

PRESENTERS

NWC

NATIONAL
WHISTLEBLOWER
CENTER



NATIONAL WHISTLEBLOWER DAY 2018

DIRKSEN SENATE OFFICE BUILDING

WASHINGTON, D.C. | JULY 30, 2018

11:00AM - 1:30PM

National Whistleblower Center
3238 P St. NW, Washington, D.C. 20007 • contact@whistleblowers.org
202 342 1903 • www.whistleblowers.org

SPEAKER BIOGRAPHIES



JANE TURNER | FORMER FBI AGENT | MASTER OF CEREMONIES

Jane Turner worked for 25 years as a Special Agent for the FBI. She is one of the only FBI agents to win a lawsuit under the FBI Whistleblower Protection Act based on retaliation for exposing theft at the 9/11 crime scene. In a second whistleblower case, a jury in Minnesota found the FBI liable for retaliating against her in a sex discrimination lawsuit and awarded her the maximum damages permitted under law.



SENATOR CHARLES E. GRASSLEY | KEYNOTE SPEAKER

Senator Chuck Grassley (R-IA) is the founder and chairman of the bipartisan Senate Whistleblower Protection Caucus and also serves as Chairman of the Senate Judiciary Committee. Senator Grassley authored the modern-day False Claims Act, the IRS whistleblower law and numerous other highly successful whistleblower protection laws.



LINDA TRIPP | WHITE HOUSE WHISTLEBLOWER

Linda Tripp made disclosures to the Office of the Independent Counsel that President Bill Clinton had lied under oath in a sexual harassment lawsuit. Her testimony contributed to the House of Representatives voting to impeach the President, and resulted in a sitting president being found in contempt of court and losing his law license. Tripp was also a victim of retaliation. After blowing the whistle, the Department of Defense retaliated by illegally leaking defamatory information from Ms. Tripp's highly confidential security clearance file.



MICHAEL E. HOROWITZ | INSPECTOR GENERAL, DEPARTMENT OF JUSTICE

Michael E. Horowitz is the Inspector General of the Department of Justice, responsible for oversight of the FBI and DOJ. In 2018 he released investigative findings concerning Hillary Clinton's use of a private email server. Since 2015, he has also served as the Chair of the Council of the Inspectors General on Integrity and Efficiency, an organization comprised of all 73 federal Inspectors General.



DANIEL M. ASHE | FORMER DIRECTOR, U.S. FISH & WILDLIFE SERVICE

Daniel M. Ashe is the President and Chief Executive Officer of the Association of Zoos and Aquariums, which represents more than 230 facilities in the U.S. and internationally and sees over 186 million annual visitors. Ashe was previously the Director of the U.S. Fish and Wildlife Service, where he worked to protect endangered species, restore wildlife habitats, and enforce federal wildlife laws.

SPEAKER BIOGRAPHIES



BETH ALLGOOD | U.S. COUNTRY DIRECTOR, IFAW

Beth Allgood is the United States Country Director at the International Fund for Animal Welfare (IFAW), responsible for strategic development and implementation of projects and campaigns combating wildlife trafficking, with an emphasis on the ivory trade and wildlife security issues



REP. MADELEINE BORDALLO | VIDEO ADDRESS

Madeleine Bordallo serves as Guam's Delegate to the United States House of Representatives and is a senior member of the House Natural Resources Committee. Bordallo has been a leader on wildlife and marine conservation. She recently introduced the Wildlife Conservation and Anti-Trafficking Act of 2018, a bill which would incentivize whistleblowers to report wildlife trafficking, poaching, and illegal, unreported and unregulated (IUU) fishing. Her bill is co-sponsored by Rep. Young (R-Alaska).



DR. AARON WESTRICK | WHISTLEBLOWER, GOVERNMENT FRAUD

As the Director of Research for America's largest body armor company, Dr. Aaron Westrick blew the whistle on unsafe bullet proof vests being sold to law enforcement agencies throughout the United States. Using the False Claims Act, his allegations resulted in a recall of thousands of unsafe vests, and the payment of over \$100 million in damages to the United States.



