



The Power of Archives

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Archives Action Group Seminar: "From Memory and
Archives to Heritage"**

25 November 2010

Hong Kong, China

Baldassarre Bonifacio (1632)

Republic of Venice

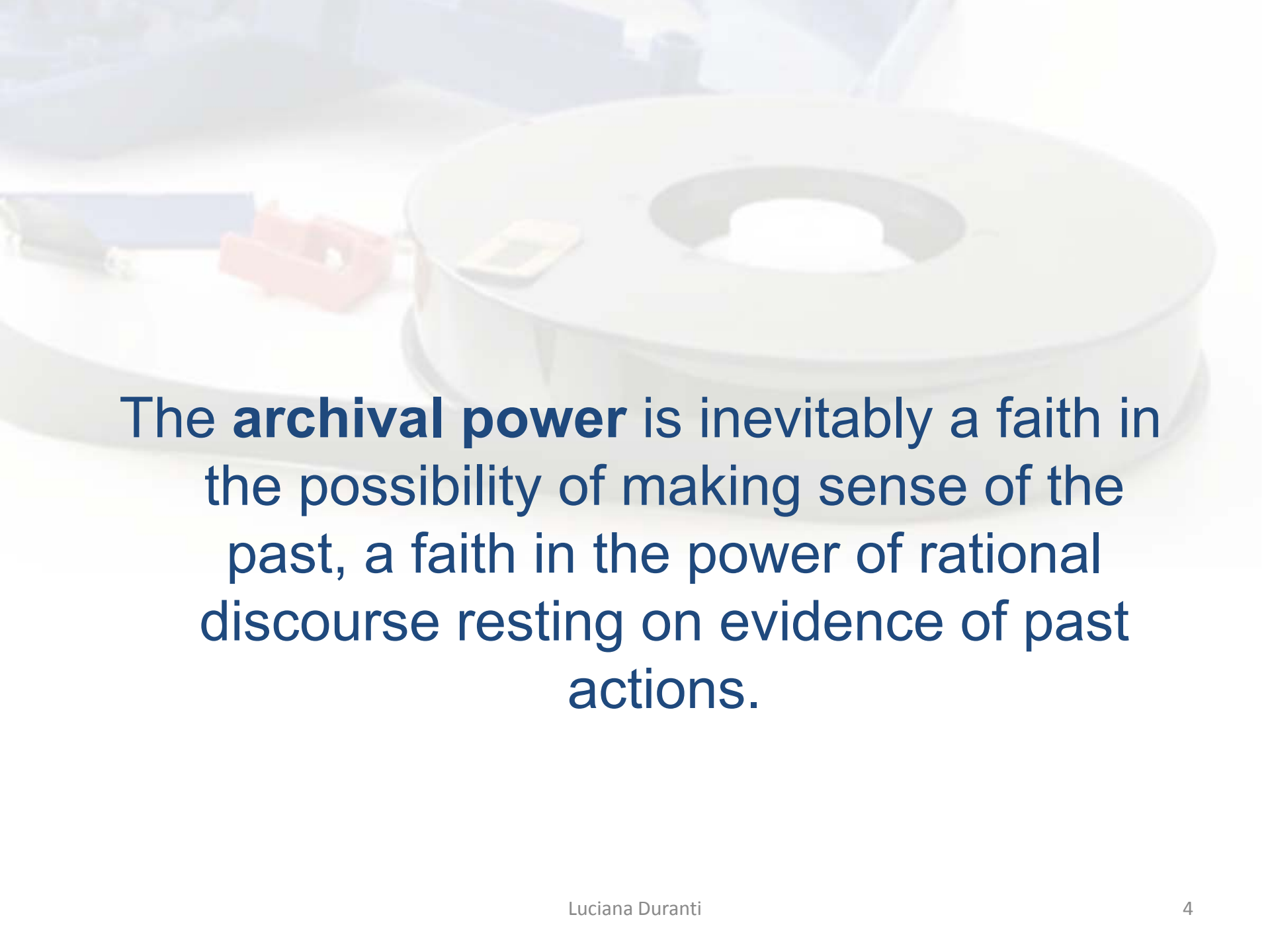
We call inviolate those things which are neither sacred nor profane, but supported by a certain sanctity, that is inviolate though it be not consecrated to God. Therefore, even now it is permissible to call archives inviolate... In agreement...are interpreters of civil law everywhere. Because of their inviolate nature, records and archives are useful for instructing and teaching men...for clearing up and illustrating obscure matters...for conserving patrimonies and thrones, all things public and private,...as much better than navy yards, much more efficacious than munitions factories, as it is finer to win by reason rather than by violence, by right than by wrong.



