

No. 13-894

In The
Supreme Court of the United States

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DEPARTMENT OF HOMELAND SECURITY,

Petitioner,

vs.

ROBERT J. MACLEAN,

Respondent.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Federal Circuit**

—◆—
**AMICUS BRIEF OF DAVID B. NOLAN, SR.
IN SUPPORT OF THE RESPONDENT**

—◆—
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QUESTIONS PRESENTED

Was the Federal Circuit correct that respondent's disclosure of Sensitive Security Information (SSI) concerning Federal Air Marshals was not specifically prohibited by law within the meaning of 5 U.S.C. Section 2302(b)(8)(A) or regulation?

Was the Federal Circuit correct that 5 U.S.C. Section 2302(b)(8)(A) immunized the respondent from disciplinary action for disclosing SSI to Senator Hillary Clinton and the press?

Does the Executive Branch violate 5th Amendment due process guarantees under the U.S. Constitution by retroactively imposing a Sensitive Security Information (SSI) classification to contrive an alleged "misconduct" basis to terminate the employment of a non-probationary federal employee for the "efficiency of the service" within the meaning of Title V of the United States Code?

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THE INTEREST OF THE *AMICUS*¹

In his request for certiorari, the Obama Administration's Solicitor General labeled as "dangerous" the unanimous decision by the three-judge panel of the Court of Appeals for the Federal Circuit in favor of patriot whistleblower Robert J. MacLean. As the submitter of the prevailing *amicus* brief in this Court below, I have a personal interest in the outcome of the case herein. I do not also want to be adversely stigmatized as "dangerous" to offset my legal achievements.

What is dangerous is the decline in the rule of law that Mr. MacLean and our nation have suffered.

I am a former White House Attorney. In 1981, I preceded by one year Chief Justice John Roberts's representation of the Office of Counsel to the President.

I was admitted to the U.S. Supreme Court bar in 2002. My law school's fellow graduates and I were kindly welcomed personally by Justice Ruth Bader Ginsburg. This followed the larger ceremony of several groups on motion in the building dedicated to Equal Justice for All.

¹ The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, its members, or its counsel made a monetary contribution to its preparation or submission.

I am the author of the Ethics Section of the D.C. Practice Manual. I am the co-author of the 1982 University of Saskatchewan published article, “The Right of American Sovereignty over Wrangell Island.” Our legal analysis was entered into the Congressional Record as Extended Remarks and motivated Cabinet and Senate debate over the then-pending Maritime Boundary Treaty with the Soviet Union.

My 2013 co-authored book, *Quest for Freedom*, is published by Amazon Books. It traces the etiology of the U.S. Constitution and its First Amendment in particular. America’s constitutional government followed the sacrifice of 40,000 patriots who gave their last full measure of devotion in support of the rule of law in their new nation.

My Hessian soldier ancestor, Heinrich Stisser, abandoned the oppressive “Kingly Rights” army of George III. Henry Stisser earned a military pension for his courageous service to his new country in a German speaking unit of revolutionary soldiers.

Over twelve thousand of the thirty thousand Hessian mercenaries who invaded Long Island in 1776 to drive George Washington’s troops out of New York City remained in America after the Revolutionary War. Our book also recalls that seventy Presbyterian Churches in the colonies were burned down by Red Coats in reprisal for their parishioner’s nearly unanimous quest for freedom against the English Crown.



SUMMARY OF THE ARGUMENT

By 9-11-2001, Respondent Robert J. MacLean had earned a property interest in his non-probationary federal employment as an Air Marshal. Today's Petitioner, the Department of Homeland Security, violated this air marshal leader's 5th Amendment guarantees of due process by retroactively classifying his protective disclosure regarding the reduction of Air Marshals in commercial airliner service as "Sensitive Security Information (SSI)" as a pretext for "misconduct" to terminate his employment in violation of Title V of the United States Code. The Court of Appeals for the Federal Circuit correctly applied 5 U.S.C. Section 2302(b)(8)(A) to determine that: (1) MacLean's protected disclosure was not specifically prohibited by law and, (2) MacLean's disclosure to Senator Hillary Clinton and the press was immunized from disciplinary action. In an admission against interest, the TSA Director of the Office of Sensitive Security Information (SSI), Andrew Colsky, expressed doubt over his SSI classification regarding Mr. MacLean.



