



# **An Effective Document Retention Policy:**

# **Your Best Defense to Electronic Discovery**

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# Document Retention and Electronic Discovery

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## Pre Electronic Storage

- Paper Document Storage
  - Difficult
  - Expense
  - Haphazard
- Tended to
  - Limit Storage
  - Limit Access and Review by All Parties



# Document Retention and Electronic Discovery

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## Electronic Storage Changed Approach to Document Storage

- **The IT Professional's Dream**
  - **Cheap and Easy**
  - **No Reason to Cull Files**
  - **Save Everything**
- **The Result**
  - **Electronic Document Storage Has, By Orders of Magnitude, Increased the Volume of Documents Saved By Corporations**



# Document Retention and Electronic Discovery

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## A Litigation Management Nightmare

- More Potential Sources for Documents
  - **Central Servers**
  - **Specific Network Servers**
  - **Backup Tapes and Systems**
  - **Local Hard Drives**
  - **Email Accounts**
  - **And Much More . . .**



# Document Retention and Electronic Discovery

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## A Litigation Management Nightmare

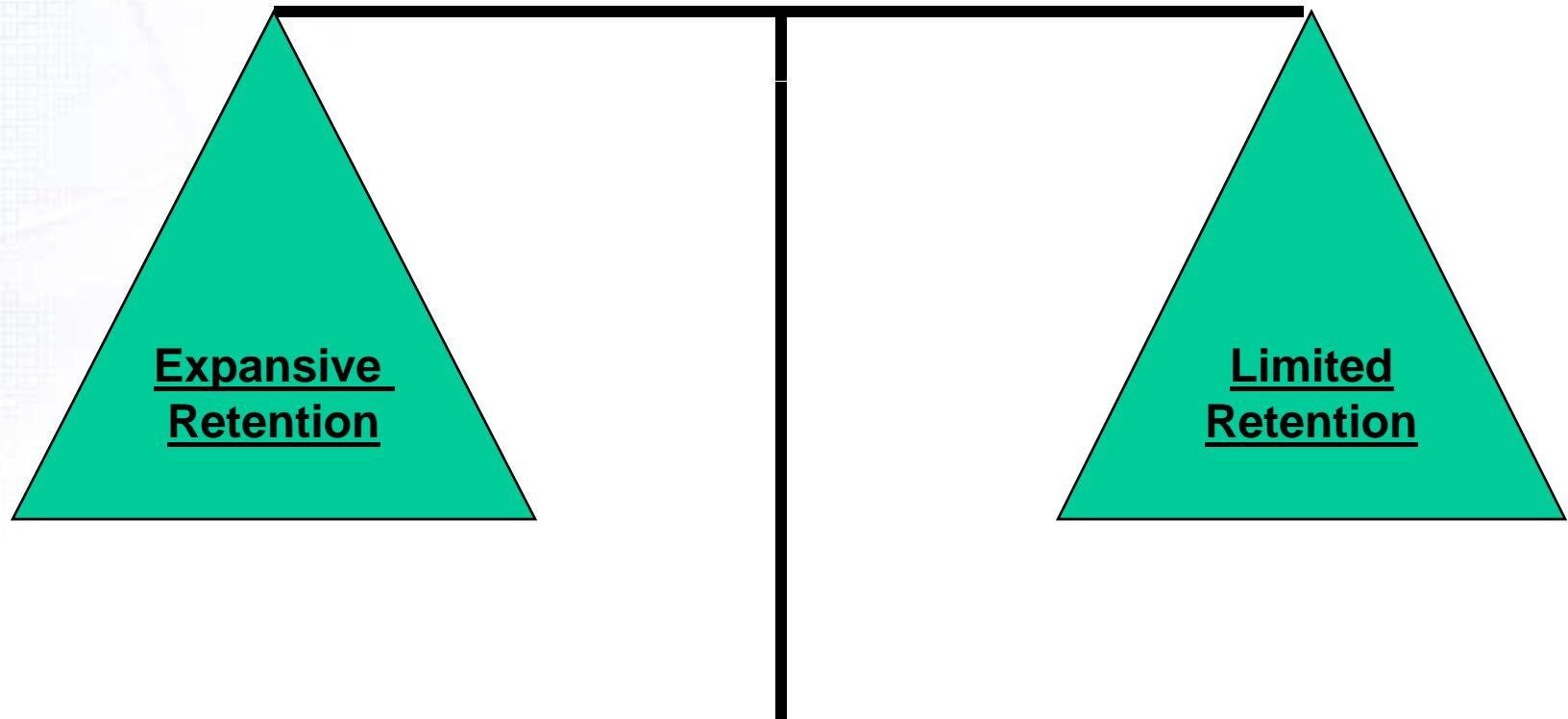
- **Discovery Costs**
  - **Greatly Increased**
  - **Discovery as Litigation Leverage**
- **Shift in Strategy and Litigation Gamesmanship**
  - **Spoliation and Sanctions**
    - **More Documents + More Sources = Greater Probability**
    - **Intentional Setup**



