



State of Connecticut
SENATOR DONALD E. WILLIAMS, JR.
Twenty-ninth District
President Pro Tempore

**Testimony before the Judiciary Committee
Senator Donald E. Williams, Jr.**

March 10, 2014

***In Opposition to SB 388, AA Implementing the Recommendations of the Task Force on
Victim Privacy and the Public's Right to Know***

Good afternoon, Senator Coleman, Representative Fox, distinguished members of the Judiciary Committee.

There have been many occasions in history where controversial images and recordings have had a dramatic impact on public policy, reform, and an understanding of the value and importance of the First Amendment to our democracy.

I appear before you today to testify against **SB-388, "AA Implementing the Recommendations of the Task Force on Victim Privacy and the Public's Right to Know."**

Let me first discuss what I see as the specific problems with the proposed legislation. Section 1 (b)(3) would create a sweeping prohibition on the release of information concerning the identity of witnesses in virtually all criminal drug offenses and all crimes of violence. If enacted, this would result in an unprecedented denial of previously available information, with no necessary relation to witnesses being threatened or endangered, and no relation to the security of an investigation. It is a suppression of information for its own sake. This radical change is at odds with the rest of this section that sets forth specific protections when the release of such information would jeopardize the safety of a witness or undermine the integrity of an investigation.

The tools to protect adult and minor witnesses are already enshrined in law in this section; this change would set a dangerous precedent and no doubt result in adverse consequences, including making it harder for defense attorneys to represent their clients. There will be unintended consequences as well, particularly concerning wrongful convictions. We have all read about cases involving defendants who are convicted of a crime of violence, a drug offense or a sexual assault, who are later exonerated. They are exonerated because of the work of law students, journalists, or interested citizens who discover discrepancies by interviewing witnesses; witnesses who often recant their testimony. At the national level, numerous wrongfully convicted individuals have been rescued from death row or long jail

terms because of such work. Access to basic information—including the names of witnesses—is essential to reversing wrongful convictions. This bill would make those efforts impossible in Connecticut. The language in this section undermines transparency and accountability in our criminal justice system on a massive scale.

The remainder of this legislation would prohibit and block the public from hearing 9-1-1 calls and other official recordings involving homicide cases through the media; through television and radio news in the way that most people have become accustomed to hearing 9-1-1 recordings. The original language of the bill would make the prohibition contingent upon the objection of a victim's relative or a legal representative on the basis of unwarranted invasion of privacy. The substitute language vests this decision with a government agency, where it can be assumed that requests for information will be automatically denied. In both scenarios, the outcome is bad for the public and bad for our criminal justice system.

This section, when fully understood, is an affront to just about everyone. First, for those who truly believe that it is a good idea to prohibit radio and television news from informing the public through the broadcast of these tapes, the problem is that news about a homicide will almost never be considered an invasion of privacy. Current law provides for an exemption if "... disclosure of which would constitute an invasion of personal privacy." C.G.S. § 1-210 (b)(2).

In Connecticut, this issue was addressed in the State Supreme Court case of *Perkins v. FOI*, 228 Conn. 158 (1993). In *Perkins*, the Court held that for the release of information to constitute an invasion of personal privacy, a) it must *not* pertain to a legitimate matter of public concern; and b) the release of the information is highly offensive to a reasonable person. Only if both of these tests are met is the matter considered an invasion of personal privacy.

I believe that a court will find that any homicide case, which of course involves the death of an individual and the response by public safety officials, will constitute a legitimate matter of public concern. I am attaching an Office of Legislative Research memo on the *Perkins* test that provides support for this conclusion ("Use of *Perkins* Test In Other Jurisdictions," February 21, 2014).

I believe one clear exception would be in the case of an image of a deceased child where the parents objected. That right to privacy has been upheld in the case of *Marsh v. County of San Diego et al.*, United States Court of Appeals, Ninth Circuit. 680 F. 3rd 1148, (2012).

So the bottom line is this: the language in this legislation will create an expectation of secrecy that in turn will be correctly reversed on appeal. And this is where it gets worse. There is an old saying that justice delayed is justice denied. By delaying the release of this information, the interest in the case and the value of the news decreases. By waiting weeks or months for an appeal to the Freedom of Information Commission, or years if the appeal goes to court, those who want to keep this information secret will have succeeded in thwarting the public's right to know in a timely manner. If the information could have

helped influence reforms in our criminal justice system, this benefit may be lost. There is another unfortunate consequence: when the information is withheld, and is later revealed and broadcast only after a long appeal, the new round of stories may be more hurtful to the victims than if the information had all come out at the time of the tragedy.

If on the other hand our courts overturn or distinguish the *Perkins* case, and permit the suppression of audio tapes related to homicide cases, the net effect will be less information about police response to violent crime, less trust in our judicial and public safety departments, and more speculation and conspiracy theories that undermine confidence in judicial outcomes.

When President John Kennedy was assassinated in 1963, there was no Freedom of Information Act at the federal or state level. The Time-Life Corporation owned the rights to the infamous Zapruder film, one of the most important pieces of evidence in that case. We can all agree that the decision to deny public access to that film—the first time it was shown on nationwide television was 12 years after the assassination in 1975—did not serve the public interest or history.

There have been many public information controversies throughout our country's past including objections to Mathew Brady's famous photographs of Civil War troops killed and wounded—the photographs that brought home the truth and brutality of war for the first time. The release of information related to violence has made the greatest difference in communities that are underserved or ignored by the media—poor urban and rural neighborhoods. Horrific photos of lynchings in the early 20th century helped galvanize outrage and opposition to the Ku Klux Klan. The brutal beatings of the Freedom Riders in 1961, in Anniston, Alabama, where a Greyhound bus was firebombed, and the bombing of the 16th Street Baptist Church in Birmingham, Alabama in 1963, which killed four young girls, were communicated by the media in explicit photographs and film that shocked the nation and spurred the Civil Rights movement. Today the release of 9-1-1 calls has brought national attention to cases such as the “stand your ground” killing of Trayvon Martin in Florida, and created discussions about racial profiling and prejudice in a case that had previously been ignored by the prosecution and the national media. After the 9-1-1 tapes related to the tragedy at the Sandy Hook Elementary School were released late last year—tapes that revealed important information about the effective response of school staff and first responders—*Time Magazine* said, “covering our ears will not make an ugly reality disappear, but paying close attention might make our response to it more rational.”

Abraham Lincoln said, “let the people know the facts and the country will be safe.” Years later Walter Lippmann said, “the theory of a free press is that the truth will emerge from free reporting and discussion, not that it will be presented perfectly and instantly in any one account.”

This legislation is unnecessary. It is not only counterproductive—it is destructive. It has the potential to prolong the drumbeat of stories that its proponents seek to prohibit, and in turn create more and not less stress for victims. It will result in less transparency in our criminal justice system, less attention paid to the needs of families in poor, high-crime

neighborhoods, and will make it harder to discover flaws in our criminal justice system and bring about effective reform. For these reasons I ask this committee to reject this legislation. Thank you.