

Section 1

GOVERNMENT PRESENTS FALSE AND MISREPRESENTED EVIDENCE REGARDING CREDIT WRITE-OFFS IN GROUP EXHIBIT 119

The misrepresented Exhibit 119 Group exhibit

Tom McNichols, takeover private witness, resigned from Near North in January of 2002, vacating the premises several days before the January 26, 2002, execution of a search warrant at Near North's offices. Immediately following McNichols' departure from Near North, his office was cleaned out--which means that as of January 26, 2002, the office formerly occupied by McNichols was empty.

On the night before the Saturday, January 26, 2002, search, there is a record of Matt Walsh, a takeover private witness, who had not worked at Near North for several months, calling building security. It is unknown whether Walsh used that contact as the foundation for gaining entry into Near North's offices late Friday night, but the possibility of such access cannot be excluded.

During the execution of the search warrant, a box of documents, inventoried as "Box 53" was purportedly seized from the empty McNichols office. Documents purportedly located in "Box 53" include a set of documents ultimately admitted at trial as Government Group Exhibit 119.

Government Exhibit 119 is a misrepresented "group" exhibit, comprised of three distinct documents that are knowingly misrepresented as to having an accounting and fact connection.

FBI Agent Murphy signs each document and refers to them as "group exhibit" which, along with the other government knowledge of false facts, continues to be misrepresentation without correcting. The three documents in the group are:

1. **An e-mail message** purportedly sent from Tom McNichols to Mike Segal on April 20, 2000. However, evidence introduced at trial proves that the document was never actually sent.
2. **A 50-page spreadsheet** falsely purported to be the work of Marie Salazar.
3. **A "table page,"** purportedly related to the spreadsheet, but which doesn't reflect anything from the spreadsheet.

In spite of FBI Murphy and AUSA vouching for these documents, they are not a proper "group exhibit." They are specious individually and are not internally or externally consistent. In addition, the Government presents other False and Misrepresented information regarding credit write-offs.

Document 1: The email message

The first document in the group exhibit is an e-mail message purportedly sent to Segal by McNichols.

The email, dated 4/20/00 is an admitted meaningless, non-purpose communication manufactured by the takeover group and adopted by and vouched for by government parties regarding Segal writing off credits in 1999 at a non-specific meeting.

McNichols testifies he and other takeover group leaders Walsh and Berry, that the five credit write-offs are listed in an email and signed off by the accepted signatures of the three takeover group members, and not Segal [*Ref: Tr. 2691, McNichols - cross by Cognetti*].

On direct examination, AUSA Kendall had McNichols read the e-mail message:

Tr. 2552: 14-17 (McNichols - direct by Kendall).

Q. All right. Let's turn to the first page of that e-mail, and if you could read to us what it says there in your e-mail to Mr. Segal.

A. It says, "Attached is a spreadsheet highlighting..."

The illusion that the first document was an e-mail message was maintained on cross examination:

Tr. 2637:9-12 (McNichols-cross by Reidy).

Q. And when you sent this e-mail back to Mr. Segal, was it your intent that there would be a record made that you had made this point to him, that he had, in fact, approved these write-offs?

A. Yes, sir.

The e-mail was never sent. It never left the "draft" folder of McNichols' computer, which means that not only did Segal never receive the "e-mail," but Maria Salazar never received the "carbon copy" of the "e-mail."

The physical evidence of the Near North computer systems, seized by the government, proves the falsity of McNichols' testimony. The e-mail message never left the "draft" folder of McNichols' computer. The "laws of nature" prohibit the contents of McNichols' draft e-mail folder from spontaneously migrating into Segal's inbox. It didn't happen because it couldn't happen. Although the government was in possession of Near North's computers, and knew that the e-mail had never been sent, the prosecutor failed to correct McNichols' testimony when it appeared.

Document 1: The email message

Not only are the circumstances of the non-transmittal of the e-mail message false, the content of the e-mail message does not properly reflect the attached spreadsheet.

The e-mail reads:

Tr. 2552:17-2553:7 (McNichols-direct by Kendall)

Attached is a spreadsheet highlighting our progress in cleaning up old accounts receivable items that you reviewed in late fall 1999. Of the \$10.8 million of outstanding receivable reviewed, only 1.7 remains open and still being investigated. Checks totaling 3.1 million have been received against these old receivables, and 6.3 million have been correct through adjustments. Adjustments were needed for several reasons, including billing errors, application of credits, et cetera.

