Data Management and Security:

The Solution to eDiscovery and Compliance

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Data Management and Security

! Evolution to Electronic Data Storage

- Pre Internet and Electronic Storage
  - Paper Document Storage
    - Difficult, Expense, Haphazard
- Tended to Limit
  - Storage
  - Access
  - Compilation & Analysis

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!Electronic Data Storage Changed Approach to Document Storage

- The IT Professional's Dream
  - Cheap and Easy
  - No Reason to Cull Files
  - Save Everything
  - Crunch, Compile and Analyze Everything

- The Result
  - Greatly Increased Volume of Data Saved By Businesses

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!Sensitive Data Is Replicated and Spread Across The System

- More Potential Sources for Documents
  - Central Servers
  - Specific Network Servers
  - Backup Tapes and Systems
  - Local Hard Drives
  - PST Drives
  - Email Accounts
  - Thumbdrives, Portable Drives, Cell Phones . . . .

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! Potential Business Nightmare

- **IT Costs**
  - Increased Storage Capacity
  - Additional Drain on IT Resources
  - Enhanced Security Requirements

- **Legal and Compliance Costs**
  - Liability and Penalties
  - Remedial Measures
  - Customer Trust and Loyalty

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eDiscovery -- 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

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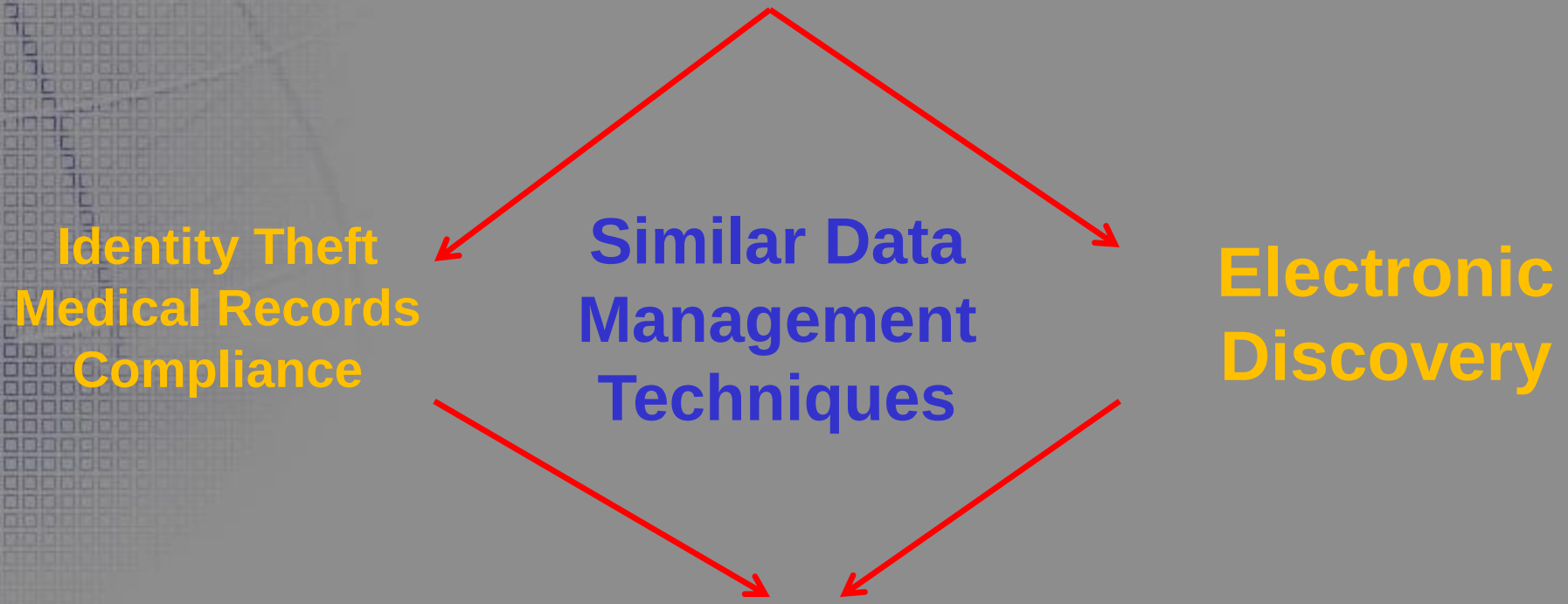
Electronic Data Management



Effective Business Solutions

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Data Management Policy -- Three Goals

- Retain records necessary to business operations.
- Promote the efficient use of information technology ("IT") resources.
- Retain those records required to satisfy legal obligations

