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Public Hearing Testimony
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Judiciary Committee
Len Fasano, State Senator, 34th District

Senator Coleman, Representative Fox, Ranking Members Kissel and Rebimbas and members of the Judiciary Committee, I am here today to testify in support of **SB 388: AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE TASK FORCE ON VICTIM PRIVACY AND THE PUBLIC'S RIGHT TO KNOW.**

As a member of the Task Force, I can tell you that much thought and deliberation went into crafting our recommendations. They reflect a compromise among often conflicting interests and points of view. Much has been written about the work of the Task Force and these recommendations. Therefore, with your indulgence, I would like to make the following points:

1. The Task Force Recommendations Provide Open Access To All Images and Audio

Contrary to many false and misleading press reports, the task force recommendations would not keep homicide photos and 911 tapes "secret". In fact, our recommendations ensure that anyone, including private citizens and members of the press, could view homicide photos and listen to 911 tapes. This access would be guaranteed and automatic - no questions asked. Individuals would then be free to write about and discuss what they saw in a photo or heard on an audio tape in the press, on a blog, or in whatever forum they choose. Transcripts of 911 tapes would also be made available to anyone and could be published and reproduced.

Thus, the recommendations provide much greater access to homicide photos than the bill adopted nearly unanimously by this legislature last year. That bill provided absolute protection for homicide photos. Our recommendations reverse that and instead provide absolute access for any person wishing to view such photos

What the recommendations would do is ensure that potentially gruesome homicide photos and emotionally wrought audio tapes are not copied and distributed publicly unless there is a significant public interest in doing so. For example, any person who, after viewing a photo,

believes that writing about what is shown in that photo is insufficient and that publicizing the photo is in the public interest may request its release.

This structure guarantees public access to all records. It is merely the reproduction of such records that would be conditional. If the public dissemination of a photo showing the body of a homicide victim or audio tape depicting that victim's last dying moments is necessary to advance a significant public interest, than the Freedom of Information Commission could order its public release.

By providing unfettered access to all homicide photos and audio while requiring a public interest showing before allowing their widespread public dissemination, this proposal strikes a reasonable and appropriate balance. It ensures that members of the press and others can view photos and listen to 911 calls to determine if there are any inconsistencies or signs of official impropriety. They are obviously free to write about whatever they see and hear, and if inconsistencies or improprieties are found, seek to have the photo or audio released for public distribution.

2. The Task Force Recommendations Are Consistent With Existing Connecticut Law

Connecticut's existing FOI law contains literally hundreds of exemptions shielding everything from personal tax information to information on shellfish grounds. Many of these exemptions are intended to protect the privacy of certain classes of individuals, including: (1) the personnel files of state employees, (2) performance evaluations for public school teachers, (3) Judicial Review Council investigations into the conduct of judges, (4) State-Wide Grievance Committee investigations involving complaints against attorneys, (5) Department of Labor investigations into workplace accidents, and (6) reports and investigations of patient abuse at a nursing home. It is impossible for me to understand how we can protect the privacy of public employees, judges, attorneys, nursing homes that may commit abuse, and businesses where employees have been hurt on the job, and not provide some protection to private citizens who become the victims of violent and random acts of crime.

3. The Task Force Recommendations Provide Greater Access Than Federal FOI Law As Well As The Law In Many Other States

Federal law and seventeen states have privacy exemptions that allow a law enforcement agency to refuse to disclose *any* record, if such disclosure could constitute an unwarranted invasion of privacy.¹ Because these exemptions apply to any record, not just homicide photos and audio, and provide for total non-disclosure, they are much broader than what we are recommending.

In addition, (1) approximately nine other states have laws that either prohibit the disclosure of death or crime scene photos or limit their disclosure to next of kin, and (2) approximately thirteen states either prohibit the disclosure of 911 tapes or allow state agencies to deny

¹ See 5 U.S.C.A 552(b)(7)(C) exempting all law enforcement records or information where disclosure "could reasonably be expected to constitute an unwarranted invasion of privacy."

disclosure.² Put together, federal law and the law in half of the states in this country would protect crime scene photos and 911 tapes from unwarranted disclosure.

Thus, our recommendations provide greater access to such records than either federal law or the law in half of the states in this country. By ensuring free access to homicide photos and audio while merely placing reasonable restrictions on their reproduction and distribution, Connecticut will continue to be a leader in open government.

