



# **The Public Interest: Post-adversarial Residual Claimant of Discovery**

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# Outline

- **Background**
  - Digital Archive of Birth of Dot Com Era
- **Test collections**
  - Brobeck
  - Other?
- **Digital Business Archives and History**
  - Future (i.e., post-adversarial envt)
  - History = Public interest = Residual claimant
- **Questions**
  - Does DESI help or hurt?
- **Pledge and Plea**
  - As ICAIL community struggles to solve one problem (DESI), please keep us in mind...

# Who Am I, And Why Am I Here?



# The Electric Vehicle and the Early History of the Automobile, 1894-1920

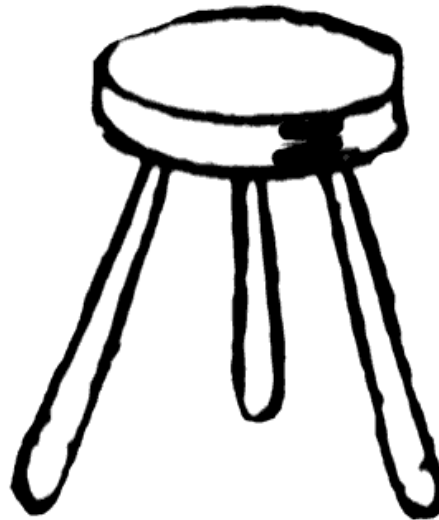


# Fast forward: 1890s to 1990s

- The Era: What Happened?
  - Emergence of new industry
  - Industry lifecycle repeats
- The Long View: From 2100?
  - What questions will scholars want to ask?
  - What primary materials will be needed?
- The Archival Record: What will remain?
  - Even less of traditional record will survive
- *The Point of Departure*
  - Absent concerted efforts today, many valuable historical traces of Dot Com era firms will not be available to future scholars

# Digital Archive of the Birth of Dot Com Era

Collection II: 2003  
Personal Experiences  
"Dot Com Archive"  
[www.dotcomarchive.org](http://www.dotcomarchive.org)  
•Online oral history



Collection I: 2002  
Business Planning Documents  
"Business Plan Archive"  
[www.businessplanarchive.org](http://www.businessplanarchive.org)  
•Limited public access  
•> 70,000 registered users  
• >> 3,000 companies

Collection III: 2004  
Legal Records  
"Brobeck Closed Archive"  
[www.brobeckclosedarchive.org](http://www.brobeckclosedarchive.org)  
•~20 million digital objects; ~4Tb  
•Closed Archive approved,  
August 9, 2006

# Network Partners

## ■ Library of Congress

- National Digital Preservation Program (NDIIPP)
- [www.digitalpreservation.gov](http://www.digitalpreservation.gov)

## ■ Legal Community

- Advisory Council
- Morrison & Foerster

## ■ Digital Evidence & Discovery

- Gallivan, Gallivan & O'Melia

## ■ Center for History and New Media

- Exploring and Collecting History Online  
([echo.gmu.edu](http://echo.gmu.edu))

## ■ Repositories

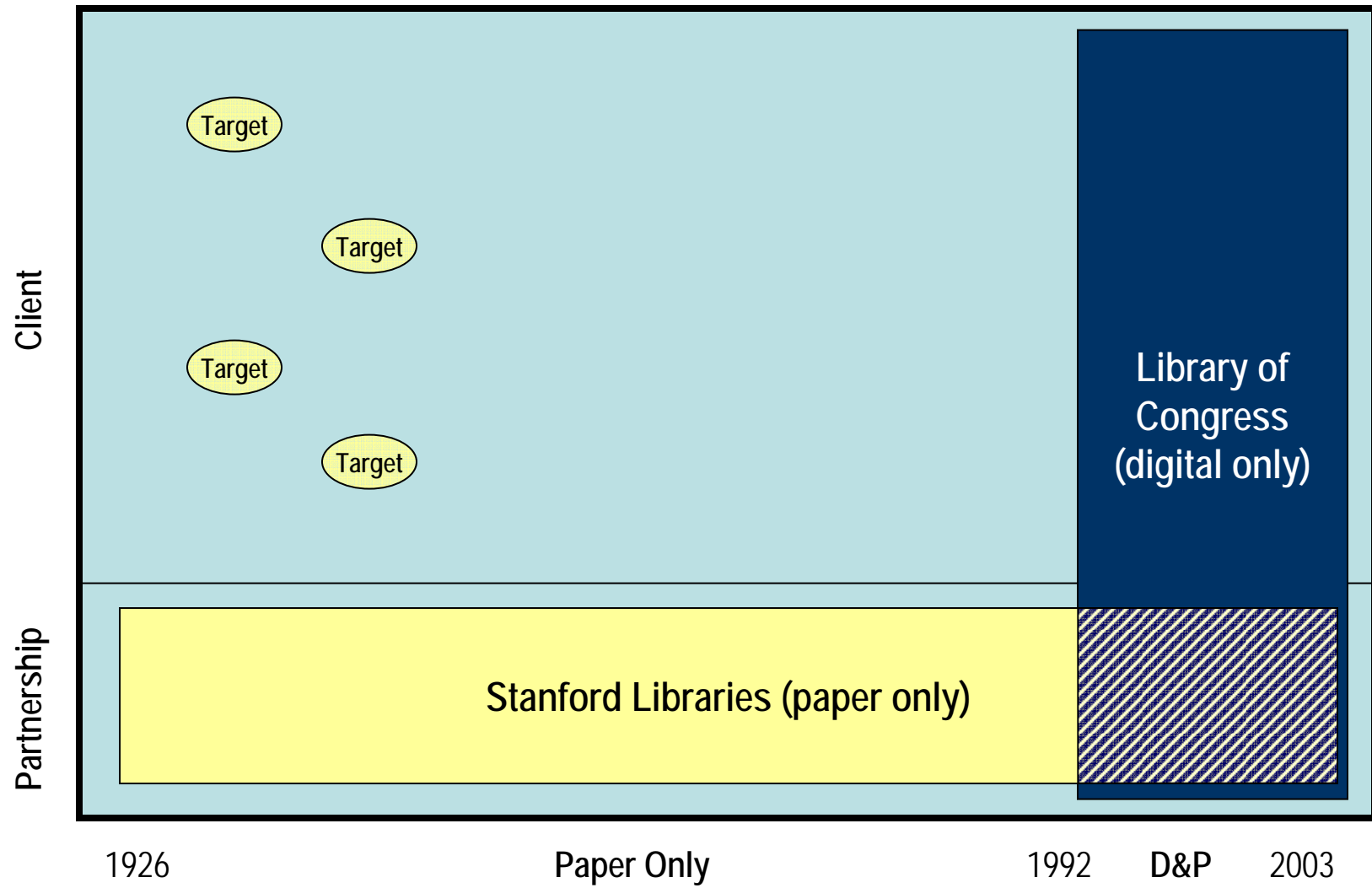
- Hagle Museum, Stanford University, Library of Congress, Internet Archive, etc.