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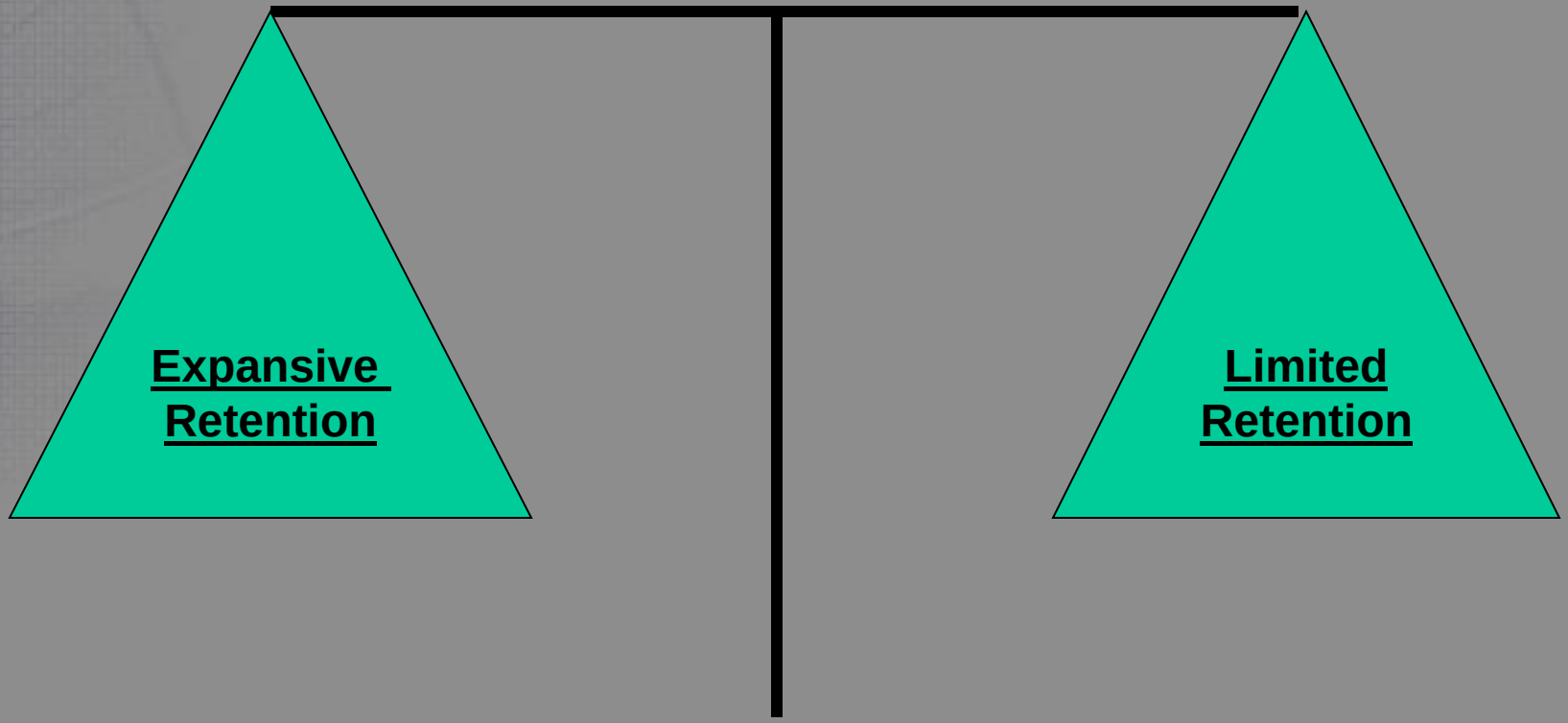