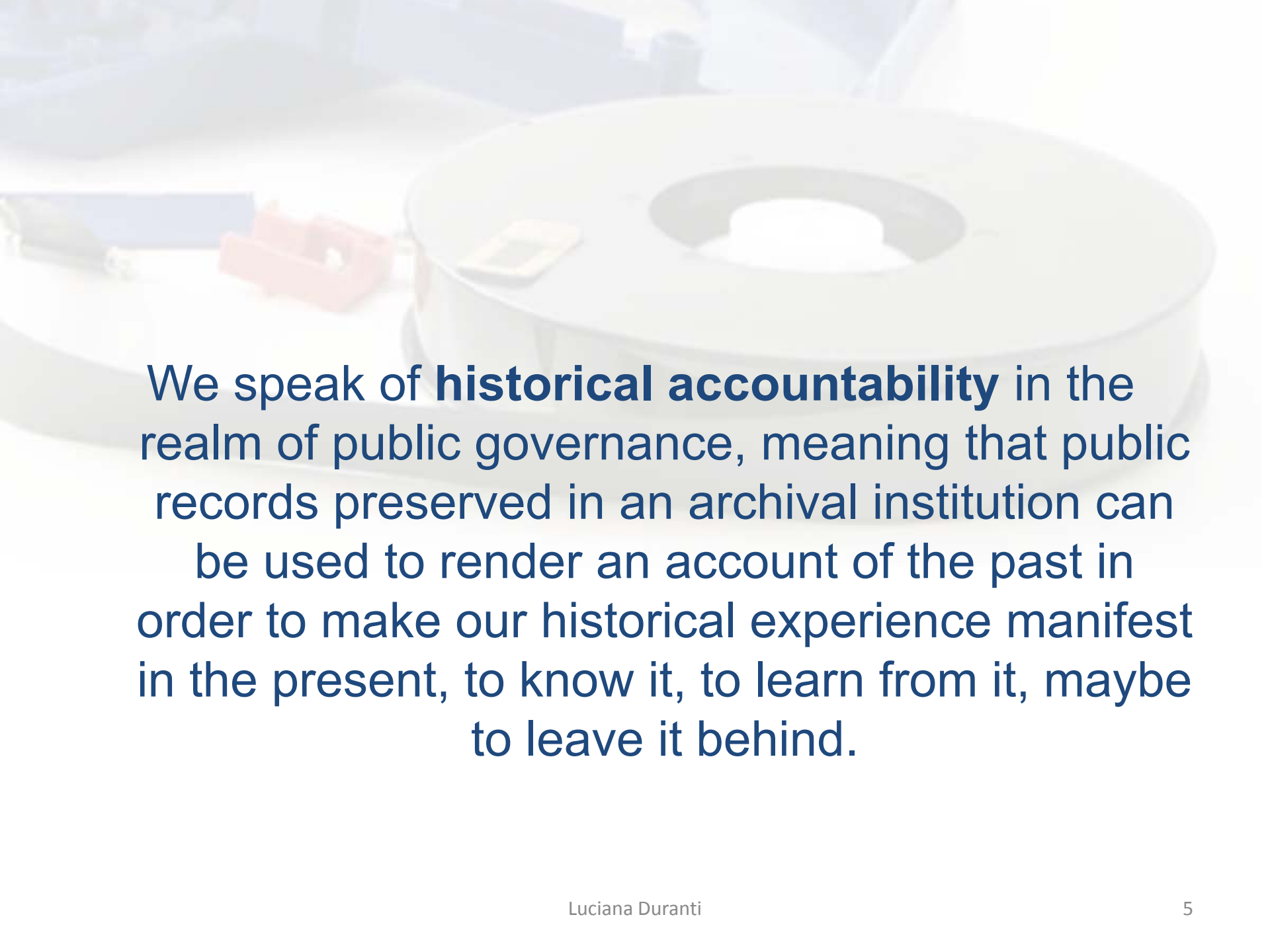
Sir Hilary Jenkinson (1922)

