

**Testimony of Rosanna Cavanagh, Esq.
New England First Amendment Coalition
Task Force on Victim Privacy and the Public's Right to Know
October 16, 2013**

This testimony is a follow up to my in person testimony on October 16, 2013 before your task force. As the Executive Director of New England First Amendment Coalition, a non-profit organization working in the six New England states to promote and defend our First Amendment freedoms and the principle of the public's right to know, I thank you for the opportunity to provide testimony as your task force grapples with the extremely difficult aftermath of the Sandy Hook massacre and the appropriate line between privacy interests of victims and the public's right to know. My heart goes out to all of the victim's families. My prayers have been with them since this tragedy and will continue to be. My purpose, however, is to discuss the public's interest in access to governmental records even records that may contain sensitive subject matter.

Robust state public access laws are essential to enhancing our democratic system and engaging the citizens of Connecticut in oversight of the proper functioning of their government. Public access to investigative reports, 9-11 emergency call transcripts and recordings, death certificates, and autopsy photos make it possible for the public to monitor the performance various governmental units

The passage of new legislation this summer modifying the Connecticut Freedom of Information Act severely damages the strength of what has been heretofore model freedom of information regime. Throughout the past decades, Connecticut's independent Freedom of Information Commission has been a model for New England, our nation and even our world. Former Freedom of Information Commission Chairman Mitchell Pearlman has advised in over 20 countries on setting up effective freedom of information regimes due to his experience in Connecticut. As a close neighbor of Connecticut in Rhode Island, I can tell you I have heard countless times from citizens and open government advocates that if only we could have the commission that Connecticut has, then we could have some hope for openness.

The main problem with the recent legislation is the scope of the exemptions it creates. Exempting documents related to any homicide where the public release of photos, videos, or other visual images depicting a victim "could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members" creates a broad new category of information off limits to the public.

It is a real concern to government watch dog organizations, that in the unfortunate case of a homicide related to police misconduct or brutality, the photographic, video, and audio evidence would fall under this exemption and thus be barred from public view. Recent history teaches us that this is more than an academic concern. The following incidents are shortened versions of information available online.¹

November 5, 1992: In Detroit, Michigan, Malice Green died while in police custody after being arrested by Detroit police officers Walter Budzyn and Larry Nevers during a traffic stop. Green allegedly failed to relinquish a vial of crack cocaine. Nevers struck Green in the head with his flashlight approximately fourteen times during the struggle which, according to the official autopsy, resulted in his death. An Emergency Medical Service (EMS) worker arrived on the scene and sent a computer message to his superiors asking, "(W)hat should I do, if I witness police brutality/murder?" Other officers and a supervisor arrived but did not intervene to stop the beating. Green had a seizure and died en route to the hospital. The official cause of death was ruled due to blunt force trauma to his head. Both officers were convicted of second degree murder, but in a retrial (due to juror misconduct), they were convicted of involuntary manslaughter. A photo taken of Green used in trial revealed the wounds to his head.

On September 15 of this year, an African-American man, Jonathan Ferrell was fatally shot by police. He was in distress and had recently suffered a car crash in nearby woods. On Saturday morning, three police officers in Charlotte, NC responded to a 911 call from a woman, who said that an unknown male was knocking on the door of her house, local media reports. When the patrol arrived at the scene, the man – later identified as Jonathan Farrell, 24 – rushed at the officers, causing them to believe that he

may be dangerous. The policemen tried to neutralize the suspect with a Taser, but when it didn't work out, one of them used his gun, firing several shots. Farrell died of his wounds on sight. The body search revealed that he had no weapon on him. Several hours later a wrecked car belonging to the deceased man was discovered at a nearby embankment. "Our investigation has shown that Officer Kerrick did not have a lawful right to discharge his weapon during this encounter," a police statement also said, according to Reuters. Attorney Chris Chestnut said he is seeking to obtain every piece of piece of police evidence (no doubt including autopsy photos) from the shooting, adding that "If Mr. Farrell was not black or brown, wouldn't they have asked him a few questions before showering him with bullets?"

August 31, 2012: In Mesquite Texas, officers attempted to stop a vehicle that matched the description of vehicle that had been involved in a previous chase. Michael Vincent turned into a cul-de-sac and officer Patrick Tuter rammed his squad car into Allen's truck. According to a witness, the police yelled "Get out" then began shooting without giving Allen a chance to comply. Allen was unarmed. Tuter fired his weapon 41 times, requiring two reloads to do so. A witness took photos and video of the scene, which police confiscated. Tuter claimed that Allen had rammed his squad car, but video from the squad car's camera established it was Tuter that rammed Allen. Mesquite police say they confiscated, but did not destroy, a memory chip from a cellphone that was used to take pictures and video of the scene where a Garland officer shot and killed a fleeing suspect.

