

# 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

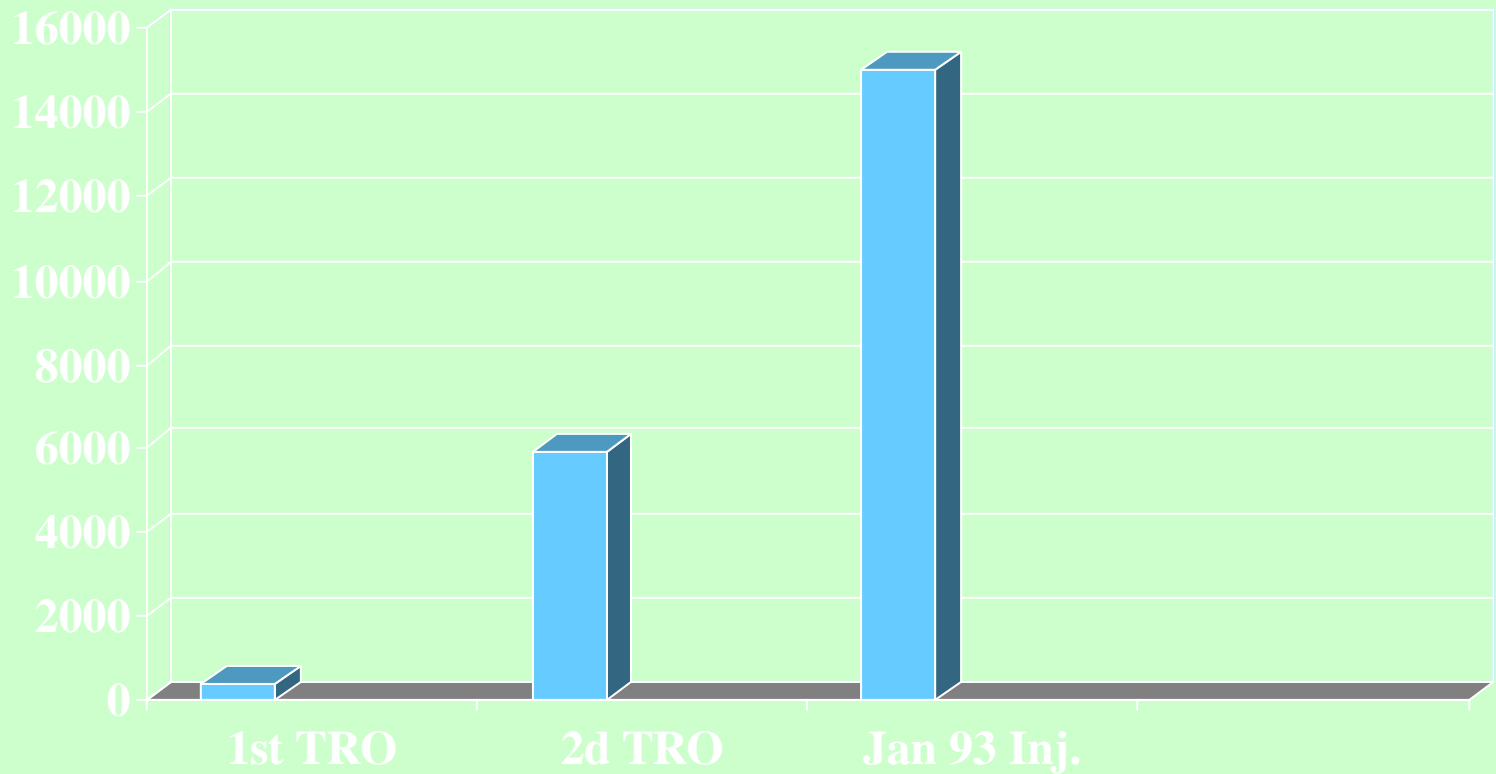
- The initial temporary restraining order covered Reagan Admin. PROFS tapes (1989)
- The second temporary restraining order covered Reagan and Bush era PROFS and All-in-1 tapes (1992)
- The district court's permanent injunction covered all "electronic communications systems" and their backups (1993)

