNORE SUPREME COURT RULING INVALIDATING DISHONEST SERVICE CONVICTIONS IN SKILLING V. US

Prosecutors try to rewrite history in light of Supreme Court ruling

Segal was prosecuted for breaching of a "fiduciary duty" that was "informed" by Illinois insurance regulations not simply the breach of the regulations. On reconsideration in light of Skilling/Black, the Seventh Circuit determined that Segal had, by virtue of the existence of his statute insurance license, "misrepresented" that he was in compliance with all Illinois Insurance regulations--hence guilty of 18 U.S.C. §§1341, mail fraud.

However, this new formulation of Segal's "crime" runs afoul of the McCarran-Ferguson Act. Now that Segal is effectively being prosecuted by the most general of federal statutes, for failing to adhere to the letter of Illinois Insurance Regulations, Segal's prosecution should be directly foreclosed by McCarran-Ferguson.

Additionally in Skilling, the Supreme Court held that federal mail fraud prosecutions must be based on a uniform national standard. The Seventh Circuit, however, upheld Segal's conviction based on a violation of an Illinois Insurance regulation that exists in the state law of only half the states.

In June, 2010, a unanimous Supreme Court found that 18 U.S.C. 1346, which was the ruled court judgment of conviction for Segal and NNIB, as applied to its decisions in Skilling, Black and Weyeracuh, was overbroad, which invalidated Segal's original conviction.

The Seventh Circuit in Segal, as a result of the government's Skilling filing, creates a federal common law requirement that insurance brokers maintain collected insurance premiums "in trust"--an absurd result in conflict with the Supreme Court's determination in *Erie R. Co. v. Tomkins* that there is no federal "common law."

Segal's conviction places in jeopardy of federal mail/wire fraud prosecution insurance brokers nationwide--who have no idea that they must abide by this new federal common law "trust" requirement, especially as to states with no state requirement.

Prosecutors try to rewrite history in light of Supreme Court ruling

In light of the Skilling Supreme Court decision, the Segal conviction is now wholly founded on the use of a general federal criminal statute to enforce a state-law based insurance regulation.

The application of McCarran-Ferguson Congressional mandate and Seventh Circuit law prohibiting the violation

Section 2 (b) of the McCarran-Ferguson Act, 15 U.S.C. ss1012 (b) states:

> **"No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance...unless such Act specifically relates to the business of insurance..."**

McCarran-Ferguson Congressional Law "established a form of inverse preemption letting state law prevail over general federal statutes that do not specifically relate to the business of insurance." *[Ref: N.A.A.C.P v. American Family Mut. Ins. Co., 987 F. 2d 287, 293 (7th Cir. 1992)]*

The inverse preemption established by McCarran-Ferguson applies to all federal laws, civil and criminal. The McCarran-Ferguson act creates a rule of construction applicable to all other federal laws, a "plain statement" approach."

The government prosecutors ignore the superimposition of the federal fraud laws on the Illinois legislative and regulatory scheme would "invalidate, impair,or supersede" the Illinois scheme by setting different standards of behavior, imposing more severe sanctions than those envisioned by Illinois.

It was not until the Skilling remand that the McCarran-Ferguson jurisdictional issue was on the table as to a pure jurisdictional issue. However, the federal prosecutors knew from the inception of the investigation of Segal/NNIB, or should have known, of the McCarran-Ferguson federal statute.

Further, it would make a mockery of the safe-harbor specifically created by the Illinois legislature's system for the self-reporting of insurance and compliance issues.

The Government used Segal's protected "self-evaluative audit document" in the prosecution of Segal and prevented the implementation of a State-approved remediation plan filed by NNIB as a matter of precaution.

Facts supporting interactions between the U.S. Attorney's Office and the Illinois Department of Insurance demonstrate that the IDOI was leveraged into resisting NNIB's self-reporting privilege and other regulatory analysis.

The Supreme Court's decision in Skilling does not just eviscerate Segal's conviction--**it eliminates the jurisdiction of the federal court to have entered the mail/fraud conviction in the first place.** A "jurisdictional" flaw is not subject to harmless error inquiry.

The abrogation of the McCarran-Ferguson act, which precludes the application of general federal laws to the business of insurance [Segal's conviction], has the potential to be disruptive to the national conversation about the role of the federal government in the business of insurance.

Prosecutors change theory of guilt to support harmless error

In a post-Skilling briefing to the Seventh Circuit, the prosecution concedes that their "honest services" theory of prosecution is legally flawed and cannot support federal mail/wire fraud conviction.

The Supreme Court has held that when it is impossible to determine whether a defendant was convicted on a legally invalid basis that the conviction must be reversed.

The only exception is when the government can prove beyond a reasonable doubt that the error was "harmless"--that the jury must have relied upon a valid theory of guilt.

Segal's jury was actually presented with multiple theories of guilt, which did not require a finding of a scheme to deprive another of money/property through misrepresentation.

Incredibly, the prosecution then alleges that Segal's jury could not have found an "honest services" fraud without simultaneously finding a scheme to deprive a victim of money or property through a material misrepresentation in violation of 18 U.S.C. §§ 1341.

On post-Skilling review, the government misrepresents both the findings of the trial jury and the findings of the Seventh Circuit panel on direct appeal.

