

his last 2 years, and the nominations were gridlocked, and slowed down. Similarly, with President Bush the first, the last 2 years were slowed down, and then other devices and procedures were employed during the last 2 years of President Clinton's administration, procedures employed by the Republican caucus. As I have said on a number of occasions, I think the Republican caucus was wrong. I said so, and I voted so, in support of President Clinton's nominations. And now, I think the Democratic caucus is wrong in what the Democratic caucus is doing.

I am not going to get into all of the nuances of the so-called "deal" about the confirmation of three circuit judges before Memorial Day, but that deal could have been accomplished had the judges waiting in line the longest been processed as opposed to judges who had not had their investigations done and had not had their ABA clearances.

But, all of that is prologue, as I see it. During an Judiciary executive committee meeting, before the recess, I said publicly that I hoped to sit down with this chairman to try to work through this. We had a meeting scheduled yesterday, and we are going to sit down this afternoon. So it is my hope we will find a way through this thick-  
et.

I have proposed a protocol where we would have a hearing so many days after a nomination; then so many days later, we would have executive committee action; then so many days later, floor action.

I think it is time that we reexamined the blue slip situation, a concept where an individual who was personally obnoxious to a given Senator was objected to. Well, I have grave questions about that standard for excluding people. I think it ought to be a matter of whether they are publicly obnoxious, but, what we ought to do is we ought to vote; we ought to bring these people to the floor for a vote.

#### GLOBAL WARMING

Mr. SPECTER. Mr. President, I am sorry to see that the majority leader has filled the tree on the global warming bill. There is no way we are going to move ahead on this legislation, as I have stated before on the floor, if we are not permitted to offer amendments.

I think there is general agreement, although there are still some dissenters, that we need to do something. We have the Warner-Lieberman bill. I think it has objectives which are not technologically obtainable, which are too difficult on the U.S. economy, and have joined with Senator BINGAMAN on alternative legislation.

I ask unanimous consent that the statement regarding a number of amendments which I had proposed to introduce be printed in the RECORD, one on emissions caps/targets, a second on a cost-containment safety-valve

amendment, a third on an international competitiveness amendment, and a fourth on process gas emissions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### SPECTER AMENDMENTS TO LIEBERMAN-WARNER BILL

As I stated on the Senate floor on Tuesday, it was my intention to offer amendments;

It is very disappointing that the Majority Leaders has opted to move to cloture on the Boxer substitute without allowing consideration of amendments;

I have played a constructive role in this debate in an attempt to improve the bill and enter into a substantive discussion with my colleagues;

Since there will be no votes on amendments, I will instead file my amendments for public scrutiny until the next opportunity to debate this important issue;

Emissions Caps/Targets Amendment.—This amendment substitutes the Bingaman-Specter emissions caps in place of the Lieberman-Warner caps. I have serious concerns that the emissions limits are not aligned with necessary technologies. If I had a comfort level with the ability of our nation to meet these targets, I could support them, but I remain unconvinced.

Lieberman-Warner	Bingaman-Specter
In 2012, limits to 2005 levels	In 2012, limits to 2012 levels.
In 2020, limits to 15% below 2005 (1990 levels).	In 2020, limits to 2006 levels.
In 2030, limits to 30% below 2005	In 2030, limits to 1990 levels.
In 2050, limits to 71% below 2005	In 2050 calls for at least 60% below 2006 levels, contingent on international effort.

Cost-Containment Safety-Valve Amendment.—This amendment would insert the Bingaman-Specter so-called "safety valve" or Technology Accelerator Payment mechanism into the Lieberman-Warner bill. That provision provides a price-capped option for purchasing emissions allowances from the government when the market price rises too high. Starting at \$12 per ton in 2012 and rising 5% over inflation annually, this is an important protection for the economy. I am open to considering a different price level, but it is a fundamentally important provision. If this mechanism is triggered, all of the funds collected through the purchase of allowances would be invested directly in zero- and low-carbon technologies to accelerate our ability to reduce emissions.

