

## **FLOOR STATEMENT ON NEW ENGLAND PATRIOTS VIDEOTAPING**

### **I. WHAT WE KNOW:**

- (1) The Patriots engaged in extensive videotaping of opponents' offensive and defensive signals starting on August 20, 2000 and extending to September 9, 2007, when they were publicly caught videotaping the Jets.

The extent of the taping was not disclosed until the NFL was pressured to do so. Originally, Commissioner Goodell said the taping was limited to late in the 2006 season and early in the 2007 season. In his meeting with me on February 13, 2008, Goodell admitted the taping went back to 2000. Until my meeting with Matt Walsh on May 13, 2008, the only taping we knew about took place from 2000 until 2002 and during the 2006 and 2007 seasons.

That left an obvious gap between 2003 and 2005. In response to my questions, Matt Walsh stated he had season tickets in 2003, 2004 and 2005 and saw Steve Scarnecchia, his successor, videotape games during those seasons including:

The Patriots' September 9, 2002 game against the Steelers.

The Patriots' November 16, 2003 game against the Cowboys.

The Patriots' October 31, 2004 game against the Steelers, which the Steelers resoundingly won 34-20. (When the Patriots played the Steelers again that season in the AFC Championship game on January 23, 2005, the Patriots won by a score of 41-27.)

Walsh stated he observed Scarnecchia filming additional Patriots home games, though he could not recall the specific games.

Walsh said he did not tell Goodell about the taping during 2003, 2004 and 2005 because he was not asked.

- (2) The NFL confiscated the Jets tape on September 9, 2007; imposed the penalties on September 13, 2007; on September 17, 2007, viewed the tapes for the first time; and then announced they had destroyed those tapes on September 20, 2007. Commissioner Goodell made his judgment on the punishment to be levied before he had viewed the key evidence.
- (3) Matt Walsh and other Patriots employees, Steve Scarnecchia, Jimmy Dee, Fernando Neto and possibly Ed Bailey were present to observe most if not all of the St. Louis Rams walk-through practice in advance of the 2002 Super Bowl, including Marshall Faulk's unusual positioning as a punt returner.

David Halberstam's book, *The Education of a Coach*, documents the way Belichick spent the week before the Super Bowl obsessing about where the Rams would line up Faulk.

Walsh was asked and told Assistant Coach, Brian Dabol, about the walkthrough. Walsh said Dabol asked him specific questions about the Rams offense and Walsh told Dabol about Faulk's lining up as a kick returner. Walsh also told Dabol about Rams running backs "lining up in the flat." Walsh said Dabol then drew diagrams of the formations Walsh had described.

(According to media reports, Dabol denied talking to Walsh about Faulk. We do not know what Scarnecchia, Dee, Neto or Bailey did or even if they were interviewed.

- (4) The Patriots took elaborate steps to conceal their filming of opponents' signals. Patriots personnel instructed Walsh to use a "cover story" if anyone questioned him about the filming.

For example, if asked why the Patriots had an extra camera filming, he was instructed to say that he was filming “tight shots” of a particular player or players or that he was filming highlights.

If asked why he was not filming the play on the field, he was instructed to say that he was filming the down marker.

The red light indicating when his camera was rolling was broken.

During at least one game, the January 27, 2002 AFC Championship game, Walsh was specifically instructed not to wear anything displaying a Patriots logo. Walsh indicated he turned the Patriots sweatshirt he was wearing at the time inside-out. Walsh was also given a generic credential instead of one that identified him as team personnel.

These efforts to conceal the filming demonstrate the Patriots knew they were violating NFL rules.

## **II. THE VIDEOTAPING HAD A SIGNIFICANT IMPACT ON THE GAME**

- (1) The filming enabled the Patriots coaching staff to anticipate the defensive plays called by the opposing team. According to Walsh, he first filmed an opponents’ signals during the August 20, 2000 pre-season game against the Tampa Bay Buccaneers. After Walsh filmed a game, he would provide the tape for Ernie Adams, a coaching assistant for the Patriots, who would match the signals with the plays.

Walsh was told by a former offensive player that a few days before the September 11, 2000 regular season game against Tampa Bay, he (the offensive player) was called into a meeting with Adams, Bill Belichick and Charlie Weis, then the offensive coordinator for the Patriots, during which it was explained how the

Patriots would make use of the tapes. The offensive player would memorize the signals and then watch for Tampa Bay's defensive calls during the game. He would then pass the plays along to Weis, who would give instructions to the quarterback on the field.

