

JUN 20 2008

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES N. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

SCOTT HINTZ,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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No. 1:08-CV-758-CC
(No. 1:03-CR-131-CC)

MOTION TO SUPPLEMENT DOC.# 258 RECUSAL MOTION

Petitioner, without the assistance of counsel, respectfully submits this filing and respectfully requests this Court stay all proceedings until the final resolution of the Doc.#258 Recusal Motion and **ORDER**:

(1) the RECUSAL of U.S. Magistrate Judge Alan J. Baverman as of the date of his first judicial involvement in this case—and ORDER this Court do anything, and everything, in its authority in an attempt to reset the proceedings of this case to before Judge Baverman's involvement and/or

(2) the RECUSAL of U.S. District Court Judge Clarence Cooper as of the time immediately prior to the sentencing of this case---and ORDER this Court do anything, and everything, in its authority to reset the proceedings of this case to before the sentencing of this case, and/or

(3) the RECUSAL of U.S. District Court Judge Clarence Cooper as of the time immediately prior to the plea hearing of this case-- and ORDER this Court do anything, and everything, in its authority to reset the proceedings of this case to before the plea hearing of this case, and/or

[Signature]

(4) the RECUSAL of U.S. Magistrate Judge C. Christopher Hagy at the time immediately prior to the indictment waiver hearing-- and ORDER this Court do anything, and everything, in its authority to reset the proceedings of this case to before the indictment waiver hearing of this case

If the Court is unable to order one, or more, of the recusal requests above based solely on the record of this case-- this Court should immediately hold evidentiary hearings (complete with provisions for discovery) to resolve the sworn allegations of activities that appear to, minimally, meet the recusal requirement in any proceeding where the judge's "impartiality might reasonably be questioned" [see 28 USC §455(a)] --- and the recusal(s) may likely be required under one, or more, of the additional provisions of 28 USC §455 (see Doc.258).

"A judge is under an affirmative, self-enforcing obligation to recuse himself sua sponte whenever the proper grounds exist...The duty of recusal applies equally before, during and after a judicial proceeding." U.S. v. Kelly, 888 F2d@744 (11th Cir. 1989, emphasis added).

"As we are required to do, we accept as true the allegations contained in the affidavits." In Re: Corrugated Container, 614 F.2d 958, 967 (former 5th Cir. 1980); see also "Affidavit must be considered as true**" Christo v. Padgett, 223 F3d 1324, 1333 (11th Cir. 2000); see also Berger v. US, 41 S.Ct. 230, 234 (1921).**

RECUSAL PRIOR TO DIRECT APPEAL

Through U.S. Magistrate Judge Alan J. Baverman's own sworn statements, he admitted he departed from his "usual course of action in such a case" and instead "additionally burden[ed] the federal treasury...by appointing...Ms. Fant...[who he] had known for a number of years before [he] took the bench (see, and herein incorporate in its entirety, Doc. 260; see especially Doc.260 pgs.16-19). Judge Baverman's actions,

despite his sworn statements to the contrary, have been shown to more than meet the requirements for recusal (Attachment 'A'; see also Doc. 258).

Additional sworn affidavits (see Attachment 'A') and other items of evidence (see herein incorporated Doc.260 pgs.7-8) clearly show U.S. Magistrate Judge Alan Baverman, and his wife, were personally involved with this Petitioner under "questionable" circumstances long before the proceedings of this case. Judge Baverman's wife evaluated [with use of sales comparison reports and personal visit(s)], and selected the properties to be extorted from this Petitioner by members of the Baverman-Morochnik family. Judge Baverman and his wife were personally aware of the extorted real and personal assets because they were personally involved and visited this Petitioner's personal residence to complete some of these acts (see Attachment 'A' West, Zwolak & Hintz affidavits; see also herein incorporated Doc.260 pgs.7-8, and other Attachment 'A' affidavits).

The affidavits and evidence show the acquisition of the subject properties were acquired with the use of extortion and fraud by members of the Baverman-Morochnik family. Judge Baverman and his wife, in their sworn statements, admit Judge Baverman's wife had financial interest in the real & personal assets received from Petitioner prior to Judge Baverman's June 23, 2004 appointment of attorney Lynn Fant (although the Baverman's contend it was only limited to commissions received from the subsequent sale of these properties and a mirror – these statements are in dispute; see Attachment 'A' affidavits). Despite the sworn testimony and evidence supporting the use of extortion and fraud to acquire the real and personal assets from this Petitioner, the Baverman's deny their illegal activity (Judge Baverman's statements are under

dispute; see Doc.260; see also Attachment 'A' Affidavits). Judge Baverman's recusal is required because of the financial [and/or other conflicting interest(s)] by any member of Judge Baverman's family up to the third degree of relation (or such person's spouse).

