

# ACCESS/RI

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The Honorable Patrick Lynch  
Rhode Island Attorney General  
150 South Main Street  
Providence, RI 02903

Dear Attorney General Lynch:

We write to express our profound disappointment at your decision not to join with 34 fellow Attorneys General – including your New England colleagues in Connecticut, Maine, Massachusetts and Vermont – who last week filed a brief in the U.S. Supreme Court in support of the appeal of journalists Judith Miller and Matthew Cooper. As you know, these two nationally respected journalists are facing contempt of court sentences for refusing to reveal sources in response to a federal grand jury subpoena.

The Supreme Court appeal raises issues of enormous significance in terms of the public's right to know. Our state, of course, is as familiar as any with the critical importance of this issue in light of the recent release from home confinement of news reporter Jim Taricani for his similar refusal to reveal a source in federal proceedings. We thus would have expected you to join with so many of your colleagues in urging review of Miller and Cooper's appeal, for this is far from an abstract constitutional issue for Rhode Islanders.

In fact, our state has a proud history in recognizing the importance of a "reporter's privilege." Rhode Island enacted a reporter's "shield law" back in 1971 – over 30 years ago and a year before a deeply divided U.S. Supreme Court held that such a privilege was not necessarily protected by the First Amendment's guarantee of a free press. R.I.G.L. §9-19.1-1 et seq. The lack of any corresponding federal privilege renders that state protection ineffectual in many circumstances, which is why this case is so significant.

In their brief, the Attorneys General recognize this point and further note – and approve – the critical purpose of shield laws: "to assure that the public enjoys a free flow of information and that journalists who gather and report the news to the public can do so in a free and unfettered atmosphere." The brief argues that the appellate court decision, which refused to find *any* federal reporters' privilege corresponding to the privileges that Rhode Island and 48 other states now have, "undermines both the purpose of the shield laws and the policy determinations of the State courts and legislatures that adopted them." Without taking a specific position on this particular case or the scope of a federal privilege, all 34 Attorneys-General agreed that "some form of a reporter's privilege grounded in federal common law is appropriate."

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We are sorry to see our own state's chief law enforcement officer stand silent when so many others across the country have recognized the crucial significance of this pending court case in allowing citizens to be able, in the brief's words, to better make "informed political, social and economic choices." Indeed, this week's dramatic revelation about Woodward and Bernstein's "Deep Throat" source – a source who can truly be said to have changed the course of American history – is particularly timely as a glaring reminder of just how essential shield laws are for the promotion of the public good.

Although it is too late for you to join the brief, we hope that, should the Supreme Court agree to hear this case, you will reconsider your decision to sit on the sidelines, and that you will instead participate with your colleagues in seeking a ruling that recognizes a federal reporters' privilege. The issues at stake, we submit, are too weighty to be ignored.

We would also appreciate learning your rationale for refusing to join the vast majority of your colleagues in signing this brief. Please contact me at the address above. Thank you in advance for your response.

Sincerely,

Barbara Meagher  
President, ACCESS/RI

Sheila Mallowney  
President, Rhode Island Press Association

Steven Brown  
Executive Director, R.I. Affiliate, American Civil Liberties Union

*ACCESS/RI, a broad-based non-profit freedom of information coalition dedicated to the belief that the records and processes of government must be open to the public, was founded in 1996, and is affiliated with the A. Alfred Taubman Center for Public Policy and American Institutions at Brown University.*