Great Britain

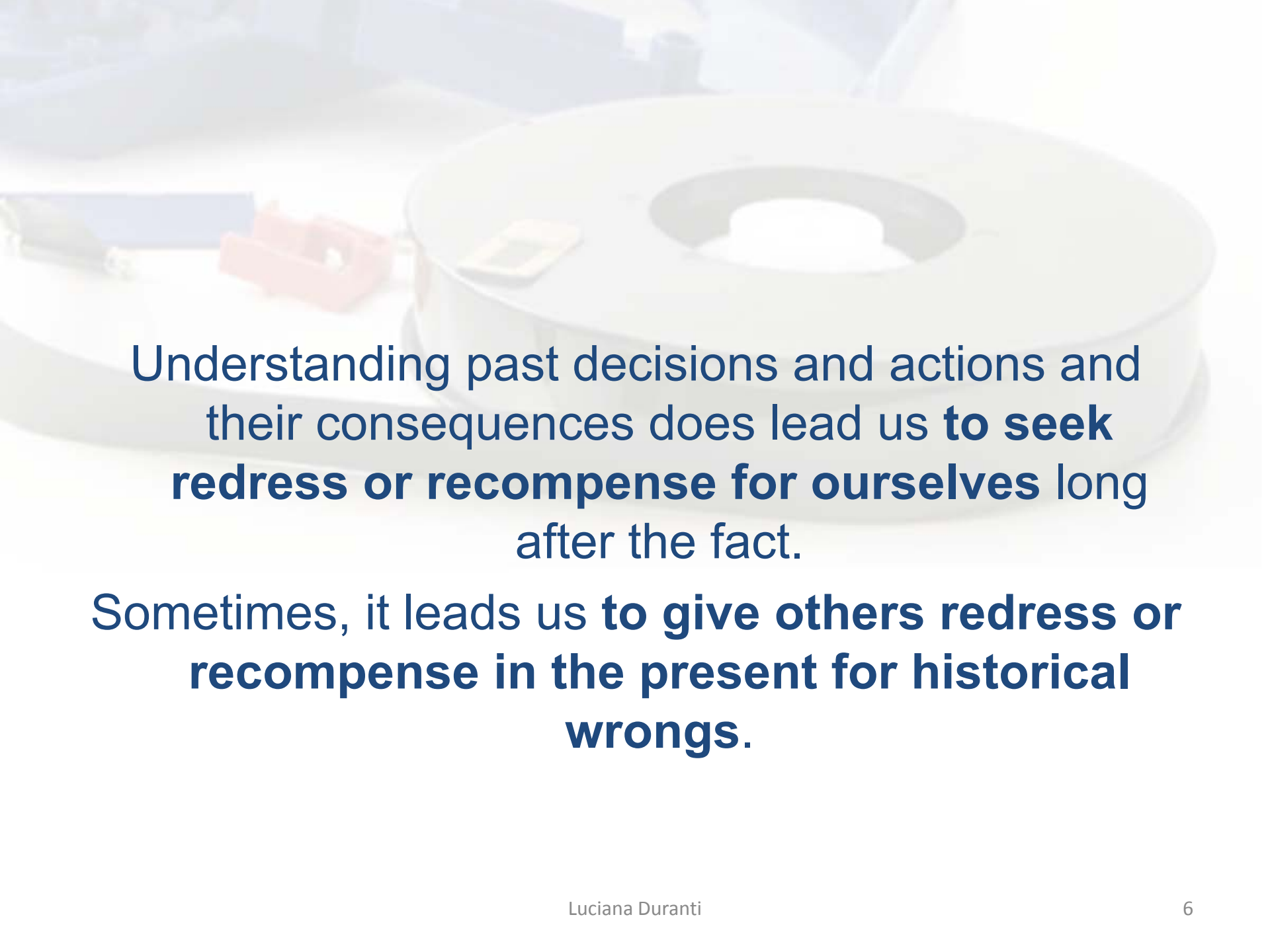
Archival documents (records) are impartial because they were not written to answer the questions of posterity and, if understood in context, can only tell the truth.



The **archival power** is inevitably a faith in the possibility of making sense of the past, a faith in the power of rational discourse resting on evidence of past actions.

