

Pondering Privilege: What Would Archival Privilege Look Like and How Would We Get It?

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Abstract: In light of the litigation surrounding the Belfast Project—an oral history collection of Northern Irish paramilitaries involved in the Troubles—the concept of archival privilege has resurfaced. First invoked in the 1980s to protect a collection from subpoena, archival privilege harkens to the idea that the importance of the historic record is greater than legal process. But what exactly is archival privilege? Unlike journalists shielding their sources or spouses preserving their relationship, archival privilege is about protecting information and documentation. With the focus on information and documentation, it becomes apparent that perhaps state secrets privilege or the work-product doctrine should serve as models for the privilege itself. However, when it comes to bringing archival privilege into existence, there is no better example to follow than that of the journalists who willed their privilege into existence not just through common law, but through legislative action.

In this paper, I will first discuss the possible extent and application of archival privilege based on existing privileges, and then, using New York’s Shield Laws as an example, I will outline the legislative push necessary to make archival privilege a reality.

About the author:

Christine Anne George works at the Charles B. Sears Law Library at SUNY Buffalo Law School where she serves as a faculty services and reference librarian and oversees the law library’s archives. She presented her article “Archives Beyond the Pale: Negotiating Legal and Ethical Entanglements after the Belfast Project” at SAA’s 2012 annual meeting and it was published in the *American Archivist*. Over the past year she has discussed archival privilege at various national and regional conferences. She received her B.A. from Bard College, her J.D. from St. John’s University School of Law, and her M.S.I.S. from the University of Texas at Austin School of Information. She has processed collections at the New-York Historical Society and worked with special collections as a Tarlton Fellow at the University of Texas School of Law’s Tarlton Law Library.