

# The National Anthem & the NFL:

Is the national anthem a proper symbol of  
America or a symbol of its racist past?

Oct. 20, 2017

Report Commissioned by  
the A-Mark Foundation

[www.amarkfoundation.org](http://www.amarkfoundation.org)

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### I. Executive Summary

Some players in the National Football League (“NFL”) and in other sports are protesting the singing of “The Star-Spangled Banner,” our national anthem, before organized sports games.

Part of the controversy comes about from the little-known third stanza of the national anthem which recently came into prominence again for a few of its controversial words:

“...No refuge could save the hireling and slave

From the terror of flight or the gloom of the grave...”

The traditional way to observe the Anthem is to stand and place one’s right hand over one’s heart while the national anthem is performed. To protest the national anthem, some players sit, stand and link arms, kneel on one knee (“take a knee”) or stay in the locker room during the singing of the anthem.

Some protestors say that America has a racist past and that the national anthem partially glorifies that past, and, regardless, that those protests are political speech, protected by the First Amendment to our Constitution. Those against the protestors say that they don't support our country, are un-American and that they should keep their politics out of sports.

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Some sport team owners have supported such protests, while others punished them.

These issues are emotional and political for many, business for others, and the differing views of the national anthem have created a lot of anger and dissension among players, fans, teams and others.

## II. The Origin and a Little History About the National Anthem and its Author

- **Aug. 1, 1779:** The writer of the national anthem, Francis Scott Key, was raised by a family who owned slaves at a time and place in America where and when slavery was legal.<sup>1</sup> Born in Frederick County, Maryland, on Aug. 1, 1779, Key became a lawyer, a U.S. attorney for the District of Columbia<sup>2</sup> and poet who passed away on Jan. 11, 1843.<sup>3</sup>

During his lifetime, Key owned slaves and set some of them free,<sup>4</sup> and opposed the abolitionist movement<sup>5</sup> but also represented freedom-seeking slaves in court.<sup>6</sup> Key was also on the board of the American Society for Colonizing the Free People of Color, which had different “motives” from ending slavery to ridding “the country of free blacks.”<sup>7</sup>

“The seeming contradictions between [Thomas] Jefferson’s slaveholding history, deeply racist

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<sup>1</sup> Marc Leepson, “Francis Scott Key: AMERICAN LAWYER,” Britannica.com, accessed 10/14/2017

<sup>2</sup> “1814: Key pens Star-Spangled Banner,” History.com, accessed 10/12/2017

<sup>3</sup> “Francis Scott Key,” Biography.com, accessed 10/12/2017

<sup>4</sup> Mark Leepson, “Francis Scott Key: AMERICAN LAWYER,” Britannica.com, accessed 10/12/2017

<sup>5</sup> Christopher Wilson, “Where’s the Debate on Francis Scott Key’s Slave-Holding Legacy?” SmithsonianMag.com, accessed 10/12/2017

<sup>6</sup> Priscilla Queen v. Francis Neale, EarlyWashingtonDC.org, accessed 10/12/2017

<sup>7</sup> “People & Events: American Colonization Society,” PBS.org, accessed 10/13/2017

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personal views, his support of the institution in his political life, and his assertion of human rights in the Declaration, in many ways parallel [Francis Scott] Key's story. In 1814, Key was a slaveholding lawyer from an old Maryland plantation family, who thanks to a system of human bondage had grown rich and powerful.”<sup>8</sup>

- **War of 1812:** During the War of 1812, the British invited thousands of American slaves to join them in the war against the United States. In order to receive freedom for themselves and their families, the men enlisted in the British Colonial Marines.<sup>9</sup>
- **Sept. 7, 1814:** A week before Francis Scott Key wrote what is now known as “The Star-Spangled Banner” (now also known as the national anthem), he was detained on a vessel by the British while negotiating the release of U.S. prisoners in British custody during the War of 1812.<sup>10</sup>
- **Sept. 13, 1814:** The British “barrage of Fort McHenry began eight miles away”<sup>11</sup> while Key watched from that vessel.
- **Sept. 14, 1814:** Key wrote about the event to the tune of “Anacreon in Heaven”<sup>12</sup> (a popular British drinking song) and took it to his brother-in-law Judge Joseph Hopper Nicholson, who “had it printed and distributed around the city.”<sup>13</sup>