In 2009, Oscar Grant III was fatally shot by BART police officer Johannes Mehserle in Oakland, California, in the early morning hours of New Year's Day. Responding to reports of a fight on a crowded Bay Area Rapid Transit train returning from San Francisco, BART Police officers detained Grant and several other passengers on the platform at the Fruitvale BART Station. Officer Johannes Mehserle and another officer were restraining Grant, who was lying face down and allegedly resisting arrest. Officer Mehserle stood and, according to his attorney, said: "Get back, I'm gonna tase him." Then Mehserle drew his gun and shot Grant once in the back. During his court

testimony, Mehserle said that Grant then exclaimed, "You shot me!" Grant turned out to be unarmed; he was pronounced dead the next morning at Highland Hospital in Oakland. The events were captured on multiple digital video and cell phone cameras.

While it is problematic to create a blanket exemption for photos of homicide victims and restrict access to certain audio recordings describing the condition of a victim as the new exemptions to the Connecticut Freedom of Information Act do, **it would be even worse if this law would go further than it already has to restrict access to portions of audio tape or other recordings where the individual speaking on the recording describes the condition of a victim of homicide in an emergency 911 call or other call for assistance.**

An amicus brief prepared on behalf of several organizations including New England First Amendment Coalition related to accessing 911 information in Maine highlights several incidents in which information from emergency calls were essential as an oversight tool to pinpoint problems in emergency response protocol and provide examples of costly delays which at times led to the death of those relying on such systems for help. At times the 911 call provided information more accurate than the "official" version of such events and in doing so exposed problems in need of attention.ⁱⁱ See summaries from the brief below:

Tapes of 911 calls revealed an eight-minute delay before the dispatch of sheriff's deputies after a social worker called 911 to report that a father of two children had locked her out of the house during a supervised visit and that the social worker smelled gas. The 911 records showed that the dispatcher questioned the social worker for nearly seven minutes before saying that he did not know when deputies could respond, dispatching the call as "routine" rather than an "emergency." Deputies arrived to find the house engulfed in flames along with the two boys and their father dead inside.ⁱⁱⁱ

In Baton Rouge, Louisiana, 911 records revealed that a technical glitch led to a thirteen-hour delay before police arrived at the scene of a shooting to find a two-year-old boy inside a home with his dead mother.^{iv}

The Arizona Daily Star in Tucson, Arizona, obtained 911 records to learn more details about a SWAT team raid where authorities shot a man 60 times. In a 911 call by the man's wife, she describes how she woke him after hearing noises outside and saw a man standing outside a window. She also told dispatchers that her husband, a former Marine, hid the wife and their four-year-old son in the closet before heading toward the front door with an assault rifle, apparently believing that people were attempting a home invasion. SWAT team members fired more than 70 times on the man, hitting him 60 times. Police initially reported that the man fired first but later retracted the statement after documents showed that the man's assault rifle had its safety on when he was shot. After police had shot her husband, the wife pleaded with dispatchers for more than five minutes to send an ambulance, with authorities letting paramedics into the home nearly an hour later after expressing confusion over whether the home was part of a series of raids police had planned on homes suspected of being involved in drug trafficking.

In conclusion, as your Task Force grapples with the difficult aftermath of the Newtown tragedy, I urge you not to overlook the unexpected consequences of changes to the Connecticut Freedom of Information Act. There are alternatives to addressing the real needs of the Newtown families, one of which may be taking a look at your laws regarding intentional infliction of emotional distress. Other possible compromises discussed at the hearing would be less advisable. Putting an age limit on autopsy photos could create a barrier to identifying instances of child abuse murder. Allowing only the press or family members access to the autopsy photos is problematic as the constricting media industry cannot be our only source of governmental oversight. Finally, a "look, listen but do not copy" rule creates problems of proof when conflicting claims are being made as to what occurred. It also would limit the ability to share information with colleagues and/or experts who could be the key to understanding the truth.

Thank you very much for your consideration of my testimony. My thoughts are with you all as you undertake this challenge.

ⁱhttp://en.wikipedia.org/wiki/Police_brutality_cases_%28United_States%29

ⁱⁱ See Maine Today Media, Inc. d/b/a Portland Press Herald/Maine Sunday Telegram v. State of Maine, Amicus Brief of The Reporters Committee for Freedom of the Press, New England First Amendment Coalition, Maine Association of Broadcasters, Maine Freedom of Information Coalition, Maine Press Association and Associated Press available at: <http://nefirstamendment.org/files/2013/04/Amicus-Brief.pdf>

ⁱⁱⁱ See Mike Baker and Gene Johnson, Tapes Show Delay in Sending Cops to Home, The Associated Press (Feb. 9, 2012), available at 2012 WLNR 2783332.ⁱⁱⁱ

^{iv} See Joe Gyan, Jr., Boy Gets \$3,400 in Suit Over Slayings, Baton Rouge Advocate (May 31, 2013), available at 2013 WLNR 13448368.