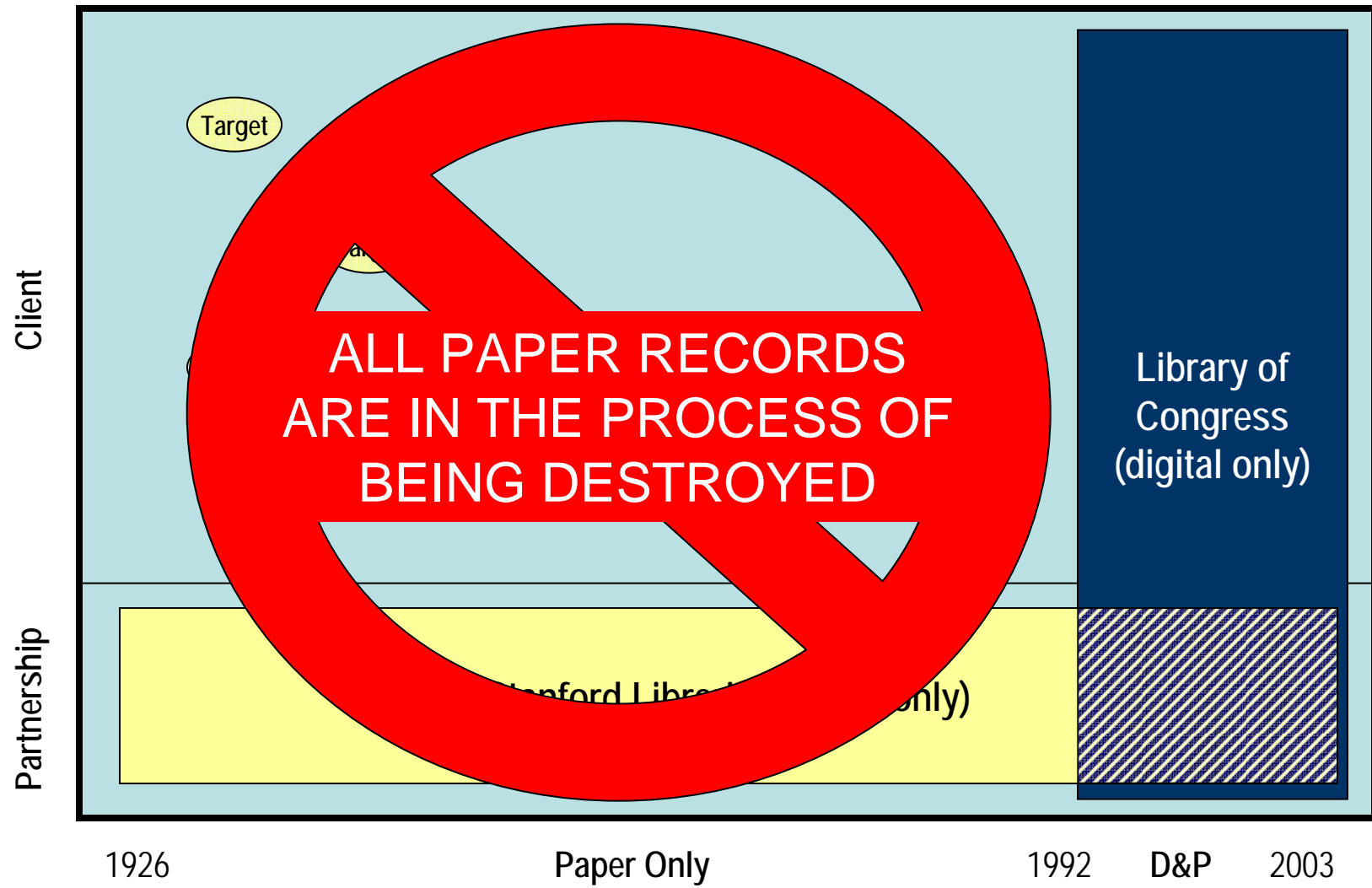
# Brobeck, Phleger & Harrison: 1926-2003