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<sup>8</sup> Christopher Wilson, “Where’s the Debate on Francis Scott Key’s Slave-Holding Legacy?” SmithsonianMag.com, accessed 10/12/2017

<sup>9</sup> “The War of 1812,” PBS SoCal, PBS.org, accessed 10/14/2017

<sup>10</sup> “Francis Scott Key: 1780-1843,” USFlag.org, accessed 10/16/2017

<sup>11</sup> Cate Lineberry, “The Story Behind the Star Spangled Banner: How the flag that flew proudly over Fort McHenry inspired an anthem and made its way to the Smithsonian.” SMITHSONIAN.COM, March 1, 2007

<sup>12</sup> Michael Muskal, “Related story: ‘Star-Spangled Banner’: Anthem was once a song of drinking and sex,” LATimes.com, Sept. 13, 2014

<sup>13</sup> “The Star-Spangled Banner, 1814 (copy c. 1840),” digitalhistory.hsp.org, accessed on 10/18/2017

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- **Sept. 21, 1814:** “Defence of Fort M'Henry” is published in *The Baltimore [Maryland] Patriot* on Sept. 21, 1814.<sup>14</sup>
- **Oct. 19, 1814:** The song<sup>15</sup> “Defence of Fort M'Henry” was renamed “The Star-Spangled Banner” and printed in music sheet form by Thomas Carr of Baltimore a short time after its publication as “Defence of Fort M'Henry.”<sup>16</sup> It is performed for the first time at the theater on Holliday Street also in Baltimore, Maryland.<sup>17</sup>
- **The 1800s:** Before “The Star-Spangled Banner” became the national anthem in 1931, Key’s song was the de facto anthem for many, in addition to many other patriotic songs during that time period before and after the Civil War.

According to History.com, “During the Civil War, ‘The Star-Spangled Banner’ was an anthem for Union troops...”<sup>18</sup> Marc Ferris, author of *Star-Spangled Banner: The Unlikely Story of America’s National Anthem*, told USAToday.com for an article on Sept. 26, 2017:

“ ‘The North won the tug of war,’ Ferris says. ‘The irony is that the South’s anthem, Dixie, was written by an anti-slavery Northerner whereas the Star-Spangled Banner, the anthem of the North, was written by a slave-holding Southerner whose family supported the Confederacy’ long after Key died in 1843.”<sup>19</sup>

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<sup>14</sup> “Lot 274: THE STAR SPANGLED BANNER – Baltimore Patriot & Evening Advertiser. Baltimore: Munroe & French, No. 54 South Street, 21 September 1814.” Christies.com, accessed 10/11/2017

<sup>15</sup> Christopher Klein, “HISTORY STORIES: 9 Things You May Not Know About ‘The Star-Spangled Banner,’” Sept. 12, 2014 – “‘The Star Spangled-Banner’ was not a poem set to a melody years later. Although Key was an amateur poet and not a songwriter, when he composed his verses, he intended them to accompany a popular song of the day.”

<sup>16</sup> Robert M. Poole, “Star-Spangled Banner Back on Display,” *SmithsonianMag.com*, November 2008

<sup>17</sup> Spencer C. Tucker, *The Encyclopedia Of the War Of 1812*, Books.Google.com, 2012

<sup>18</sup> Christopher Klein, “9 Things You May Not Know About ‘The Star-Spangled Banner,’” *History.com*, 2014, accessed 10/19/2017

<sup>19</sup> Erik Brady, “How national anthem became essential part of sports,” *USAToday.com*, Sept. 26, 2017

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- **July 26, 1889:** The Secretary of the Navy “designated” that “The Star-Spangled Banner” be played “at the raising of the flag,” according to the Library of Congress.<sup>20</sup>
- **Sept. 5, 1918:** Key’s song first came into prominence at a sports game during the 1918 World Series.<sup>21</sup>
- **April 15, 1929:** Rep. John Linthicum of Maryland on April 15, 1929,<sup>22</sup> introduced the legislation calling for Key’s song to be the national anthem. The final law was titled: “CHAP. 436. An Act To make The Star-Spangled Banner the national anthem of the United States of America.”
- **March 3, 1931:** “The Star-Spangled Banner” was instituted as the National Anthem by President Herbert Hoover on March 3, 1931. On March 3, 1931, President Herbert Hoover signed H.R. 14, from the 71<sup>st</sup> Congress (1929–1931).<sup>23</sup>

