

## FORUM

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*With the exception of editing for conformity to capitalization, punctuation, and citation style, letters to the Forum are published verbatim.*

## To the Editor:

If there is one thing that has become apparent as of late, it is that context matters. A scholar needs to understand context before making a declaration. Perhaps one of the more glaring examples of this is Naomi Wolf learning, while being interviewed, that she misunderstood the term “death recorded” and thus invalidated the thesis of her forthcoming book.<sup>1</sup> Since July 2019, I’ve been experiencing the disjointed reality where someone has made unfounded generalizations about my work and personal opinions and included them in an article that somehow made it past peer review, was given an opportunity to make corrections which still fall short of the mark, but still is being published in this issue of *American Archivist*. Frank Boles is allowed to publish “For Everything There Is a Season” as an article, while my response defending work I spent years on is relegated to the Letters to the Editor section because, to be given equal space, my rebuttal would have to formally go through the peer review process, which means my response wouldn’t be within the same issue of *American Archivist*.

Allow me to provide some context to the section in Boles’s article on archival privilege.<sup>2</sup> First let’s talk qualifications. For the majority of my undergraduate years, I studied Irish and Irish American history in the early twentieth century. This was around the time of the St. Andrew’s Agreement, which continued the work of the Good Friday Agreement so the Troubles and the fate of Northern Ireland were ever-present, even as I looked back to the start of partition. I also earned a law degree. When it was time for me to choose a thesis topic for my MSIS and Boston College had been served the first of the subpoenas that would ignite a legal battle that played out on both sides of the Atlantic, the topic seemed like a perfect fit.

Because Boles does not give any information about the Belfast Project or the court battle in his article, here is a brief primer. The Troubles was a period of sectarian violence in Northern Ireland that most agree began in the 1960s and continued into the 1990s. No side’s hands were clean during this conflict. The Belfast Project is an oral history project that Boston College sponsored to collect oral histories from paramilitaries on both sides of the conflict in an effort to capture that history before it died with the ones who lived it. Because of the culture of silence with paramilitaries, assurances had to be given to obtain the interviews. Those assurances were that the interviews would be kept secret until either the interviewee gave express permission for it to be released or the interviewee died. Unfortunately, because those oral histories were housed at

Boston College, in the United States, they were subject to a subpoena. The Police Services of Northern Ireland invoked an international treaty, and the United States Department of Justice delivered the subpoena.

That first subpoena, which was overly broad and rightfully challenged, began the legal proceedings. All of this was playing out while I wrote my thesis, a chapter of which later became the article from which Boles cherry-picked quotes. The United States has a common law legal system that is based on *stare decisis*. Simply put, we have laws passed by the legislature which are interpreted by judges. Once a judge issues a ruling, that ruling is to be upheld. Overturning established law does occur, but it is meant to be a rare occurrence. If you notice an urgency in the quotes that Boles chose to include, it is because, at the time of my writing, it was urgent. There was the potential that a court would issue a ruling on archival privilege that would then become law, and no archivists were publicly commenting on the issue. The Government Affairs Working Group—which coincidentally Frank Boles was heading up at the time—was silent except for an error-ridden document about the Belfast Project.<sup>3</sup> I did say that archivists should advocate for archival privilege, but in that same article, I also acknowledged that I had no idea what that privilege would look like.

Privilege is an interesting legal concept. Most are familiar with the privileges that Boles quoted from my article. What Boles did not include is the reason why those privileges exist. It is for the public good. Clients need to trust their attorneys to be able to zealously represent them; marriage would be a pretty terrible institution if one spouse was forced to testify against the other; and patients need to be absolutely honest with their doctors in order to receive proper care. Boles also does not include the fact that there are exceptions. Clients can break privilege with their attorneys by sharing the information with a third party. Doctors can break privilege with their patients if there is the threat of imminent harm. Then there is also the issue of partial privileges, such as the state secrets privilege where there is a court review of the information to determine whether or not there is a reason for the information to not be disclosed, such as a threat to national security.

