All the President’s Email: Electronic Recordkeeping Policies and Practices in the Executive Office of the President

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OVERVIEW

- Litigation concerning the record status of email & rules on retention
  - Armstrong v. Exec. Office of the President
- ERK at the White House
- Monitoring Schemes
- Anomalies & Audits
  - General Accounting Office
  - Congressional
  - Litigation
- Lessons Learned
Email & The U.S. Federal Government

- Mid-1980s “early adopters” of email by the White House National Security Council staff
- End of 1990s: 32 million White House email messages preserved as records of the William J. Clinton Administration
- 2004: tens of billions email messages created each year by Federal government employees
THE PROFS DECADE BEGINS: ARMSTRONG v. EXECUTIVE OFFICE OF THE PRESIDENT

Filed: January 19, 1989
The last day of the Reagan Administration
THE THREE ARMSTRONG INJUNCTIONS

- The initial temporary restraining order covered Reagan Admin. PROFS tapes (1989)
- The second temporary restraining order covered Reagan and Bush era PROFS and All-in-1 tapes (1992)
- The district court’s permanent injunction covered all “electronic communications systems” and their backups (1993)
THE ARMSTRONG ORDER
January 6, 1993

“* * * ORDERED that Defendants are enjoined from removing, deleting, or altering information on their electronic communications systems until such time as the Archivist takes action pursuant to . . . the Federal Records Act to prevent the destruction of federal records, including those records saved on backup tapes.”
Armstrong Backup Tapes Retained at NARA

![Bar Chart]

- **1st TRO**
- **2d TRO**
- **Jan 93 Inj.**

Values:
- 0
- 2000
- 4000
- 6000
- 8000
- 10000
- 12000
- 14000
- 16000
ISSUES ADDRESSED IN ARMSTRONG

- Email messages can be “federal records” under U.S. law - 44 USC 3301
- Agencies must manage the unique “electronic” email record, as it is only a “kissing cousin” of a hard-copy printout
- Agencies must provide for some form of periodic audit/monitoring by records managers to ensure correct application of guidance
Transmission and receipt data must be managed along with content
- Names of senders, recipients
- Distribution lists
- User directories
- Receipt data, including acknowledgements of receipt, where requested
An Aside: A Sea of Metadata

* Hidden email header information
* Proprietary features of word processing, e.g., summary fields
* Hidden codes of all types
* Embedded data
* Ability to ‘undelete’
* Tracking information
* Spreadsheet formulas
How the EOP Implemented Armstrong

- Issued recordkeeping guidance covering applications on existing email systems
- Customized existing proprietary software to perform electronic recordkeeping functions (ARMS)
  - Introduced front-end ‘prompts’
  - Built in automatic monitoring functions
- Restored and reconstructed email residing on backup tapes
Auditing the End User By Way of Records Management Monitoring

- Monitoring program by EOP component based on statistical sampling methods
- Record/nonrecord designations
- Policy Evolution Due to Audit function: default to “record”
ARMS Anomalies & Audits

- General Accounting Office Investigation into Email Anomalies
- Congressional Investigation into Missing Email
- Litigation: Spoliation, Sanctions, and Beyond
ARMS Anomalies, Cont’d

- MAIL2 server / Mail2 server
- Letter D
- MultiHost Anomaly
- VP email
Findings of the GAO

- “Monitoring program did not ensure effective management of e-mail records”
  - Incomplete monitoring of presidential records
  - Lack of controls over incoming e-mail
  - Lack of documentation & testing of records management controls
  - Management control weaknesses
Additional Rounds of Oversight Activity

- 4 days of Congressional hearings

- 50+ days of evidentiary hearings in litigation brought by private party against the White House
Aftermath of Audit

- Restoration project at $25 million expense
- Thousands of backup tapes restored as part of “Calverton project”
- Need for special memorandum of understanding between White House and Archivist covering post-Administration work
Lessons Learned

- The need for QC checks and controls on software programs and processes
- The need for clear communication channels between IT staff, records managers, and the lawyers
- Integrating lessons learned in next generation ERK system at the White House: building in audit functions and procedures
For further reading:


Baron, Jason R., “The PROFS Decade: NARA, E-mail and the Courts,” in Thirty Years of Electronic Records, Bruce Ambacher, ed. (Scarecrow Press 2003).


Further Reading (Con’t)

Memorandum of Understanding on the Clinton-Gore E-mail Records, available at http://www.archives.gov/presidential_libraries/presidential_records/clinton_gore_email_records_memo.html