DANIEL P. MEYER | NATIONAL SECURITY WHISTLEBLOWING

Daniel P. Meyer served as the Executive Director for Intelligence Community Whistleblowing & Source Protection, specializing in national security whistleblower cases. He was removed from his position in March of 2018, a decision that has come under sharp review by Members of Congress. Mr. Meyer is also a decorated naval officer for his service during the Persian Gulf War.



STEPHEN M. KOHN | HISTORY OF AMERICA'S FIRST WHISTLEBLOWER LAW

Stephen M. Kohn is the Executive Director of the National Whistleblower Center author of eight books on whistleblower law, including *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (Lyons Press 2017). His historical research led to the re-discovery of America's first whistleblower law, passed by the Founding Fathers during the height of the American Revolution on July 30, 1778. He will recount the history of this landmark legislation.



GRETCHEN PETERS | THE SATAO PROJECT

Gretchen Peters is an expert in researching and mapping transnational organized crime networks. She currently serves as the Executive Director of The Satao Project, the Executive Director of the Center on Illicit Networks and Transnational Organized Crime (CINTOC), and as a board member at the Center on Sanctions and Illicit Finance. Peters has a background as a journalist, having served as an international correspondent, and is the author of *Seeds of Terror*, a groundbreaking look at the Afghan heroin trade.

SPEAKER BIOGRAPHIES



TRISTAN LEAVITT | U.S. OFFICE OF SPECIAL COUNSEL

Tristan Leavitt is the Principal Deputy Special Counsel at the U.S. Office of Special Counsel. The OSC is responsible for protecting federal employee whistleblowers throughout the civil service. He formally was staff on the House Oversight and Government Reform Committee and the Senate Judiciary Committee. In 2013, Mr. Leavitt helped shepherd the passage of the first Congressional resolution designating July 30 as National Whistleblower Appreciation Day.



DR. FREDERIC WHITEHURST | FORMER FBI AGENT | CLOSING REMARKS

Dr. Frederic Whitehurst was the FBI's top explosives expert, responsible for securing the crime scene in the first World Trade Center bombing. His case resulted in President Clinton signing the order granting whistleblower protections to all FBI agents, and forced the FBI to agree to seek accreditation for its crime lab. Dr. Whitehurst's disclosures resulted in a review of thousands of criminal cases, and the release of innocent people from prison.



DEAN A. ZERBE | NATIONAL WHISTLEBLOWER CENTER

Dean A. Zerbe is a Senior Policy Analyst for the National Whistleblower Center and former Senior Counsel and Tax Counsel on the Senate Finance Committee for Senator Charles E. Grassley. Mr. Zerbe will introduce Senator Grassley.



DAVID K. COLAPINTO | NATIONAL WHISTLEBLOWER CENTER

David K. Colapinto is the General Counsel of the National Whistleblower Center and specializes in *qui tam* cases. He is co-author of *Whistleblower Law: A Guide to Legal Protections for Corporate Employees*. He will introduce Tristan Leavitt and Dan Meyer.



DR. GINA GREEN | NATIONAL WHISTLEBLOWER CENTER

Dr. Gina Green is a former Vice President of the Nature Conservancy and is currently a Senior Associate for Tetra Tech, managing USAID's Oceans and Fisheries Partnership project and the Sustainable Ecosystem Approach project (SEA). Dr. Green serves as a Chair of the National Whistleblower Center's Board of Directors and is spearheading the NWC's international program to protect whistleblowers who expose illegal wildlife trafficking. She will introduce Dan Ashe and Beth Allgood.



MICHAEL D. KOHN | PARTNER, KOHN, KOHN & COLAPINTO

Michael D. Kohn is a partner in the law firm of Kohn, Kohn and Colapinto. Since 1985, Mr. Kohn has successfully represented numerous high-profile whistleblower retaliation and *qui tam* cases and is the co-author of two books on whistleblower law, including *The Labor Lawyers Guide to the Rights and Responsibilities of Employee Whistleblowers*. Mr. Kohn will introduce Linda Tripp.