Judge Baverman, himself, and several members of his family have financial interest due to their extorted (and in some cases, fraudulent) acquisition real & personal assets from this Petitioner, and have personal interest in avoiding criminal scrutiny for their extortion of Petitioner and his family.. Additionally, one, or more, of the recusal requirements listed against Judge Baverman (see Doc.258, pgs.3-8) have been proven with the sworn statements of others (and other evidence- including some from Judge Baverman's own family members—see incorporated Doc.260; see also Attachment 'A' Affidavits). Minimally, Judge Baverman's judicial involvement reasonably brings into question Judge Baverman's impartiality for the actions and involvement of Judge Baverman and his family not only in allegedly directing the cause of losses for their own benefit but also for their own direct involvement in one, or more, properties included in the proceedings of this case (see incorporated Doc.260, and Attachment 'A' Affidavits).

For any or all of the above reasons, and those already before this Court, Judge Baverman's recusal should be required as of the date of his first judicial involvement in this case—and this Court must attempt to do anything, and everything, in its authority to reset the proceedings of this case to before Judge Baverman's involvement.

RECUSAL PRIOR TO SENTENCING

Immediately prior to this Petitioner's sentencing, Petitioner was delayed, (due to a fatal traffic accident on the Petitioner's route to this Court) from arriving timely to his own sentencing. As a result, U.S. District Court Judge Clarence Cooper entered the

Court and was able to speak personally (and outside of the record of this case) to Attorney Mark Kadish.

Sworn testimony shows Judge Cooper and attorney Mark Kadish spoke of personal, out of court meetings, prior to sentencing. The 'off the record' personal conversations included Mark Kadish telling Judge Cooper of disputed facts regarding this case. (See Attachment 'A' – Cottrell, Hintz, Jensen & West Affidavits). Attorney Mark Kadish alleged power & influence with Judge Cooper (see attachment 'A' Jensen, West & Hintz Affidavits). These activities should be reviewed for recusal under the requirements of 28 USC §455 (a) & (b).

For any or all of the above reasons, and those already before this Court, Judge Cooper should be recused and should require the recusal as of the time immediately prior to the sentencing of this case---and this Court should attempt to do anything, and everything, to reset the proceedings of this case to before sentencing.

RECUSAL PRIOR TO PLEA HEARING

Immediately prior to this Petitioner's Plea Hearing (and off the record of the case), U.S. District Court Judge Clarence Cooper personally invited attorney Mark Kadish to meet personally outside of court. Attorney Mark Kadish had previously stated he was a very good friend of Judge Cooper's and would/had spoken to Judge Cooper outside the record of the case about the facts of this case (see Attachment 'A' Cottrell, Hintz, Jensen & West Affidavits; and herein incorporated Doc.260). The activities should be reviewed for recusal under the requirements of 28 USC §455 (a) & (b).

For any or all of the above reasons, and those already before this Court, Judge Cooper should recuse himself and should require the recusal as of the time immediately

prior to the sentencing of this case---and this Court should attempt to do anything, and everything, to reset the proceedings of this case to before sentencing.

RECUSAL PRIOR TO INDICTMENT WAIVER HEARING

Prior to the initial hearing of this case (before U.S. Magistrate Judge C. Christopher Hagy) Attorney Mark Kadish had previously stated he and U.S. Magistrate Judge Alan Baverman had significant influence with involved judges (see Attachment 'A' Hintz, West & Jensen Affidavits; and herein incorporated Doc.260).

For any or all of the above reasons, and those already before this Court, this court should order the recusal of Judge Hagy and should require the recusal as of the time immediately prior to the Indictment Waiver hearing of this case---and this Court should attempt to do anything, and everything, in its power to reset the proceedings of this case to immediately before the Indictment Waiver hearing.