In an article I wrote that Boles does not cite, I tie in the idea of archival privilege to shield laws—the laws that protect reporter’s sources. Those are not absolute and not universally recognized, but they serve a public good. Sources are willing to come forward with information because there is a layer of protection. Reporter’s privilege is not absolute. I have not proposed that any version of archival privilege I have speculated about would be absolute, so it is rather shocking to see Boles create his own definition of archival privilege and attribute it to me by writing: “To this list of existing legal privileges, George argues for the addition of an archival privilege. Archival privilege would shield donated

records found in archives that have been closed under terms of the deed of gift from inquiring eyes of the government and other parties.”<sup>4</sup>

Due to corrections I tweeted about when I saw the first preprint of the article, Boles acknowledges that another archivist wrote about archival privilege before me.<sup>5</sup> The issue first arose in 1986 with the case *Wilkinson v. Federal Bureau of Investigation*. The facts of that case are interesting, though not included in Boles’s article. Ann Braden had donated her papers to an archives, but retained the right to approve access to her papers. When the FBI stumbled upon the finding aid to her papers and requested access during the course of their research of a dissident group, Braden refused. A subpoena was issued and she went to court. Braden ultimately lost, but the judge in her case issued a narrow ruling, meaning that the door was left open for there to be an archival privilege. The judge could have written that such a privilege should never exist, which would have closed the door, but he didn’t. Boles ignores that significant fact.

In reading Boles’s interpretation of my work, it appears to me that there is a fundamental misunderstanding. In everything I write about archival privilege, it is to gain a more complete historical record. The appeal of archival privilege as a concept is similar to reporters shielding their sources—it is a means to obtain important information that is not available anywhere else. How many minority or controversial or dissident groups or individuals will be willing to donate to archives if the materials that they donate will be organized and then potentially used against them as evidence? I have always thought of archivists as forward looking. We preserve the history now so that it can be studied in the future. Archival privilege would be a layer of protection for those who would be willing to share their stories.

There have been other instances of subpoenas over the past decade that show the risks associated with self-documentation. Twitter received subpoenas from the NYPD for information on Occupy Wall Street protestors.<sup>6</sup> The NYPD also tried to subpoena footage from Ken Burns’s documentary on the Central Park Five (now Exonerated Five).<sup>7</sup> In those instances, Twitter complied, and the court ruled in Ken Burns’s favor. There is no set law on how these situations are handled. It was one of the reasons why I was pushing so hard for there to be discussion among archivists about how to approach protecting collections from subpoenas. Not every institution that houses archives has legal representation at the ready, and lawsuits can be expensive. If archival collections are going to be at risk, archivists need to be prepared.

As a test case for archival privilege, the Belfast Project is terrible. I don’t shy away from that in any of my work. It is unnecessarily inflammatory to ignore the greater context surrounding the Belfast Project to say, as Boles does, “But what of the notion that ‘archival privilege’ should be used by ‘ethical’ archivists to withhold information from an investigation regarding the murder to

a widowed mother of ten?”<sup>8</sup> The first is that it is a misreading of the facts. It is incredibly telling that the case that Boles cites is *Wilkinson* rather than any of the decisions from the Massachusetts District Court or the First Circuit.<sup>9</sup> Looking at those cases, one would find that Boston College followed proper legal procedure. They challenged an overly broad subpoena. When a second subpoena was issued that narrowed the scope of the request, Boston College challenged it again. A judge reviewed the interviews in question *in camera* and determined that a small number should be given to the Police Services of Northern Ireland. Most of those interviews were from Delours Price, an interviewee who told a third party that she interviewed with the Belfast Project. There were no archivists holding a line against agents from the Department of Justice. There was no evil plot to subvert the course of justice. There was a legal process, a system of checks and balances, the same as one would find with other partial privileges. With that context, someone claiming “Murders and other criminals should not be able to hide evidence of their crimes with the advice of a smart lawyer and a complicit, or perhaps, naïve, archivist who signs the deed of gift,”<sup>10</sup> is akin to anyone who claims archives or libraries who deaccession are throwing away history. There is a process, but the person issuing protest is either ignorant of or does not understand it.

When I teach students about research, I tell them that they must go to the primary source. They cannot simply rely on someone else’s interpretation of it. If they do not understand the primary source, then they need to look for context. It is irresponsible for scholars and researchers to only rely on one source and to lift quotes and citations from that single source. Moreover, I tell students they must always, always, always, provide citations to support their assertions. Boles’s lack of citations and sources in his section discussing archival privilege is extremely troubling. He avoids nuance in order to veer toward the dramatic—something more fitting for an editorial rather than an academic article. But, I am no longer a peer reviewer for *American Archivist*, and the treatment Boles’s article received shows editorial standards for *American Archivist* have changed for the worse.