ADDITIONAL RESOURCES

ATTACHED: SENATE RESOLUTION RECOGNIZING NATIONAL WHISTLEBLOWER DAY 2018

Read the unanimously-passed Senate Resolution that officially designates July 30th, 2018 as "National Whistleblower Appreciation Day."

ATTACHED: THE HISTORY OF AMERICA'S FIRST WHISTLEBLOWERS

Read an excerpt from Stephen M. Kohn's book, *The New Whistleblower's Handbook*, which recounts the story of America's first whistleblowers and how their disclosures led to America's first whistleblower law.

ATTACHED: NEW YORK TIMES OP-ED "THE WHISTLE-BLOWERS OF 1777"

Read an Op-Ed by Stephen M. Kohn that ran in the New York Times in 2011 retelling the history of America's first whistleblowers.

2018 HONORED WHISTLEBLOWERS

To learn more about the whistleblowers who will be attending and recognized at National Whistleblower Day 2018, please click [here](#).

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3238 P St. NW
Washington, D.C. 20007

2018 SENATE WHISTLEBLOWER DAY RESOLUTION

III



115TH CONGRESS
2D SESSION

S. RES. 558

Designating July 30, 2018, as “National Whistleblower Appreciation Day”.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2018

Mr. GRASSLEY (for himself, Mr. WYDEN, Ms. BALDWIN, Mr. CARPER, Mr. MARKEY, Mr. JOHNSON, Mr. TILLIS, Mrs. McCASKILL, Mr. PETERS, Mr. BOOZMAN, Mrs. ERNST, and Mrs. FISCHER) submitted the following resolution; which was referred to the Committee on the Judiciary

JULY 12, 2018

Committee discharged; considered and agreed to

RESOLUTION

Designating July 30, 2018, as “National Whistleblower Appreciation Day”.

Whereas, in 1777, before the passage of the Bill of Rights, 10 sailors and marines blew the whistle on fraud and misconduct that was harmful to the United States;

Whereas the Founding Fathers unanimously supported the whistleblowers in words and deeds, including by releasing government records and providing monetary assistance for the reasonable legal expenses necessary to prevent retaliation against the whistleblowers;

Whereas, on July 30, 1778, in demonstration of their full support for whistleblowers, the members of the Conti-

mental Congress unanimously enacted the first whistleblower legislation in the United States that read: “*Resolved*, That it is the duty of all persons in the service of the United States, as well as all other the inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge” (legislation of July 30, 1778, reprinted in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–37), 11:732);

Whereas whistleblowers risk their careers, jobs, and reputations by reporting waste, fraud, and abuse to the proper authorities;

Whereas, in providing the proper authorities with lawful disclosures, whistleblowers save the taxpayers of the United States billions of dollars each year and serve the public interest by ensuring that the United States remains an ethical and safe place; and

Whereas it is the public policy of the United States to encourage, in accordance with Federal law (including the Constitution of the United States, rules, and regulations) and consistent with the protection of classified information (including sources and methods of detection of classified information), honest and good faith reporting of misconduct, fraud, misdemeanors, and other crimes to the appropriate authority at the earliest time possible: Now, therefore, be it

1 *Resolved*, That the Senate—

1 (1) designates July 30, 2018, as “National
2 Whistleblower Appreciation Day”; and

3 (2) ensures that the Federal Government imple-
4 ments the intent of the Founding Fathers, as re-
5 flected in the legislation enacted on July 30, 1778,
6 by encouraging each executive agency to recognize
7 National Whistleblower Appreciation Day by—

8 (A) informing employees, contractors work-
9 ing on behalf of United States taxpayers, and
10 members of the public about the legal right of
11 a United States citizen to “blow the whistle” to
12 the appropriate authority by honest and good
13 faith reporting of misconduct, fraud, mis-
14 demeanors, or other crimes; and

15 (B) acknowledging the contributions of
16 whistleblowers to combating waste, fraud,
17 abuse, and violations of laws and regulations of
18 the United States.