- **Prestigious San Francisco Law Firm**
  - Represented ~2,000 tech clients in 1990s
- **Filed for Bankruptcy, 2003**
  - Paper records span 77 years, extend to 200,000 boxes
  - Digital records span 9 years, extend to 2.5-4.0 Tb (~20-40M pages of text)
- **Preservation via Closed Archive**
  - Established by Court Order, August 2006
  - [www.brobeckclosedarchive.org](http://www.brobeckclosedarchive.org)







# Court Transcript, July 18, 2006

9 MR. JONES: Yes, Your Honor.  
10 THE COURT: Do we have other appearances on that?  
11 MR. MURPHY: Yes, Your Honor, it's Ben Murphy of  
12 Hennigan, Bennett & Dorman, LLP for the trustee. Mr. Jones

**“First of all, let me complement the Trustee and you, Ms. Borrey, and all the people you’ve been working for, for a very, very comprehensive and, you know, well thought out and well conceived approach to this problem, a unique problem, and I’m not going to pause and then say “but...” I was quite impressed by the degree of effort that went into something so novel and unique as what you and the Trustee have asked ... to do.”**

20 THE COURT: Well, first of all, let me compliment  
21 the Trustee and you, Ms. Borrey, and all the people you’ve  
22 been working for, for a very, very comprehensive and, you  
23 know, well thought out and well conceived approach to this  
24 problem, a un  
25 then say “but

**Basic Principles Endorsed  
And Closed Archive Approved**

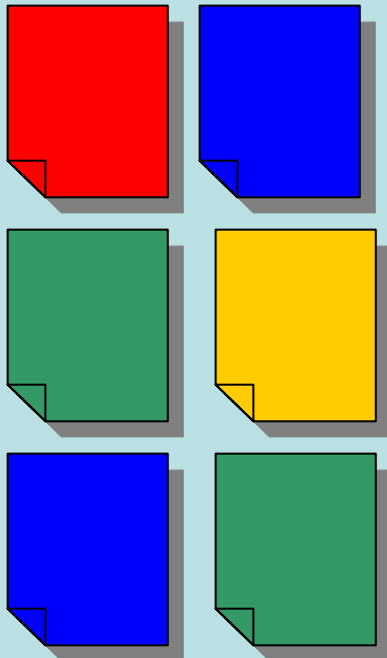
# Brobeck Archive: Records Overview

Managed Documents (~3.48 million; 800 GB)

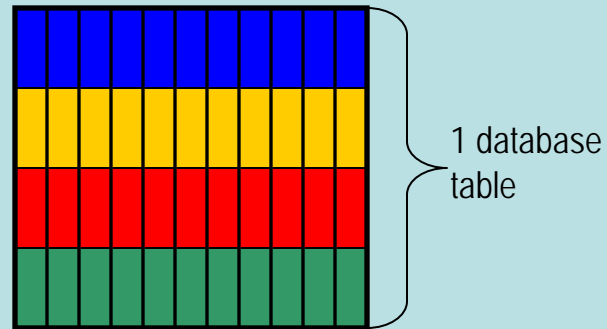
Word & Word Perfect (~3.34 million)

Excel (~54,000)

TIFF, PDF, PowerPoint, etc. (~90,000)



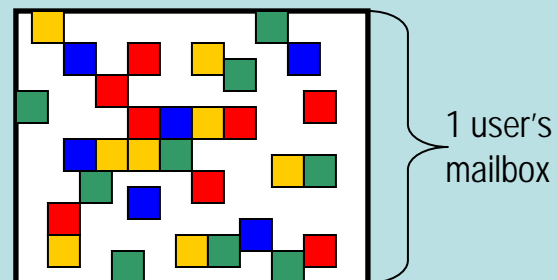
Relational Databases (~7; 229 GB)



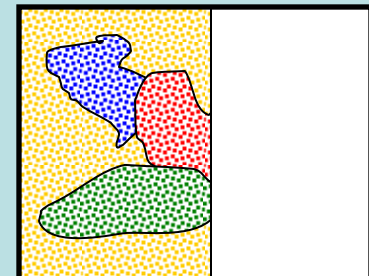
Brobeck Clients

- Client A
- Client B
- Client C
- Client D

Microsoft Outlook Data (~1,700 users; 363GB)