# Document Retention and Electronic Discovery

## A New Strategy for Electronic Document Retention

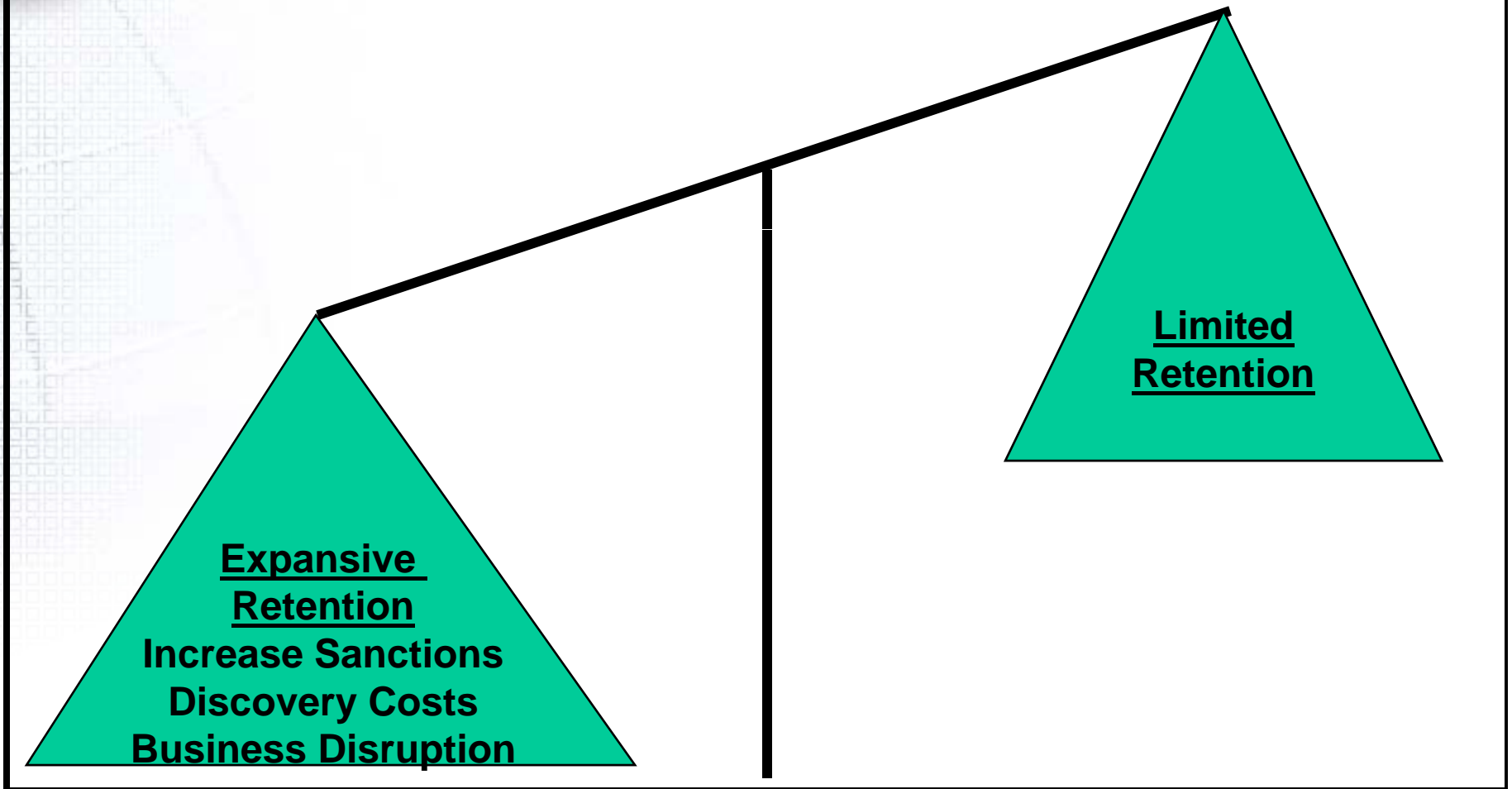
- Do Retained Documents Help or Hurt?





# Document Retention and Electronic Discovery

## A New Strategy for Electronic Document Retention





# Document Retention and Electronic Discovery

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## How to Focus Document Retention

- Type
- Required Retention Period
- Document Source





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## Electronic Document Retention Policy: General Principle No. 1

- **Documents Should Be Discarded Unless There is a Good Business or Legal Reason to Retain**
- **Exceptions:**
  - **Financial Documents – i.e., Accounts Receivable, Accounts Paid**
  - **Insurance Policies – Liability / Occurrence**
  - **Regulatory Documents – Corporate, Tax, Environmental**
  - **Employment – Statute of Limitations**



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## Electronic Document Policy: General Principle No. 2

- Retention Policy Must Be Simple and Easy To Implement
  - **Limit Number of Subject Matter Categories**
  - **Limit Number of Time Period Categories**



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## Electronic Document Policy: General Principle No. 3

- Document Retention Practices Must Be Consistent
  - **Foreseeability of Litigation is the Rule, But . . .**
  - **Inconsistency Will Create a Taint of Intentional Spoliation**



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## Electronic Document Policy: General Principle No. 4

- **Enforcement Must Be Simple and Consistent**
  - **Use Automated Systems**
  - **Establish Expectations**
  - **Motivate Compliance**
  - **The “Burn Barrel”**



# Document Retention and Electronic Discovery

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## Problem Areas: The 80/20 Rule

- **Email**
- **Text Pages**
- **Local Hard Drives**
- **Home Computers**
- **Mothballed Servers – Lingering Files**
- **Backup Tapes**