These multi-faceted misrepresentations are so prevalent that the case has become permeated with due process deprivations that so confuse proceedings that it becomes extraordinarily difficult to uncover the truth -- it is so obscured by the Prosecution’s misrepresentations of the prior proceedings.

Prosecutors try to rewrite history in light of Supreme Court ruling

The prosecution's case started as one thing and ended as another.

The original prosecution and conviction affirmed by the Appellate court, was 1346 dishonest services, *federal* mail fraud.

At each stage of trial, rulings in the record found that:

"…there was no loss."

"…no evidence of intent do defraud "

"…no evidence of false statements on financial reports"

"…no evidence of influence on state regulators"

Both the District and Appelate courts ruled Segal was guilty of 1346-Dishonest Services and ***not*** Federal Mail Fraud.

And yet, Segal was sentenced to a harsh 10-year sentence, the forfeiture of 15 NNNG companies, and a personal forfeiture of $30M.

Now that the "honest services" theories have been invalidated by the Supreme Court, the government has resurrected its pecuniary fraud theories to sustain Segal's conviction post-Skilling. But ultimately, there was no crime.

The government now argues it never presented an "honest services" theory to the jury. The only theory of guilt they actually presented was the taking of money/property through misrepresentation.

In post-Skilling briefing to the Seventh Circuit, the government concedes that their "honest services" theory of prosecution is legally flawed and cannot support federal mail/wire fraud conviction. However, the government alleges that Segal's jury could not have found an "honest services" fraud without simultaneously finding a scheme to deprive a victim of money or property through a material misrepresentation in violation of 18 U.S.C. 1341.

As a general proposition, once a jury convicts a defendant in a criminal trial, factual disputes in the testimony are resolved in the manner most favorable to the government.

However, as demonstrated by this Court in *U.S. v. Black*, (7th Cir. 2011), on remand from the Supreme Court, one exception to that proposition is in the conduct of multiple-legal-theory hold harmless error analysis, which was the clear case as to Segal's dishonest services prosecution.

The 7th Circuit, in spite of the prosecution's objection, agreed to allow a filing as to the application of a Skilling mandate to Segal/NNIB under its ongoing forfeiture remand appeal.

Prosecution's court documented misrepresentations in post-Skilling remand

No Finding of Money/Property Fraud

The Government argues:

> It is not any more dispositive of the issue now before the Court than was the finding that defendant also committed money/property fraud, in part because of "the money he stole from the PFTA." *[Ref: Gov. Supp.8 (citing U.S. v. Segal, 495 F.3d 826, 838 (7th Cir. 2007)]*.

The Government alleges in the above-cited passage that the Seventh Circuit made a "finding that defendant also committed money/property fraud" on page 838 of the opinion.

The panel made no such finding. The language simply does not appear in the opinion.

Prosecutors Admit to No Intent to Deprive Anyone of Money or Property

The Seventh Circuit requires that the "scheme to defraud" be aimed at depriving the victims of money or property. Yet the government argued in their trial closing arguments:

> **Tr. 5693: 1-17 (Government rebuttal)**
> Now, the intent to defraud? Sure, he had an intent to defraud. It's not the intent to deny someone coverage. It's not the intent to welsh so that the carriers would terminate coverage. Why? Because that's the end of his scheme, not the beginning of his scheme. That defeats his scheme. That isn't his scheme.

The government's admission that it was Segal's intent to continue to provide his customers with insurance and to pay the carriers precludes the conclusion that Segal "aimed" to deprive his customers or carriers of money or property – in other words, there was none o

Without both "material falsehood" and "fraudulent intent", there can be no federal mail/wire fraud. What is left is the insinuation that Segal committed the offense of 'unlawful conversion'--which is not a federal offense. Further, because the Illinois PFTA is not a pure trust account the 'fraudulent intent' required for mail/wire fraud. containing other people's money, there was no money to 'convert.' The money in the account is commingled from collections, which NNIB has a fiduciary duty to pay to the insurance carriers on demand, which was fulfilled.

All Government witnesses testified that all carriers paid within 30-45 days billing required cycle *[Ref: Tr.867,1318-19 1856-57,1545,1713]*

Prosecution's court documented misrepresentations in post-Skilling remand

Prosecutors ignore Illinois Statute and Government witness clear record of impossible and misleading presentation of the Illinois Statute.

PFTAs are not conventional 'Trust' Accounts

The Government falsely represented at trial, and now on remand, that the PFTA is a "trust" account as that term is understood in common law.

The Government cites, not to the record, but to *U.S. v. Segal, 495 F.3d 826, 830 (7th Cir. 2007)* in support of this proposition. The line from this Court's opinion that is misrepresented by the Government reads:

Commissions, interest, credit, and other non premium money could be withdrawn (from the PFTA), but brokers were required to maintain PFTAs in trust with sufficient funds to pay premiums.

There was no finding that the PFTA is a "trust" account. Such a characterization is contrary to this Court's recognition that the PFTA was a commingled account (Segal, 495, F.3d at 830) and the text of the Illinois insurance regulations permitting commingling of premium receipts with other broker funds *[Ref: 50 Ill.Admin.Code $3113.40(f)) Tr.197, 2143, 2163, 197, 2143, 2163, 1693]*.