Network Share Drives

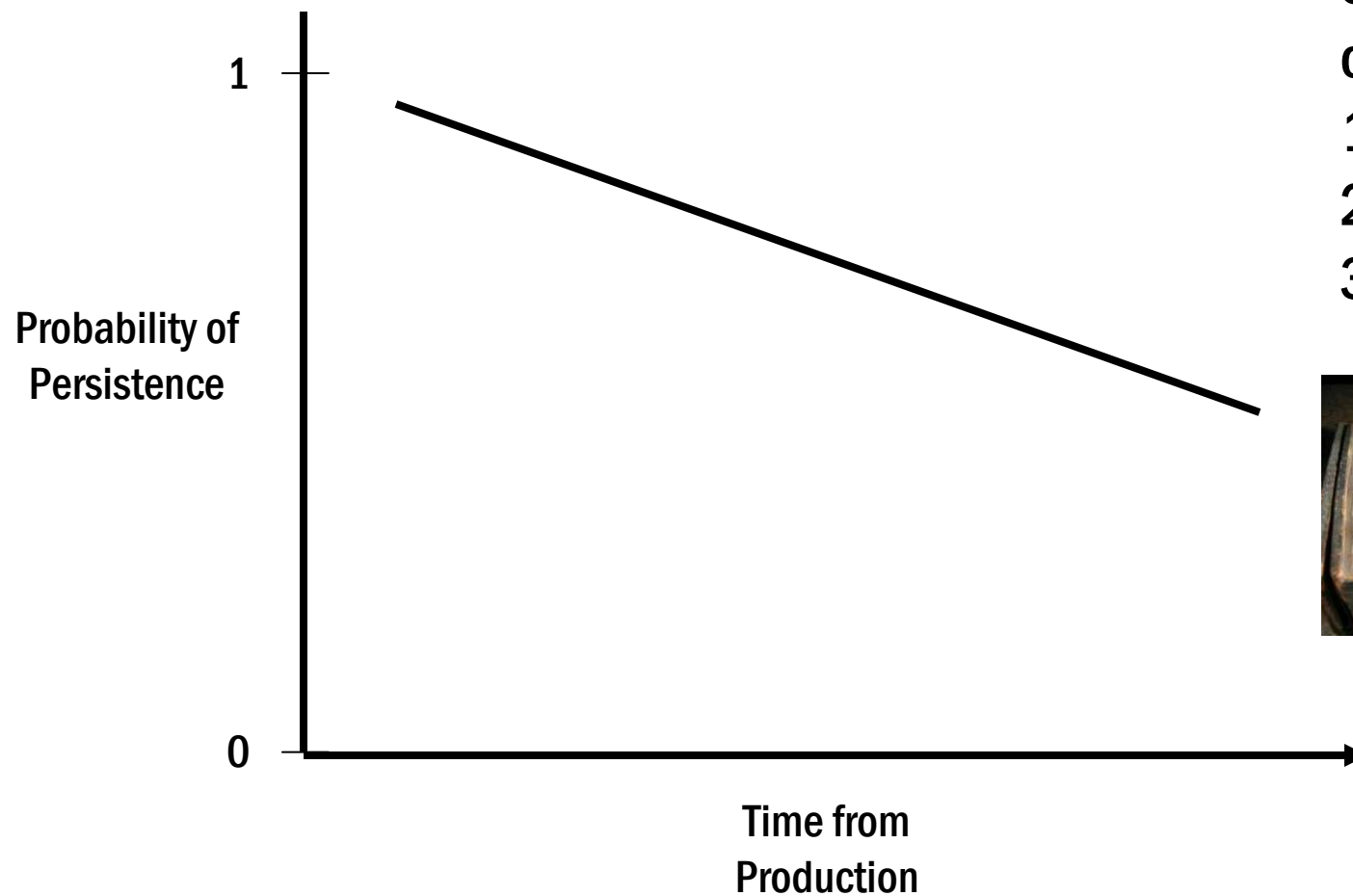


# Next Steps



- **Processing records to establish Brobeck Closed Archive**
  - [www.brobeckclosedarchive.org](http://www.brobeckclosedarchive.org)
- **Working with legal and technical communities to interpret court ruling**
  - i.e., like regs from law
- **Access will be governed by system modeled on U.S. Census Research Data Centers**
  - Merit-based access
  - Data enclave
  - Institutional review
- **Other potential collections**
  - Buy non-law firm records from bankruptcy court
  - Ideal target attributes?