Most of these adjustments were made in consultation with the appropriate AE [Account Executive]. Write-off's were made where accounts receivable balance matched accounts payable amounts that had already been purged. Write-offs were also made for accounts receivable credits which you identified during our review. These are summarized at the end of the report. Please review the attached report and call me or Maria Salazar with any comments, suggestions.

It's tempting to just "read past" the millions of dollars identified in the e-mail without doing any addition. But that would be a mistake--because the numbers don't properly add up:

1.7 million still under review	
+ 6.3 million adjustments	
+ 3.1 million checks received	<u> </u>
11.1 million total	

Yet the e-mail message pegs the total of "receivables reviewed" at \$10.8 million, a \$300,000 discrepancy.

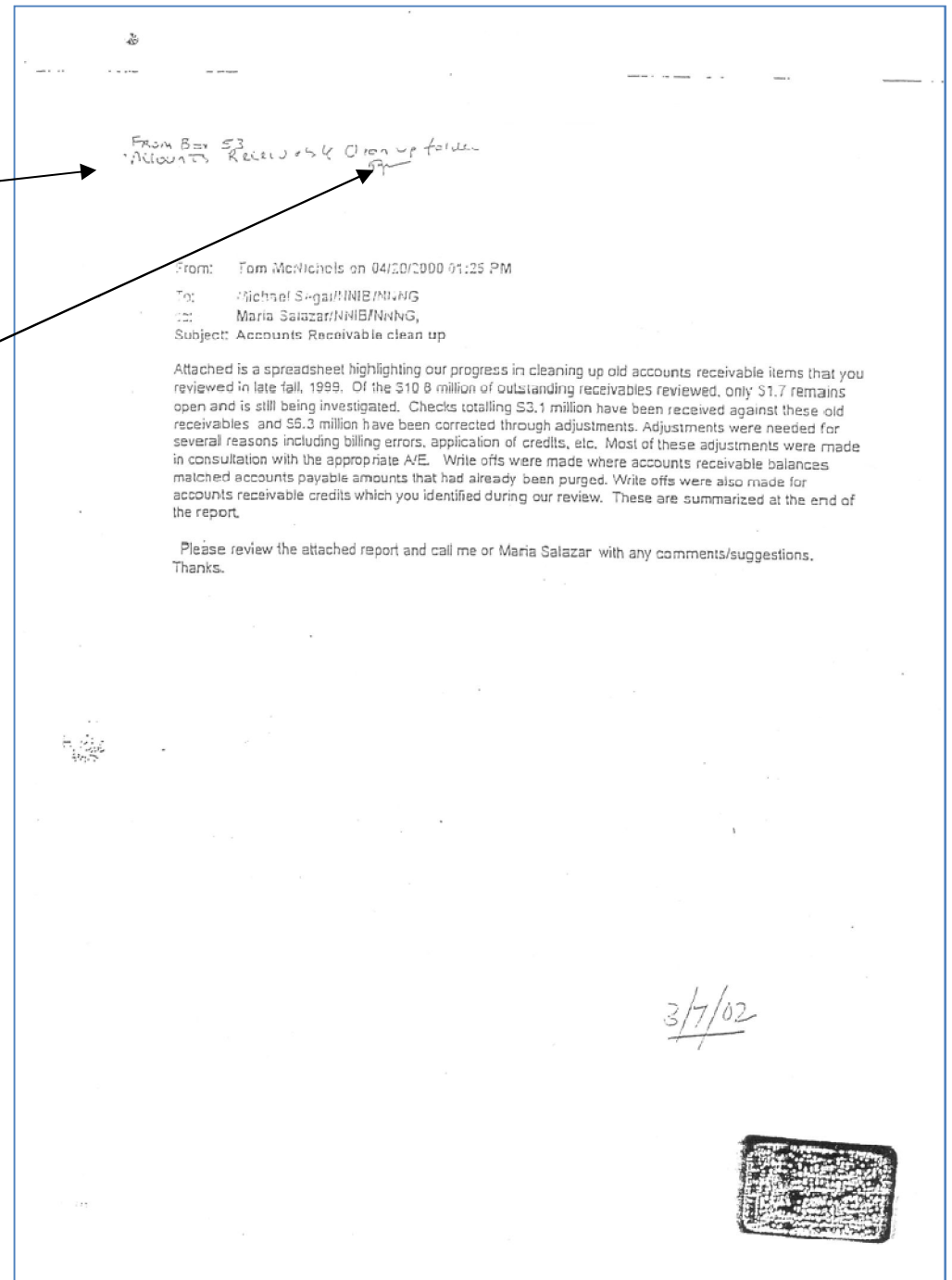
So what does this mean?