Illinois law requires that brokers maintain premiums in a "fiduciary" manner. The word "trust" does not appear in the statute. 215 ILCS 5/550-115.

No Misrepresentation or Misappropriation of Money

The Government advances only one theory of fraud. They explicitly state: "The money/property fraud and the honest services fraud are the same." G.Br.8

The plain-language theory of the Government's case is that during the period of time between when a customer paid NNIB for its insurance and the time when NNIB had to pay carrier (a period of 30-34 days) that Segal/NNIB "used" the money. The Government has referred to this as using the "float".

Absent the Illinois PFTA regulations, there is no problem with this business practice. If NNIB had been located in Milwaukee (Wisconsin has no PFTA-type regulation) the alleged conduct would not violate ANY Wisconsin law/regulation. The use of the "float" is considered a fully-normal business practice in Wisconsin.

By misrepresenting and concealing select provisions of the Illinois Insurance Code from the both the grand and petit jury, prosecutors created the false impression that Illinois insurance brokers were required to segregate customer premiums into a trust account, congruent to a real estate escrow account or lawyer's trust account. By further ignoring the regulations permitting commingled deposits, the non-accounting support of use and borrowing or stealing from a trust account was misunderstood.

Prosecution's court documented misrepresentations in post-Skilling remand

"No false statements" cannot mean "false statements"

In trying to salvage Segal's mail/wire fraud conviction after Skilling, prosecution alleges that Segal's prosecution was always based on a theory of deprivation of money & property by misrepresentation--that the "honest services" references at trial were surplusage.

As the sole theory of "misrepresentation," the Government alleges that Segal made material false statements to the Illinois Department of Insurance on insurance license renewal applications.

The district court ruled that the statements on the license renewal applications did not constitute material false statements.

On post-skilling review, in spite of the judgment of acquittal, the Government continues to argue the statements on the license renewal applications as its sole theory of misrepresentation.

The Government's money/property fraud is completely missing an essential criminal element of the offense--the element of material misrepresentation.

Prosecution's statements inapposite to court findings law of case regarding harmless error

District Court finds no loss, which was not appealed by the Government and becomes the law of the case.

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And I believe that given Mr. Segal's misconduct with the premium fund trust account, which for a lot of different reasons did not result in a loss to his clients, I believe that looking at the sentencing guidelines and the economic reality of what occurred here, that this is an

[Ref: Line 10-12, page 15, District Court sentencing Transcript]

Presentencing officer rules no evidence of intent to defraud and court adopted finding.

Pursuant to §2B1.1, Application Note 3A, loss is the greater of the actual or intended loss. Pursuant to Application Note 3(A)(ii), intended loss means the pecuniary harm that was intended to result from the offense, and includes intended pecuniary harm that would have been impossible or unlikely to occur. There is no evidence the defendant intended to defraud either the insurance clients or the insurance companies

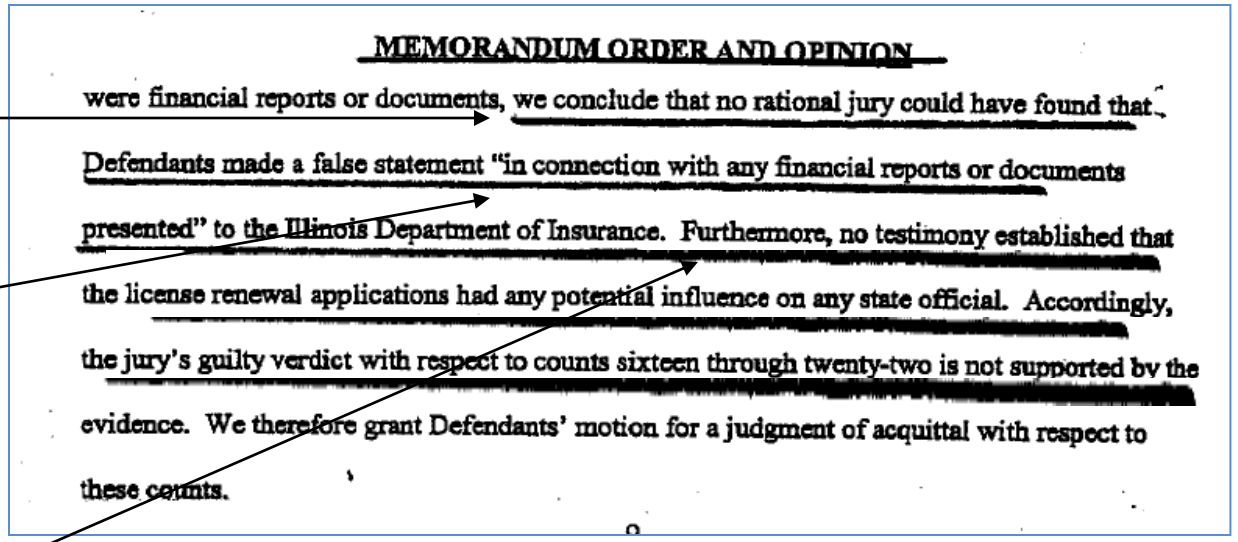
[Ref: Presentencing Officers Report, 745-747.]