# 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



# 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



# ISSUES ADDRESSED IN ARMSTRONG (cont'd) "Who Knew What When"

- 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

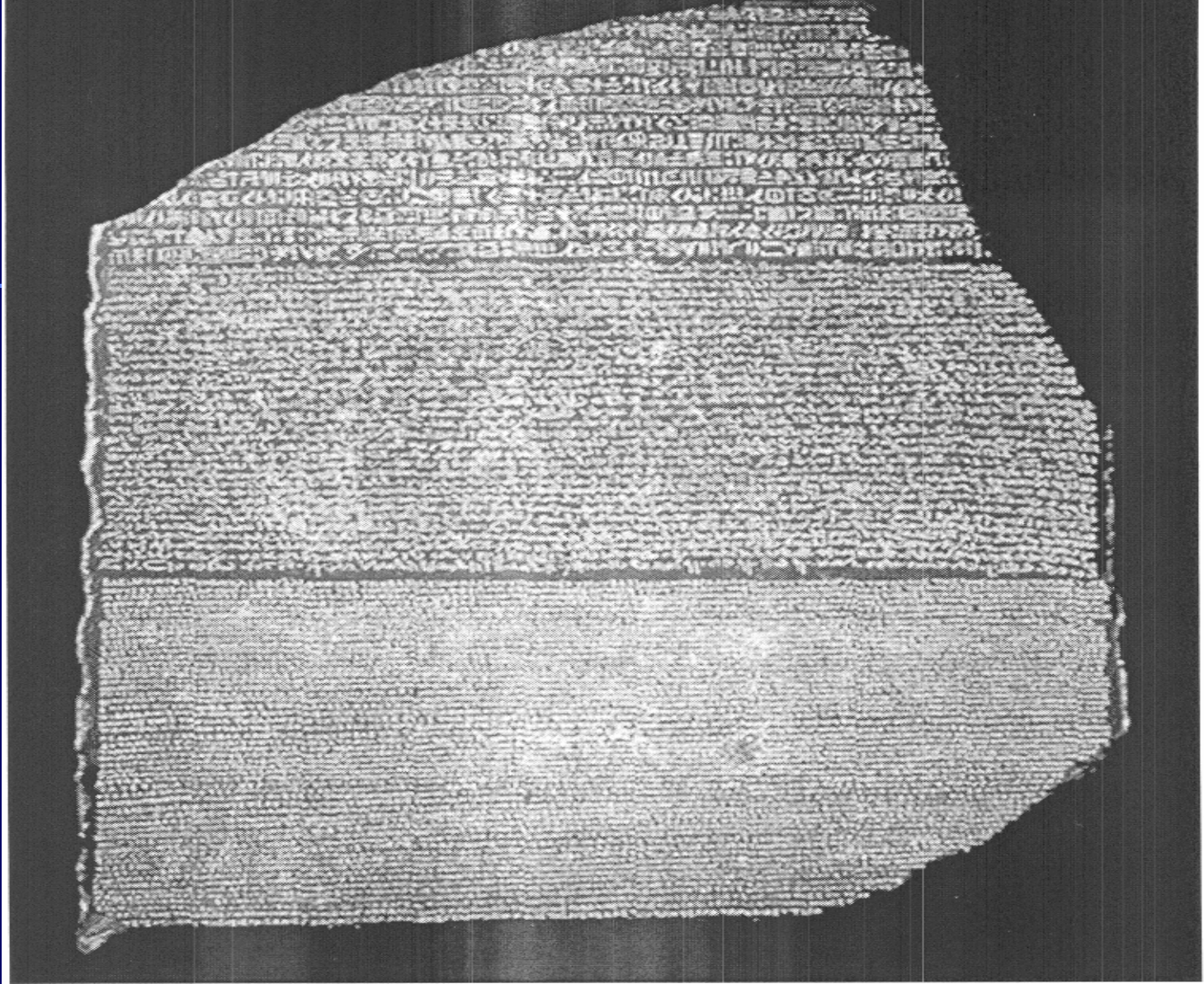


# Aftermath of Audit

- 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:

*Armstrong v. Executive Office of the President*, 1 F.3d 1274 (D.C. Cir. 1993), available at <http://www.citizen.org/litigation/briefs/ERecords/articles.cfm?ID=620>

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

-----, "Email Metadata In A Post-*Armstrong* World, 3rd IEEE Metadata Conference (1999), available at <http://www.computer.org/proceedings/meta/1999/papers/83/jbaron.html>

"Clinton Administration's Management of Executive Office of the President's E-Mail System," U.S. General Accounting Office Report, GAO-01-446 (April 2001), available at <http://www.gao.gov/new.items/d01446.pdf>

# 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](http://www.archives.gov/presidential_libraries/presidential_records/clinton_gore_email_records_memo.html)

“Missing White House E-mails: Mismanagement of Subpoenaed Records,”  
Hearings before the Committee on Government Reform,  
U.S. House of Representatives, 106<sup>th</sup> Cong, 2d Sess., Serial No. 106-  
179 (March 23, March 30, May 3, and May 4, 2000)

The Sedona Principles: Best Practices Recommendations & Principles for  
Addressing Electronic Document Production (Jan. 2004), available at  
<http://www.thesedonaconference.org>

The Sedona Guidelines: Best Practices for Managing Information and  
Records in the Digital World (draft forthcoming 2004), at  
<http://www.thesedonaconference.org>

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