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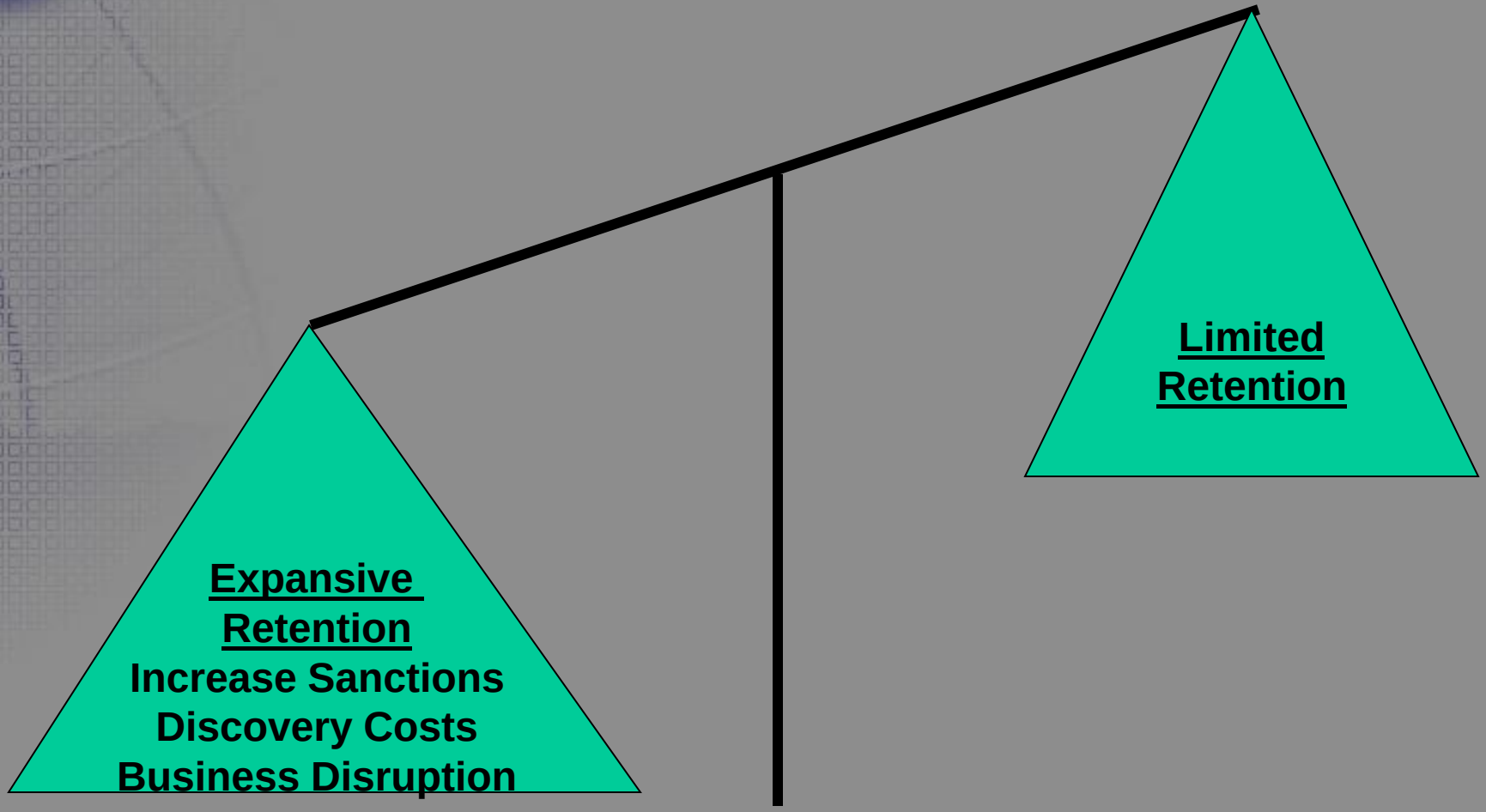

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Data Management Policy: Guideline #1: Know What Data You Collect And Why

- **The Data Inventory – Know:**
  - **What Data You Collect**
  - **Why You Collect it**
  - **Where you store it**
  - **Who Has Access**

- **Types of Collected Data:**
  - **General – Credit Card & Social Security Numbers**
  - **Specific – HIPAA, SEC Reporting, Financial, Litigation**

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Data Management Policy: Guideline #2: Documents Should Be Discarded Unless There is a Good Business or Legal Reason to Retain

- Limit
  - What You Keep
  - How Long You Keep It
- Avoid The Tendency To Keep Everything
- Make Informed Choices About What To Keep
  - Data Important To Business Operations
  - Data Related To Compliance and/or Litigation

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Data Management Policy: Guideline # 3: Dispose Of Data No Longer Needed

- Systematic Deletion Process
- Pursuant To Data Management Policy
- Use Automated IT Tools When Possible
  - Methods And Examples

- Exceptions:
  - Financial Documents
  - Insurance Policies – Liability / Occurrence
  - Regulatory Documents – Corporate, Tax, Environmental
  - Employment – Statute of Limitations
  - Personally Identifiable Information

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Data Management Policy: Guideline # 4:

Policy Must Be Simple and Easy To Implement

- Limit Number of Subject Matter Categories
- Limit Number of Time Period Categories

- **Policy Must Be Tailored to Business Needs and IT Capabilities**

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Identity Theft Protection Policy: Guideline #5: Consistently Implement And Enforce Your Policy

- Use Automated Systems and Behavioral Controls
- Establish Expectations
- Motivate Compliance
- Policy As A Condition Of Employment
- Employee Agreement
- Training

- **Inconsistency Will Create a Taint of Intentional Spoliation**
- **Policy Without Proper Implementation Worse Than No Policy At All**

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Problem Areas: The 80/20 Rule

- Email
- Texting and Instant Messaging
- Local Hard Drives
- PST Drives
- Home Computers
- Cell Phones / Blackberries
- Mothballed Servers – Lingering Files
- Backup Tapes
- Paper Documents / Off Site Storage

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Identity Theft and Personally Identifiable Information

- FTC Rule
- Additional Security and Access Requirements

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RFCopple Articles And Presentations On Data Security And eDiscovery

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eDiscovery: It's All About the Information, Arizona ADR Forum, (Fall 2007).

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Firms Must Pick Which Data To Save, Arizona Republic (September12, 2004).

Data Life Cycle Management, ACCA Docket (September 2004).