CONCLUSION

For all of the above reasons and the reasons already before this Court (either individually or as a whole), this Court should stay all proceedings pending final resolution of this Petitioner's Recusal request AND should **ORDER**:

(1) the RECUSAL of U.S. Magistrate Judge Alan J. Baverman as of the date of his first judicial involvement in this case—and ORDER this Court do anything, and everything, in its authority in an attempt to reset the proceedings of this case to before Judge Baverman's involvement and/or

(2) the RECUSAL of U.S. District Court Judge Clarence Cooper as of the time immediately prior to the sentencing of this case---and ORDER this Court do anything,



and everything, in its authority to reset the proceedings of this case to before the sentencing of this case, and/or

(3) the RECUSAL of U.S. District Court Judge Clarence Cooper as of the time immediately prior to the plea hearing of this case-- and ORDER this Court do anything, and everything, in its authority to reset the proceedings of this case to before the plea hearing of this case, and/or

(4) the RECUSAL of U.S. Magistrate Judge C. Christopher Hagy at the time immediately prior to the indictment waiver hearing-- and ORDER this Court do anything, and everything, in its authority to reset the proceedings of this case to before the indictment waiver hearing of this case

If the Court is unable to order one, or more, of the recusal requests above -- this Court should immediately ORDER evidentiary hearings (complete with provisions for discovery) to resolve these supported allegations of activities that appear to, minimally, meet the recusal requirement in any proceeding where the judge's "impartiality might reasonably be questioned" [see 28 USC §455(a)] --- and the recusal(s) may likely be required under one, or more, of the additional provisions of 28 USC §455 (see Doc.258).

Respectfully submitted this 20th day of June 2008.



Scott Hintz,
Pro Se Petitioner



CERTIFICATE OF SERVICE

I, Scott Hintz, certify I have personally delivered a copy of the foregoing

MOTION TO SUPPLEMENT DOC.# 258 RECUSAL MOTION

[and its Attachment A – six (6) pages in total]

to:

U.S. Attorney's Office
AUSA Charysse Alexander
75 Spring Street SW
Atlanta, GA 30303

This 20th day of June 2008.

Sincerely,



Scott Hintz

**AFFIDAVIT IN SUPPORT OF MOTION FOR RECUSAL AND MOTION FOR STAY OF PROCEEDINGS
PENDING RESOLUTION OF RECUSAL REQUEST**

I, Scott Hintz, state the following statements are true under the penalty of perjury

(28 U.S.C. §1746):

1. To best of my knowledge and belief, all statements listed in the SUMMARY section (paragraph #s 1-8) of the preceding MOTION FOR RECUSAL AND MOTION FOR STAY OF PROCEEDINGS PENDING RESOLUTION OF RECUSAL REQUEST are true.
2. Paul J. Morochnik (a relative of Judge Baverman) and Alan J. Baverman instructed me to use attorney Mark J. Kadish for the investigation and proceedings of the underlying case so their 'questionable' activities and legal direction would be 'behind the scenes' and less likely scrutinized. Both Paul J. Morochnik and Alan J. Baverman were well aware of the FBI investigation (leading to the proceedings of the underlying case) well before I was instructed to "give" them significant real and personal property at very large discounts to market value (or in some cases – free) and directed to walk away from properties that later went into foreclosure. Losses would either have not occurred or, minimally, would have been significantly limited without their self-serving direction. They told me they had a great amount of power and influence over just about everything in the district and instructed me to follow their specific direction.
3. Between January and March 2001, Paul J. Morochnik, Alan J. Baverman and Elida Baverman (Judge Baverman's wife) visited my home in early 2001 to take real and personal property from my family with the use of their power and influence.
4. Elida Baverman evaluated and rendered direction regarding real property transferred from me to Paul J. Morochnik and his wife in 2001; Elida Baverman later sold the real estate, for the profit of the Baverman-Morochnik family, including at least some property specifically listed in the underlying case.
5. Mark J. Kadish informed me that he and U.S. Magistrate Judge Alan J. Baverman had some very strong power and influence with allegedly-violent criminal organizations, law enforcement,

politicians and judges. I was told to remain silent about the questionable, and likely illegal activities, of the Baverman family or they (Baverman & Kadish) would find out through their connections rendering my minor children unsafe.