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the composition consisting of the words and music known as The Star-Spangled Banner is designated the national anthem of the United States of America.”<sup>24</sup>

- **1940s:** According to the book *Pigskin: The Early Years of Pro Football* by Robert W. Peterson:

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<sup>20</sup> “SONG-COLLECTION: Star Spangled Banner,” LOC.gov, accessed 10/12/2017

<sup>21</sup> “1918 World Series key in US love affair with national anthem,” USAToday.com, July 3, 2017

<sup>22</sup> “Historical Highlights: The Designation of the ‘Star-Spangled Banner,’” U.S. House of Representatives: History, Art & Archives, History.House.gov, accessed 10/12/2017

<sup>23</sup> “Historical Highlights: The Designation of the ‘Star-Spangled Banner,’” U.S. House of Representatives: History, Art & Archives, History.House.gov, accessed 10/12/2017

<sup>24</sup> “The Statutes at Large ... from April, 1929, to March, 1931 ... Vol. XLVI: Session III: H.R. 14, Public, No. 823, Chapter 436,” LOC.gov, Page 1508

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“During the war [WWII], playing the national anthem had become a ceremonial prelude to NFL games. [NFL] Commissioner Elmer Layden announced that the anthem would continue to be played.”<sup>25</sup>

- **1967:** In his memoir titled *I Never Had It Made*, 1962 National Baseball Hall of Fame inductee Jackie Robinson (1919-1972), wrote: “As I write this twenty years later, [from 1947 World Series, around 1967] I cannot stand and sing the anthem.”<sup>26</sup> Cornel West wrote the following in the introduction to Robinson’s memoir:

“And yet, his disillusionment with America is real. Robinson cannot stand and sing the national anthem or salute the flag. His deep patriotism and his hatred of white supremacy will not allow him to engage in such empty gestures of country-worship. He knows that ‘money is America’s God’ and that he is ‘a black man in a white world.’”

- **1968:** Other athletes who openly protested the national anthem include Olympic medalists Tommie Smith and John Carlos in 1968.<sup>27</sup> According to SmithsonianMag.com, in an article titled “Olympic Athletes Who Took a Stand” from August 2008:

“Smith and Carlos, winners of the gold and bronze medals, respectively, in the event, had come to the ceremony dressed to protest: wearing black socks and no shoes to symbolize African-American poverty, a black glove to express African-American

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<sup>25</sup> Robert W. Peterson, *Pigskin: The Early Years of Pro Football*, Books.Google.com, Published by Oxford University Press, accessed 10/19/2017

<sup>26</sup> Craig Calcaterra, “Jackie Robinson: ‘I cannot stand and sing the anthem. I cannot salute the flag,’” MLB.NBCSports.com, Aug. 29, 2016

<sup>27</sup> David Ng, “How ‘The Star-Spangled Banner,’ racist or not, became our national anthem,” LATimes.com, Sept. 6, 2016

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strength and unity. (Smith also wore a scarf, and Carlos beads, in memory of lynching victims.) As the national anthem played and an international TV audience watched, each man bowed his head and raised a fist. After the two were banished, images of their gesture entered the iconography of athletic protest.”<sup>28</sup>

- **March 12, 1996:** National Basketball Association (NBA) Denver Nuggets player Mahmoud Abdul-Rauf<sup>29</sup> was suspended for protesting the national anthem. The NBA, unlike the NFL, has a rule that players stand for the performance of the national anthem.<sup>30</sup> Like Kaepernick, a reporter first noticed that Abdul-Rauf was not traditionally observing the performance of the national anthem:

“Like Kaepernick, Abdul-Rauf said he viewed the American flag as a symbol of oppression and racism. Abdul-Rauf also said standing for the anthem would conflict with his Muslim faith. ‘You can’t be for God and for oppression. It’s clear in the Quran, Islam is the only way,’ he said at the time.

