

Testimony before Joint Judiciary Committee, CT General Assembly -- March 10, 2014  
by Don DeCesare

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Chairman Coleman and Chairman Fox, Vice Chairs Doyle and Ritter, Ranking Members  
Kissel and Rebimbas, all Committee Members --

Last June, as you concluded the 2013 legislative session, you passed -- by a majority of more than 98 percent -- a bill that, with the Governor's signature, became Connecticut law. Public Act 13-311 made serious changes to the State's cherished Freedom of Information Act. Yet, implicit within your passage of this law was a plea for 17 citizens to give you considered guidance in how to improve it -- for the benefit of all the State's citizens -- in how to balance the interests of the public at large with those of victims of crime and their families. Those 17 citizens comprised the Task Force on Victim Privacy and the Public's Right to Know.

I was privileged to be named one of the Task Force's Co-Chairs. Over more than six months we worked diligently and dutifully to fulfill our mission and find that balance which you, by law, charged us to find. Senator Coleman and Representative Hovey, you both know how hard we worked, as you both were strong, contributing members of the Task Force. During our time together we compiled hundreds of pages of reference material, heard hours of public testimony, and spent scores more hours among ourselves debating every aspect of this very complex and sensitive issue.

As we began, commentators predicted we would not be able to achieve our goal. Some even claimed the Task Force was stacked and would merely ratify existing law. There was even an article which mocked us for being too courteous in our meetings. Let me assure all of you who were unable to observe our sessions closely, while we were indeed courteous, we seventeen expressed our views passionately. Our debate was, at the very least, spirited.

In the end, we reached agreement on a series of recommendations to improve PA 13-311. And, I must add, we did so by overwhelming majority -- better than 80 percent; 14-3. Those recommendations are, of course, the centerpiece of our Final Report which, as the law required, we've submitted to the legislative leadership. I know all of you will read the report carefully so as to get the full context behind our recommendations. I hope all those who will come before you to testify about these issues will have also read the report and let it inform their comments.

Your staff has translated the Task Force's recommendations into legislative language, which you have before you as Raised Bill Number 388, and modified by substitute language in L-C-O # 2360. The combination of that substitute language with the original #388 more properly reflects the recommendations agreed upon by the Task Force. I would urge you to use this newer language, coupled with the earlier language for the other sections of the raised bill, as your text for discussion.

As to our recommendations, they are truly the product of many weeks of discussion and negotiation. They represent the best that both sides could achieve through mutual agreement.

As such, you should consider them as a package, carefully crafted to balance all the issues we had before us. I urge adoption of them as they are.

For my own part, I am most pleased that -- overwhelmingly -- the Task Force reaffirms the public's right to inspect and review all official documents and materials, both audible and visual, associated with homicides. As you consider these recommendations, remember we found a way to maintain the principle of full public availability, yet preclude the general release and subsequent dissemination of horrifying photos and videos. We found a way to provide privacy and dignity to victims and their families while enabling anyone to judge the work of law enforcement and to speak or write freely about it. Furthermore, we protect against potential malfeasance by inserting a reasonable appeal process, which could provide full public release through the already existing FOIC and, if necessary, the courts.

The Task Force's recommendations also address Section 1 of PA 13-311, which with five words -- "the identity of minor witnesses" -- created an entire class of citizens who might never be accountable for statements they made, signed or unsigned, to the authorities. We debated this section strenuously and, in the end, agreed, again overwhelmingly, to limit it. The Task Force's recommendation in this area can achieve for law enforcement and the justice system all of what we perceived to be needed to protect minors and at the same time encourage witnesses to volunteer statements.

There is one other Task Force recommendation I wish to highlight: that associated with Section 4 of PA 13-311. By this recommendation we urge the Legislature, to study deeply the public policy questions associated with victim privacy in an information age. Connecticut's Freedom of Information Law, now nearly forty years old and already revised numerous times, seems too often, as one of our members said, to be gauged both the villain and the savior, depending on who is referencing it, when complicated and sensitive public policy issues are raised. New exemptions to it -- even the ones we are recommending here -- further frustrate the public's belief that government should have nothing to hide.

And so there is an urgency to act during this legislative session and put the Task Force's recommendations into law. According to the Governor's office, about one hundred of our neighbors were murdered in Connecticut during 2013. As PA 13-311 requires, the most critical of homicide crime scene materials remain unavailable to public scrutiny. No one can truly know whether the investigations into those murders were properly conducted or even if those investigations correctly concluded anything with regard to the crimes. The public is left needlessly ignorant. Confidence in law enforcement and the justice system may well be eroded. The Task Force recommendations, when enacted into law, will re-open all these murder files to public examination and, when essential, full public release.

Overall, therefore, our recommendations provide the framework which fulfills our charter. We, by overwhelming majority, found a balance between the privacy rights of homicide victims (and their families) and the public's right to know what its government is doing. Adopting these recommendations into law this session, should again move Connecticut to the forefront in providing public access to official documents of all kinds.

Clearly the Task Force has illuminated issues which are of sufficient consequence that our recommendations, even when made law intact, cannot nor should not end the considerations you required us to begin.

Thank you for your time. I am pleased to answer any questions you may have.

Don DeCesare

A handwritten signature in cursive script, appearing to read "Don DeCesare".