Prosecution's statements inapposite to court findings law of case regarding harmless error

Presiding Trial Judge, Ruben Castillo, finds no false statements nor regulator influence.

Defendants did not make a false statement in conjunction with any financial reports or documents presented to the Illinois Department of Insurance.

Furthermore, there is no evidence any license renewal applications had any potential influence on any state official eliminating any alleged support for the required element of material misrepresentation to satisfy the alternate new crime of 1341-Mail Fraud to interfere with Skilling mandate.



MEMORANDUM ORDER AND OPINION

were financial reports or documents, we conclude that no rational jury could have found that Defendants made a false statement "in connection with any financial reports or documents presented" to the Illinois Department of Insurance. Furthermore, no testimony established that the license renewal applications had any potential influence on any state official. Accordingly, the jury's guilty verdict with respect to counts sixteen through twenty-two is not supported by the evidence. We therefore grant Defendants' motion for a judgment of acquittal with respect to these counts.

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[**Ref:** Order and Opinion page 9, Judge Ruben Castillo.]

Prosecutors misrepresentation of facts of Vincent case in direct appeal reply accepted by Court

The Seventh Circuit's foundational proposition of law, upon which it upheld Segal's conviction was:

> **U.S. v. Segal, 495 F.3d 826, 834 (7th Cir. 2007) (citing U.S. v. Vincent, 416 F.3d 595 (7th Cir. 2005).**
>
> The unauthorized use of money from an insurance premium trust account is mail fraud even if the defendant did not gain and the victim did not lose.

The legal proposition cited by the Segal court is not, however, established in Vincent. This is especially interesting when one considers that Judge Evans, the author of the Segal opinion, was a member of the Vincent panel.

Vincent was an Illinois lawyer. As the Vincent Court explained:

> **Vincent, 416 F.3d at 597.**
>
> Vincent began a title insurance business which required him to act as a financial intermediary in real estate closings. Vincent's clients involved in those transactions entrusted to him funds specifically designated for the purchase of real property. Vincent deposited those funds into client trust accounts.

With respect to the regulations of the Illinois Office of Banks and Real Estate, there was no allegation of any violation of any regulations of that department.

Although a subsidiary company, Near North Title, was in the business of providing title insurance and held millions of dollars in escrow for real estate transactions pursuant to the regulations of the Illinois Office of Banks and Real Estate. There was no accounting irregularity either alleged or identified with respect to Near North's maintenance of real estate escrow accounts. The regulations of the Illinois Office of Banks and Real Estate have no bearing on Segal's case.

Examples of multiple Prosecution 'facts' not in evidence or misrepresented by Prosecutors, included in court opinion

830, RC, 2: Shown false in application of statutory accounting not prohibited in regulations.

830, RC, 3: No evidence presented to show use or tracing of PFTA funds; impossible accounting exhibit in record financing and retained income utilized

831, RC, 4: Judge rules no evidence, pure speculation.

832, RC, 4: irrelevant

833, RC, 3: no evidence presented nor client testimony as to misrepresentation or materiality

834, LC, 1: Assertion without evidence presented; misrepresented testimony.

839, LC, 1: Shown false via record Forensic accounting and Prosecution witness testimony

839, LC, 3: Shown false via record Forensic accounting and Prosecution witness testimony

830, RC, ¶ 2	Zero-balance operating account a violation of law.
830, RC, ¶ 3	Acquisition of subsidiaries was funded by the PFTA
831, RC, ¶ 4	Political influence with Shapo/Ryan
832, LC ¶ 4	Walsh & Berry sued for violation of "noncompetes"
833, RC, ¶ 3	"false appearance that payments to NNIB would be held in trust" (as opposed to "in a fiduciary manner").
834, LC, ¶ 1	NNIB was often late in paying carriers
834, LC, ¶ 1	NNIB had to hold checks to carriers until it came up with sufficient funds to send them out.
834, LC, ¶ 1	By the end of 2001, NNIB had to borrow $30 million to meet its obligations.
834, LC ¶ 1	Proceeds from other acts, such as the CTA fraud, were commingled in the PFTA and used for a variety of unauthorized purposes.
839, LC, ¶ 1	Here, the evidence is sufficient to show that money was stolen from the PFTA. It is also sufficient to show what the amount is. The evidence shows a deficit which grew over the years. At the end of 1989 the PFTA was over $7 million out of trust. At the end of 1995 it was $10 million short. Dennis Pogenburg of the Hales Groups testified that in the fall of 2001 the deficit was $24 million -- after $10 million in borrowed money had been deposited into the fund. McNichol testified that at the end of April 2001 the PFTA deficit was $29 million. By the end of 2001, $30 million was borrowed to meet NNIB's premium obligations.
839, LC, ¶ 3	Furthermore, the $30 million is net, not gross, proceeds to Segal.

[Ref: Circuit Court Opinion Listing.]

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

The government's money/property fraud is completely missing an essential criminal element of the offense--the element of material misrepresentation.

As the sole theory of "misrepresentation," the Government alleges that Segal made material false statements to the Illinois Department of Insurance on insurance license renewal applications.