International Competitiveness Amendment.—This amendment takes a number of steps to further refine the excellent proposal that was first included in the Bingaman-Specter bill to require purchase of emissions allowances by importers of goods into the U.S. from countries which are not taking comparable action on climate change. The amendment seeks to better define "comparable action." It also makes the effective date for import allowances the same as the effective date for domestic producers (2012). Further, it applies the import allowance program to all countries, including those with "de minimis" emissions levels. Finally, it equalizes the ability of importers to submit foreign credits and allowances to the same 15 percent limit for which domestic producers may use.

Process Gas Emissions Amendment.—This amendment exempts process gas emissions from ironmaking, steelmaking, steel recycling, and coke processes. There are currently insufficient technological options to make virgin steel without emitting carbon dioxide from the use of coal and coke. Therefore, requiring submission of allowances will only raise the cost of domestic steel in a highly competitive and unforgiving global

steel market. This will put our industry at a serious disadvantage and likely send jobs overseas actually increasing emissions from steelmaking in non-carbon-reducing nations.

Mr. SPECTER. But there is no way to get 60 votes to impose cloture unless we find a way to allow Senators to offer their amendments.

Finally, I ask unanimous consent that the full text of a floor statement of mine on the New England Patriots videotaping of NFL football games be printed in the CONGRESSIONAL RECORD as if read in full on the Senate floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### SENATE FLOOR STATEMENT ON THE NEW ENGLAND PATRIOTS VIDEOTAPING (By Arlen Specter, June 5, 2008)

With the Memorial Day Recess and the cancellation of my west coast fundraising trip due to my recurrence of Hodgkin's, there was time to review and reflect on the issues and comments on the New England Patriots' videotaping and to prepare a summary for entry into the Congressional Record for future reference.

#### BACKGROUND: TWO QUESTIONS; NO ANSWERS; NO INITIAL INTENT FOR AN INVESTIGATION

When I made my first inquiry of the NFL on the videotaping, there was no intent to initiate an investigation. After reading about the Patriots' videotaping of the Jets September 9, 2007 game, I wrote Commissioner Roger Goodell by letter dated November 15, 2007, shortly before the Patriots were scheduled to play the Philadelphia Eagles, asking if there had been any evidence of videotaping of the 2005 Super Bowl between the Eagles and the Patriots:

Dear Commissioner Goodell:

With the New England Patriots about to play the Philadelphia Eagles again, as they did in the Super Bowl in January 2005, I would appreciate your advising me what your investigation showed, if anything, on the question of the Patriots stealing Eagles' signals during that Super Bowl game.

I had thought there would be some additional disclosures following your initial sanction on the Patriots and Coach Belichick, but I did not see anything further so I would like a response on this specific question.

Sincerely,

ARLEN SPECTER.

I received no answer. When I later read about the NFL's destruction of the videotapes, I wrote again by letter dated December 19, 2007:

Dear Commissioner Goodell:

More than a month has passed since I wrote to you on November 15, 2007 concerning the issue of the New England Patriots spying on the Philadelphia Eagles on their 2005 Super Bowl game. I would appreciate a prompt response.

I was surprised to read in the New York Times on December 16th that the NFL had destroyed the tapes on the Patriots spying. Is that true?

The same New York Times story also contained the author's surmising that there was more than one copy because of the general practice of not having a single copy of anything. Was there a second copy? Is it possible to retrieve a copy?

Candidly, the destruction of the tapes is, in my opinion, highly suspicious. I would appreciate your reply as to the scope of your investigation and your findings on the number of times the Patriots spied and on whom.

I share the concern that your treatment of the Patriots and Coach Belichick was insufficient. I would like to know the specifics of

the misconduct which you found and your reasons for imposing the penalties which you did.

As I have said on many occasions in the past, including legislation which I have introduced, the NFL has a special duty to the public in light of the antitrust exemption which the NFL enjoys.

I would appreciate a prompt response to the questions posed in this letter and in my prior letter to you.

Sincerely,

ARLEN SPECTER.

Again, I received no answer.