# The Pre-Digital Path from Business Record to Historical Archive

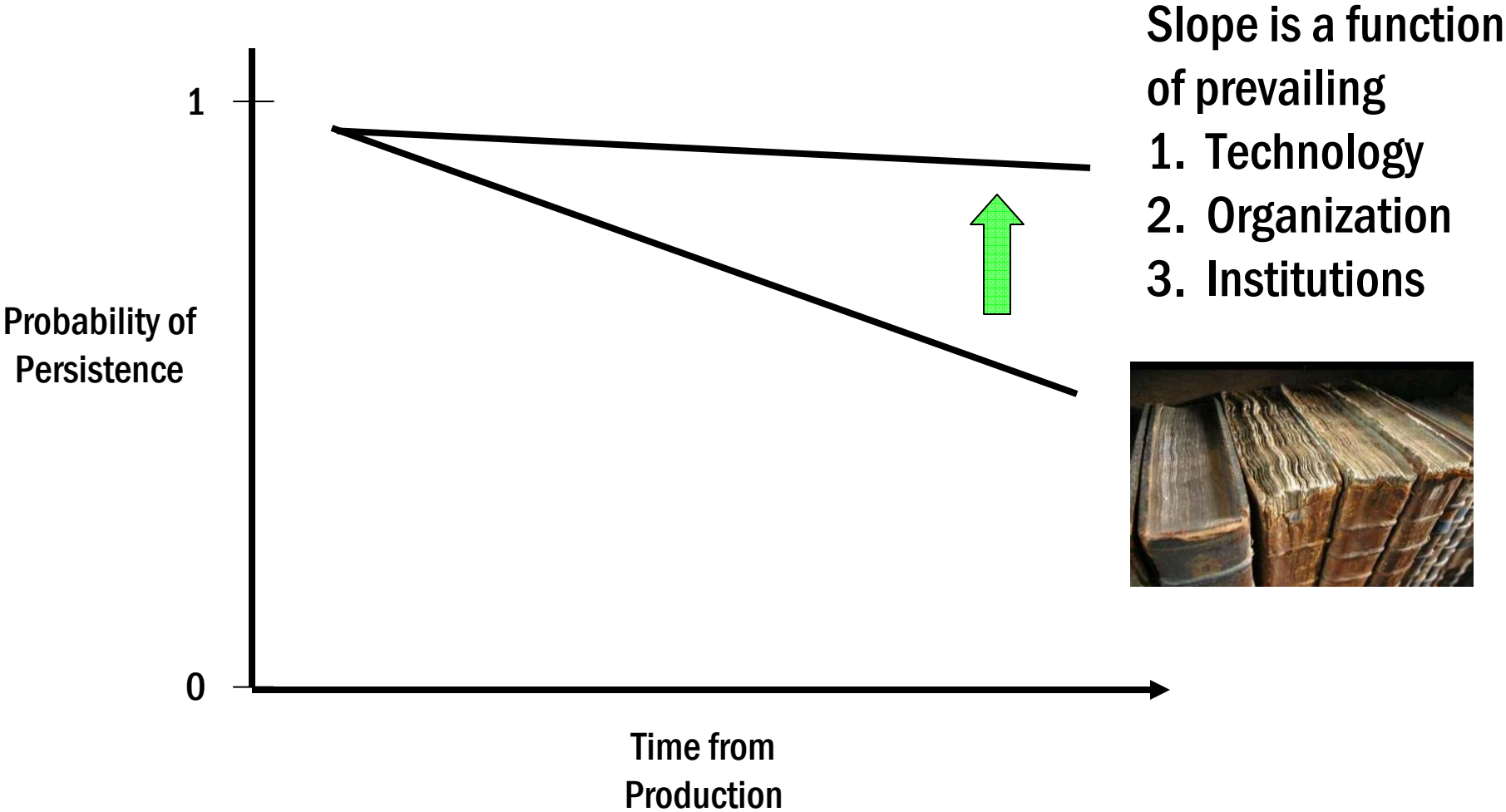


Slope is a function of prevailing

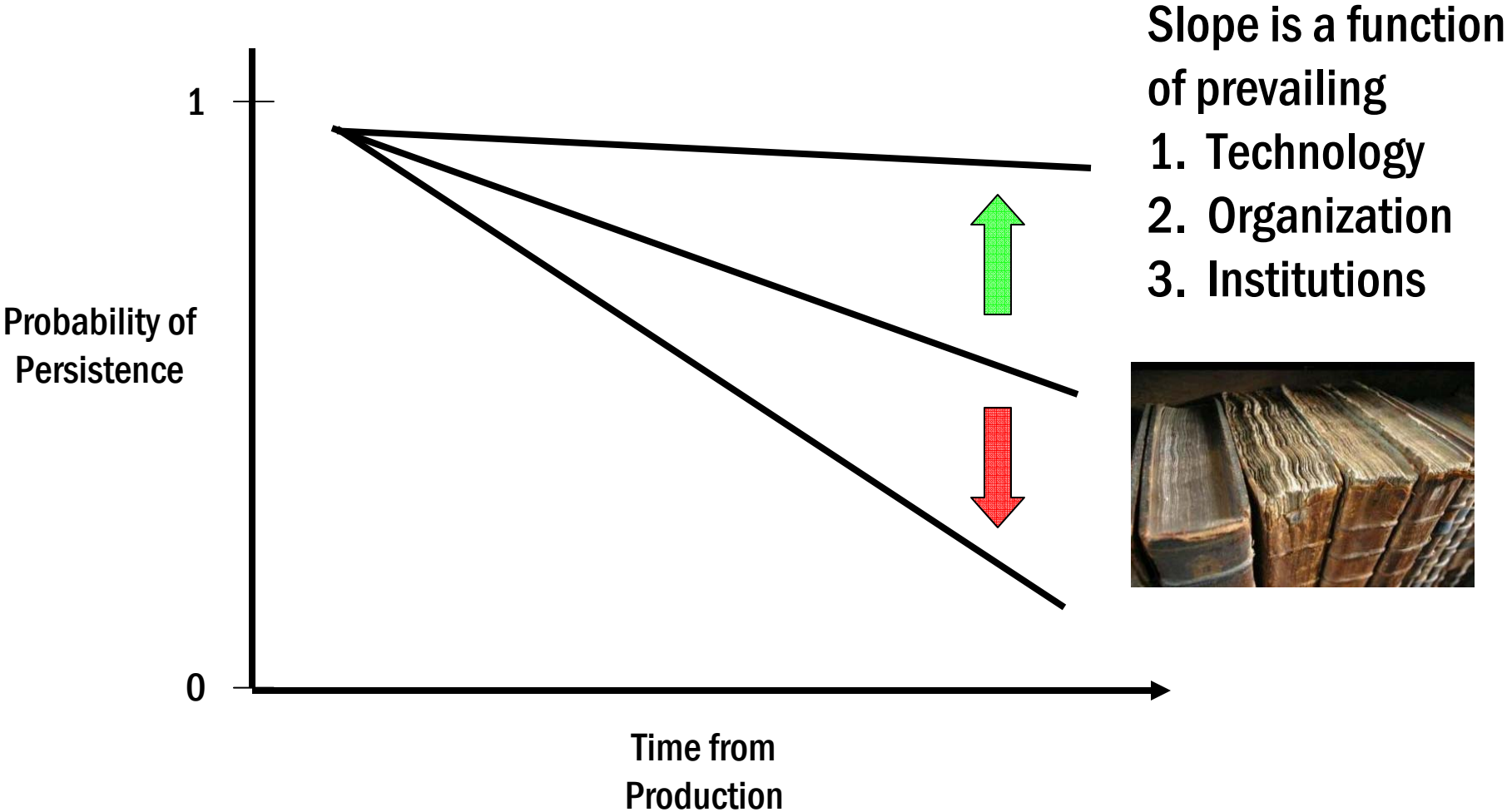
1. Technology
2. Organization
3. Institutions