However, that course of conduct was also charged as a "false statement" violation on which Segal was granted a judgment of acquittal. **The district court ruled that the statements on the license renewal applications did not constitute material false statements** by ruling there was no evidence that the license renewal application had any potential influence on any state official**.**

The government did not appeal this ruling, making the district court's finding the "law of the case," and therefore not subject to later reversal.

It is simply impossible that "statements" that were not "materially false" could constitute the "material misrepresentation" element of a money/property mail/wire fraud.

On post-Skilling review, in spite of the judgment of acquittal, the Government continues to argue the statements on the license renewal applications as its sole theory of misrepresentation.

The Government's only response to Segal's objection to the lack of "material misrepresentation" is that Segal somehow waived it by not raising the missing element in his initial appeal. ("Misrepresentation" is not an element of "honest services" mail fraud. Until skilling, all parties had been litigating Segal's conviction as an "honest services" prosecution.)

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

The Prosecutor's misrepresentation began in the grand jury, where the government falsely alleged that Segal had personally signed the license renewal applications, when they knew that he had not personally signed them.

The misrepresentation with the misrepresenting the actual text of the statements on the license renewal applications--misrepresenting the signatures, the text, and the district court's finding that the statement thereon were not materially false.

Moreover, the subpoenaed license renewal application of Near North and Segal appear on their face to contain different signatures of Michael Segal.

The FBI agent testified to establish Segal's signature by telling the grand jury that another FBI agent Murphy was told by one of the ex-employee takeover conspirators government witnesses that Segal signed the application and did not have personal knowledge, then stated it appeared to be *[Ref: Grand Jury, February 14, 2002, 1:30 pm, pages 12, 13, 14]*

It is believed that the AUSA did not disclose that Segal sat for handwriting examination for over two hours.

Segal was called back for a second exemplar examination session and was not given a reason why.

The results of the examination were never turned over as to a report of comparisons of the license application signatures.

Equally concerning the government having two exemplars of Segal's signature and initials do not disclose the comparison with the false Watkins 10/19/1989 memorandum which is a key exhibit in the tax conspiracy.

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

The Grand Jury transcripts are most revealing and prove that government prosecutors deliberately ignored facts and evidence and misrepresented to Grand Jurors in response to the Grand Juror's questions as to the license renewal transactions.

The Grand Jurors notice that there were different signatures. The government had noticed that others signed Segal's signature without specific documented instructions (see Page 18).

> February 14, 2002. Grand Jury: Juror asked as to other license applications that were subpoenaed, prosecutors avoided a direct answer. *[Ref: 1:30 pm, pages 16, 17]*

October 31, 2002. Grand Jury: Juror states that all signatures are different on applications and asks if hand writing exemplar analysis was ordered. Prosecutors incorrectly state that they were to be ordered but did not take place knowingly concealing that an exemplatory session took place. *[Ref: 1:30 pm, pages 68, 69]*

Denise Mayo testified to the Grand Jury that some of the "Michael Segal" signatures were in fact HER renditions of Segal's signature. Mayo denied having specific authorization to sign the renewal applications. Mayo further denied having been specifically instructed to sign the application. *[Ref: Grand Jury, July 23, 2003, pages 31, 32, 35, 44, 45]*

Eventually, FBI Agent Higgins modifies her characterization of the signatures. Asked if signatures are Michael Segal, Agent Higgins responds, "Then name on the signature line is Michael Segal," without any indication of whether Michael Segal was personally responsible for the signature or not. Asked whether one of the license signatures was consistent with what various witnesses had identified as Segal's signature, Agent Higgins replied, "I can't say with particular to this particular exhibit that's the case."

In post-Skilling briefing, the Government cites Alan Jackson's testimony that he prepared the insurance license renewal applications FOR Segal's signature. Jackson never testified that he had personal knowledge of who actually signed the applications. At trial, the prosecutors knew or should have known Segal did not sign the license renewal but continued to mislead.

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

Even in the Grand Jury room, the government knew that they had no proof of "misrepresentation" based on the license applications. Before the Grand Jury, the Government used Segal's NAME (not signature) on the license applications to establish that Segal was the person responsible for providing the intangible right of honest services to customers and carriers:

> ? The government prosecutors cannot deny the license renewal applications appear to have different signatures as to Michael Segal and the Illinois DOI corporate license renewal does not contain any wording as to a PFTA account. And aside from the duty that he owed to the Illinois Department of Insurance to follow the regulations, aside from the duty that he owed to the customers and clients to keep the money in trust, did Mr. Segal also owe a duty of, on his services to those individuals, to follow those rules and regulations for their money

To which Agent Higgins responded in the affirmative. In the Grand Jury room, the Government used the license applications to identify Segal as the person with the fiduciary duty. In the Grand Jury room, the Government pushed its "honest services" theory over a "misrepresentation" theory.

The signatures on the applications so obviously were not all Michael Segal's personal signatures that a member of the Grand Jury spontaneously confronted the prosecutor with the discrepancy. Rather than admit that the government had already obtained Segal's signature in response to a grand jury subpoena, the prosecutor falsely told the grand jury that Segal had not complied with the subpoena, tainting the proceedings not only by withholding the handwriting exemplars from the grand jury, but by creating the impression that Segal was trying to hide his handwriting from the grand jury -- a double-dose of falsity by the government.