I thought nothing more about the issue until early January 2008 after returning to Washington when I had a casual conversation in the Capitol with New York Times reporter Carl Hulse who covers the Senate. Hulse asked me who I thought would win the Super Bowl and I jokingly replied that it all depended on whether there was cheating. That led to a conversation about the Patriots' videotaping and my unanswered letters. At Hulse's request, I gave him copies of those letters.

I thought nothing more about the matter until the middle of the week before the Super Bowl when I received a call from New York Times sportswriter Greg Bishop. Hulse had given him my letters. I gave him background of my reasons for writing. Bishop then apparently contacted the Commissioner's office on the Thursday before the Super Bowl, prompting Commissioner Goodell to write to me on January 31, 2008:

Dear Senator Specter:

I saw today for the first time your letters inquiring about my investigation into the taping of defensive signals by the New England Patriots. I apologize for not having replied earlier. (I have instructed my staff to contact your office to make sure that you have my best phone and fax numbers for our future communications.)

With respect to the Patriots matter, senior members of my staff conducted detailed, individual interview with Patriots' owner Robert Kraft, Coach Belichick, and other Patriots employees promptly after this matter came to our attention. They reviewed the

videotapes and notes made by the Patriots employee who reviewed the tapes on behalf of the club. Following that review, the tapes and the notes were destroyed by our office in order to ensure that they could not be used for any purpose going forward. Our goal was to ensure that the Patriots would not secure any possible competitive advantage as a result of the misconduct that had been identified. The Patriots have separately certified to me in writing that we received all tapes, all notes, and that no other material exists relating to taping of defensive signals.

Our investigation specifically disclosed nothing relating to the stealing of Eagles' signals during the Super Bowl game between the Patriots and the Philadelphia Eagles in 2005. (The two teams had only played one other game against each other in the current decade, a preseason game in the summer of 2003.) We have no reason to believe that the outcome of the 2005 Super Bowl was affected in any way by the improper taping of Eagles' defensive signals.

The discipline I imposed on both the Patriots and Coach Belichick was very substantial. No coach has ever been fined as much as Coach Belichick, and no club has been required to forfeit its first round selection in the college draft for such an on-field violation. I am confident that neither the Patriots, nor any other NFL team, will engage in this type of conduct again.

I believe that I have no more significant responsibility than protecting the integrity of the game and promoting public confidence in the NFL, and that our actions in response to the Patriots' taping was entirely consistent with that responsibility.

Again, I regret not having seen and responded to your questions sooner. As always, I appreciate your interest in the NFL.

Sincerely,

ROGER GOODELL.

The next day, February 1, 2008, there was a headline at the top of the New York Times sports page: "Senator Arlen Specter Wants NFL Commissioner Goodell to Explain the Rationale Behind Destroying Evidence that the Patriots Cheated," followed by text of my letter to Goodell dated November 15,

2007, partial text of my December 19, 2007 letter and a partial text of his reply dated January 31, 2008.

I was then accused of timing the dropping of a bomb on Super Bowl weekend. The fact is that had my earlier letters been answered, the matter would not have achieved such attention.

Those events then led to my meeting with Commissioner Goodell in my Senate office on February 13, 2008, and a series of disclosures far beyond the Commissioner's initial statement at his February 1 news conference: "I believe there were six tapes, and I believe some were from the pre-season in 2007, and the rest were primarily in the late 2006 season," before the Patriots were caught videotaping the Jets on September 9."

#### THE ANTITRUST EXEMPTION—PUBLIC FINANCING FOR STADIUM CONSTRUCTION

A question is sometimes raised as to Congress's reasons for special attention to the NFL. In part, it is because the NFL has an antitrust exemption enjoyed by few other businesses. The NFL has contracts for broadcast rights with Fox, NBC, CBS and ABC/ESPN to make more than \$3.7 billion through 2011. Over the past twenty-five years, the NFL has earned roughly \$33.6 billion from its television contracts with broadcast networks.