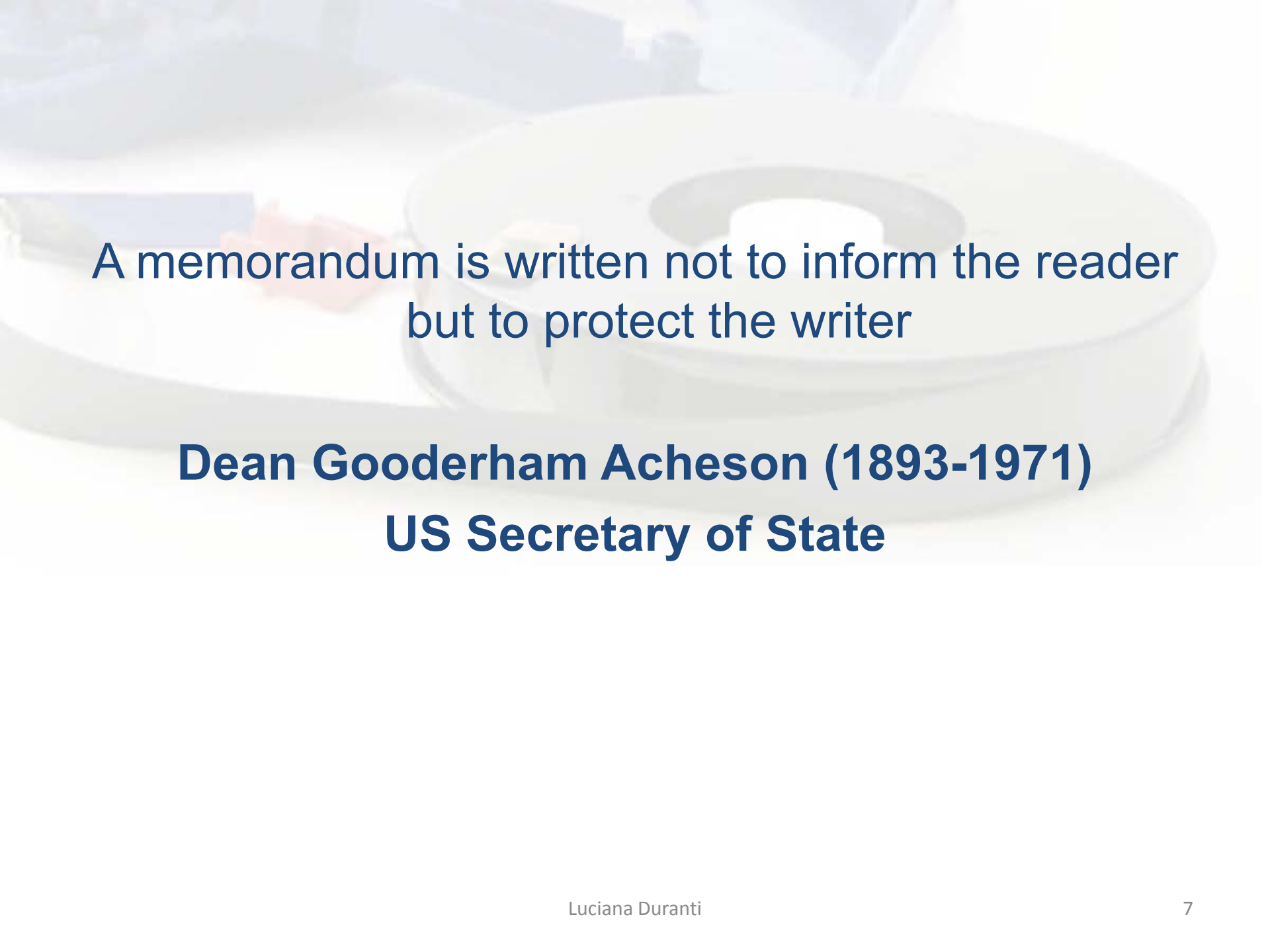


We speak of **historical accountability** in the realm of public governance, meaning that public records preserved in an archival institution can be used to render an account of the past in order to make our historical experience manifest in the present, to know it, to learn from it, maybe to leave it behind.



Understanding past decisions and actions and their consequences does lead us **to seek redress or recompense for ourselves** long after the fact.

Sometimes, it leads us **to give others redress or recompense in the present for historical wrongs.**



A memorandum is written not to inform the reader
but to protect the writer

Dean Gooderham Acheson (1893-1971)
US Secretary of State

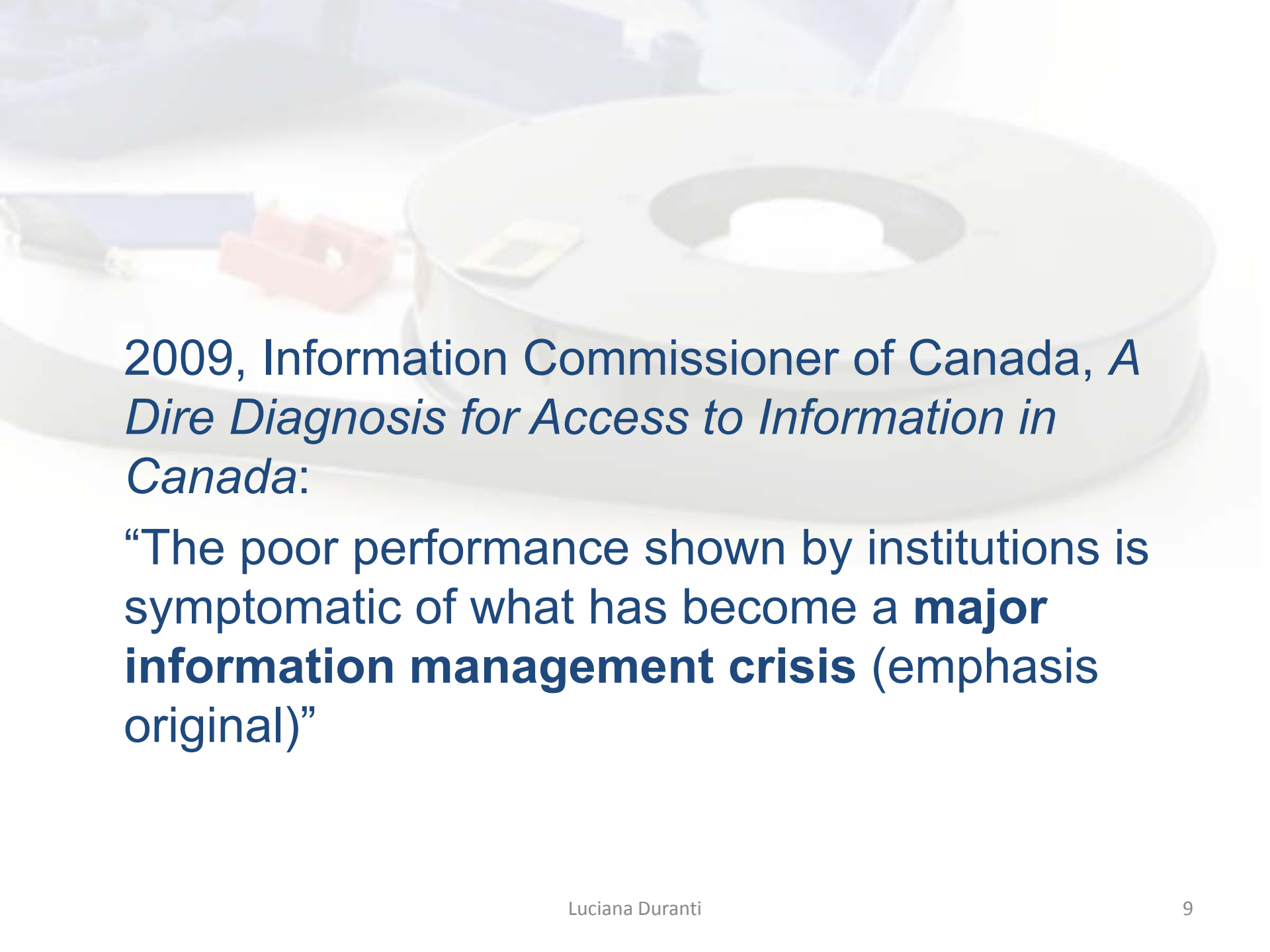
A blurred background image showing a CD-ROM and a pen on a desk.