The answer is simple. **The "e-mail" message misrepresents the spreadsheet.** The "totals" from the spreadsheet are really "cross-foot" totals. Each "column" of the spreadsheet contains both debits and credits. Understood in this manner, the "cross-foots" do reconcile--except **the e-mail message fraudulently conceals a \$300,000 cross-foot total on the spreadsheet.**

Document 1: Unsent email from McNichols to Segal

FBI Agent Murphy notation that the message was found in Box 53 and deals with accounts receivable.

Murphy's labeling of clean-up folder is intended to support the misrepresentation of the group exhibit.



Document 1: The email message

The totals actually appearing on the spreadsheet are:

\$1,772,129.09 Still Open
\$6,263,495.71 Adjustments
\$3,111,961,069.94 Checks Received
\$(317,069.94) Write off
\$10,830,516.72 Amount

In other words, the "numbers" on the spreadsheet are "cross-foot" totals, not "absolute" totals. Why is it proper to characterize the omission of \$317,069.94 in write offs as "fraudulent"? Because, at trial, the "write-offs" are supposedly represented on the third document of the group exhibit --the "table page".

Had the e-mail included the \$317,069.94 in write offs shown on the spreadsheet, it would have been obvious that the "table page," which purports to show "write offs specified by Michael Segal" does not reconcile with the spreadsheet or the "e-mail" message. The terminology of table is misleading in itself.

The "table page" identifies the following accounts and amounts:

Texas Rangers Baseball	(\$91,800.00)
Ticketmaster	(\$49,998.59)
ShowBoat Marina Casino	(\$42,723.00)
Helene Curtis Industries	(\$24,917.00)
<u>Waste Management Industries</u>	<u>(\$357,078.57)</u>
Total	(\$566,517.16)

The lack of correspondence between the \$317,069.94 in write offs set forth in the spreadsheet and the \$566,517.16 in write offs set forth in the "table page" raises an immediate red-flag that something is wrong with the numbers.

The documents were proven that they had nothing to do with one another

A closer comparison between the spreadsheet and the "table page" shows that far from being a "summary" of write offs from the spreadsheet, none of the customers appearing on the "table page" appear in the spreadsheet. The documents have nothing to do with each other.

Document 1: The email message

Yet, as presented supra, the text of the e-mail message states:

Tr.2553:1-7 (McNichols-direct by Kendall).

Write-offs were also made for accounts receivable credits which you identified during our review. These are summarized at the end of the report.

This was the same misrepresentation perpetrated by the government at the grand jury through the testimony of FBI Agent Renno:

GJ882/p. 13.

Q. And the page that was at the end of that report, is that the page that begins write-offs specified by Michael Segal as of 12/30/99? (No foundation is presented as to a meeting at closing AUSA's represent Segal's signs or initials or write offs.)

A. Yes.

Linguistic analysis of the unsent "e-mail" message shows an additional anomaly in this exhibit. The first sentence of the e-mail reads:

Tr.2552:17-20 (McNichols-direct by Kendall).

Attached is a spreadsheet highlighting our progress in cleaning up old accounts receivable items that you review in late fall 1999.

The phrase "cleaning up old accounts receivable items" is not a standard phrase used by accountants (i.e. "accountant-speak"). It is also not a figure of speech use by McNichols in any other communications.

Interestingly, it is a term tossed around by FBI Agent Murphy--the individual who purportedly "found" Group Exhibit 119 and established the association between those three items via his signature.

By itself, the linguistic inconsistency can be explained as a random anomaly. However, in combination with the absence of consistency between the e-mail, the spreadsheet, and the "table page", such linguistic inconsistencies take on heightened importance.

Document 2: The spreadsheet

The government uses the testimony of Tom McNichols to establish that the spreadsheet was prepared by Maria Salazar:

Tr.2553:8-14 (McNichols-direct by Kendall).