‘I don’t criticize those who stand, so don’t criticize me for sitting.’ “

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<sup>28</sup> David Davis, “Olympic Athletes Who Took a Stand: For 40 years, Olympians Tommie Smith and John Carlos have lived with the consequences of their fateful protest,” SmithsonianMag.com, August 2008

<sup>29</sup> Ryan Vooris, “10 Athletes Who Made Bold Political and Social Statements,” BleacherReport.com, Aug. 30, 2010

<sup>30</sup> Zach Lowe, “Memo reinforces rule that NBA players, coaches stand for anthem,” ESPN.com, Sept. 30, 2017

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- **Aug. 12, 1998:** According to U.S. Code “Title 36 – Patriotic and National Observances, Ceremonies and Organizations,”<sup>31</sup> the following is the suggested code of conduct for non-military individuals observing the National Anthem when a flag is displayed:

“(A) all present except those in uniform should stand at attention facing the flag with the right hand over the heart; (B) men not in uniform should remove their headdress with their right hand and hold the headdress at the left shoulder, the hand being over the heart; and ... (2) when the flag is not displayed, all present should face toward the music and act in the same manner they would if the flag were displayed.”

- **Dec 16, 2014:** There has been legislation proposed since 1931 making other songs, such as “America the Beautiful,” the national anthem. A more recent one came in 2014 introduced by Sen. Thomas Harkin (D-IA): “S. 3020 (113th): A bill to establish the composition known as America the Beautiful as the national anthem,” according to GovTrack.us accessed Oct. 19, 2017.
- **Nov. 4, 2015:** It was discovered that patriotism was being manufactured through the use of the anthem and other military displays at sports games. In 2015, Sens. Jeff Flake (R-AZ) and John McCain (R-AZ) released a report that exposed the Department of Defense’s practice of paying sports teams to promote patriotism:

“Certain contracts show that DOD paid for specific activities including on-field color guard performances, enlistment and re-enlistment

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<sup>31</sup>“USCode, Title 36 – Patriotic and National Observances, Ceremonies and Organizations: Subtitle I – Patriotic and National Observances and Ceremonies: Part A – Observances and Ceremonies: Chapter 3. National anthem, Motto, Floral Emblem, March, and Tree,” USCode.House.gov, Enacted by Public Law 105-225, Aug. 12, 1998, 112 Stat. 1253, accessed 10/12/2017

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ceremonies, performances of the national anthem, full-field flag details, and ceremonial first pitches and puck drops.”<sup>32</sup> (underlining added)

- **Aug. 26, 2016:** A San Francisco 49ers NFL quarterback, Colin Kaepernick, who was spotted *sitting* for the anthem during the third preseason home game on Aug. 26, 2016, although he had sat for the anthem previously while out of uniform. The next game, he “*took a knee*,” kneeling on one knee on the sideline while the national anthem was played.

After he was spotted sitting at the third preseason game, Kaepernick said he was protesting a country that “oppresses black people and people of color.”<sup>33</sup>

- **Aug. 27, 2016:** In response to Kaepernick's decision to protest during the National Anthem, the San Francisco 49ers issued a statement on Aug. 27, 2016:

"The national anthem is and always will be a special part of the pre-game ceremony. It is an opportunity to honor our country and reflect on the great liberties we are afforded as its citizens. In respecting such American principles as freedom of religion and freedom of expression, we recognize the right of an individual to choose and participate, or not, in our celebration of the national anthem.”<sup>34</sup>

- **Aug. 27, 2016:** In response to Kaepernick's decision to protest during the National Anthem, The NFL also issued a statement on Aug. 27, 2016:

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<sup>32</sup> “PAID PATRIOTISM? FLAKE & McCAIN RELEASE NEW OVERSIGHT REPORT,” McCain.Senate.gov, Nov. 4, 2015

<sup>33</sup> John Branch, “The Awakening of Colin Kaepernick,” NYTimes.com, Sept. 7, 2017

<sup>34</sup> Steve Wyche, “Colin Kaepernick explains why he sat during national anthem,” NFL.com, Aug. 27, 2016

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“...: ‘Players are encouraged but not required to stand during the playing of the national anthem.’”<sup>35</sup>

- **Aug. 28, 2016:** Although sports players protesting the national anthem is not a new phenomenon, Kaepernick’s protest comes at a time when many in the United States are debating the future of statues and documents, from the Constitution of the United States to statues of Robert E. Lee, that were created in or commemorate an era in history that condoned slavery.