Maria Grazia Tato' (2010)

Italy

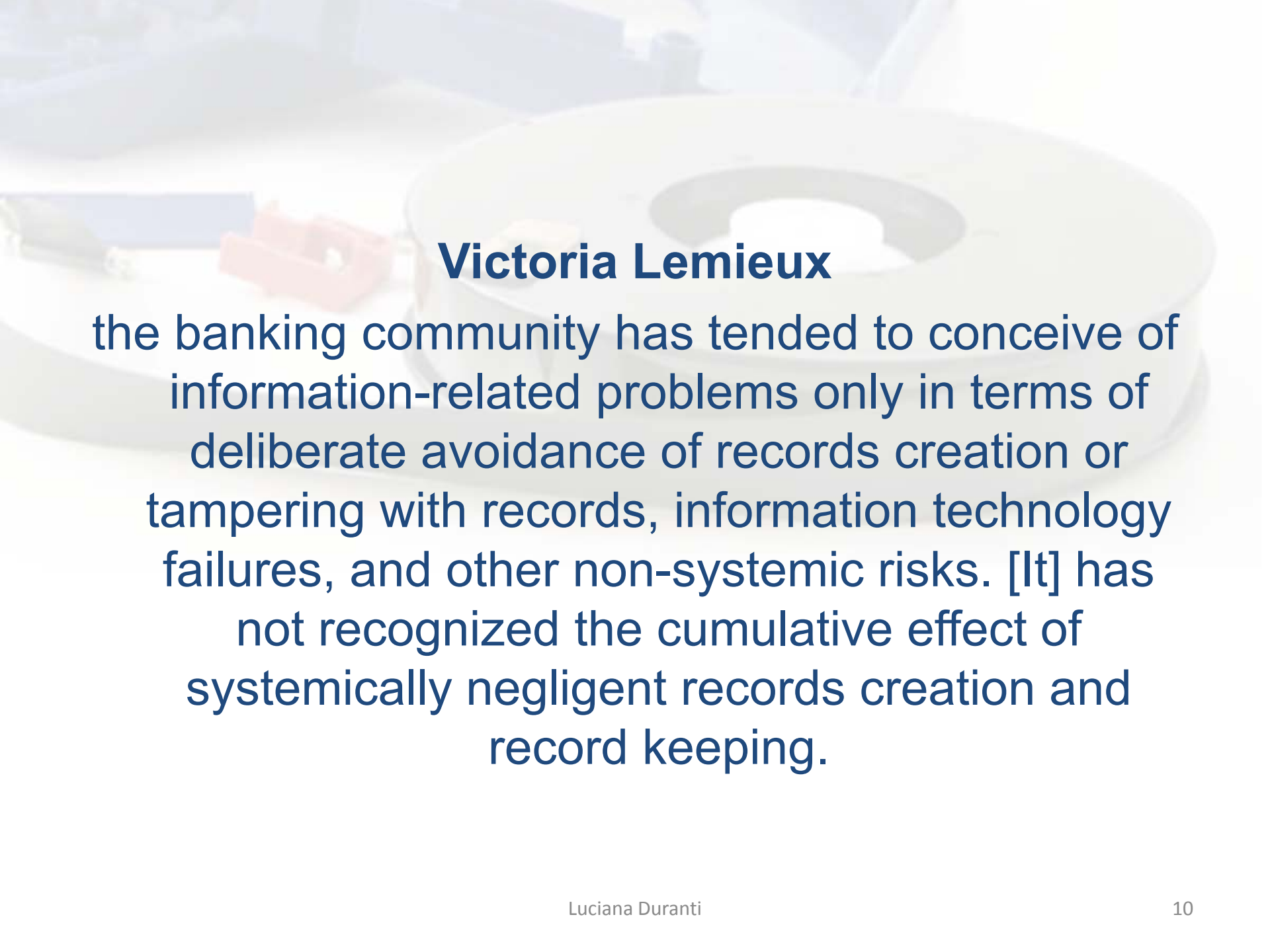
Who is afraid of records and archives? Researchers who fear uncomfortable truths. Administrators and politicians who fear the judgement of posterity. Professionals who fear to be held accountable.

To protect records and archives from those who fear them, we need a strong regulations and controls, because, as the Australian Auditor General once remarked, “poor recordkeeping attracts corruption like flies to a carcass.”.



