

Connecticut Daily Newspapers Association

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Testimony of

Kevin Crosbie

Before the Judiciary Committee in support of H.B. 5212

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Chairperson McDonald, Chairperson Lawlor, members of the Committee, thank you for the opportunity to comment before your committee today. My name is Kevin Crosbie and I am the publisher of the Willimantic Chronicle and serve as past-president of the Connecticut Daily Newspapers Association; an organization that represents The Torrington Register, Danbury News-Times, Greenwich Times, Norwalk Hour, Stamford Advocate, Connecticut Post, Waterbury Republican-American, New Haven Register, Bristol Press, Meriden Record, New Britain Herald, Hartford Courant, Manchester Journal Inquirer, Middletown Press, New London Day, Norwich Bulletin and Willimantic Chronicle.

I believe the time has come to afford protections available to news gathering organizations through a shield law. Initially I have been hesitant about this idea feeling that the First Amendment grants all citizens certain freedoms and protections. I was concerned about creating a special, protected class of persons entitled to protection not otherwise available to others.

However, the obvious reality is that the press has always been envisioned as the eyes and ears of the public. Its job is to obtain and disseminate information necessary for an informed public to make rational decisions based on facts. The public at large does not have that responsibility. It relies on information given to it by the government, private commercial entities and the press. Without the press asking why, how and who, we have decision making by governmental and commercial press release. As we learn daily, those press releases are not entirely accurate or complete.

Why a Shield Law is Needed:

There has, historically, been a tension between government at all levels, on the one hand, and those reporting on the behavior of government, on the other. Government officials want *their* stories told on *their* terms. Without the press to look under the hood, uncountable instances of abuse and deception would never be uncovered.

It is also no secret that many leaks, disclosures and leads originate with government officials. Often, those same officials try to stop others from leaking what they don't want

disclosed. The subject of those leaks and disclosures can range from mundane gossip concerning personal foibles, to critical matters of public concern, such as favoritism in the award of contracts, violations or non-enforcement of laws and regulations, to outright bribery and corruption, which we have, tragically, witnessed first hand in this state over the past few years.

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Every news organization relies on reliable sources for their leads. Sometimes, those sources require promises of confidentiality in order to disclose this information. We then have to make judgments as to whether these sources are providing usable information, or whether we must go further to corroborate the source and gather additional information. The point is that source would not provide the information if confidentiality is not assured.

When subpoenas are issued to a news organization for source identity or documents, the first concern we have is to protect the source of the news or document. Otherwise, the sources will not again come forward. In many cases, that is precisely the result that a governmental entity would prefer--to silence the source so that further embarrassment will not result, or pesky questions will no longer be asked.

There is an additional reason why source confidentiality is critically important to the press--we are not an investigative arm of the government.

That brings us to why we need a shield law in Connecticut. While Connecticut state and federal courts have generally recognized a qualified privilege for news sources based on either common law or the First Amendment, the application of this privilege has been somewhat inconsistent and unpredictable.

Some courts, including the District Court in New York City in February 2005 (Judge Sweet in NY Times v. Gonzales) on the subpoena of phone records of its reporters regarding a governmental leak investigation, have had no difficulty recognizing both a common law and constitutional privilege of the press to rely on confidential sources to gather information on important issues. Other courts have held that no such privileges apply. This uncertainty is having a negative effect on news gathering throughout the United States in the twenty or so states, such as Connecticut that do not presently have shield laws.

I believe that the provisions outlined in H.B. 5212 protect the confidentiality of sources and protect the aggrieved party in a criminal or civil case.

The press in Connecticut needs a shield law for the simple reason that it will help protect the free flow of information to the press, and thus, to the public, from sources who have legitimate reasons to be kept confidential. By eliminating the fear of fine or imprisonment in return for keeping source identity confidential, this proposed bill is a promising step forward.