On Aug. 28, 2016, Kaepernick spoke about his reason for protesting during the performance of the national anthem:

“Yes. I’ll continue to sit. . . I’m going to continue to stand with the people that are being oppressed. To me this is something that has to change. When there’s significant change and I feel like that flag represents what it’s supposed to represent, this country is representing people the way that it’s supposed to, I’ll stand.”<sup>36</sup>

- **Aug. 28, 2016:** In the article, “Colin Kaepernick is Righter Than You Know: The National Anthem is a Celebration of Slavery,” written by Jon Schwartz<sup>37</sup> two days after Kaepernick was spotted sitting during the national anthem, there is a breakdown of the origin of the national anthem and the writer’s interpretation of the lines in the third stanza about the “hireling and slave” lines:

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<sup>35</sup> Steve Wyche, “Colin Kaepernick explains why he sat during national anthem,” NFL.com, Aug. 27, 2016

<sup>36</sup> Chris Biderman, “Transcript: Colin Kaepernick addresses sitting during national anthem,” NinersWire.USAToday.com, Aug. 28, 2016

<sup>37</sup> “Before joining First Look, Jon Schwarz worked for Michael Moore’s Dog Eat Dog Films and was Research Producer for Moore’s ‘Capitalism: A Love Story.’ He’s contributed to many publications, including the *New Yorker*, the *New York Times*, *The Atlantic*, the *Wall Street Journal*, *Mother Jones*, and *Slate*, as well as NPR and ‘Saturday Night Live.’ In 2003 he collected on a \$1,000 bet that Iraq would have no weapons of mass destruction.” TheIntercept.com, accessed 10/19/2017

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“So when Key penned ‘No refuge could save the hireling and slave / From the terror of flight or the gloom of the grave,’ he was taking great satisfaction in the death of slaves who’d freed themselves. His perspective may have been affected by the fact he owned several slaves himself.”

Jon Schwartz notes that he had gained some insight from an even earlier article by Andrew Cockburn in the September 2014 issue of *Harper’s Magazine* online at Harpers.org.

- **Aug. 28, 2016:** The same day, Radley Balko, an opinion blogger for *The Washington Post’s* “The Watch,” re-Tweeted TheIntercept.com article on Kaepernick’s protest:

“Damn. Did not know this. The third verse of the U.S. national anthem literally celebrates the deaths of slaves. ...”

- **March 3, 2017:** It is reported the Kaepernick opted out of his contract with the San Francisco 49ers.<sup>38</sup>
- **Sept. 13, 2017:** The reference to slaves in the national anthem may be a reason for someone reportedly spray painting “Racist Anthem” on the base of Key’s statue in Baltimore, Maryland, on Sept. 13, 2017. In response to the vandalism, Eric Holcomb, executive director of the city’s Commission for Historical and Architectural Preservation said:

“It’s so counterproductive, what they’re doing,’ he said. ‘History’s messy. It’s nuanced. It’s something to talk about, not something to erase.’<sup>39</sup>

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<sup>38</sup> James Brady, “Colin Kaepernick opts out of contract with 49ers,” SBNation.com, March 3, 2017

<sup>39</sup> Colin Campbell and Sean Walsh, “Baltimore to keep, clean defaced Francis Scott Key statue,” BaltimoreSun.com, Sept. 13, 2017

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- **Oct. 17, 2017:** There is no current official rule that players stand or observe the National Anthem in the National Football League, although there is a section on “Personal Messages”<sup>40</sup>

According to the “2017 Official Playing Rules of the National Football League” on the NFL Operations website, a search does not turn up anything for “anthem” in the online PDF as of Oct. 12, 2017. Under Section 4 – “Equipment, Uniforms, Player Appearance,” in addition to what is acceptable to wear on the field, including the towel rules – “Players are prohibited from adding to these towels personal messages” – and penalties for when rules are broken during the game, there is a passage on “Personal Messages” under Rule 5:

“ARTICLE 8. PERSONAL MESSAGES. Throughout the period on game-day that a player is visible to the stadium and television audience ... players are prohibited from wearing, displaying, or otherwise conveying personal messages either in writing or illustration, unless such message has been approved in advance by the League office. ... The League will not grant permission for any club or player to wear, display, or otherwise convey messages, ... which relate to political activities or causes, ...”