2009, Information Commissioner of Canada, *A Dire Diagnosis for Access to Information in Canada*:

“The poor performance shown by institutions is symptomatic of what has become a **major information management crisis** (emphasis original)”

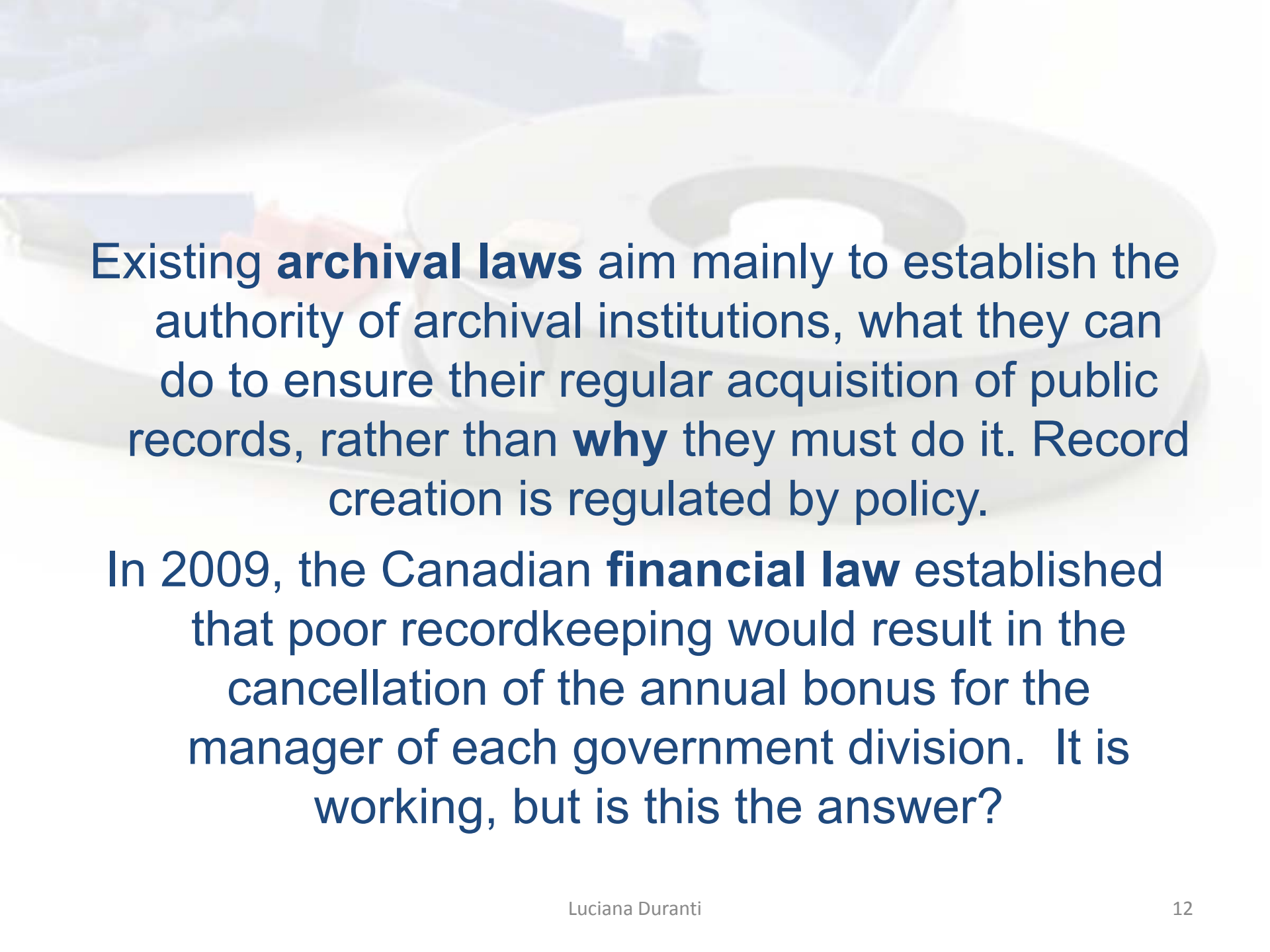
The background of the slide features a blurred image of a CD-ROM and a red paperclip. The CD-ROM is positioned in the upper right, and the red paperclip is on the left side, partially overlapping the CD's edge.

Victoria Lemieux

the banking community has tended to conceive of information-related problems only in terms of deliberate avoidance of records creation or tampering with records, information technology failures, and other non-systemic risks. [It] has not recognized the cumulative effect of systemically negligent records creation and record keeping.



In her study of the Fabrikant Affair, **Barbara Craig** reveals that one investigative report on this tragic incident in which a university professor shot five of his colleagues “spoke about the importance of clear and consistent record keeping as the grounding of accountability and the best insurance against risk.”



Existing **archival laws** aim mainly to establish the authority of archival institutions, what they can do to ensure their regular acquisition of public records, rather than **why** they must do it. Record creation is regulated by policy.

In 2009, the Canadian **financial law** established that poor recordkeeping would result in the cancellation of the annual bonus for the manager of each government division. It is working, but is this the answer?



It is necessary to ensure that the right records are created at the right time by the right person in the right way and that they are kept as **reliable** and **accurate** as created for as long as they are needed by their creator or legitimate successor, that is, that their **authenticity** (i.e. Identity and integrity) is protected, presumable and verifiable.