This process enabled the Patriots to go to a "no-huddle" offensive, which would lock in the defense the opposing team had called from the sideline, preventing the defense from making any adjustments. When Walsh asked whether the tape he had filmed was helpful, the offensive player said it had enabled the team to anticipate 75 percent of the plays being called by the opposing team.

- (2) Among the tapes Walsh turned over to the NFL is one of the AFC Championship game on January 27, 2002 in which the Patriots defeated the Steelers by a score of 24-17. When the Patriots played the Steelers again during their season-opener on September 9, 2002, the Patriots again won, this time by a score of 30-14.

On October 31, 2004, the Steelers beat the Patriots 34-20, forced four turnovers, including two interceptions, and sacked the quarterback four times. In the AFC Championship game on January 23, 2005, the Patriots won 41-27 and intercepted Ben Roethlisberger three times. The Steelers had no sacks that game.

With respect to the 2002 AFC Championship game, it was reported in February of this year that Hines Ward, Steelers wide receiver, said: "Oh, they know. They were calling our stuff out. They knew, especially that first championship game here at Heinz Field. They knew a lot of our calls. There's no question some of their players were calling out some of our stuff."

In addition, Steelers cornerback, Sheldon Brown, reportedly said earlier this year that he noticed a difference in New England's playcalling in the second quarter of the January 27, 2002 AFC Championship game.

- (3) Tampa Bay won the August 20, 2000 pre-season game by a score of 31-21. According to the information provided by Matt Walsh, the Patriots used the film to their advantage when they played Tampa Bay in their first regular season game on September 3, 2000. The Patriots narrowed the spread, losing by a score of 21-16. After the game, Charlie Weis, the Patriots' offensive coordinator, was reportedly overheard telling Tampa Bay's defensive coordinator, Monte Kiffin, "We knew all your calls, and you still stopped us." The tapes Walsh turned over to the NFL indicate the Patriots filmed the Dolphins during their game on September 24, 2000, a game the Patriots lost by 10-3.

According to Walsh, when the Patriots first began filming opponents, they filmed opponents they would play again during that same season. The Patriots played the Dolphins again that season on December 24, 2000; they again narrowed the spread, losing by a score of 27-24.

According to Walsh, he filmed the Patriots' game against Buffalo on November 5, 2000, a game the Patriots lost 16-13. When the Patriots played the Bills again that season on December 17, 2000, the Patriots won by a score of 13-10.

During the following season, Walsh filmed the Patriots' game against the Jets on September 23, 2001, a game the Patriots lost by a score of 10-3. When the Patriots played the Jets again that season on December 2, 2001, the Patriots won by a score of 17-16.

The tapes Walsh turned over to the NFL indicate the Patriots filmed the Dolphins during their game on October 7, 2001, a game the Patriots lost by 30-10. When the Patriots played the Dolphins again that season on December 22, 2001, the Patriots won by a score of 20-13.

- (4) The Patriots filmed opponents offensive signals in addition to defensive signals. On April 23, 2008, the NFL issued a statement indicating that "Commissioner

Goodell determined last September that the Patriots had violated league rules by videotaping opposing coaches' *defensive signals* during Patriots games throughout Bill Belichick's tenure as head coach." However, the tapes turned over by Matt Walsh contain footage of offensive signals. The tapes turned over to the NFL and the information provided by Walsh proves that the Patriots also routinely filmed opponents' offensive signals.

- (5) Why the Patriots videotaped signals during games when they were not scheduled to play that opponent during the balance of the season unless they were able to utilize the videotape during the latter portion of the same game. The NFL has not addressed the question as to whether the Patriots decoded signals during the game for later use in that game.

Mark Schlereth, a former NFL offensive lineman and an ESPN football analyst, is quoted in the New York Time on May 14<sup>th</sup>:

"Then why are you doing it against teams you aren't going to play again that season?"

Schlereth said that "the breadth of information on the tapes – mainly, the coaches' signals and the subsequent play – would be simple for someone to analyze during a game. There are enough plays in the first quarter, he said, to glean any team's "staples," and a quick review of them could prove immediately helpful. I don't see them wasting time if they weren't using it in that game."

### **III. The NFL's Investigation was not objective, transparent or adequate**

- (1) Walsh said that Dan Goldberg, an attorney for the Patriots, was present at his interview and asked questions. With some experience in investigations, I have never heard of a situation where the subject of an investigation or his/her/its representative was permitted to be present during the investigation. I strains credulity that any objective investigator would countenance such a practice.