When I saw what was happening with stadium financing in the 1990's, I introduced the Stadium Financing Act of 1999 (S. 952) on March 19, 1999, requiring the NFL to contribute 10% of the amounts received under the joint agreement for broadcasting rights to finance the construction and renovation of playing facilities. As a matter of basic fairness, the owners should have been paying for their own stadium construction without relying on the public funds desperately needed for so many other purposes. In my opinion, it would have been sound public policy to condition the antitrust exemption on the owners paying for construction costs without relying on taxpayers funds. Under the threat of franchise removal to other cities, NFL teams have extracted enormous public funding.

#### STADIUMS—PUBLIC CONTRIBUTION ( FROM BONDS, TAXES, ETC.)

City	Year opened	Project cost (in millions)	Public contribution (in millions)	Private contribution (in millions)	Lease (years)
Glendale, AZ .....	2006	\$448	\$344	\$104	30
Philadelphia .....	2003	512	202	310	30
Detroit .....	2002	471	125	346	35
Houston .....	2002	424	309	125	30
Boston .....	2002	452	.....	*452	25
Seattle .....	2002	465	296	169	30
Denver .....	2001	370	229	141	30
Pittsburgh .....	2001	271	158	123	30
Cincinnati .....	2000	450	425	25	26
Cleveland .....	1999	300	212	88	30
Nashville .....	1999	292	220	72	30
Baltimore .....	1998	224	200	24	30
Tampa Bay .....	1998	168	153	15	30
Washington DC .....	1997	251	71	180	30
Charlotte .....	1996	250	50	200	31
St. Louis .....	1995	257	257	0	30
Atlanta .....	1992	214	214	0	20
Total Public Contribution .....			\$3.46 billion		

\*The Commonwealth of Massachusetts contributed \$70 million to be repaid over twenty years.

#### FUTURE PLANS

City	Type	Project cost (in millions)	Public contribution (in millions)	Private contributions (in millions)
Dallas .....	New Stadium .....	\$650	\$325	\$325
Indianapolis .....	New Stadium .....	500	400	100
Kansas City .....	Renovation .....	325	250	75
Minneapolis .....	New Stadium .....	675	395	280
New Orleans .....	Renovation .....	135	.....	.....
New York .....	New Stadium .....	800	.....	.....

Source: The Fans, Taxpayers, and Business Alliance For NFL Football in San Diego, available at <http://www.ftballiance.org/stadiums/financing.php>

A comparable situation exists with respect to Major League Baseball:

## NEW STADIUMS IN PROFESSIONAL BASEBALL (1990–2003)

City	Capacity	Year	Real costs (millions) <sup>a</sup>	Percent public	Public cost per Seat	Cost per seat in replaced stadium
Tampa Bay <sup>c,d</sup>	46,000	1990	225.30	100.00	4,699.96	NA
Chicago	44,321	1991	212.50	100.00	4,786.73	142.71
Baltimore	48,000	1992	260.20	96.00	4,560.00	1,498.41
Arlington	49,292	1994	227.74	71.00	3,280.38	589.41
Cleveland	42,400	1994	206.59	88.00	7,287.79	927.43
Denver	50,100	1995	242.93	75.00	3,636.72	NA
Atlanta	49,831	1997	252.13	0.00	0.00	1,910.65
Phoenix <sup>c,d</sup>	48,569	1998	368.70	68.00	5,162.03	NA
Seattle	46,621	1999	535.00	66.66	7,537.10	307.21
Detroit	40,000	2000	300.00	38.00	2,875.00	NA
Houston <sup>d</sup>	42,000	2000	250.00	68.00	4,047.62	4,532.07
San Francisco	41,059	2000	255.00	3.92	243.45	1,993.85
Milwaukee	43,000	2001	394.20	77.50	7,209.30	895.58
Pittsburgh	38,365	2001	252.51	100.00	6,829.14	4,138.97
Cincinnati	42,059	2003	399.08	86.15	6,657.01	3,773.28
Average <sup>c</sup>	44,671	1997	298.06	79.56	5,274.52	1,867.23
Total Public Financing				\$ 3.01 billion		

Notes: Data obtained from www.ballparks.com and author's calculations. <sup>a</sup> Current dollars at date stadium opened. <sup>b</sup> Dollars adjusted by BLS inflation factor to represent 2000 dollars. <sup>c</sup> New stadium not replacing an old stadium. <sup>d</sup> Domed or retractable roof stadium. <sup>e</sup> Includes only those stadiums with majority funding, i.e., excluding Atlanta and San Francisco.