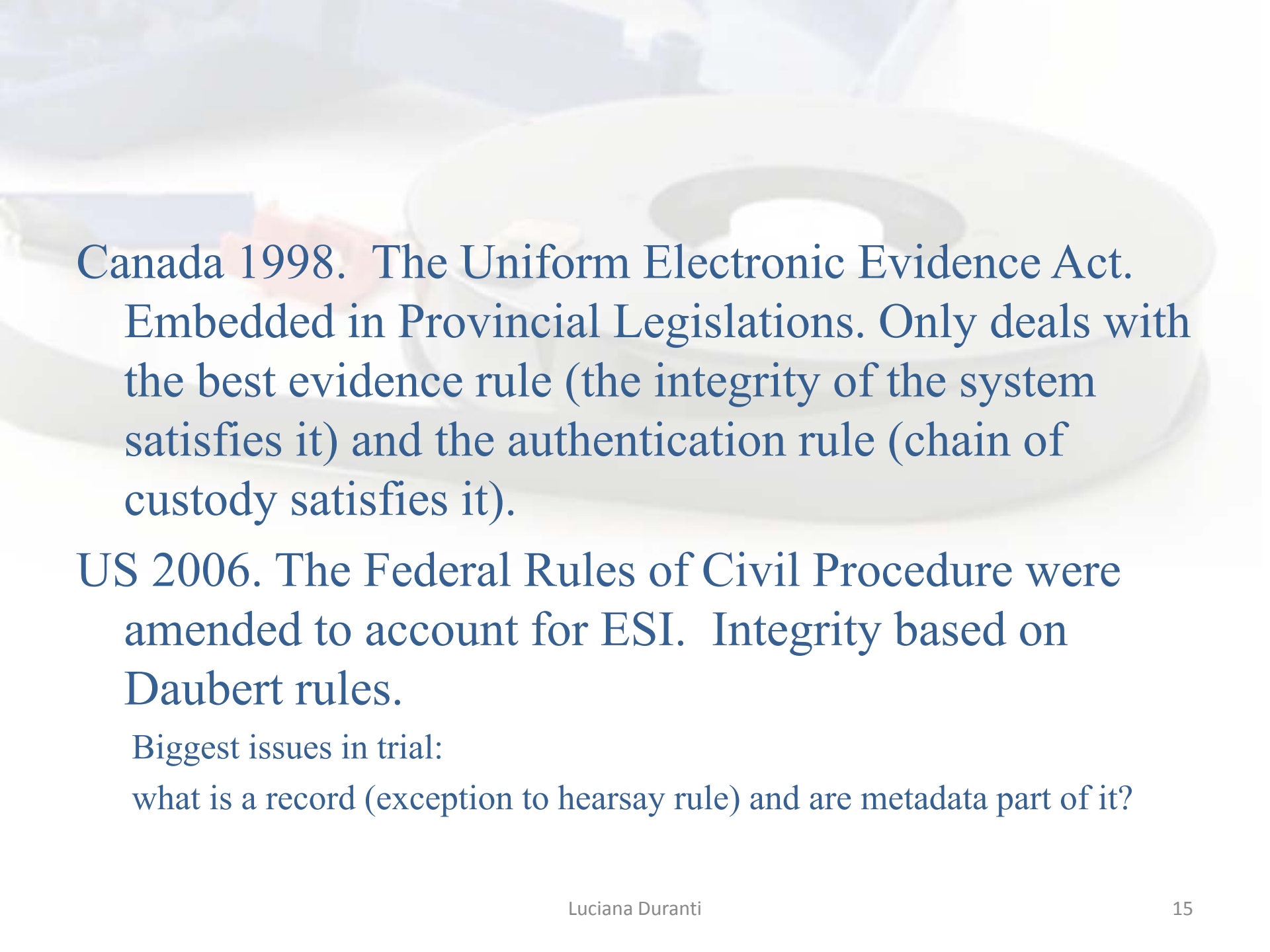
In today's digital environment this is not possible without a strong archival legislation.

A stack of white vinyl records is shown, with a hand holding one of them. The background is a soft, out-of-focus light blue and white.

**We cannot maintain or preserve digital records,
only the ability to reproduce them.**

The authenticity of digital records is an **inference** based on an uninterrupted chain of legitimate custody and on the controls exercised on their creation, maintenance and preservation.