Q. Now, if we can just look briefly at like, for example, the chart that's right in front of you, and up in the upper left-hand corner, it refers to aged receivables over 90 days as of April 20th.

A. Right.

Q. And who generated this table here?

A. Maria Salazar.

The spreadsheet was in fact generated by Steven Dudzek. (affidavits or witness support available) Maria Salazar is the cash receipts coordinator for the employee benefits department (FBI 302 of 3/20/2002).

During the relevant time period (1999-2000) Maria Salazar was involved in a project with the employee benefit department, where certain direct bill commissions were improperly entered and needed to be reconciled on the books. This project is the subject of e-mail messages contained in the discovery dated April 25, 2000. The "receivables" spreadsheet attached to Maria Salazar's e-mail is not the "aged receivables" report that is the second component of Group Exhibit 119.

When interviewed by the FBI, Maria Salazar stated that the "write-offs" referenced in the e-mail, which was shown to her by the FBI, referred to "either bad debts that were not going to be collected or credits that could not be found on the payables statement from the carrier. The government 302 of Salazar is crafted to assist in the cover up of false 119 set up. Salazar was not asked if she prepared the spreadsheet or had any knowledge of the spreadsheet.

At trial, McNichols testified that he didn't attach the spreadsheet because the e-mail system is incapable of sending attachments. The testimony was false.

The ability to attach a file, such as a Lotus 123 spreadsheet, to an e-mail message is an inherent feature of NNIB's Lotus notes e-mail system. The fact that McNichols sent other e-mail messages that did have attachments proves that McNichols simply lied.

Again, the government, in possession of the seized computer systems from Near North, was fully aware of the falsity of McNichols' testimony.

Document 2: The spreadsheet (Page 1 of 50)

FBI Agent Murphy notation that the spreadsheet was found in Box 53 and deals with accounts receivable.

From Box 53
+ ACCOUNTS RECEIVABLE Cl
Folder # 8

Aged Receivables over 90 Days
As of April 30, 2000

A/E	CLIENT CODE	INVOICE#	POLICY#	EFFECTIVE DATE	AMOUNT	A/E / Insured's remarks	CHECK RECEIVED	WRITE OFF	STILL OPEN	ADJUST
A. Wickel	APPLERDARE	106042	UM991643	07/20/1999	\$1,125.00	Cancellation requested on this policy.				
B. Montgomery	PHYSICANS2	137499	90115427060	10/29/1999						
B. Montgomery	PHYSICANS2	137506	90115427099	09/01/1999	(\$704.70)					
B. Montgomery	PHYSICANS2	137509	90116427060	03/23/1999	\$6,950.44	Charge back done at Insured's request.				
					\$226.24	Cleared via a/r adjustment	6,950.44			(704.70)
P. Muller	INTEGRATED3	71199	75110705190	04/02/1999	\$8,150.00					
P. Muller	INTEGRATED3	811905	75110705199	04/13/1999	(\$251.00)	Check received				
Ben Schul	UETRA	131898	CLAIMSMANAGE	10/04/1999	\$5,781.25	received check on 2/04/00				
Ben Schul	UETRA	134954	LOSSCONTRD	10/12/1999	\$913.00	received check on 2/04/00				
Ben Schul	UETRA	143350	CLAIMSMANAGE	11/17/1999	\$5,325.00	received check on 2/10/00				
Ben Schul	UETRA	146353	WCCONSULTING	11/17/1999	\$4,622.00	received check on 2/10/00				
C. Drabek	HCIPOBOX83	934950	MC813074188	06/07/1998	\$1,623.00	Still outstanding				
C. Drabek	HCIPOBOX83	934951	MC813074469	06/07/1998	\$1,634.00	Still outstanding				
									1,623.00	
									1,634.00	
Beverly Thomas	BARBIGUY	41678	1128291901	01/25/1998	\$997.00	Cancelled				
Beverly Thomas	BELMORRDR	98757	1309487	05/30/1999	\$1,743.00	No response and still outstanding				
									1,743.00	
Beverly Thomas	DAVISDEFOR	85209	12150075	02/22/1999	(\$7.00)					
Beverly Thomas	DAVISDEFOR	144831	12150075	09/19/1999	(\$102.00)					
Beverly Thomas	DAVISDEFOR	85450	12150075	05/28/1999	(\$240.00)					
Beverly Thomas	DAVISDEFOR	82702	12150075	07/08/1999	(\$522.00)					
Beverly Thomas	DAVISDEFOR	99024	12150075	08/01/1999	\$7,000.00	No response and still outstanding				
Beverly Thomas	DAVISDEFOR	144738	12150075	01/06/2000	\$0.00	Cleared via a/r adjustment.				
Beverly Thomas	DAVISDEFOR	92701	12150075	07/06/1999	\$261.00	No response and still outstanding				
Beverly Thomas	DAVISDEFOR	833701	12042525	07/31/1999	\$437.00	No response and still outstanding				
Beverly Thomas	DAVISDEFOR	839647	VAA12042525E	09/31/1999	(\$90.50)	No response and still outstanding				
Beverly Thomas	DAVISDEFOR	936448	VAA12042525F	09/31/1999	(\$57.50)					
Beverly Thomas	DAVISDEFOR	936449	VAA12042525G	09/31/1999	(\$51.50)					
Beverly Thomas	DAVISDEFOR	936600	VAA12042525H	09/31/1999	(\$48.50)					
Beverly Thomas	DAVISDEFOR	936651	VAA12042525I	09/31/1999	(\$48.50)					
Beverly Thomas	DAVISDEFOR	936652	VAA12042525J	09/31/1999	(\$48.50)					
Beverly Thomas	DAVISDEFOR	936653	VAA12042525K	09/31/1999	(\$48.50)					
Beverly Thomas	DAVISDEFOR	936654	VAA12042525L	09/31/1999	(\$48.50)					
Beverly Thomas	DAVISDEFOR	957281	VAA121500750	11/30/1999	\$244.00	No response and still outstanding				
									244.00	
Beverly Thomas	DOYLEWILL2	85814	1005262201	09/12/1999	\$278.20	No response and still outstanding				
Beverly Thomas	DOYLEWILL2	121142	1005262204	09/31/1999	\$680.00	No response and still outstanding				
									278.20	
									680.00	
Beverly Thomas	ECKERHOWAR	48993	1008590301	01/26/1999	\$223.45	No response and still outstanding				
									223.45	