# The Pre-Digital Path from Business Record to Historical Archive

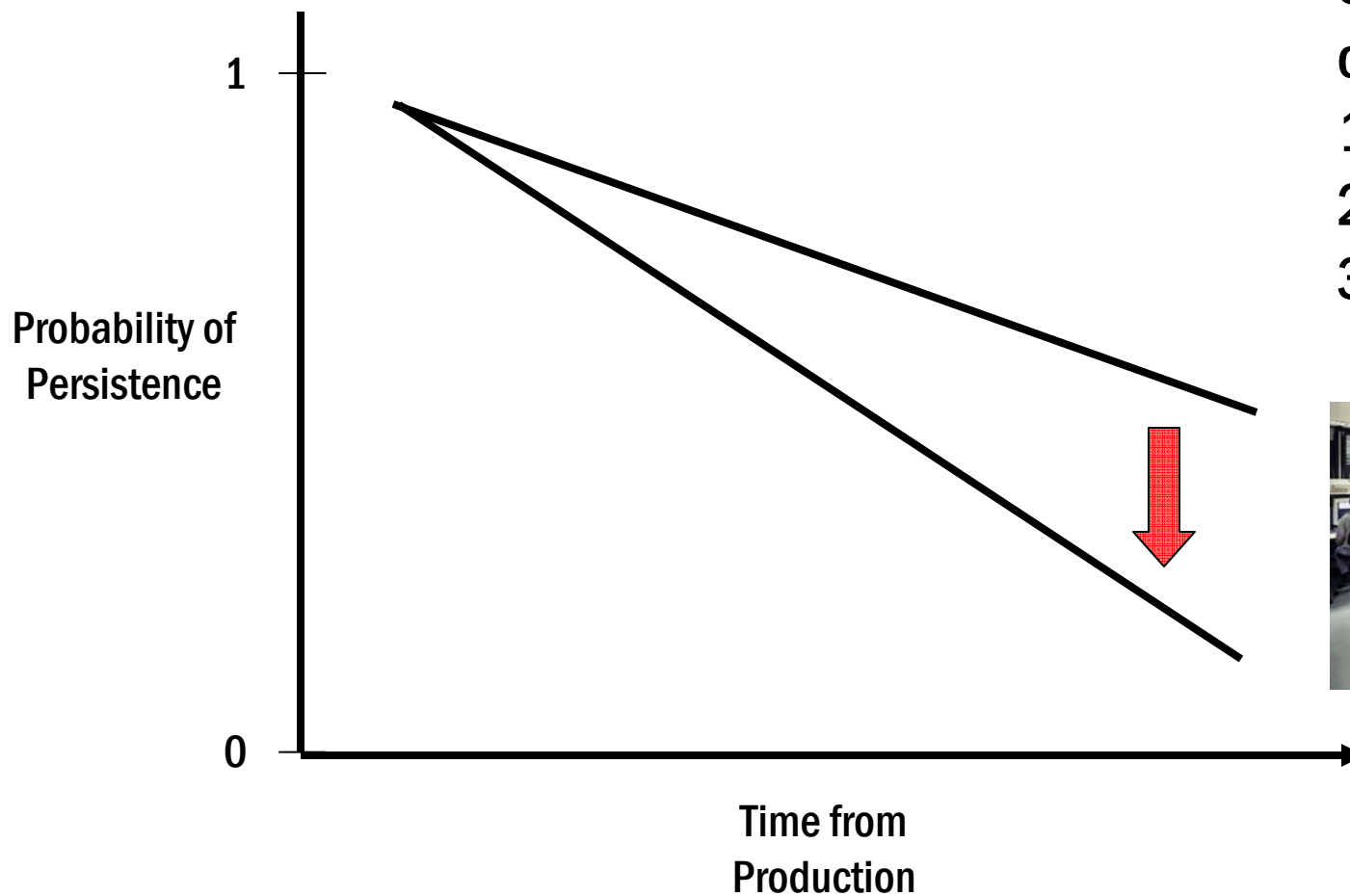


# The Pre-Digital Path from Business Record to Historical Archive





# The **Digital** Path from Business Record to Historical Archive

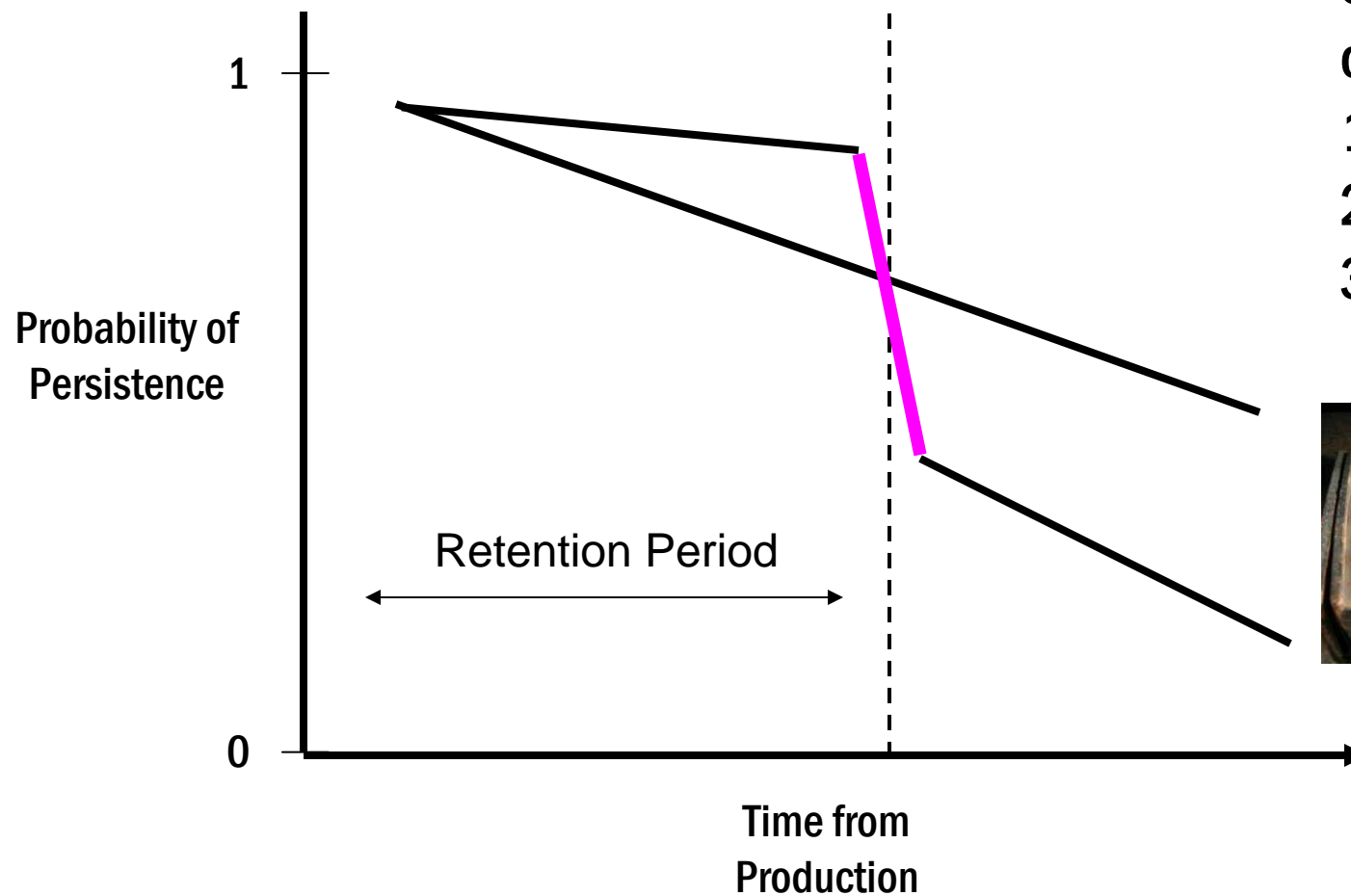


Slope is a function of prevailing