○

THE WHISTLE-BLOWERS OF 1777

**Copy of a *New York Times* Op-Ed by
Stephen M. Kohn, Esq. (June 12, 2011)**

Washington

FORTY years ago today, The New York Times began publishing the Pentagon Papers, a seminal moment not only for freedom of the press but also for the role of whistle-blowers — like Daniel Ellsberg, who leaked the papers to expose the mishandling of the war in Vietnam — in defending our democracy.

Today, the Obama administration is aggressively pursuing leakers. Bradley E. Manning, an Army private, has been imprisoned since May 2010 on suspicion of having passed classified data to the antisecrecy group WikiLeaks. Thomas A. Drake, a former official at the National Security Agency, pleaded guilty Friday to a misdemeanor of misusing the agency's computer system by providing information to a newspaper reporter.

The tension between protecting true national security secrets and ensuring the public's "right to know" about abuses of authority is not new. Indeed, the nation's founders faced this very issue.

In the winter of 1777, months after the signing of the Declaration of Independence, the American warship *Warren* was anchored outside of Providence, R.I. On board, 10 revolutionary sailors and marines met in secret — not to plot against the king's armies, but to discuss their concerns about the commander of the Continental Navy, Commodore Esek Hopkins. They knew the risks: Hopkins came from a powerful family; his brother was a former governor of Rhode Island and a signer of the declaration.

Hopkins had participated in the torture of captured British sailors; he "treated prisoners in the most inhuman and barbarous manner," his subordinates wrote in a petition.

One whistle-blower, a Marine captain named John Grannis, was selected to present the petition to the Continental Congress, which voted on March 26, 1777, to suspend Hopkins from his post.

The case did not end there. Hopkins, infuriated, immediately retaliated. He filed a criminal libel suit in

Rhode Island against the whistle-blowers. Two of them who happened to be in Rhode Island — Samuel Shaw, a midshipman, and Richard Marven, a third lieutenant — were jailed. In a petition read to Congress on July 23, 1778, they pleaded that they had been "arrested for doing what they then believed and still believe was nothing but their duty."

Later that month, without any recorded dissent, Congress enacted America's first whistle-blower-protection law: "That it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge."

Congress did not stop there. It wanted to ensure that the whistle-blowers would have excellent legal counsel to fight against the libel charges, and despite the financial hardships of the new republic, it authorized payment for the legal fees of Marven and Shaw.

Congress did not hide behind government secrecy edicts, even though the nation was at war. Instead, it authorized the full release of all records related to the removal of Hopkins. No "state secret" privilege was invoked. The whistle-blowers did not need to use a Freedom of Information Act to obtain documents to vindicate themselves. There was no attempt to hide the fact that whistle-blowers had accused a Navy commander of mistreating prisoners.

Armed with Congress's support, the whistle-blowers put on a strong defense, and won their case in court. And true to its word, Congress on May 22, 1779, provided \$1,418 to cover costs associated with the whistle-blowers' defense. One "Sam. Adams" was directed to ensure that their Rhode Island lawyer, William Channing, was paid.

Nearly two centuries later, the Supreme Court justice William O. Douglas, praising the founders' commitment to freedom of speech, wrote: "The dominant purpose of the First Amendment was to prohibit the widespread practice of government suppression of embarrassing information."

A 1989 law was supposed to protect federal employees who expose fraud and misconduct from retaliation. But over the years, these protections have been completely undermined. One loophole gives the government the absolute right to strip employees of their security clearances and fire them, without judicial review. Another bars employees of the National Security Agency and the Central Intelligence Agency from any coverage under the law. And Congress has barred national security whistle-blowers who are fired for exposing wrongdoing from obtaining protection in federal court.

It is no surprise that honest citizens who witness waste, fraud and abuse in national security programs but lack legal protections are silenced or forced to turn to unauthorized methods to expose malfeasance, incompetence or negligence.

Instead of ignoring and intimidating whistle-blowers, Congress and the executive branch would do well to follow the example of the Continental Congress, by supporting and shielding them.

A version of this op-ed appears in print on June 13, 2011, on Page A23 of the New York edition with the headline: The Whistle-Blowers of 1777.

