

On Thursday, October 10, 2002, I was preparing to depart the office for scheduled sick leave (noon Thursday and all day Friday). On my way out the door, approximately 12:10 PM, I stopped in Mr. McCaleb's office to place documents in his in-basket. Mr. McCaleb was at his computer and asked me if he was to be printing off the document on his screen prior to deleting it. I quickly glanced at the document on the screen and without actually reading it, it appeared to be related IIM account transactions. I stated to Mr. McCaleb that yes, he should be printing them before deleting them. He asked me to have the "OIRM Morning Report" restored to his system. I was already late in leaving the office for a surgical procedure, and advised Mr. McCaleb that I would take care of it when I returned to the office on Tuesday. Mr. McCaleb advised me that he needed to do his deposition with the court and wanted to be sure that he had them restored before then.

Tuesday, October 15, 2002, at approximately 7:30 AM, I returned to the office. I immediately placed a Kym Burns in OIRM and left a telephone message for her to call me - I also sent her an e-mail message to call. Kym returned my call and I told her I needed to have Mr. McCaleb's e-mail restored and/or a CD with them all on it from last January. Although Mr. McCaleb had specifically requested the OIRM Morning Report be restored, I requested all e-mails to be restored out of an abundance of caution and because of the court order mandating that all trust e-mails be maintained. I wanted assurance that no other document may have been deleted prior to being filed. Kym advised me she'd get back to me regarding the restoring of his e-mail.

A short time later, I had a telephone message from Sam Sharp in Albuquerque. I called Sam back and he informed me he was calling regarding my request to Kym. I again repeated my request for Mr. McCaleb's e-mail to be restored. Sam began asking me for a time period. I told him from present to last January. He asked me for a specific week and I told him all of them. Sam indicated to me that it would take one hour to restore just one week's worth of e-mails and that I needed to be more specific. I again repeated I needed them all as far back as last January. He advised me that e-mails that were not backed up on the weekly back ups may be lost. He also stated that the e-mails may not have been getting backed up every evening and if e-mails had been deleted before the scheduled weekly back up there was nothing he could do to restore them.

At this point, I began to panic. I got off the phone with Sam and called Kym back. I told her that I needed to OIRM Morning Reports that were sent to Mr. McCaleb and asked if she knew how I could get them resent. Kym stated she would get ahold of the contractor, Francis Corbley who generates the reports and see if he could assist me. I advised Kym that he needed to take the encryption off the e-mails because I could not pull them up from Mr. McCaleb's e-mail with the encryption.

In the meantime, I advised Chief of Staff Jerry Gidner that Mr. McCaleb had deleted e-mails and had instructed me to have them restored. I told him of my conversations that morning with Kym and Sam as well as my continued efforts to get the reports.

Shortly thereafter, Francis called me and stated he had sent a file to Mr. McCaleb's in-box that contained all of the reports he had generated. He also advised me he had taken the encryption off so I could now pull the OIRM Morning Reports up.

Since this incident, the issue of Mr. McCaleb's e-mail retention has been the center of attention and I would like to clarify my involvement in the process.....

LKAT1 - PRIVILEGED & CONFIDENTIAL

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- When Mr. McCaleb became Assistant Secretary in July 2001, he was set up with his calendar and e-mail on lotus notes. Several staff have access to his calendar, I believe I am the only staff with access to his e-mails.
- During the slow period between Thanksgiving and Christmas 2001, I agreed to go through Mr. McCaleb's e-mails and save the Cobell related documents in electronic files so they would not inundate his e-mail. At this time, I knew Mr. McCaleb was up-to-date in reading his e-mails as he was extremely conscientious about having his laptop up and running prior to going on travel so he could be in daily contact with the office. Because I was confident he had read his e-mails I did not hesitate to electronically file them. (When electronically filing the e-mail in the in-box it is moved and dropped into a folder on the left side of the screen and disappears from the in-box but remains retrievable from the file).  
*With whom?  
On my initiative*
- I also created a few other electronic folders that I felt Mr. McCaleb would need to retain for future reference and would periodically move those e-mails into the folders as well.
- It was our understanding that I would periodically go through his e-mails and file related documents for him. Because I view e-mails as being personal to the receiver, I did not feel comfortable deleting e-mails in his in-box and only deleted "received meeting request notices" leaving the rest for him to delete or keep at his discretion.
- Following the computer shut down in December 2001, the BIA was no longer on the Department's e-mail system. We had no access to incoming/outgoing e-mail outside of the Bureau. But, more importantly, we were crippled in not having access to our e-mails while out of the office.
- From early 2002, Mr. McCaleb was on travel status non-stop with tribal consultations as well as other commitments. He had no means of checking his e-mails while out of the office. On a couple of rare occasions, he called and asked for a particular e-mail and I would pull it up and send it to him. Otherwise, they remained in his in-box for him to read upon his return.
- Although his e-mails were decreased dramatically – most had been from the Department – when he came back to the office, he had several to read. But, because so much of his time was spent in meetings I could not be sure of what had been read. For my own e-mails, I could distinguish my read e-mails by the change in color (they appear red when not opened and black after opening) – when pulling up Mr. McCaleb's I could not distinguish if he had read them or not because unless I opened them they were red. Occasionally, I would go in and see that he had cleaned out several days worth and would check for any remaining e-mails that he may have left to be filed.
- The OIRM Morning Report began to appear early 2002. I did not know what this report was as it was encrypted and I could not access it from my computer. But I did notice that Mr. McCaleb would delete it. Therefore, I assumed it was just an update that the e-mails had been backed up from the evening before. It wasn't until October 10<sup>th</sup> that I became aware that these were documents that might need to be retained.