The government began this prosecution in the grand jury room with false representation to the grand jury that Segal had personally signed license applications that they knew he had not signed. The government concealed to the grand jury about having obtained Segal's handwriting exemplars.

At trial, the district court granted a Judgment of Acquittal as to the license applications constituting a "false statement" by Segal. Yet, on post-SKILLING review, the Government continues to cling to this acquitted conduct as the foundation for maintaining Segal's mail/wire fraud convictions. The government's pattern of falsity continues unabated from the Grand Jury room to post-conviction review.

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

Even though the financial misrepresentation counts were dismissed in a post-trial motion and the Court ruled that there was no financial non-disclosure or misrepresentation. The number of counts and the allegations presented to the jury had a most prejudicial effect. These facts could not be clearer.

The misrepresentation is repeated again in the Supplemental Skilling filing.

The misrepresentation is material and is intended to interfere with Segal rights under Supreme Court skilling mandate. The misrepresentation is the ''core'' of the Government's alternate 1341 theory. Without it, this would have all been over on June 24th following Skilling.

The government had a duty to correct. The misrepresentation is also part of a pattern as to 1033a facts in the record.

Prosecutors ignored the record of their own witnesses and PSR finding by continuing allegations of misrepresentation regarding the alternate crime of 1341-Mail Fraud.

All government witnesses testified they had no knowledge of misrepresentation, non-disclosure, alteration or change of any transaction in NNIB's books and records. *[Ref: Tr.866, 937, 1729, 2466, 2271, 2673, 3201, 3403, 3645, 1258, 4870]*

Near North CFO Kendeigh testified that financial transactions at Near North were coded honestly:

Tr. 1720:1-6 (Kendeigh cross by McNulty)

Q: So there was never any effort by any of your superiors at Near North to hide anything?

A: That is true, yes.

Q: And, in fact, to the best of your knowledge, there was no information that was intentionally miscoded or hidden, correct?

A: That's correct, yes.

Knowing use of acquitted conduct and misrepresentation of Illinois License printed content

Kendeigh specifically testified there was never any intention to mislead anyone with respect to Near North's books and records.

Tr. 1721: 10-12 (Kendeigh cross by McNulty)

Q: So there was never anythign prepared that you're aware of where somebody intentionally tried to mislead anyone?

A: That's correct.

Deloitte and Touche accountants testified there was transparency and no missing money.

Tr. 1140:19 - 1141:8 (Perez cross by Cognetti)

Q: So all those records were transparent. They were on the books and records of Near North, correct?

A: Yes.

Q: There's no -- no hidden company someplace that you found for Near North, did you?

A: No.

Q: No flow of money to a secre account someplace. Did you find any flow of any money to some secret account someplace?

A: I don't recall finding anything of that nature.

Insert Tr. 1302: 14-17 (Jackson cross by Cognetti)

Q: Did you ever see any drain of money to an offshore account or any hidden corporations or this money going to any nefarious place?

A: No I did not.

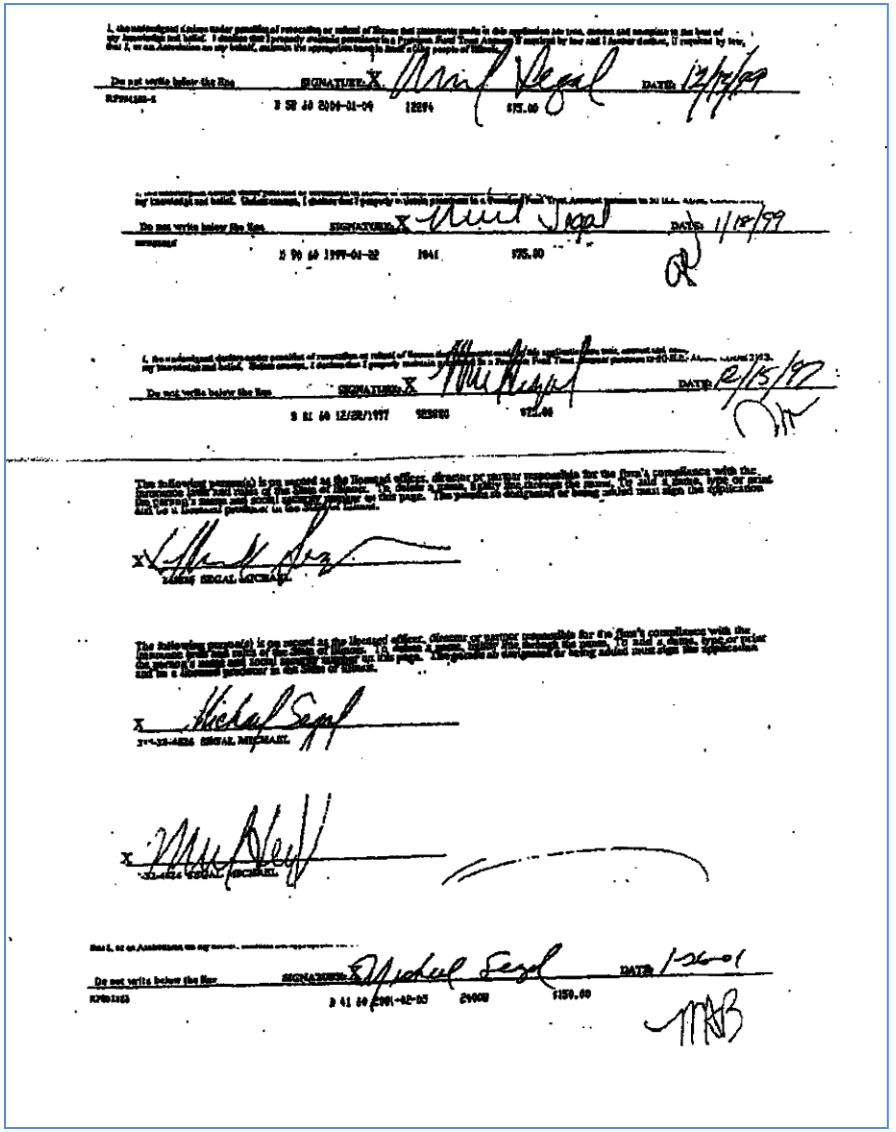
Grand Jury and Trial exhibits are not Segal signatures and know as such on their face