WHISTLEBLOWING & THE AMERICAN DREAM

Excerpt from *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (Lyons Press) by Stephen M. Kohn, Esq.

One thing is certain: The roots of whistleblowing can be found deep in the American Dream. They are not based on wealth or opportunity, but on service and a Democratic Ideal that can be traced directly back to the earliest days of the American Republic and the very first whistleblowers in the newly independent United States.

On February 19, 1777, just six months after the Declaration of Independence was signed by our Founding Fathers, the warship Warren was anchored outside of Providence, Rhode Island. On board, ten sailors and marines who had joined the U.S. Navy to fight for independence from Great Britain, met, not to plot a battle against the King's armies, but rather to vet their concerns about the incompetence and lack of moral integrity of the commander in chief of the Continental Navy, Commodore Esek Hopkins. Their boss not only held the top Navy job, but came from a powerful colonial family; his brother was a governor of Rhode Island and one of the original signers of the Declaration of Independence.

These sailors were devoted to fighting and winning the War for Independence. They were revolutionaries, risking their lives to build a free and independent America; they wanted nothing more than to fight and defeat their British foes. However, they feared that their commander could not successfully lead any such effort, for his tactics foreshadowed doom for the new American Navy. They blew the whistle on the mistreatment of prisoners almost 250 years before other whistleblowers exposed mistreatment of prisoners in the modern "war on terror."

The American Republic was not yet one year old. There was no First Amendment protection for freedom of speech. There were no legal protections for any whistleblowers, let alone sailors and marines who intended to expose misconduct by their commander in

the middle of a war. Yet these ten men agreed to send a petition to Congress to expose misconduct by the Navy's highest officer. They became the first whistleblowers of the newly independent United States of America: Captain of the Marines John Grannis, First Lieutenant of the Marines George Stillman, Second Lieutenant of the Marines Barnabas Lothrop, First Lieutenant Roger Haddock, Second Lieutenant James Sellers, Third Lieutenant Richard Marvin, Chaplain John Reed, midshipman Samuel Shaw, ship's gunner John Truman, and ship's carpenter James Brewer.

Their petition, straightforward and written from their hearts, is found below:

On Board the Ship 'Warren'

Feb 19, 1777

Much Respected Gentlemen: "We who present this petition engaged on board the ship 'Warren' with an earnest desire and fixed expectation of doing our country some service . . . We are ready to hazard every thing that is dear & if necessary, sacrifice our lives for the welfare of our country, we are desirous of being active in the defense of our constitutional liberties and privileges against the unjust cruel claims of tyranny & oppression; but as things are now circumstanced on board this frigate, there seems to be no prospect of our being serviceable in our present situation. . . . We are personally well acquainted with the real character & conduct of our commander, commodore Hopkins & we take this method not having a more convenient opportunity of sincerely & humbly petitioning, the honorable Marine Committee that they would inquire into his character & conduct, for we suppose that his character is such & that he has been guilty of such crimes as render him quite unfit for the public department he now occupies, which crimes, we the subscribers can sufficiently attest.

Each sailor also signed personal affidavits to Congress setting forth specific instances of misconduct committed by the commander in chief that they had

witnessed. These included allegations that commodore Hopkins “treated prisoners in the most inhuman & barbarous manner,” failed to attack a British frigate that had run aground (thereby permitting the enemy to escape), and stated that he would “not obey the Congress” of the United States.

Captain John Grannis agreed to secretly leave the Warren and present the whistleblower allegations to the Continental Congress’s Marine Committee. Grannis traveled from Rhode Island to Philadelphia, presented the petitions to the Congress and testified before a special congressional subcommittee appointed to hear the whistleblower’s concerns:

Q: Are you the man who signed the petition against Esek Hopkins, Esq. by the name of John Grannis?

A: Yes...

Q: Commodore Hopkins is charged with being a hindrance to the proper manning of the fleet, what circumstances do you know relative to this charge?

A: For my part his conduct and conversation are such that I am not willing to be under his command. I think him unfit to command. . . his conversation is at times so wild & orders so unsteady that I have sometimes thought he was not in his senses & I have heard others say the same. . . .