Source: Depken, Craig, The Impact of New Stadiums on Professional Baseball Team Finances available at <http://www.uta.edu/depken/P/SportsArenas16.pdf>

The public contribution for the Philadelphia Phillies stadium which opened in 2004 was \$174 million. Nationals Park, in Washington D.C., was completed in 2008 at a cost of \$610.8 million and was 100% publicly funded.

#### THE CONCEALED TAPING AND SPYING WAS DONE ON A WIDESPREAD BASIS

Contrary to Commissioner Goodell's initial statement that: "[W]e think (the taping) was quite limited. It was not something that was done on a widespread basis," the facts demonstrate the opposite. At my meeting with Goodell on February 13, 2008, he dramatically changed the story and conceded that taping began in 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, 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' September 25, 2005 game against the Steelers, which the Steelers won 23–20.

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.

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 he told Assistant Coach Brian Daboll about the walk-through. Walsh said Daboll asked him specific questions about the Rams offense, and Walsh told Daboll about Faulk's lining up as a kick returner. Walsh said Daboll then drew diagrams of the formations Walsh had described. According to media reports, Daboll denied talking to Walsh about Faulk. The NFL has not disclosed the details on Daboll's statements. We do not know what Scarnecchia, Dee, Neto or Bailey did, or what they said if they were interviewed.

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 that indicated when his camera was rolling was broken.

During at least one game, the January 27, 2002, AFC Championship game with the Steelers, 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.

While there may have been others, as best as can be determined from the available information, the Patriots taped opponents' signals in the following games:

#### GAMES FOR WHICH WALSH TURNED OVER TAPES TO THE NFL

September 25, 2000: Miami Dolphins v. New England Patriots

October 7, 2001: Miami Dolphins v. New England Patriots (Offense & Defense)

November 11, 2001: Buffalo Bills v. New England Patriots

December 8, 2001: Cleveland Browns v. New England Patriots

January 27, 2002: Pittsburgh Steelers v. New England Patriots (AFC Championship)

#### GAMES WALSH FILMED (NO TAPES TURNED OVER)

August 20, 2000: Tampa Bay Buccaneers v. New England Patriots (Preseason)

October 8, 2000: Indianapolis Colts v. New England Patriots

November 5, 2000: Buffalo Bills v. New England Patriots

September 23, 2001: New York Jets v. New England Patriots

September 30, 2001: Indianapolis Colts v. New England Patriots

October 7, 2001: Miami Dolphins v. New England Patriots

October 14, 2001: San Diego Chargers v. New England Patriots

November 11, 2001: Buffalo Bills v. New England Patriots

December 9, 2001: Cleveland Browns v. New England Patriots

#### GAMES WALSH MAY HAVE FILMED BUT NOT POSITIVE

October 15, 2000: New York Jets v. New England Patriots

August 18, 2001: Carolina Panthers v. New England Patriots (Preseason)

December 22, 2001: Miami Dolphins v. New England Patriots

#### GAMES WALSH WITNESSED STEVE SCARNECCHIA FILMING

September 9, 2002: Pittsburgh Steelers v. New England Patriots

November 16, 2003: Dallas Cowboys v. New England Patriots

September 25, 2005: Pittsburgh Steelers v. New England Patriots

#### GAMES FOR WHICH THE PATRIOTS TURNED OVER TAPES TO THE NFL

2006 Season: Games v. New York Jets, Miami Dolphins and Buffalo Bills (unclear on specific dates because each team played two games against the Patriots)

September 9, 2007: New York Jets v. New England Patriots (Estrella caught by Jets)

#### GAMES THE MEDIA REPORTED THE PATRIOTS TAPED

August 31, 2006: New York Giants v. New England Patriots (Preseason)

September 17, 2006: New York Jets v. New England Patriots

November 19, 2006: Green Bay Packers v. New England Patriots

December 3, 2006: Detroit Lions v. New England Patriots

#### THE VIDEOTAPING HAD A SIGNIFICANT IMPACT ON THE GAMES

The overwhelming evidence flatly contradicts Commissioner Goodell's assertion that there was little or no effect on the outcome of the games. 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 that 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.