On Oct. 17, 2017, NFL leaders decided to continue the policy of not enacting any rule requiring players to stand and not protest during the performance of the national anthem.<sup>41</sup>

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<sup>40</sup> “2017 OFFICIAL PLAYING RULES OF THE NATIONAL FOOTBALL LEAGUE,” accessed 10/18/2017

<sup>41</sup> Ken Belson and Kevin Draper, “Trump Criticizes N.F.L. for Not Penalizing Anthem Kneeling,” NYTimes.com, Oct. 17, 2017

### III. Those for and Against the NFL Protests

- **Aug. 30, 2016:** Nate Boyer, both an ex-Green Beret and former NFL player, penned an “open letter”<sup>42</sup> to Kaepernick on Aug. 30, 2016, after Kaepernick was spotted sitting for the anthem. Nate Boyer is among those credited for Kaepernick choosing to “take a knee” instead of sitting while the national anthem was performed:

“We sorta came to a middle ground where he would take a knee alongside his teammates,’ Boyer says. ‘Soldiers take a knee in front of a fallen brother’s grave, you know, to show respect. When we’re on a patrol, you know, and we go into a security halt, we take a knee, and we pull security.’”

- **Sept. 22, 2017:** During a Sept. 22, 2017, campaign rally for Senate-candidate Luther Strange in Huntsville, Alabama, President Donald Trump said:

“Wouldn’t you love to see one of these NFL owners when somebody disrespects our flag, to say ‘Get that son of a bitch off the field right now, out, he’s fired?’”

- **Sept. 24, 2017:** Not every player or team that observes the performance of the national anthem or protests during the national anthem is showing solidarity to any player or political issue. On Sept. 24, 2017, the NFL team the Pittsburgh Steelers stayed in the locker room:

“ ‘We’re not going to play politics. We’re football players, we’re football coaches,’ Tomlin said. ‘We’re not participating in the anthem today - not to be

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<sup>42</sup> Nate Boyer, “An open letter to Colin Kaepernick, from a Green Beret-turned-long snapper,” ArmyTimes.com, Aug. 30, 2016

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disrespectful to the anthem, but to remove ourselves from the circumstance.”<sup>43</sup>

- **Sept. 24, 2017:** Only one player, a former Army Ranger, was not in the locker room and stood alone for the performance of the national anthem, a decision Alejandro Villanueva says he regrets because he didn't support the team's decision:

Villanueva said his presence on the field was a mistake, and only went out ahead of the National Anthem because he wanted to see the flag. When the anthem began, he did not want to move.<sup>44</sup>

- **Sept. 24, 2017:** A World War II vet “took a knee” to support the player protest.<sup>45</sup>
- **Sept. 25, 2017:** Some veterans disagree with the protests,<sup>46</sup> while others believe they served to protect the right to protest. The American Legion and The Veterans of Foreign Wars<sup>47</sup> condemned the Sept. 23-24, 2017, player protests as “disrespectful.”
- **Sept. 26, 2017:** In a Twitter message, President Trump made a suggestion to the NFL about player protocol for the national anthem:

“The NFL has all sorts of rules and regulations. The only way out for them is to set a rule that you can't kneel during our National Anthem!”

- **Oct. 1, 2017:** Some networks decided to stop showing the performance of the national anthem at football games:

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<sup>43</sup> “Steelers don't participate in national anthem, with exception of ex-Ranger Alejandro Villanueva,” USAToday.com, Sept. 24, 2017

<sup>44</sup> Solange Reyner, “Steelers' Villanueva Apologizes for Standing for National Anthem,” Newsmax.com, Sept. 25, 2017

<sup>45</sup> M.L. Nestel, “The 97-year-old WWII veteran who took a knee to support NFL player protests,” ABCNews.go.com, Sept. 25, 2017

