



# Faster, Better & Cheaper & Complaint: So Why Care About Best Practices



**Randolph Kahn, ESQ.**

Kahn Consulting  
*...because information matters.*

# How do you navigate the perfect RIM storm?

If at first  
you don't  
succeed,  
skydiving  
is not for  
you.

## **Volume**

1800 exabytes of new data 2011

200+ billion email per day

## **Value**

All kinds of business being done

**More laws** and regulations

## **Liability**

Greater downside

**Info mismanagement ubiquitous**

After funneling billions in investor money to Bernard Madoff over nearly two decades, Fairfield Greenwich Group is offering up its explanation to investors . . . firm supplied falsified trading documents. . . WSJ, 3/2/09

# Why Care About Best Practices?

Imitation  
is the  
sincerest  
form of  
collective  
stupidity

W. Carroll Munro,  
marketing director,  
PepsiCo

*Wikipedia*— “...the most efficient and effective way of accomplishing a task, based on repeatable procedures that have proven themselves over time for large numbers of people...”

Justice Says CIA  
Destroyed 92 Tapes

WSJ 3/3/2009

# But do you know what good RIM looks like?

I am not a vegetarian because I love animals; I am a vegetarian because I hate plants.

Whitney Brown



# Comfort in following the herd

I used to think I was indecisive, but now I'm not so sure.



“Back-up tapes of all email shall be preserved until further notice “

Even though policy makes clear tapes are to be used for disaster recovery purposes only and purged after 30 days

Its all good until someone has an accident

# Sometimes following is dumb

"Why does Sea World have a seafood restaurant? I'm halfway through my fish burger and I realize, Oh man ... I could be eating a slow learner."

**Intelligence Agencies' Databases to Be Linked**  
**"... nearly five years after the intelligence community was rebuked by the 9/11 commission for failing to "connect the dots" and detect the attack...new technology is addressing a more basic problem...spies often have trouble emailing colleagues...today, an analyst's query might scan only 5% of the total intelligence data in the U.S. government..."**

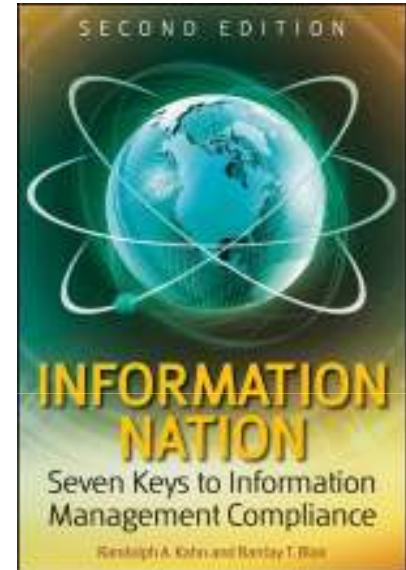
Wall Street Journal, 2/22/09

# Best Practices as insulation?

There are three kinds of people - those who can count and those who can't

## 7 Keys to Information Management Compliance

1. Policies
2. Executive Responsibility
3. Delegation
4. Communication and Training
5. Auditing & Monitoring
6. Consistent Enforcement
8. Continuous Improvement



“A corporation can act through natural persons, and it is therefore held responsible for the acts of such persons...on the other hand in certain circumstances, it may not be appropriate to impose liability upon a corporation, particularly one with a compliance program...” U.S. Dept. of Justice

# Types of Best Practices

Imagine  
there were  
no  
hypothetical  
situations

- Legal “best practices”
- Professional competence
- Technical mastery
- Programmatic development
- Policy or practices completeness

Information Management Compliance

GARP

Sedona

FRCP

MOREQ

# Case Law as Best Practices

I owe a lot to my parents, especially my mother and father.

“..In an employment discrimination suit ... the employer sent the policy to the employee via a mass email containing two links to the policy and did not require any further action ... the employee claimed that he received a large volume of mass company emails daily and that he could not specifically remember the arbitration policy. Although an email ‘tracking log’ indicated the time and date that the employee opened the email, the employer could not prove that the employee had actually read the email or clicked on the links. The court determined that the mass email did not constitute sufficient notification and further admonished the employer for not taking ‘the incredibly simple and inexpensive step of configuring their system to log when and if employees clicked on the links.’” Campbell v. General Dynamics

# RIM common knowledge as Best Practices

“If you rob a bank and your pants fall down, its OK to laugh, and its OK to let your hostages laugh too, because come on, life is funny.”