Q: Had you liberty from Commodore Hopkins. . . to leave the frigate you belong to?

A: No. I came to Philadelphia at the request of the officers who signed the petition against Commodore Hopkins & from a Zeal for the American cause.

Q: Have you, or to your knowledge either of the signers aforesaid any difference or dispute with Commodore Hopkins since you or their entering into service?

A: I never had, nor do I believe that either of them ever had. I have been moved to do & say what I have done & said from love to my country. . .

On March 26, 1777, the Marine Committee concluded its investigation and presented the matter to the full Continental Congress, including all the papers signed by the officers of the Warren. After considering the matter, Congress backed up its whistleblowing sailors and passed the following resolution: “Resolved, That Esek Hopkins, be immediately and he is hereby, suspended from his command in the American Navy.”

Congress listened to the voices of the whistleblowers and suspended the highest-ranking navel of-

ficer. John Hancock, the president of the Continental Congress, and the most famous signer of the Declaration of Independence, certified the resolution and ordered that it be served on Hopkins. Hopkins remained under suspension for over nine months. He never appeared before Congress to refute the allegations. On January 2, 1778, Congress voted to fully terminate Hopkins’ service, and he was subsequently removed from the U.S. Navy.

Unfortunately, the incident did not end with the commodore’s removal from office. Hopkins sought revenge against the whistleblowers—both during his short remaining stint as commodore and after he was stripped of his command. Upon learning of the letters signed by the ten sailors and the fact that the information was being delivered to the Continental Congress, Hopkins sprung into action during his last days as commander. He used his authority to pressure the sailors to change their testimony, and he organized a rump military prosecution for one of the petitioners, Lieutenant Marvin. Marvin, a follower of Thomas Paine, was accused of being the “prime mover in circulating” the petition. Hopkins ordered Marvin arrested and tried by a court-martial.

The military court consisted only of Hopkins’ supporters, including his own son. Hopkins was permitted to personally question the accused. If found guilty, Marvin’s only appeal would be to Hopkins himself. Marvin’s sole crime: having “signed” “scurrilous papers” “against his Commander in Chief.”

At his court-martial Marvin stood strong. He did not plead for mercy or back down from his actions. Indeed, he readily admitted to his crime of signing the petition against Hopkins. He told the prosecutors that the accusations brought forth against the commander “were of such a nature that we thought it was our duty to our Country to lay them before Congress.”

Hopkins grilled Marvin as to who else had signed the petition and what specific information was provided to Congress. Marvin would not turn in his fellow sailors or tip off Hopkins as to the allegations provided to Congress. Instead, he stated, “I refuse answering to that until such time as I appear before Congress or a Committee authorized by them to inquire into the affair.”

It was no surprise when Marvin was found guilty of treating the commander with the “greatest indignity” by “signing and sending to the Honorable Continental

Congress several unjust and false complaints.” Commodore Hopkins immediately affirmed the findings of the court-martial and ordered Marvin expelled from the Navy. America’s first whistleblower was fired from his job.

Hopkins was not satisfied with merely firing the ringleader of the whistleblowers. On January 13, 1778, the former commodore sued the ten whistleblowers for conspiracy and criminal libel. Hopkins demanded ten thousand pounds in retribution, and the whistleblowers could be jailed if found guilty. Hopkins hired a well-known Rhode Island attorney, Rouse J. Helme, and filed his “writ of attachment” in the Rhode Island Inferior Court of Common Pleas. Only two of the ten sailors, Shaw and Marvin, were actually served with the complaint. The others resided outside of the jurisdiction of the Rhode Island court. Therefore, they escaped the retaliatory lawsuit.

Even though the United States was still in the middle of its War for Independence, Hopkins used his resources and connections in an attempt to destroy the lives of two sailors who had the courage to file allegations of serious wrongdoing with the Continental Congress. Shaw and Marvin were both arrested, held in jail, and forced to post an “enormous bail.”