Context matters. The extreme lack of context is why the rest of Boles’s article is inherently flawed. I don’t see how social justice can be separate from archival work, or from any work really. But I also believe in striving to make a comprehensive historical record—even though we are a long way from reaching that goal. I don’t think that just because a goal is not easily obtainable it should be discarded. You do what you can, how you can. Right now, what I can do is once again spend time correcting Boles’s information regarding archival privilege and the Belfast Project.

But I cannot help but wonder why, after the very public disaster of his preprint, Frank Boles was given another opportunity which this updated version

of his article proves he squandered. Why is his sloppy take on scholarship being enabled by Cal Lee, editor of *American Archivist*, and the SAA's Editorial Board? Do these individuals with editorial oversight understand the cost? Sure there is a personal cost to me. My scholarly reputation and work were called into question because Boles was not held to a high editorial standard. When finding out that there were issues with Boles's article, Lee put the burden on me to prove that there were errors. I am still pointing out errors. But the cost is not just to me—it is to the entire archival profession. By following through and publishing Boles's article, those with editorial authority are taking space away from another scholar who should be heard. They are diminishing the reputation of *American Archivist*, because if Boles's article made it through peer review, one cannot help but wonder about every other article. The publication of Boles's article is not an attempt to do better. It is not even an attempt to hold the line. It is saying that there are certain people of a particular status who are given chance after chance to continue to do something wrong, no matter what the cost to others.

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## NOTES

- <sup>1</sup> Yelena Dzhanova, "Here's an Actual Nightmare: Naomi Wolf Learning On-Air That Her Book Is Wrong," *Intelligencer*, *New York Magazine*, May 24, 2019, captured at <https://perma.cc/N8WTYXS2>.
- <sup>2</sup> All of the information I am about to discuss regarding the Northern Irish history, the Belfast Project, and archival privilege can be found discussed at length in my scholarship which can be accessed via my Google Scholar profile (<https://scholar.google.com/citations?user=szUmGcAAAA&hl=en> or search the name Christine Anne George).
- <sup>3</sup> SAA Government Affairs Working Group, "Discussion of the Boston College/IRA Oral History Situation," Society of American Archivists, February 11, 2013, captured at <https://perma.cc/HVU4-XD97>. I wrote a blog post correcting the Government Affairs Working Group's document. Christine Anne George, "Calling a Privilege a Right Is Just Plain Wrong," *SAA Issues & Advocacy Blog*, Society of American Archivists, February 2013, captured at <https://perma.cc/5SR6-GM5L>.
- <sup>4</sup> Frank Boles, "To Everything There Is a Season," *American Archivist* 82, no. 2 (2019): 610.
- <sup>5</sup> That specific tweet from August 1, 2019, can be found at [https://twitter.com/\\_cageorge/status/1157088963984801800](https://twitter.com/_cageorge/status/1157088963984801800). The entire thread that began on August 1, 2019, and continued can be found at [https://twitter.com/\\_cageorge/status/1157088906027962373](https://twitter.com/_cageorge/status/1157088906027962373).
- <sup>6</sup> "Twitter to Turn Over OWS Tweets," *NBC4 New York*, September 14, 2012, captured at <https://perma.cc/93R6-WTEY>.
- <sup>7</sup> Lisa de Moraes, "Ken Burns Wins Legal Battle with NYC Over 'Central Park Five' Documentary Footage," *Washington Post*, February 20, 2013, captured at <https://perma.cc/728Q-6NHE>.
- <sup>8</sup> Boles, "To Everything There is a Season," 611.
- <sup>9</sup> In the federal judiciary system, district courts are the lowest courts that can then be appealed to the circuit courts. Both cover specific geographical areas. Decisions from circuit courts can be appealed to the United States Supreme Court. Due to the location of Boston College, the Massachusetts District Court had jurisdiction and Massachusetts falls into the First Circuit Court.
- <sup>10</sup> Boles, "To Everything There Is a Season," 611.