The misrepresentation began in the grand jury, where the government falsely alleged that Segal had personally signed the license renewal applications, when they knew that he had not personally signed them.

February 14, 2002. Grand Jury: Juror asked as to other license applications that were subpoenaed, prosecutors avoided a direct answer.

October 31, 2002. Grand Jury: Juror states that all signatures are different on applications and asks if hand writing exemplar analysis was ordered. Prosecutors incorrectly state that they were to be ordered but did not take place. *[Ref: FBI Agent Higgins, p68-69]*

At trial witness was only shown personal licence as a respresentative of all.



THE MISSING ‘MATERIAL MISREPRESENTATION’ ELEMENT

The Missing “Material Misrepresentation” Element

The Government's alternative PFTA ''float'' pecuniary fraud theory is fatally lacking the element of material misrepresentation.

A pecuniary fraud has as its graveman the element of a "material“ misrepresentation as mandated by the Supreme Court in Neder v. United States ;527 U.S. 1, 25 (1999).

The government alleges one and only one course of conduct constituting “misrepresentation”. It claims that ''when [Segal] filed his annual applications to renew his broker's license” he ''falsely certifi[ed] that the PFTA was in trust.'' *[Ref: Govt.Skill.Br.4.]* Segal, however, made no such representation.

The exclusive conduct alleged by the government as constituting Segal's 1341/1343 “misrepresentation” was independently charged in Counts 16-22 of the indictment as violations of 18 U.S.C. 1033(a), False Statements. At trial, the government introduced the license renewal forms. There are two forms of license renewal at issue – one is the “personal” license of Michael Segal as an individual (with two variations in language depending upon the year) and one is the “firm” (i.e. corporate) license of NNIB.

The evidence showed that, prior to 1999, the language on the personal license renewal form stated:

Trial Exhibit #281E; Tr.3949:2-7.

Unless exempt, I declare that I properly maintain premiums in a Premium Fund Trust Account pursuant to Illinois Administrative Code 3113.

In 1999, the language on the personal license application form was changed to read:

Trial Exhibits #282C, #283D

I declare that I properly maintain premiums in a Premium Fund Trust Account if required by law and I further declare, if required by law, that I, or an association on my behalf, maintains the appropriate bond in favor of the people of Illinois.

Michael Segal did not sell insurance as an ''individual.'' Therefore, Michael Segal was not required to personally ''maintain premiums in a Premium Fund Trust Account . Within the meaning of the earlier form of the license renewal application Michael Segal was ''exempt” from the PFTA requirement.

Within the meaning of the later form of the language, individually maintaining a PFTA was not required by law. Michael Segal, the individual, had no personal premium receipts to maintain. Other insurance salespersons at NNIB also had individual insurance licenses. None of them sold insurance as individuals—neither were they required to maintain a PFTA.

The Missing "Material Misrepresentation" Element

Regardless of whether NNIB's premiums were properly maintained in the PFTA, the certification on the individual insurance producer's license renewal application refers only to the obligation of a person engaged in the individual sales of insurance. It does not certify that the agent's employer is in compliance with the PFTA regulations.

The language of the "Firm" license renewal, filed for NNIB's license renewal, stated:

> **Trial exhibits #284B. #285C, #376A, #379, #380, #381; Tr.3466:16-23.**
> The following person(s) is on record as the licensed officer, director or partner responsible for the firm's compliance with the insurance laws and rules of the State of Illinois. To delete a name, lightly line through the name. To add a name, type or print the person's name and social security number on this page. The person so designated or being added must sign the application and be a licensed producer in the State of Illinois.

There is no PFTA language whatsoever on the firm license renewal form. There is a requirement that the corporation identify the name of the person or persons responsible for the firm's regulatory compliance, but there is no requirement that the corporation certify that it is actually in compliance with any particular Illinois insurance regulation.