Shaw and Marvin were not men of means. They had nowhere to turn, except to plead for help from the Continental Congress. On July 8, 1778, the two whistleblowers wrote an impassioned letter to the Congress:

Your petitioners, not being persons of affluent fortunes but young men who have spent most of their time in the service of their country in arms against its cruel enemies since the commencement of the present war, finding themselves arrested for doing what they then believed and still believe was nothing but their duty, held to bail in a state where they were strangers, without connections that can assist them in defending themselves. . . against a powerful as well as artful person who by the advantages of his officers and of the present war hath amassed great wealth—do most humbly implore the interposition of Congress in their behalf in such way and manner as the wisdom of that most august body shall direct and order. . .

The petition was read to Congress on July 23, 1778. A special “Committee of Three” was appointed to review the matter. After a seven-day review, the committee re-

ported back to the Continental Congress. History was made.

On July 30, 1778, the Continental Congress came to the defense of Marvin and Shaw. The Congress, without any recorded dissent, passed a resolution that encouraged all citizens to blow the whistle on official misconduct. Perhaps for the first time in world history—and unquestionably for the first time in the history of the United States—a government recognized the importance of whistleblowers in exposing official misconduct of high-ranking officials working for the government itself. The act of Congress could have been written today:

That it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanors committed by any persons in the service of these states, which may come to their knowledge.

The Continental Congress was also sympathetic to the personal plight of Shaw and Marvin. The Founding Fathers understood that finding whistleblowers guilty of criminal libel was counter to the framework of the new Republic. Congress authorized the government to pay the legal costs and attorney fees for Shaw and Marvin so that the two men would have excellent lawyers and be able to fully defend themselves in the Rhode Island courts.

Moreover, the Congress did not hide behind government secrecy edicts, even during time of war. Instead, the Congress authorized the full release of government records related to the appointment and removal of Hopkins as commander in chief, as well as the various papers of the Marine Committee as related to the information provided by the ten sailors. No “state secret” privilege was invoked, and Marvin and Shaw did not even need to use a Freedom of Information Act to obtain documents necessary to vindicate their whistleblowing.

Just like in modern whistleblower cases, documentary evidence can make or break a case. In 1778, the Founding Fathers understood this simple fact and made sure that Marvin and Shaw had the necessary evidence to defend their actions before a jury of their peers. The Founding Fathers went beyond passing a law endorsing whistleblowers. They spent scarce federal monies to

defend and protect the sailors who had the courage to blow the whistle to the Congress.

With the help of the Congress, Shaw and Marvin were able to retain topnotch legal assistance. Their main lawyer at the trial was William Channing, a distinguished Rhode Island attorney who had been recently elected as the attorney general for the state. His father-in-law was William Ellery, one of the signers of the Declaration of Independence. Interestingly, Ellery had attended the initial examination of Grannis when he testified before the Marine Committee and was the member of the Congress responsible for transcribing Grannis' testimony.

The criminal libel trial lasted five days. Shaw and Marvin "relied almost entirely for their case upon" the information provided to them by the Congress, including "copies of letters from President John Hancock and others" to Commodore Hopkins, along with the "depositions of the officers and men on the Warren who had signed the petition to Congress against Hopkins."

The jury ruled for the whistleblowers. The defendants were vindicated and Hopkins was ordered to pay their court costs.

In May, 1779, the Congress "examined the accounts of Samuel Shaw and Richard Marvin for expenses incurred in defending an action at law brought against them by Esek Hopkins" authorized the payment of "fourteen hundred and eighteen dollars and 7/90 to be paid to Mr. Sam. Adams," of which \$500 was set aside for William Channing.

Despite his so-called "court-martial," Marvin also received his full sailor's pension for his service during the Revolutionary War.

WHISTLEBLOWERS AND THE BIRTH OF THE FIRST AMENDMENT

It was not by accident that the Founding Fathers, some of the very people who voted to defend the Warren whistleblowers, enshrined "freedom of speech" and the "right to petition" as the first governing principle of the Bill of Rights: "Congress shall make no law . . . abridging the freedom of speech. . . or the right of the people. . . to petition the government for a redress of grievances."

