In the District of Columbia:

AFFIDAVIT

In the District of Columbia, comes Neal A. McCaleb, being duly sworn, deposes and says:

1.   I am over the age of 21, am of sound mind and have personal knowledge of every statement made herein, and am fully competent to testify to the matters stated herein.

2.   I am the Assistant Secretary - Indian Affairs of the United States Department of the Interior in Washington, D.C. As Assistant Secretary - Indian Affairs, I am an advisor and assistant to the Secretary of the Interior, and exercise the authorities and responsibilities of the Secretary of the Interior for administering laws, regulations, an programs relating to Indian tribes, individual Indian tribal members, and Indian affairs.

3.   At all times between the July 4, 2001 and the present, I have acted as the Assistant Secretary - Indian Affairs.

4.   I am aware that, as a result of the litigation in *Cobell v. Norton*, employees of the Department of the Interior who send and receive certain e-mails must retain those e-mails until the employee has been notified that the e-mail systems has been backed up. E-mails which must be retained are those pertaining to three areas:

   1) American Indian Trust Reform, including the High Level Implementation Plan or any of its subprojects;
   2) the *Cobell v. Norton* litigation, or;
   3) administration of Individual Indian Money (IIM) accounts.

5.   F rom the beginning of my tenure as Assistant Secretary - Indian Affairs on July 4, 2001, until sometime in December 2001, ~~I retained~~ all e-mails that I received in my "Inbox" on my e-mail account.   *My asst. Ms. Jean Maybee retained*

6.   Lotus Notes is the e-mail system used by the Bureau of Indian Affairs ("BIA") and the Office of the Assistant Secretary is supported on the BIA e-mail system.

7.   Between the period of Thanksgiving and Christmas of 2001, it was my understanding that Jean Maybee electronically filed all previous e-mails relating to the three categories listed in paragraph 4 in folders within my Lotus Notes account.

8.   At or about the time of these events, I came to the believe that the Bureau of Indian Affairs e-mail system was backed up contemporaneously. That is, I believed that all e-mails routed through the Bureau of Indian Affairs e-mail system were backed up as soon as they entered the BIA e-mail system or were sent through or out of the BIA e-mail system.

Approved as amended

HM 10-12-02

and/or retained by the BIA OIPM.

9.   I believed that e-mail that fell into the three categories listed in Paragraph 4 were being periodically filed by my Assistant, Jean Maybee. I would not have deleted e-mail if I had not believed that it was backed up.

10.   I believed that my e-mail administration was in compliance with court ordered requirements in the *Cobell v. Norton* litigation based on my recollection of communications I had with my assistant Jean Maybee. It was my understanding that in the period after Thanksgiving through December 2001, Jean Maybee was assuring that my e-mail administration was in compliance with court-ordered requirements, although I cannot recall a specific conversation or agreement that she was doing so. *?*

11.   In the spring of 2002, I began to receive messages when I opened my e-mail account that my e-mail files exceeded the allowable memory threshold. The message states that the user has exceeded the maximum memory threshold allowable, and that the user may not be able to send or receive mail if they do not archive or delete e-mail.
Checknotes.
Subsequent to the period between Thanksgiving and Christmas of 2001, I discontinued the practice of saving all e-mail I received for an indefinite period of time. I would often delete e-mail that did not fall within the three categories identified in paragraph 4 soon after opening it. I would not delete e-mail that I received for the categories listed in paragraph 4 for some period of time after reading the e-mail.

12.   As a result of this message, I began to delete e-mails that did not fall within the three categories listed in Paragraph 4 immediately after reading them. I also began to delete e-mail related to the paragraphs listed above, after some length of time had passed.

13.   I have ~~never deleted~~ e-mail that is located in the "Sent" box of my e-mail account. *saved all my "Sent" email since 11-1-01 to date 4/k/02. I began deleting Sent email in Sept & Aug '02 in response*

_____
Neal A. McCaleb

_____
Date *to file system message that my e-mail files were exceeding the memory threshold*

Subscribed and sworn before me this _____ day
of _____, 2002.

_____
Notary Public

_____
My commission expires