Jack Handy

**“...the document written by Dr. Geller doesn't accurately reflect the company's position in 2000. In fact, it was not Dr. Geller's ultimate view either. It was an initial draft for discussion purposes... In response to a plaintiffs' attorney's question, Dr. Geller responded that the statement was an artifact of an earlier discussion document.”** WSJ 2/27/2009

The logo for RULESMAPPER, featuring the word "RULESMAPPER" in a bold, blue, sans-serif font. The letters "L" and "P" are stylized with a red chevron shape pointing to the right, integrated into their design. A small "TM" trademark symbol is located at the bottom right of the word.

# Aspirational or Practical

Last night I lay in bed looking up at the stars in the sky and I thought to myself, where the heck is the ceiling.

“Our company manages all information in a medium independent way....”

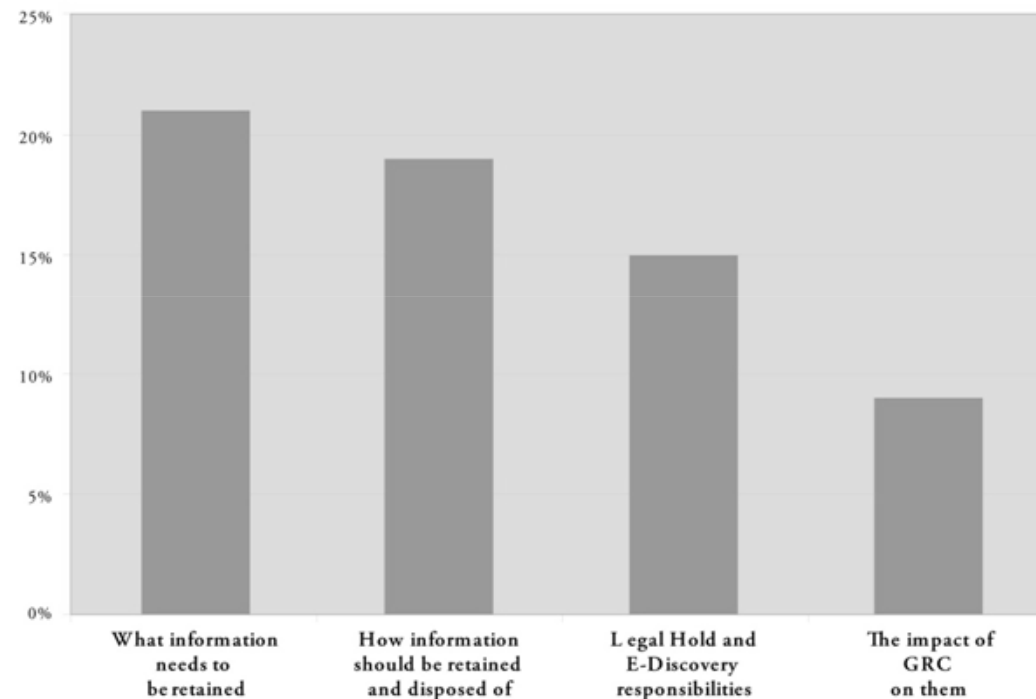
What about:

- voice mail
- blog posts
- tweets

# Realities driving new Best Practices

“I dream of a better tomorrow, where chickens can cross the road and not be questioned about their motives.”

Employee Understanding of Responsibilities



“GRC, RIM and E-Discovery: State of the Industry,”  
©2008, Kahn Consulting, Inc., [www.KahnConsultingInc.com](http://www.KahnConsultingInc.com)

# Conclusions

He who  
laughs  
last  
didn't  
get it.

## Best Practices as:

- Starting point
- Road map of where to go
- Insurance policy
- Borrowing good ideas from smart folks
  
- Sometimes it's not best for you

# Thank You

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