

October 16, 2013

Testimony Before the Task Force on Victim Privacy and the Public's Right to Know

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Members of the task force:

My name is Claude Albert. I am the legislative chair of the Connecticut Council on Freedom of Information. CCFOI was instrumental in winning passage of the state Freedom of Information Act in 1974 and has worked for more than half a century to further government transparency and accountability. Thank you for giving us this opportunity to address you.

As you well know, the difficult question before you concerns where to draw the line between privacy for the families of homicide victims and the public interest in the transparency and accountability of the criminal justice system. The fact that this inquiry comes in the shadow of the horrific tragedy in Newtown weighs heavily on all of us and makes some of the issues before you wrenching ones.

The enormity of that crime makes it difficult to examine these issues through any other lens. Nonetheless, it is critical to keep in mind that any new law the legislature enacts would apply to all homicides. CCFOI believes the legislature should not forbid public access to crucial evidence in homicides or other crimes, including crime scene photographs and 9-1-1 recordings.

CCFOI believes there is no area where public transparency is more vital than in the administration of justice. The need for accountability is particularly acute when the police and prosecutorial powers of the state are exercised in the name of society at large.

The public good in access to 9-1-1 tapes and similar communications is clearly stated. As the Record-Journal in Meriden put it in a recent editorial, "How can the public know whether an emergency was handled well or poorly if the minute-by-minute events are going to be reviewed only by insiders, meeting in secret? Or swept under the rug and not reviewed at all?"

When it posed that question, the Record-Journal might well have had in mind the most horrific crime in memory within its coverage area --- the Cheshire home invasion. There the police department has yet to perform a review of its response on that terrible day. Cindy Renn, the sister of Jennifer Hawke-Petit, one of the victims, told The Hartford Courant in July that family members have repeatedly asked the Cheshire police to explain what happened and have never received an answer. "If they never even looked at what happened and what they did, then they didn't learn anything from our family's deaths," she said.

More broadly, CCFOI believes the public good requires a way to expose mistakes, inadequacies or misconduct in the criminal justice system. The vast majority of cases do not raise such questions, of course, but certainly, over time, there are cases where police response to an emergency seems inadequate; where the handling of an investigation or a decision not to prosecute is suspect; where a shooting by the police is questioned; or where some other shortcoming is alleged. When those cases arise, the public, at some point, must be able to review the record – including all the evidence.

Similarly, in rare cases, the families of victims may themselves want to make evidence public, especially if they feel there has been a miscarriage of justice. They may not find an enforced secrecy in their interest at all.

The criminal courts have long understood that public confidence in their judgments and verdicts requires all relevant evidence to be presented in open court. They have recognized a constitutional right of public access to court sessions, documents and exhibits. Graphic materials are regularly made public in court as part of normal procedure. They have also long been part of police files subject to public inspection under the Freedom of Information Act.

Nonetheless, crime scene photographs of homicide victims are virtually never published. To cite some recent Connecticut examples, no photographs of victims from the 2010 mass shooting at Hartford Distributors in Manchester or the 1998 lottery shootings in Newington were ever published. Does this guarantee that no one will publish photographs of Newtown victims? It does not. But it does demonstrate that there has been restraint about such publication in the past.

In sum, CCFOI agrees with The National Press Photographers Association Code of Ethics, which says in part, “Treat all subjects with respect and dignity. Give special consideration to vulnerable subjects and compassion to victims of crime or tragedy. Intrude on private moments of grief only when the public has an overriding and justifiable need to see.”

But we also believe that for the state to conceal evidence of a crime is a dangerous precedent and not in the public interest.