STATEMENT OF THE ARGUMENT

The Justice Department's argument is not persuasive that the decision of the U.S. Court of Appeals for the Federal Circuit is incorrectly reasoned, let alone "dangerous." Moreover, the Department of Justice has failed to address the stated uncertainty of TSA Director, Office of Sensitive Security Information,

Andrew Colsky, concerning his application of SSI regarding Mr. MacLean.

I ask the U.S. Supreme Court to take judicial notice of the decline in the rule of law in today's America that includes the following troubling absurdities and the abuse of Executive Branch power.

Robert J. MacLean, a targeted air marshal leader, lost his property interest in his non-probationary Executive Branch job created under Article II of the U.S. Constitution for alleged misconduct regarding a National Air Marshal disclosure which was not Sensitive Security Information (SSI) at the time of the disclosure to Senator Hilary Clinton and the press. *Ex post facto* application of statute or regulation by the federal government flaunts 5th Amendment guarantees of due process under the United States Constitution.

At least four U.S. citizens, including a sixteen-year-old boy, have been assassinated recently in Yemen by U.S. Military drones without any due process of law under the U.S. Constitution. These murders violate traditional notions of fair play and substantial justice. They were innocent until proven guilty.

President Lyndon Baines Johnson allegedly ordered the sinking of the U.S.S. Liberty off the coast of Israel to make Egypt the fall guy so as to justify a Middle East War. Were the innocent lives of U.S. sailors actually expendable? Was the Gulf of Tonkin Resolution a contrivance to send 67,000 Americans to death in Indo-China for the ego of LBJ?

The U.S. Senate has been recently spied upon by the Executive Branch's Central Intelligence Agency (CIA). As a college student, Barack Hussein Obama allegedly traveled to Pakistan on an Indonesian passport that may have furthered CIA interests as well as his long and short term goals.

Forty-seven U.S. inspectors general have denounced recently the failure of the Executive Branch under Article II of the U.S. Constitution to provide each of them with all the information necessary to carry out their statutory duties. This alleged repression violates the Inspectors General Act of 1978 passed by Congress and signed into law by President Jimmy Carter.

Executive Branch reprisal against whistleblowers is now pandemic. Former Congressional candidate and investigative reporter Fred Sanders concluded that a solid fuel missile shot down TWA Flight 800 off the Connecticut coast. The U.S. Justice Department prosecuted him for testing shoreline debris on the pretext that he had "disturbed" a crash site that was otherwise untested and silent as to the truth of scores of observers who witnessed converging vapor trails and the sound of exploding ordinance.

Fortunately, the quest for the air disaster's true causation was recently re-opened by federal aviation authorities. The death of all passengers and crew may be an anti-aircraft missile from a submarine that missed its drone target, not an unruptured fuel tank without the necessary heat or oxygen for an

explosion. On a daily basis, 30,000 commercial flights operate safely with no ruptured fuel tanks.

The very nature of MacLean's protected disclosure also contradicts logical expectations. Why was Federal Air Marshal assistance reduced and not increased on 9-11-2001 immediately after four airliner skyjackings and the deaths of over 3,000 Americans? President George W. Bush's pretext of "weapons of mass destruction" is as derided as ever today for the initiation of a second Iraq War whose adverse ramifications continue today.

On September 11, 2001, Janet Howard was on Capitol Hill for No Fear Act activities. She and others observed a very low flying commercial airliner that buzzed the U.S. Supreme Court Building as it headed towards the Pentagon. After her reporting the incident, Janet was fired from federal employment.

At the National Press Club in Washington, D.C., spokesmen for two thousand architects and structural engineers concluded that synchronized nitric oxide detonations on 9-11, not an air born terrorist attack, demolished Building Seven of the World Trade Center. Two weeks prior to 9-11, the insurance coverage for Building Seven was allegedly increased. The growing number of truthers in the thousands is too large to orchestrate reprisal IRS audits for all.



CONCLUSION

The “non-dangerous” decision of the Federal Circuit in the case herein must be sustained to protect the rule of law in America.

Respectfully submitted,

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