During a hearing or trial, parties will be present with the right of cross-examination and confrontation but certainly not in the investigative stage.

- (2) Commissioner Goodell misrepresented the extent of the taping when he said at the super Bowl press conference on February 1, 2008: “I believe there were six tapes, and I believe some were from the pre-season in 2007, and the rest were primarily in the lat 2006 season. In addition, there were notes that had been collected, that I would imagine many teams have from when they scout a team in advance, that we took, that may have been collected by using an illegal activity, according to our rules.”

Later, Goodell said of the taping “[W]e think it was quite limited. It was not something that was done on a widespread basis.”

- (3) Commissioner Goodell materially changed his story in his meeting with me on February 13, 2008 when he said there has been taping since 2000.
- (4) There has been no plausible explanation as to why Commissioner Goodell imposed the penally on September 13, 2007, before the NFL examined the tapes on September 17, 2007.
- (5) There has been no plausible explanation as to why the NFL destroyed the tapes. Commissioner Goodell sought to explain his reason by saying during his February 1, 2008 press conference that: “We didn’t want there to be any question about whether this existed. If it shows up again, it would have to be something that came outside of our investigation and what I was told existed.”
- (6) On April 23, 2008, the NFL issued a statement that the penalties imposed on the Patriots last Fall were solely for filming defensive signals. “Commissioner Goodell determined last September that the Patriots had violated league rules by videotaping opposing coaches’ *defensive signals* during Patriots games

throughout bill Belichick's tenure as head coach." The tapes turned over by Matt Walsh also contain footage of offensive signals.

- (7) The overwhelming evidence flatly contradicts Commissioner Goodell's assertion that there was little or no effect on the outcome of the game: during his February 1, 2008 press conference, Commissioner Goodell stated "I think it probably had a limited effect, if any effect, on the outcome on any game." Later during the press conference, Goodell stated again "I don't believe it affected the outcome of any games."

Commissioner Goodell's effort to minimize the effect of the videotaping is categorically refuted by the persistent use of the sophisticated scheme which required a great deal of effort and produced remarkable results.

- (8) In the absence of the notes, which the NFL destroyed, of the Steelers' three regular season games and two post-season games, including the championship game on January 23, 2005, we do not know what effect the videotaping of the earlier games, especially the October 31, 2004 game, had on enabling the Patriots to win the AFC Championship. It is especially critical that key witnesses (coaches, players) be questioned to determine those issues.

- (9) Failure to question (or at least publicly disclose the results of) key witnesses to other matters identified herein on what we do not know.

#### **IV. An Objective, Thorough, Transparent Investigation is an Absolute Necessity**

On the totality of the available evidence and the potential unknown evidence, the Commissioner's investigation has been fatally flawed.

The lack of candor, the piecemeal disclosures, the changes in position on material matters, the failure to be proactive in seeking out other key witnesses, and responding only when unavoidable when evidence is thrust upon the NFL leads to the judgment that an impartial investigation is mandatory.

There is an unmistakable atmosphere of conflict of interest or potential conflict of interest between what is in the public's interest and what is in the NFL's interest. The NFL has good reason to disclose as little as possible in its effort to convince the public that what was done wasn't so bad, had no significant effect on the games and, in any event, has all been cleaned up. Enormous financial interests are involved and the owners have a mutual self-interest in sticking together. Evidence of winning by cheating would have the inevitable effect of undercutting public confidence in the game and reducing, perhaps drastically, attendance and TV revenues.

The public interest is enormous. Sports personalities are role models for all of us, especially youngsters. If the Patriots can cheat, so can the college teams, so can the high school teams, so can the 6<sup>th</sup> grader taking a math examination. The Congress has granted the NFL a most significant business advantage, an antitrust exemption, highly unusual in the commercial world. That largesse can continue only if the NFL can prove itself worthy. Beyond the issues of role models and antitrust, America has a love affair with sports. Professional football has topped all other sporting events in fan interest. Americans have a right to be guaranteed that their favorite sport is honestly competitive.

In an extraordinary time, baseball took extraordinary action in turning to a man of unimpeachable integrity – Federal Judge Kenesaw Mountain Landis – to act forcefully and decisively to save professional baseball from the Black Sox scandal in 1919.

On this state of the record, an objective, thorough, transparent investigation is necessary. If the NFL does not initiate an inquiry like the investigation conducted by former Senator George Mitchell for baseball, it will be up to Congress to get the facts and take corrective action.