+ 50 pages more

Document 3: The Table Page

The Government tried to foist off what they referred to as the "table page" as an integral part of the spreadsheet. The "e-mail," the one not actually sent to Segal by McNichols, refers only to a single "attachment" -- the spreadsheet.

As discussed supra, the ostensive "table page" summarizing data from the spreadsheet has nothing to do with the spreadsheet. The accounts listed in the "table page" do not appear in the spreadsheet. The only relationship between the "table page" and the remainder of the group exhibit is the association established by FBI Agent Murphy and the testimony of McNichols.

The five insurance credit balances are not included in the 50-page spreadsheet, but made to appear as such in attaching multiple documents false vouched for a group exhibit. The five credit balances are not included as to the insurers, amounts or the total footings of the spreadsheet. It is flatly proven the so-called table page is part of the manufactured false evidence.

The table page, which is misleading in the title itself, is further false evidence of authorization by Segal for the 1999 credit write offs'. Parallel objections as to Exhibit 140 related to the 2000 sign off's which consist of a list of no reconciliation or verifications. Although both exhibit documents bear no mark that could be represented as Segal's signature or initials, throughout the trial this document was referred by the Government as having been "initialed" by Segal.

Forensic analysis of the 'credits' claimed by the government were not actually owed to the customers, but accounting errors, reallocation of premiums across multiple properties. Exhibit 119 shows no initials or signature by Segal, and the table page does not contain a date or preparer, yet the government states in their closing that Segal initials the credit write-offs *[Ref: 5265-66, closing-Government]*.

This false characterization continued through the Government's closing argument, a further deprivation of Segal's due process rights.

Document 3: The Table Page

Document states "write-offs specified by Michael Segal as of 12/30/99" with no identification as to date or signature.