**Records preservation starts at the moment of
records creation**

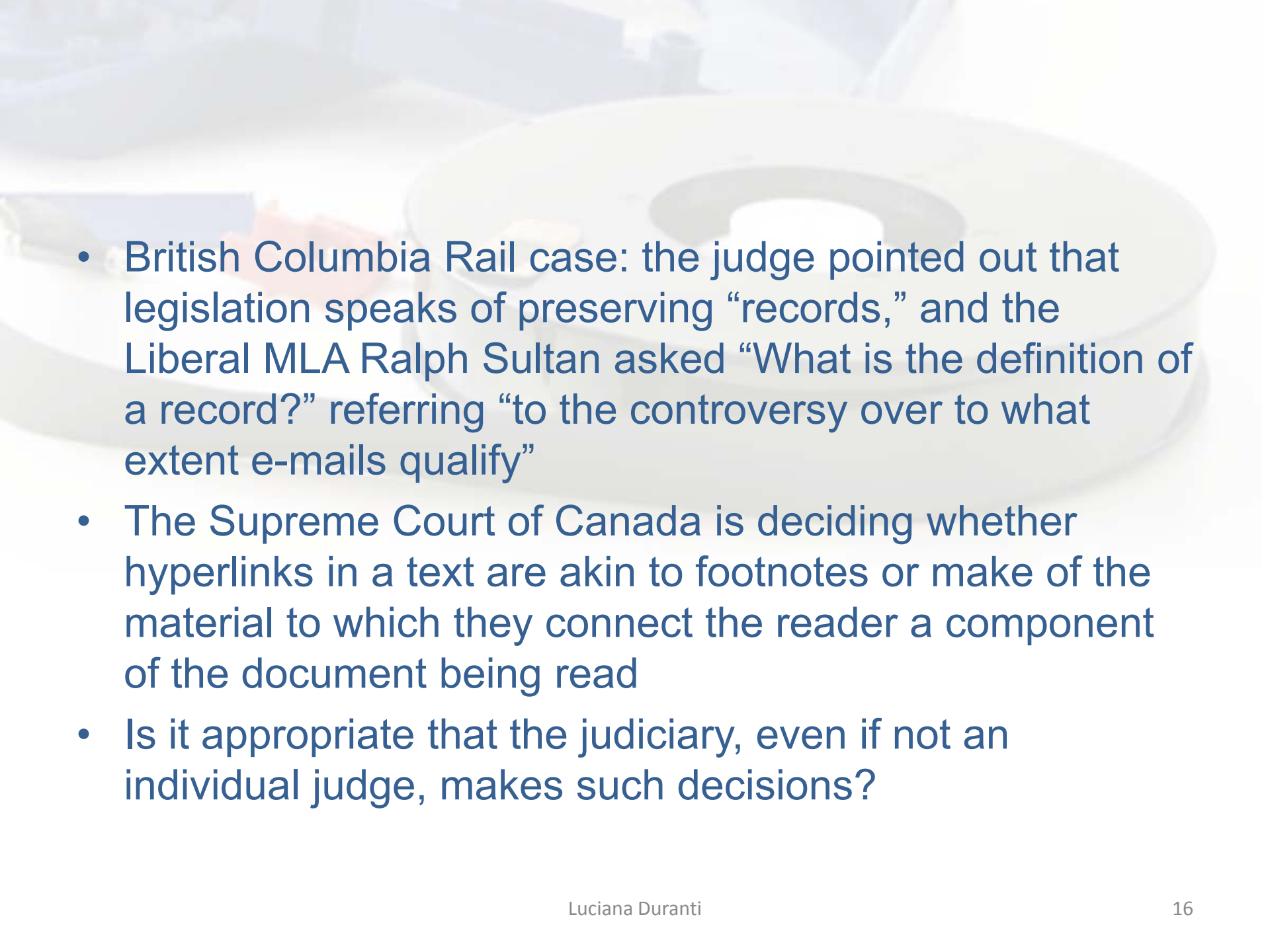


Canada 1998. The Uniform Electronic Evidence Act. Embedded in Provincial Legislations. Only deals with the best evidence rule (the integrity of the system satisfies it) and the authentication rule (chain of custody satisfies it).

US 2006. The Federal Rules of Civil Procedure were amended to account for ESI. Integrity based on Daubert rules.

Biggest issues in trial:

what is a record (exception to hearsay rule) and are metadata part of it?

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- A background image showing a stack of white vinyl records. A hand is visible on the left, holding a red pen and pointing towards the records. The records are stacked, with the top one having a black center label.
- British Columbia Rail case: the judge pointed out that legislation speaks of preserving “records,” and the Liberal MLA Ralph Sultan asked “What is the definition of a record?” referring “to the controversy over to what extent e-mails qualify”
 - The Supreme Court of Canada is deciding whether hyperlinks in a text are akin to footnotes or make of the material to which they connect the reader a component of the document being read
 - Is it appropriate that the judiciary, even if not an individual judge, makes such decisions?



Good records creation, recordkeeping and record preservation ensure efficiency, transparency, administrative, legal, social and historical accountability, the formation and preservation of a cultural heritage and the perpetuation of the memory of our past.

This requires an archival law.

What to include in an archival law

- A definition of responsibilities for records creation, maintenance and preservation
- Definitions of records, authenticity, integrity
- Definition of reliable records system and its components
- Definition of clear qualifications for the records professionals responsible for records along their life cycle
- Requirements for compliance, due care, due diligence, forensic readiness (including e-discovery), quality assurance
- Access and privacy requirements
- Monitoring responsibilities and auditing rules
- Use of cyberspace and social media in the usual and ordinary course of affaires
- Intellectual rights (copyright and moral rights) in relation to methods of preservation

The background of the slide features a blurred image of a CD-ROM and a pen. The CD-ROM is positioned in the upper right, and the pen is on the left side, both resting on a light-colored surface.

**The amount of our care of for archives is the
measure of our civilization.**

**The quality of our archival legislation is the
measure of such care**

The power of our archives depends on it.

InterPARES

www.interpares.org

Digital Records Forensics

www.digitalrecordsforensics.org