In closing argument, the government argues that the mailing of the license renewal applications satisfied the "material misrepresentation" element of mail/wire fraud:

> **Tr. 5288: 6-15 (Government-closing)**
> Well, in this case, not only did the mailings contain fraudulent representations, but they certainly furthered the scheme as I've already pointed out.
>
> And how did they in this case contain fraudulent representation? And this is important because those fraudulent representations form the basis for Counts 16 through 22; that is, the false statement counts to the Department of Insurance because in those mailings, in those applications, Near North repeatedly, and Mr. Segal individually, represented among the following things: That they were complying with all the Illinois rules and regulations governing the operations of insurance brokerages and premium trust accounts, and that they were maintaining their books and records in an accurate fashion that could be subject to inspection by the state of Illinois.
>
> And they were making those representation that they were holding the customer's money in trust in a fiduciary capacity in conjunction with and compliance with the Illinois rules and regulations, which you've seen over and over in this case.

In 6000 pages of trial transcripts, Prosecutors do not present one cite of a representation to any customer(insured) or insurance carrier (insurer) of any such content or wording.

Missing "Material Misrepresentation" Element

Contrary to the Government's argument, the language on the license renewal application did not represent compliance "with all the Illinois rules and regulations governing the operations of insurance brokerages and premium trust accounts". The government's argument was a complete misstatement of the evidence presented at trial.

The district court was not deceived by the government's misrepresentation of the trial evidence. In granting Segal's Rule 29 Motion, the district court held: 1) the license renewal applications were not financial reports or documents; and 2) 'no testimony established that the license renewal applications had any potential influence on any state official*". [Ref: Order granting Judgment of Acquittal, December 13, 2004, p9]*

Prosecutors leave out two remaining sentences of courts opinion

> **Presentencing Officers Report, 745-747**
>
> There is no evidence the defendant intended to defraud either the insurance clients or the insurance companies.

A close inspection of the actual text of the renewal applications demonstrate that there was no 'certification' with respect to properly maintaining Near North's PFTA. There was no false statement. The district court's judgment of acquittal finding that, "no testimony established the license renewal applications had any potential influence on any state official," precluded those statements from being material. A factually true statement found to not be material cannot satisfy the material misrepresentation element of U.S.C. 1341/1343.

In spite of the judgment of acquittal with respect to the conduct in context of 1033(a), on post-Skilling review, the government continues to argue that the submission of the license renewal applications, allegedly falsely purporting that NNIB properly maintained a PFTA, satisfies the material misrepresentation element of 18 U.S.C. 1341/1343.

It is simply not possible that a document containing only true statements which , in any event, are not legally material in the context of 18 U.S.C. 1033(a) can satisfy the material misrepresentation element of 18 U.S.C. 1341/1341.

With the 1346 theory of Segal's conviction invalidated by the Supreme Court's decision in Skilling, there is, as the district court found, a "complete absence of evidence" of material false statement necessary to constitute the criminal element of material misrepresentation.

GOVERNMENT MISREPRESENTATION OF RECORD ACQUITTED CONDUCT ON DIRECT APPEAL REPLY POSITION

Government misrepresentation of Record acquitted conduct on direct appeal reply position

In Segal's original direct appeal motion reply, the government misrepresented the holding of the district court in granting Segal's judgment of acquittal:

> **[Ref: Govt.Br.18.]**
>
> Counts 16-22 charged Segal and NNIB with false statements on the license renewal applications, which certified that they maintained a PFTA in compliance with state law. The district court granted a motion for judgment of acquittal on these counts because the evidence did not prove that the applications were "financial reports or documents" as required by 18 U.S.C. $ 1033(a) (1). *[Ref: Complete Government filed reply brief]*

Although the government correctly related that the district court granted the judgment of acquittal because the license renewal applications were not "financial reports or documents," that was actually only part of the reasoning underlying the district court's decision.

The government, through its silence, misled the appellate court to believe that was the only reason for the decision. The Government concealed the second part of the district court's holding -- that the statements on the license renewal applications lacked even the potential to influence a state official (i.e. "decision maker").

By misrepresenting the text of the license agreements and concealing the district court's finding of an absence of materiality, the government created the false impressions that: 1) Segal made material false statements to the Illinois Department of Insurance; and 2) Segal beat the 1033(a) (1) charges on a technicality that did not preclude the alleged conduct from constituting "material misrepresentation" in the context of a pecuniary mail/wire fraud.

Prosecutors leave out two remaining sentences of courts opinion

CONCLUSION

Conclusion

From indictment through post-Skilling review, the government's theory of pecuniary fraud in Segal's mail/wire fraud convictions has been based on Government misrepresentation and due process violations.

Government misrepresentation of the license renewal applications was and is the core of the Government's pecuniary fraud theory to interfere with Skilling mandate rendering Segal 1346 Dishonest Services invalid.

- the Government misrepresented the plain text of the license renewal applications to the grand jury, trial, closing, Skilling Remand
- the Government misrepresented to the appellate court the district court's full foundation for granting Segal's judgment of acquittal on 18 U.S.C. § 1033(a)(1);
- the Government concealed from the appellate court on direct appeal that the district court had found the statements on the license renewal applications incapable of influencing a state official, thus making them not material; and
- the Government's arguments to the appellate court on post-Skilling review continue to rely on the misrepresentations of the license text and the district court's finding of no "potential influence" form the statements actually made as its foundation for the continued validity of Segal's mail/wire fraud and RICO convictions.