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Testimony of

Kirk Varner

Before the

Judiciary Committee

in support of

H.B. 5212, AN ACT CONCERNING FREEDOM OF THE PRESS

Chairman McDonald, Chairman Lawlor, members of the Committee, thank you for the opportunity to testify before your committee this afternoon. My name is Kirk Varner and I am the Vice President and Director of News for television stations WTNH and WCTX, the ABC and UPN affiliates for Connecticut. I am also here today speaking on behalf of the Connecticut Council on Freedom of Information. The CCFOI has many of the state's leading newspapers and broadcasters among its membership.

I am here to speak in support of H.B. 5212 AN ACT CONCERNING FREEDOM OF THE PRESS. An act which we believe addresses a vital need in the support of the freedom of the press set forth in the U.S. Constitution. A freedom which is currently subject to growing number of legal challenges. It is this very troubling trend that has led some 31 other states across our country to establish similar legislation, shielding reporters from being compelled to divulge confidential information or identify confidential sources under threat of a subpoena. Even the United States Senate is reviewing the problem for possible legislative action on the Federal level.

So let us examine for a moment the simple question: Why is this legislation necessary here in Connecticut? Isn't a free press guaranteed by the constitution and shouldn't that be enough? If we lived in a society where basic rights were that simple and clear cut, it might be. But as everyone in this room knows, that simplicity is subject to interpretation and indeed in some cases, misinterpretation.

Yale Law Professor Alexander Bickel, writing in a brief filed in the Supreme Court case *Branzburg v. Hayes* in 1972 stated it well when he wrote, "The public's right to know is not satisfied by news media which act as conveyor belts for handouts and releases, and as stationary eye-witnesses. It is satisfied only if reports can undertake independent, objective investigations." We couldn't agree more.

That is why one crucial tool of investigative journalism is the use of confidential information and confidential sources. The ability of a reporter to obtain information that might not be readily available or forthcoming, and then to publish or broadcast that information is sometimes the only avenue to expose those stories that others, including in some cases the government itself, would prefer not to be brought to light. Key to that ability to illuminate such stories is for a reporter to be able to promise to keep the source

of confidential information just that-confidential, because without that promise, there would be often be no information to support a story in the first place.

Journalists take this promise of confidentiality very seriously. They are usually reluctant to grant it unless it is the only way to get to the truth, because they know they may have to be willing to risk incarceration to protect their information and their sources. Of course we are all familiar with the landmark cases in this area from the Pentagon Papers and Watergate scandal, to more recent events with reporter Judith Miller and The New York Times, and our colleague, reporter Jim Taricani from WJAR television in neighboring Rhode Island.

But let me focus your attention for a moment on some real world examples of the question, right here in our state. In the past two years inside our newsroom at WTNH, investigative reporter Alan Cohn has reported on a number of stories that were based at least in part on confidential information, supplied to him by sources that sought promises of confidentiality. In one instance, his story exposed the illegal selling of Connecticut Driver's licenses by employees of the Department of Motor Vehicles. In another, the uncovering of trafficking in illegal aliens, recruited from counties outside the US and brought to Connecticut to work illegally for below minimum wages for fast-food outlets.

Those are two examples from just one newsroom. Every newsroom across this state could provide a number of their own examples, on stories both large and small on a regular basis, and in each case the reporter's ability to protect the source of their information was crucial to their ability to publish or broadcast reports that ultimately uncovered situations that potentially could impact us all.

But this reporting occurs with journalists knowing that in Connecticut, we do so under the potential threat of subpoena. That the justice system can compel us to identify confidential information and sources for any and whatever reason it determines, creates a chilling effect on news reporting that should be lifted. That any promise of confidentiality is subject to being voided by the courts with absolutely no standard for doing so, is not in keeping with the fundamental premise of having a free press as a cornerstone of democracy, in whatever form it operates.

What this proposed act establishes first and foremost is a standard to protect the fundamental freedom of the press to operate in our state, creating a standard by which journalists can obtain confidential information and in turn protect the confidentiality of their sources for that information. This is critically important, since in many cases throughout this nation, and sometimes even here in Connecticut--it is a government agency that has sought to compromise a reporter's promise of confidentiality.

Again, to quote Professor Bickel in his brief to the US Supreme Court that is as relevant today as it was 34 years ago—"There is not even a surface paradox in the proposition, as it might somewhat mischievously be put, that in order to safeguard a public's right to receive information--it is necessary to secure to reporters a right to withhold information."

The court's decision in *Branzburg* noted that there was "merit in leaving state legislatures free, within first amendment limits, to fashion their own standards" regarding the granting of any privilege to journalists. It is with that understanding that 31 states and the District of Columbia have enacted legislation protecting the press in varying degrees.

Some who might disagree with the need for this legislation before you, might perhaps point out to you that there is not a history of subpoenas being used against journalists in this state or that this is not a problem that requires legislative action at this time. But the simple fact is that to wait until a track record of a chilling effect on the news media in this state is established, would be much too late to address this issue in the meaningful way that you have before you in House Bill 5212.

It is for that reason that I urge you to support its passage.