6. Attorney Mark J. Kadish very specifically told me he was a close friend of Judge Clarence Cooper; Mark Kadish told me he personally spoke to Judge Clarence Cooper outside of court in regards to factually-incorrect items listed in the charging document of this case and told me that Judge Cooper would become upset if I brought up the Baverman family details in court.
7. In court, and before the Plea Hearing of the case, I witnessed Judge Clarence Cooper invite Mark Kadish to a personal out-of-court meeting; Judge Cooper's personal invitation to meet personally with Mark Kadish outside of court, coupled with Mark Kadish's words about having significant influence over Judge Cooper intimidated me—especially when Mark Kadish told me that Judge Cooper had my life in his hands and would become very upset if I did not remain silent about the Baverman family direction and activity.
8. Attorney Mark Kadish lied to me and threatened me on numerous occasions. When I requested Mark Kadish be replaced with appointed counsel, Judge Alan J. Baverman appointed his replacement with another attorney that demanded I remain silent about the Baverman family involvement and informed me that Judge Baverman had enough power and influence to retaliate against those who opposed his family and friends.

Stating the above are true to the best of my knowledge and belief, I hereby state the above this 22nd day of May 2008.

Sincerely,



Scott Hintz

Attachment 'A' pg 2 of 6
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AFFIDAVIT

I, Sherman Lee Cottrell, do hereby state under penalty of perjury that the following statements are true. I hereby state:

- 1. I was personally present in court immediately prior to, during, and after various court proceedings in the case of United States v. Scott Hintz in the United States District Court for the Northern District of Georgia (Atlanta Division) Docket No.1:03-CR-131-CC.**

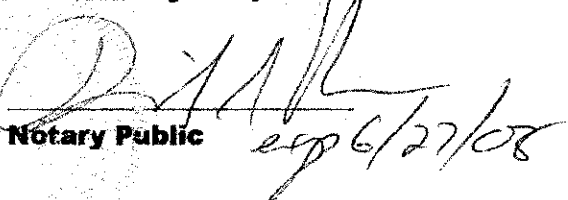
- 2. Immediately before one, or more, of these same court proceedings, I witnessed attorney Mark J. Kadish and United States District Court Judge Clarence Cooper speaking about their personal meetings and/or interactions outside of court; these conversations occurred in court and while Judge Clarence Cooper was sitting at his bench, but the conversations were not reflected in the transcripts of United States v. Scott Hintz, No.1:03-CR-131-CC.**

- 3. Immediately before the September 22, 2003 court proceeding of United States v. Scott Hintz, No.1:03-CR-131-CC, I witnessed attorney Mark J. Kadish speak to various court personnel while in court, but off the record of this same case. Attorney Mark J. Kadish tried to convince the court he was not involved in the receipt of approximately one million dollars (\$1,000,000.00) worth of real and/or personal property from Scott Hintz (as identified in Scott Hintz's Pre-Sentence Report) stating someone else was involved instead; Alan J. Baverman and/or Alan J. Baverman's family, including his wife and others, were involved in the receipt and subsequent sale of one or more of these assets for their own personal profit.**

Stating the above are true, I state the above this 7th day of April 2007.


Sherman Lee Cottrell

Before me appeared the above-named affiant and, after providing sufficient and proper identification, personally affixed his signature to this affidavit this 7th day of April 2007.


Notary Public esp 6/27/08

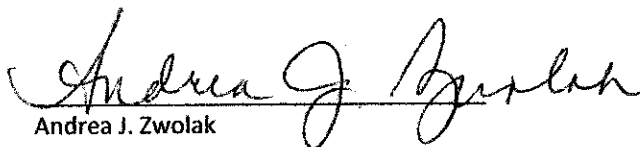
Attachment 'A'
pg 3 of 6 se

DECLARATION OF ANDREA ZWOLAK

I, Andrea J. Zwolak, personally testify the following statements are true and correct to the best of my knowledge and belief:

1. Attorney Paul J. Morochnik was giving my ex-husband, Scott R. Hintz, legal advice and direction regarding an FBI investigation and real estate transactions well before Paul Morochnik's January 2001 visit to my previous residence. I witnessed some conversations between Scott Hintz and Paul Morochnik in the second half of December 2000 and the month of January 2001 that made it clear to me that Scott Hintz was scared and intimidated by attorney Paul Morochnik. Scott Hintz fired another criminal attorney and began using attorney Mark Kadish in January 2001 after being specifically directed to do so in by Paul Morochnik. Mark Kadish visited my previous residence in January 2001 while Scott Hintz and I were in attendance. Paul Morochnik specifically told Scott Hintz to walk away from several properties and told us not make any mortgage payments on various real estate properties even though funds were available in late December 2000 and the first week of January 2001. Mark Kadish visited my previous residence in January 2001 while Scott Hintz and I were in attendance.
2. I did not want to sell seven real estate properties to Paul J. Morochnik and his wife because I had other confirmed, and very significantly higher, offers to purchase the properties. I specifically remember crying during the real estate closings on January 18, 2001, in attorney Paul Morochnik's law office, because I knew Paul Morochnik was receiving very significant equity at his own direction. Attorney Paul J. Morochnik directed me to sign real estate closing paperwork even though some paperwork did not have final numbers. Paul Morochnik had knowledge, prior to purchase, that one of the properties he purchased from us had an open loan in the name of Kevin Hoppe (a Roswell Springs Condo on Warm Springs Circle), but Paul Morochnik, himself, decided not to pay off the loan because it would have reduced his own equity position. Paul Morochnik knew Kevin Hoppe would likely dispute the transaction, but Paul Morochnik believed he could avoid having to pay the mortgage anyway.
3. Scott Hintz and I did not have any estate or garage sale at our residence in January 2001. Any visit Elida Baverman may have made to my residence on in mid-January 2001 would have been to evaluate mortgaged real estate for Paul Morochnik and not for any estate or garage sale. In late February, or early March, 2001 Paul Morochnik brought his relatives, Alan & Elida Baverman, to my previous residence at 1110 Vintage Club Drive, Duluth, GA to receive personal property including various items not just a "mirror"; to the best of my knowledge they did not pay any money.

In accordance with 28 U.S.C. §1746, I state the above are true and correct to the best of my knowledge and belief and under the penalty of perjury. I state the above this 14th day of June 2008.


Andrea J. Zwolak

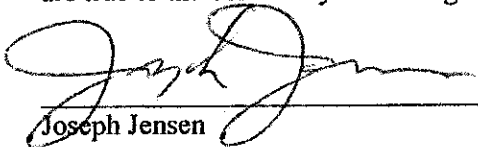
Attachment 'A'
pg 4 of 6 SL

AFFIDAVIT

I, Joseph Jensen, do hereby state the following statements are from my personal knowledge and are true under the penalty of perjury:

1. I am over the age of eighteen, mentally sound, and am a resident of the state of Georgia.
2. Since I drove with Scott Hintz a lot in 2002 and 2003, I was with Scott Hintz during a lot of Scott's conversations with attorney Mark Kadish during this same time.
3. It was clear from what I heard and seen that Scott Hintz was using attorney Mark Kadish only because Scott Hintz was very afraid of Mark Kadish and worried someone would harm Scott's kids if he did not follow Mark Kadish's direction.
4. Immediately before Scott went to his first criminal proceeding with Mark Kadish, Scott Hintz told Mark Kadish the criminal allegations against him were false and told Mark Kadish he did not want to plead guilty to false statements. Mark Kadish responded by instructing Scott Hintz to plead guilty anyways and by telling Scott it was the only way to keep Scott's kids safe. Mark Kadish also responded by telling Scott Hintz he would only be held accountable for a single charge and the other listed people would be accountable for the rest of the charges.
5. In 2002, Scott Hintz told me Paul Morochnik, and members of Morochnik's family including one that is a judge, did illegal things and told Scott Hintz to do some things he did not want to do that made them a lot of money but caused banks a lot of losses. Scott Hintz told me he could not go public with this information because they and attorney Mark Kadish would become upset, they had a lot of influence, and they would cause harm to Scott's kids.
6. Sometime in or before July 2003, I remember Mark Kadish was angry about Scott Hintz telling the government about the real estate transfers between Scott Hintz and the Morochnik family. Scott Hintz stated he could not lie about the transfers because they were in county records. Mark Kadish told Scott Hintz he would have to discuss this problem with Judge Cooper before the sentencing hearing and directed Scott Hintz to make certain statements to correct this problem before Scott Hintz's sentencing hearing.
7. Many times throughout 2002 and 2003, Scott Hintz told me he was not happy with Mark Kadish's representation, but was continuing to use Mark Kadish only because he had no other choice if Scott wanted to keep his kids safe.
8. It is very clear from what I heard, Scott Hintz followed the instructions of Mark Kadish because Mark Kadish was a threat to the safety of Scott Hintz's kids and Mark Kadish promised a very short sentence if Scott Hintz kept involved judges happy by remaining silent about the Morochnik and Baverman family before, during and after the plea and sentencing hearings. Before Scott's sentencing hearing, Mark Kadish told Scott Hintz he had already negotiated sentence adjustments with Judge Cooper to make Scott's sentence very short for providing Scott's information about people other than the Morochnik and Baverman family.