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# The Pre-Digital Path from Business Record to Historical Archive (with Document Management/Retention)

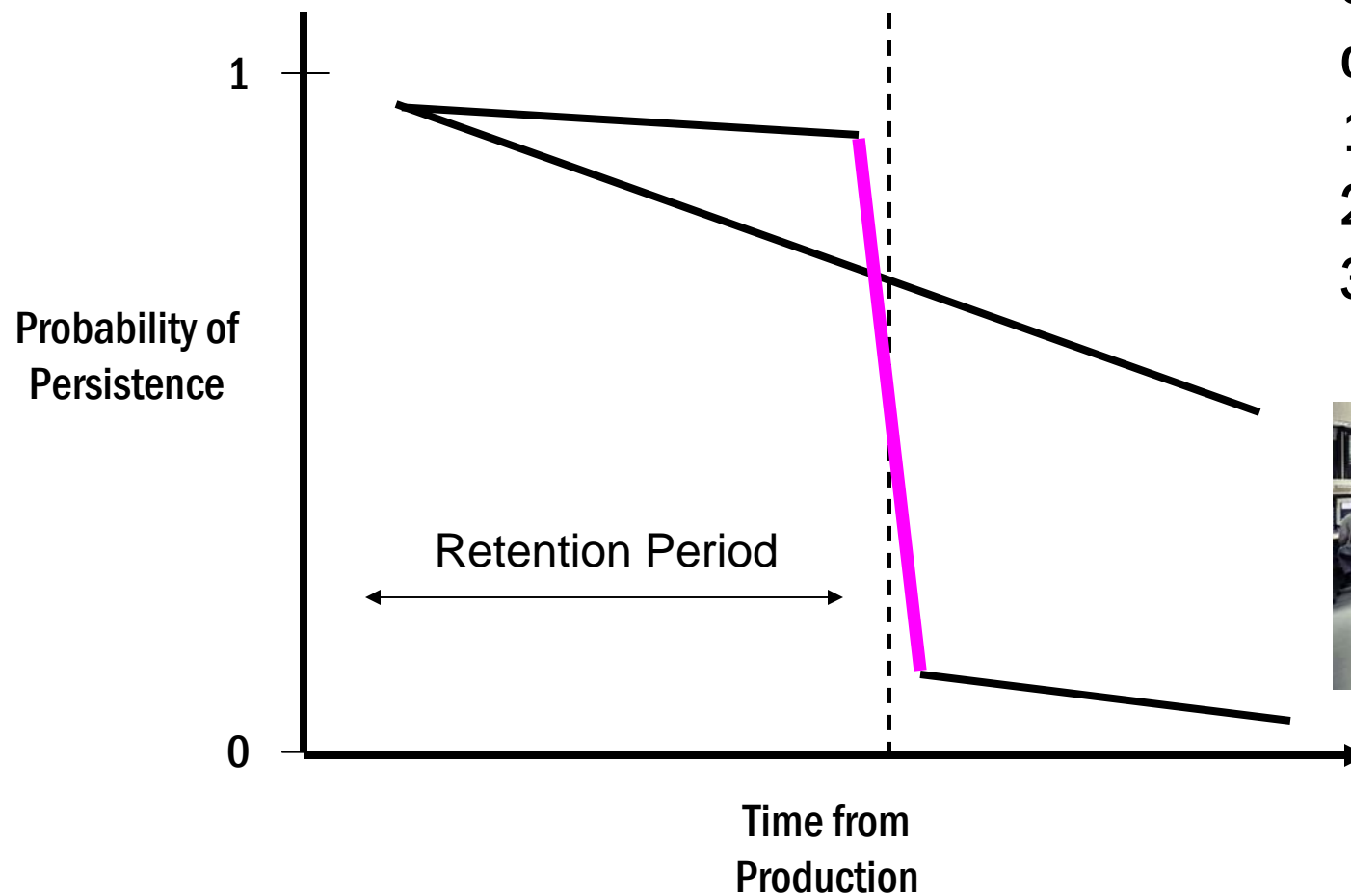


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# The **Digital** Path from Business Record to Historical Archive (with Document Management/Retention)