The filming enabled the Patriots coaching staff to anticipate the defensive plays called by the opposing team. According to Walsh, he first filmed an opponent's 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 3, 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" offense, 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.

Tampa Bay won the August 20, 2000 preseason game by a score of 31-21. According to the information provided by Matt Walsh, the Patriots used the film to their advantage when the Patriots 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.

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." (Emphasis added). However, the tapes turned over by Matt Walsh on May 8, 2008 contain footage of offensive signals. The tapes turned over to the NFL and the information provided by Walsh prove that the Patriots also routinely filmed opponents' offensive signals.

Why did the Patriots videotape 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 Times on May 14, 2008:

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 view of them could prove immediately helpful.

"I don't see them wasting time if they weren't using it in that game," Schlereth said.

#### COACHES, PLAYERS AND SPORTS COMMENTATORS/EXPERTS CONFIRM VIDEOTAPING HAD A SIGNIFICANT IMPACT ON THE GAMES

Jim Bates, the Miami Dolphins' defensive coordinator in 2001 who stepped down as the Denver Broncos' Assistant Head Coach of defense in January 2008, was referenced and quoted in the Palm Beach Post on May 13, 2008:

Bates wouldn't declare that the Patriots stole the 2001 AFC East title, but he wasn't afraid to accuse the Patriots of putting the Dolphins at a "tremendous disadvantage" in their critical rematch that essentially decided the division.

"There's only a certain number of plays that truly determine winning and losing," Bates said. "It might come down to five plays. Sometimes it's just one play. A critical play at a critical time to move the sticks and get a first down, it definitely can change the outcome of a game." . . . .

"To know their personnel as soon as they do . . . it's a tremendous advantage," Bates said. "You're not panicking to get players in and out of the game as far as matching up with the offense."

The same Palm Beach Post article referenced comments made by former Dolphins quarterback Jay Fiedler. Although Fiedler contended that stealing offensive signals didn't have much impact on a game, the Post article said that:

Fiedler, a Dartmouth grad known as a cerebral quarterback, certainly would have welcomed inside information on the opposition's defensive signals.

"That's what you put all the hours of film study throughout the week for," Fiedler said, "to get that little advantage out on the field, to see the little rotations in the defense or how they line up or the alignments to tip off what kind of blitz is coming."

"If the quarterback knows what's coming, he can dissect it at the line of scrimmage. In most cases you're not going to get an advantage, but if there's an exotic blitz coming, then usually there are ways to exploit that."

Commenting on the Patriots' videotaping in a Pittsburgh Post-Gazette sports article "On the Steelers" on May 25, 2008, Ed Bouchette said:

The practice was unique to Belichick and his crew. Some pro scouts advancing games have told me that they've tried to steal the signals of opposing coaches on the sideline which is as legal as trying to pick up the third-base coaches' signals in baseball. Some say it can help, some say it's futile and wastes time.

"I didn't think it was worth the time and energy you were looking at," said Hal Hunter, who spent 23 years in the league as a coach and pro scout, including four as the Steelers' offensive line coach in the 1980s.

But, if you can set up a sophisticated system like the Patriots had, it was worth it. New England would break down its videotape of the coaches using their hand signals from earlier games and match it with the defense that was used on that play.

Where it helped the most came when they went to their no-huddle offense. Because a defense does not know when the ball will be snapped in the no-huddle, it must call its plays quickly. The quarterback, then, could simply wait until the defense was signaled in and the word was relayed to him by his coaches in his headset what to call against it.

Defenses normally use the same or similar signals from game to game and even year to year under the same coordinators. The reason is simple: It's not as easy to change signals in football as it is in baseball, where the calls are simple. It will confuse the players—the reason for so many of those "miscommunications."