Pursuant to 28 USC Section 1746, and under the penalty of perjury I state the above statements are true to the best of my knowledge. I hereby state the above this 14 day of June 2008.


Joseph Jensen

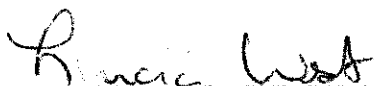
Attachment 'A' pg 5 of 6
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AFFIDAVIT OF LINDA WEST

I, Linda West, do hereby state under the penalty of perjury that the following statements are true to the best of my personal knowledge and belief. I hereby state:

1. In 2001, Scott told me he was very specifically directed to use Mark Kadish as counsel by Paul Morochnik and Alan Baverman. I saw Judge Alan Baverman at the home of Scott Hintz on at least one occasion before a public estate sale was held there in March 2001.
2. I witnessed several conversations between Mark Kadish and Scott Hintz between 2001 and 2003 that occurred either in person or over the phone. When any of these conversations occurred over the phone, I was able to clearly hear the conversations because of the speaker volume of the phone.
3. Between 2001 and 2003, I heard Mark Kadish lose his temper with Scott Hintz many times. On one occasion, Mark Kadish told Scott Hintz he was upset because Scott Hintz did not pay off a loan on his Mercedes SL600 and give it to Mark Kadish. Another time, Mark Kadish told Scott Hintz he was not paid enough to pursue the truth and told Scott Hintz he needed to provide Kadish with more money or Kadish would retaliate against Scott Hintz. On yet another occasion, Mark Kadish threatened Scott Hintz with retaliation for attempting to replace him.
4. Just before Scott Hintz's first appearance before the U.S. District Court, I heard Scott Hintz very specifically tell Mark Kadish he did not want to plead guilty and heard Mark Kadish clearly threaten Scott Hintz and tell Scott Hintz he had to plead guilty or Mark Kadish would ensure retaliation against Scott Hintz. Mark Kadish specifically told Scott Hintz he would definitely only be held accountable for one loan in his name and would definitely eventually only serve 0-6 months of incarceration so long as Scott kept his mouth shut about the Morochnik and Baverman family, kept quiet in court about these agreements, and let Mark handle everything with the judges.
5. Mark Kadish specifically told Scott Hintz that other involved people, besides the Baverman and Morochnik family, would be the ones ultimately held accountable for the other listed loans not in Scott's name. Mark Kadish specifically told Scott Hintz he would ultimately be held accountable for only his own loss on a single loan in Scott's name. I am certain this is what Scott Hintz believed during his plea hearing because I, myself, heard Mark Kadish say it to Scott Hintz. Scott and I talked about Kadish's statements before Scott's plea hearing of March 2003 and were both led to believe the statements were true by Mark Kadish. The Plea Agreement Mark Kadish discussed with Scott Hintz, and the one signed by Scott Hintz, was a total of nine pages in length with no other pages attached; the only other document associated with the Plea Agreement, and faxed by Mark Kadish to Scott Hintz with the Plea Agreement Scott Hintz signed, was a five page Criminal Information. Mark Kadish said the plea hearing was just a formality and specifically told Scott Hintz to keep his mouth shut in court about these agreements so the judge would not become upset. Mark Kadish led Scott Hintz to believe a back-room agreement had been made because Judge Alan Baverman was a judge in the same court and Mark Kadish was a good friend of Judge Cooper.
6. On various occasions before Scott Hintz's sentencing, Mark Kadish told Scott Hintz to present incomplete or misleading statements to protect the Morochnik and Baverman family. During this same time, Mark Kadish told Scott to trust him to talk to Judge Cooper before the sentencing hearing to make sure Scott received a very light sentence after any adjustments.
7. In September 2003, Mark Kadish told Scott Hintz all he had to do was remain silent in court, say only what Mark Kadish told him to say, and Mark Kadish would handle the rest. Mark Kadish told Scott Hintz that if Scott followed his instructions, Scott would be safely back with his children, and out of prison, in a matter of few months.

In accordance with Title 28 U.S.C. Section 1746, I hereby state under the penalty of perjury that the foregoing is true this 15th day of June 2008.


Linda West.

Attachment 'A'
Pg 6 of 6 *sh*