Jul 11 02 04:11p Producer Regulatory Unit (217)558-2081 P.1

Jul 09 02 01:55p 3129226695 P.2

1168

Write offs Specified By Michael Segal
As of 12/30/99

Account Executive Client Code	Amount
Dana Berry Texas Rangers Baseball	(591,800.00) INV 957862 20,550 > 91,800
Tickelmaster	(549,998.59) INV 883592 71,250
Showboat Marine Casino	(542,723.00)
Monica Lang Helene Curtis Industries	(524,917.00) INV 80885
Claude LoPiccolo Waste Management Industries	(5357,078.57)
Total	(5566,517.16)

Questions surrounding Government Exhibit 119 origins

The Government produced an inventory report of the NNIB search of January 26, 2002, for the 19th Floor at Near North's Hancock Building office. The inventory represents the sole three boxes taken from McNichols office, which are labeled 52, 53, and 54.

It is proven that prior to this time, McNichols turns over substantial documents to the Government as a government agent and before October 2001 when he is a remaining point person for the takeover group (proof in record).

Why didn't McNichols give these documents during the time he was a government private agent?

The only document related to accounts receivable in his office is the false group exhibit 119. The government marks three 'X's' and uses this as a code for other documents that somehow appear.

McNichols leaves NNIB several days before the search and it is known that he removes several items from his office. The day he gives notice, he amends an October 1999 document on his hard drive that relates to accounting testimony by Government witness Heitzmann.

Government inventory of Exhibit 119 documents

Exhibit 119 is listed in the government's search and seizure inventory report, marked with three X's as a code not contained in any other McNichols' inventoried documents.

	R. PATKS, S. PATAKY	19th FI M. Ryan
52	SALARY/BONSU RECOMMENDATIONS -NNNG INCENTIVE SAVINGS PLAN -E-MAILS FOR/FROM MCNICHOLS -CONSOLIDATED INCOME STATMTS. & PROJECTIONS	19th FI McNichols
53	MEETING NOTES, CONSOLIDATED FINANCIAL STATEMENTS, FINANCL PREMIUMS, ANNUAL RETURNS, ACCOUNT RECEIVABLE XXX	19th FI McNichols
54	1998 PRELIMINARY BUDGET SUMMARY AND DETAILED INCOME AND EXPENSE 1997 -CERTIFICATE MANAGEMNT PROFIT AND LOSS ACTIVITY FOR MONTH OF SEPT. 2000 -SETTLEMENT PLANNING ASSOCIATES 12/01 -INCOME STATEMENT SEPT. 2001	19th FI McNichols
55	NOTEBOOK "SUMMARY AND DETAILED STATEMENTS OF INCOME AND EXPENSE ACTUAL VS. BUDGET REVENUE AND VAS DEPARTMENTS SEPTEMBER 1997 -NOTEBOOK "SUMMARY & DETAILED STATEMENTS OF INCOME & EXPENSE ACTUAL VS. BUDGET OVERHEAD DEPARTMENTS NINE MONTHS ENDED 9/30/77 -NOTEBOOK "FINANCIAL STATEMENTS" FOR THE PERIOD 1/1/98-4/30/98 - NOTEBOOK "NNNG" ACTUAL VS. BUDGET AS OF 7/31/98	19th FI McNichols
56	NNNG BUSINESS PLANNING & BUDGETING PROCESS MGMT., A/R FOR APRIL 2000, MISC. CASH ACCRUAL REPORTS, ACCTG/COLLECTIONS PROCEUDRE MANUAL W/EMAIL COPIES OF PROCEDURE UPDATES, CASHIER PROCEDURE MANUAL/FOLDER MARKED "DEC 1998 TRIAL" "NOV 98 TRIAL" "JUNE 1999 TRIAL", ACCTG PROCEDURES MANUAL, ACCTG & CONTROL MANUAL, CORRESPONDENCE TO SEGAL FROM PAULINE TOVAR RE ACCTS REC & COLLECTION PROCEDURE	19th FI R. Johnson
57	BANK STATEMENTS & CANCELLED CHECKS NNI 6/97 - 12/97	19th FI Accounting Storage
58	1996 NNIB OPERATING ACCT. CANCELLED CHECKS & BANK STMTS. (LASALLE BANK)	19th FI Accounting Storage
59	3 OF 4 2000 NNIB PFTA BANK RECONCILIATIONS & 98-00 (VOICED CHECKS)	19th FI Accounting Storage

Exhibit 119 documents are separate from the facts

The Exhibit Group is presented as if it were a congruent set of documents. But the origins of each element in the group show clear proof that the Exhibit is not a single connected document, but rather a collection of known false and manufactured evidence separate from the facts.