<sup>46</sup> Cam Inman, “Colin Kaepernick takes knee during anthem, joined by Eric Reid,” MercuryNews.com, Sept. 1, 2016

<sup>47</sup> Leo Shane III, “VFW, American Legion slam NFL players for anthem protests,” ArmyTimes.com, Sept. 25, 2017

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“Fox’s statement also said, however, that ‘our cameras are always rolling and we will document the response of players and coaches on the field.’ As of early Sunday afternoon, it was unclear how the network will ‘document’ the protests without airing the anthem.”<sup>48</sup>

- **Oct. 11, 2017:** According to an NFL.com a league spokesman on Oct. 11, 2017:

“The NFL has no plans to mandate players stand for the national anthem ...”

- **Oct. 11, 2017:** Sports columnist Christine Brennan, on Oct. 11, 2017, had suggested this option for NFL policy in a USA Today.com article:

“So, what to do? There's a very simple answer: Go back to the days before 2009 when teams were not required to come out of the locker room for some games until after the anthem was played (except for the Super Bowl and after 9/11).”<sup>49</sup>

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<sup>48</sup> David Z. Morris, “The Reason Why Fox Sports Isn’t Airing the NFL’s National Anthem Today,” Fortune.com, Oct. 1, 2017

<sup>49</sup> Christine Brennan, “NFL, players have one easy answer for how to end protests on their own terms,” USA Today.com, Oct. 11, 2017

## IV. The National Anthem

### A. A Few Interpretations of the Third Stanza of the National Anthem: “No refuge could save the hireling and slave...”

There have been many critiques on having “The Star-Spangled Banner” as the national anthem. They range from the tune being too hard for average people to sing<sup>50</sup> to the song it too militaristic<sup>51</sup> and offends the British<sup>52</sup> to the lyrics of the third stanza being racist.

- **Aug. 30, 2016:** ConservativeReview.com interpretation on Aug. 30, 2016:

“There's just one problem: These lyrics are describing slaves, who were, as King conveniently points out, hired by the British. This song is not about killing black slaves. It's about fighting the enemy, be he a decorated British officer or the escaped slave hired to do his dirty work.”<sup>53</sup>

- **Sept. 14, 2017:** “For his time, he ought to be perceived as progressive,” Robert Devaney wrote in a Georgetowner.com article on Sept. 14, 2017, in defense of Key after his statue was vandalized in Baltimore, Maryland. Devaney says Key was “conflicted about slavery”:

“The accusation that the poem itself is racist is off the mark and lacks historical context. How is Key's use of the word, ‘slaves,’ who were part of the

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<sup>50</sup> Dr. George J. Svejda, “HISTORY OF THE STAR SPANGLED BANNER : FROM 1814 TO THE PRESENT,” Archive.org, accessed 10/15/2017

<sup>51</sup> Harvey Wasserman, “We Need a New National Anthem,” Progressive.org, Sept. 25, 2017

<sup>52</sup> Dr. George J. Svejda, “HISTORY OF THE STAR SPANGLED BANNER : FROM 1814 TO THE PRESENT,” Archive.org, accessed 10/15/2017

<sup>53</sup> Marian Weyo, “Enough already! Here's why our national anthem is not racist,” ConservativeReview.com, Aug. 30, 2016

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enemy force, offensive? How many texts contain the word 'slaves'? In such excluding minds, what's next? The sculpture in Francis Scott Key Park on M Street in Georgetown, next to Key Bridge? What about the equestrian statue of liberator Simón Bolívar, a slave owner, at 18th Street and Virginia Avenue, across from the Organization of American States?"<sup>54</sup>

- **Sept. 15, 2017:** Walter Olson in NationalReview.com questioned whether Key's song is racist in a Sept. 15, 2017, article subtitled "Its third verse uses the word 'slave,' but it may not have referred to chattel slavery in the South":

"Was Key pursuing a grudge by describing, or misdescribing, the Corps of Colonial Marines as slaves? Or did he have the (predominantly white) conscripts in mind? Or was he just reaching for a common word pairing, familiar to his listeners, that provided him with a rhyme? There's no record of him ever explaining why he chose those words. When we decide whether to give his words a reading that is charitable or otherwise, we make a choice too."<sup>55</sup>