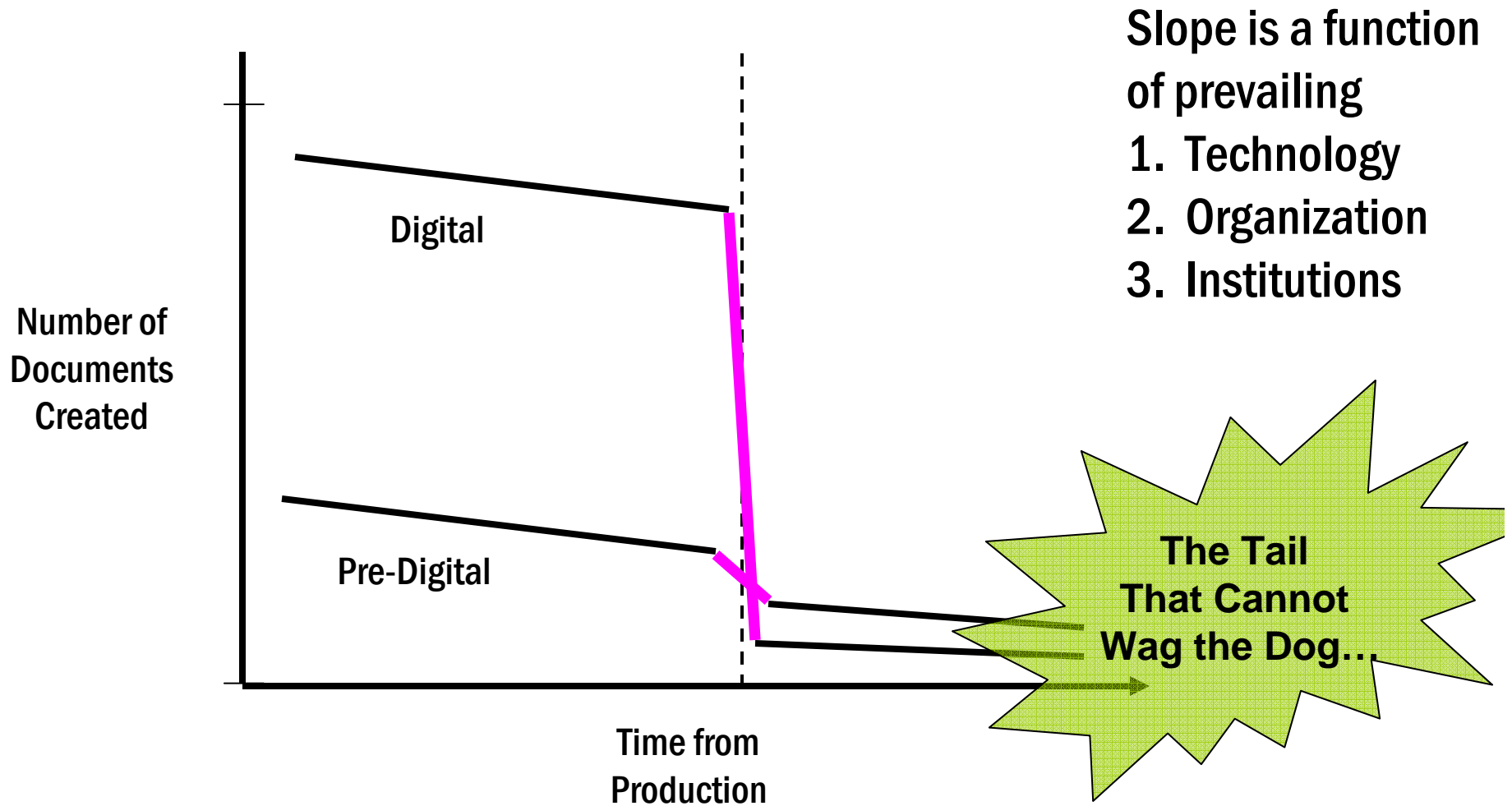


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# Path from Business Record to Historical Archive: Taking Account of Scale



# Feast or Famine

“Historians need to be thinking simultaneously about how to research, write and teach in a world of unheard-of historical abundance *and* how to avoid a future of record scarcity.”

Roy Rosenzweig

*American Historical Review* (2003)

# **Questions: Does DESI Help or Hurt?**

- **Can research on discovery in electronic records incorporate and address elements of the historian's challenge?**
- **Does solving the digital preservation problem in the legal setting provide a policy roadmap to address the larger challenge of preserving digital business records?**
- **As institutions (i.e., rules) evolve in response to new realities of digital discovery, can we create incentives for digital preservation?**

# Pledge and Plea

## ■ Pledge

- Hippocratic Oath
- We're trying to do no harm

## ■ Plea

- Despite the fact that the tail of preservation doesn't wag the dog of discovery, can we at least remember that it's there?



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