4. The Task Force Recommendations Correctly Balance The Legitimate Privacy Rights of Victims With The Public's Right to Know

In National Archives and Records Administration v. Favish, 541 U.S. 157 (2004), the U.S. Supreme Court ruled that the death scene photos of Vincent Foster, deputy counsel to President Clinton, were exempt from disclosure based upon the legitimate privacy concerns of his surviving family members. The court noted that this right to privacy is not merely statutory but is grounded in our common law and constitution. State courts have followed a similar analysis in shielding certain records from disclosure, including the 911 tapes from the September 11th attacks and the Station nightclub fire in Rhode Island, and certain autopsy records from the Columbine school shooting.³

Thus, the idea that there exists a fundamental right to privacy that may limit the public disclosure of certain documents is neither unprecedented nor novel as a matter of law. This right to privacy is imbedded in our constitution and is the same right to privacy that provides the basis for many important individual rights, including the right to be free from unwarranted search and seizure and the right to control our own bodies. That some would cavalierly disregard this fundamental right simply because a private citizen has become the victim of a random act of violence should cause great concern to those who have fought so hard for these rights.

As the Supreme Court stated, "where the subject of the documents is a private citizen the privacy interest ... is at its apex." Unlike individuals applying for a government license or voluntarily requesting government action on their behalf, crime victims do not choose to become the subject of a government investigation. Their bodies are poked and prodded, photographed and tagged without their consent. As such, the Supreme Court found that the federal privacy exemption rightly "requires us to protect, in the proper degree, the personal privacy of citizens against the uncontrolled release of information compiled through the power of the State."

By allowing access to homicide photos and video but conditioning the reproduction and dissemination of such records upon a public interest showing, the recommendations rightly recognize the legitimate privacy interests of victims and their families while still protecting the public's right to know.

5. The Task Force Recommendations Accurately Reflect Modern Day Reality

² For a discussion of FOI exemptions in other states see OLR Reports 2013-R-0364, 2013-R-0384, and 2013-R-0435.

³ See Bodelson v. Denver Publishing Co., 5 P.3d 373 (Colo.App. 2000); Providence Journal Co. v. Town of West Warwick, 2004 WL 1770102 (R.I. Super. 2004); N.Y. Times Co. v. N.Y. Fire Dept., 829 N.E.2d 266 (N.Y. 2005).

I have the utmost respect for our local mainstream media outlets. They correctly note that they have rules of professional conduct and do not recklessly publish gruesome crime scene photos. However, this is not about them. For better or worse, they now represent a tiny fraction of what is available and published in the modern media.

Whether a result of pressure from internet news sites or simply a decreased sensitivity, even mainstream media outlets have published horrific and personal images of crime victims. For example, the Huffington Post published photos of Jodie Arias' murdered boyfriend - dead and bloody in the shower. NBC ran clips of a man jumping to his death on September 11th. In 2004, the Boston Herald published what one veteran reporter described as "lurid photos" of a young woman "sprawled and bleeding on the pavement" after she was hit by a police projectile. A Florida TV station aired close up video of a local police chief removing a victim's skull from an evidence box. An NBC station aired video of a dying man's last moments that was taken inside a private apartment without consent.

Not surprisingly, the images posted and available for all to see on the internet are truly disturbing. Just google "Nikki Catsouras" and you will quickly find images of her decapitated bloodied body sitting inside her mangled car. Or, better yet, check out the many websites dedicated to posting the most gruesome photos including www.crimeshots.com, www.documentingreality.com, or www.everwonder.com.

This is why even our Supreme Court jurists, who were raised in a different era, nevertheless recognized a victim's rightful desire "to be shielded by the exemption to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility ...", and took judicial notice of Sheila Foster's legitimate "fear that the release of [additional] photographs would set off another round of intense scrutiny by the media. Undoubtedly, the photographs would be placed on the Internet for world consumption."

In my mind, there is simply no reason to force family members to view the dead bodies of their loved ones and commit them to a lifetime of being afraid to type their own last name on a computer for fear of the images it may generate, when any legitimate public interest in viewing those images can otherwise be accommodated. These recommendations make that accommodation. They deny access to no one, yet provide peace of mind and solace to many.

In closing, I would like to point out that there was an error in drafting the proposed bill. As the Task Force Co-chairs, Rep. Arce and Don Decesare, have testified, there is substitute language that more accurately reflects the intent of the task force with respect to providing notice to the families of crime victims. I urge your committee to adopt these recommendations with the substitute language.

Thank you for your time and attention.

Senator Len Fasano