- **Sept. 27, 2017:** Zahara Hill in Ebony.com wrote:

"Some interpret the verse as a celebration of the slaves' deaths. Others say the song is simply a reflection of the era in which it was written. We say no matter Key's intention, anything normalizing

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<sup>54</sup> Robert Devaney, "In Defense of the National Anthem and Francis Scott Key," Georgetowner.com, Sept. 14, 2017

<sup>55</sup> Walter Olson, "Is 'The Star-Spangled Banner' Racist?," NationalReview.com, Sept. 15, 2017

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slavery is essentially racist and, consequently, unappealing.”<sup>56</sup>

- **Oct. 2, 2017:** Associate Professor Jason Johnson of Morgan State University, as quoted by HuffingtonPost.com contributor Gyasi Ross in an article titled “Maybe It’s Time For A New National Anthem (Or None At All): #TakeAKnee is not about the national anthem. But maybe it should be.”:

“Essentially, Francis Scott Key was happy to see former slaves, who had joined the British as part of their Colonial Marines, getting slaughtered and killed as they attempted to take Baltimore...he’s essentially saying to these terrible, ungrateful, black people, this is the consequence of standing up against the United States.”<sup>57</sup>

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<sup>56</sup> Zahara Hill, “The ‘Star-Spangled Banner’ Actually Is Racist, So Here Are Some Other Anthems We Can Get With,” Ebony.com, Sept. 27, 2017

<sup>57</sup> Gyasi Ross, “Maybe It’s Time For A New National Anthem (Or None At All),” HuffingtonPost.com, Oct. 2, 2017

## B. The Lyrics to the National Anthem

*"The Star-Spangled Banner"<sup>58</sup>*

*"O say can you see, by the dawn's early light,  
What so proudly we hail'd at the twilight's last  
gleaming,  
Whose broad stripes and bright stars through the  
perilous fight  
O'er the ramparts we watch'd were so gallantly  
streaming?  
And the rocket's red glare, the bombs bursting in air,  
Gave proof through the night that our flag was still  
there,  
O say does that star-spangled banner yet wave  
O'er the land of the free and the home of the brave?*

*On the shore dimly seen through the mists of the  
deep  
Where the foe's haughty host in dread silence  
reposes,  
What is that which the breeze, o'er the towering  
steep,*

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<sup>58</sup> "The Lyrics," Smithsonian Institute, AmHistory.si.edu, accessed 10/11/2017

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*As it fitfully blows, half conceals, half discloses?  
Now it catches the gleam of the morning's first  
beam,  
In full glory reflected now shines in the stream,  
'Tis the star-spangled banner - O long may it wave  
O'er the land of the free and the home of the brave!*

*And where is that band who so vauntingly swore,  
That the havoc of war and the battle's confusion  
A home and a Country should leave us no more?  
Their blood has wash'd out their foul footsteps'  
pollution.*

*No refuge could save the hireling and slave  
From the terror of flight or the gloom of the grave,  
And the star-spangled banner in triumph doth wave  
O'er the land of the free and the home of the brave.*

*O thus be it ever when freemen shall stand  
Between their lov'd home and the war's desolation!  
Blest with vict'ry and peace may the heav'n rescued  
land  
Praise the power that hath made and preserv'd us a  
nation!  
Then conquer we must, when our cause it is just,  
And this be our motto - "In God is our trust,"*

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*And the star-spangled banner in triumph shall wave  
O'er the land of the free and the home of the brave.”  
(underlining added)*

### **V. Some Questions About This Controversy to Think About**

1. Is the national anthem racist?
2. Are the non-violent protests to the national anthem by NFL and other players protected by the First Amendment, or do the sports teams have the right to treat the protestors punitively for their protests as long as the players are otherwise doing their jobs?
3. Should there be a NFL rule that players must stand without protest for the performance of the national anthem in the NFL?
4. Why is the national anthem played before sports games but not before performances of many other entertainment venues?
5. Has our government in any way promoted the performance of the national anthem at sports events, and if so, how and why?

Many other questions have arisen or will surely arise from these issues, and as is often the case on such controversies, what may initially seem black and white to some might look grayer on closer inspection.

***To send your comments, suggestions and/or criticisms on this report, [click here.](#)***

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