Whistleblowing embodies the heart and soul of the First Amendment. It establishes the right of the people to expose wrongdoing and empowers them with

the right to demand that powerful leaders remain accountable. The Warren incident demonstrates that the Founding Fathers were not only aware of "whistleblowing," but that they strongly supported it.

Former Supreme Court Justice Louis Brandeis hit the nail on the head when he described the early American political culture and influential personalities whose struggles led to the passage of the First Amendment: "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty."

Justice Brandeis went on to describe those who fought for the First Amendment as: "Courageous, self-reliant men" whose "confidence in the power of free and fearless reasoning" rested at the heart of "popular government. . . . They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and speak as you think are means indispensable to the discovery and spread of political truth. . . they knew that order cannot be secured merely through fear of punishment. . . that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies. . . . They eschewed silence coerced by law. . ."

Justice Brandeis could well have been referencing the sailors and marines on the Warren, who risked courts martial and criminal libel charges to blow the whistle on their commander in chief. His description seems to fit the personality of the courageous whistleblowers far more than the nameless and faceless bureaucrats who harass or make decisions to fire these employees.

As understood by the Founding Fathers, the First Amendment established a credo at the very heart of American politics that valued the contributions of whistleblowers: "The dominant purpose of the First Amendment was to prohibit the widespread practice of government suppression of embarrassing information."

If whistleblowers are silenced, if voters cannot learn about the corruption of their leaders, if investors cannot learn the truth about companies they rely upon for their retirement security or their child's education, what then is the future of the American Dream? On the reverse side, if ordinary workers are empowered to do their job honestly, even when they are faced with pressure to cut corners on safety, sell defective products, or lie to obtain lucrative government contracts, what then

of the American Dream? Is it one to be proud of — to aspire toward?

IN CONCLUSION

Corruption is a cancer on all Democratic institutions. It converts the “rule of law” to the “rule of back door influence.” Greed trumps justice.

When the United States was born, the Founding Fathers believed, almost religiously, that freedom of speech would protect the people from corruption. So much so that in the middle of the Revolution they protected whistleblowers who exposed malfeasance in the top leadership of the newly created Continental Navy. After the Revolutionary War they incorporated the right to criticize the government and expose wrongdoing into the heart of the First Amendment to the Constitution. During the Civil War, when the existence of the United States was again under attack, the leaders of the Union enacted the first modern whistleblower law (the False Claims Act) to empower citizens to defend key laws in court, use these legal proceedings to expose and defeat corruption in public contracting, and obtain monetary rewards for taking the risk to expose wrongdoing. The role of the people in defending democratic institutions from the destructive impact of corruption was clearly recognized, endorsed, and encouraged by the founders and saviors of American democracy.

Over the past fifty years, a national framework for protecting people who courageously step forward and report corruption has developed. The framework is extremely complex and consists of numerous federal and state laws, but is also plagued by loopholes and technicalities that cause unnecessary hardship to many employees.

But despite many personal hardships, change has come for whistleblowers. There are now four *qui tam* reward laws covering a sizable segment of society. The False Claims Act and IRS whistleblower law now covers fraud in the public-sector economy. The Dodd-Frank Act now covers fraud in trading securities and

commodities. State governments are slowly following the federal lead, and a majority of states now have *qui tams* covering public procurement.

Slowly, anti-retaliation laws are being modernized. The new laws passing through Congress almost uniformly permit employees access to federal court proceedings and reasonable damages. Reforms are slowly fixing infamous tricks and technicalities used to undermine whistleblowers—such as mandatory arbitration agreements and the failure to protect internal disclosures.

Today the key to obtaining protection as a whistleblower is navigating the maze: finding the best laws, becoming fully aware of the traps and pitfalls facing any whistleblower, and ultimately using these laws effectively to ensure real protection. At some point there will be a change in corporate culture. At some point corporations, government agencies, and most judges will acknowledge the benefits of strongly promoting employee disclosures of wrongdoing. We are not there yet—not even close. But the legal framework for changing this culture is coming into place, and a growing number of whistleblowers are landing on their feet.