The Pittsburgh Tribune-Review's issue of May 9, 2008 noted the comment of Steelers linebacker Larry Foote who joined the team the season after the 2002 championship game and started against the Patriots when the teams met in a title game three years later. The Tribune-Review said:

(Foote) believes the Patriots may have gained an advantage by taping signals, but he doesn't know how much.

"If they know our defense, that's a big advantage," Foote said yesterday. "But we don't know the degree of it. We'll never know the degree of it."

In a highly critical article in the St. Louis Post-Dispatch on May 16, 2008 entitled "Getting Tougher to Keep NFL Image Clean," Bryan Burwell asserts that the Patriots had a competitive advantage on their taping, and concludes his column with the question "Who says crime doesn't pay?"

#### KEY CONCLUSION: NFL INVESTIGATION LACKED CREDIBILITY

The most important conclusion from the NFL investigation is its lack of credibility. This judgment emerged from the NFL's calculated effort to appear objective while pulling its punches and acting only when compelled by public pressure.

(1) Commissioner Goodell's letter to me dated January 31, 2008 stated that my letters of November 15, 2007 and December 19, 2007 had just come to his attention: "I saw today for the first time your letters inquiring about my investigation into the taping of defensive signals by the New England Patriots." The Commissioner's representation that this was the first the NFL had known of my letters was contradicted by an email exchange on January 25, 2008 between NFL counsel and my staffer, Ivy Johnson, that the NFL had received my letters and would reply to them in due course after the Super Bowl.

(2) The Commissioner originally represented in his news conference on February 1, 2008 in advance of the Super Bowl that the taping was limited to the September 9, 2007 game and six other games. Specifically, he stated: "I believe there were six tapes, and I believe some were from the preseason in 2007, and the rest were primarily in the late 2006 season." That representation was flatly contradicted in the meeting of February 13, 2008 between Commissioner Goodell and me where he admitted that the taping had gone on back to the year 2000.

(3) The NFL's judgment on the penalty was not credible—really not rational. The Patriots were caught taping the Jets on September 9, 2007. The Commissioner imposed the penalty on September 13, 2007. The NFL reviewed the tapes for the first time on September 17, 2007. The NFL announced the tapes had been destroyed on September 20, 2007. How could the penalty be rationally imposed before examining the evidence?

(4) The Commissioner's stated reason for destroying the tapes lacks credibility. He

said in his January 31, 2008 letter that “the tapes and the notes were destroyed by our office in order to ensure that they could not be used for any purpose going forward. Our goal was to ensure that the Patriots would not secure any possible competitive advantage as a result of the misconduct that had been identified.” That objective could have been obtained by storing the tapes in a vault and they would have been preserved for future inspection if the need arose. The NFL would have avoided the inevitable smell of destroying evidence.

(5) Like destroying the tapes, the NFL’s destruction of the Patriots’ notes of tapings lacks a credible reason—raising the obvious inference that there is something to hide. That applies to all the destruction of notes, but especially to the destruction of notes on the tapings of the Steelers games.

In the AFC Championship game on January 27, 2002, the Patriots defeated the Steelers by a score of 24–17. Hines Ward, Steelers wide receiver, was quoted: “Oh, they knew. They were calling our stuff out. They knew, especially that first championship game (2002) 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.” 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.

(6) No objective, credible investigation would permit a representative of the subject of the inquiry to be present at the questioning of a key witness. 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 representative was permitted to be present during the investigation. It 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 with the sensitive questioning of a witness.

#### COMMENTS (CRITICISM/COMPLIMENTS) ON MY ACTIVITIES

Some newspapers, especially in New England, have been critical of my role, and there were some hostile comments on two radio interviews I volunteered to do on the Dennis and Callahan Show on WEEI (Boston radio) on February 8, 2008 and May 16, 2008, but there were many columns, editorials and letters to the editor supporting my position.

Harvey Araton, writing in the New York Times sports section on May 9, 2008, called me the “crusading Senator Arlen Specter” in a column seeking for the NFL to bar Belichick from coaching the Patriots for one season saying, “One year out. Then let’s see Belichick dare spy again in 2009.”

In its May 10, 2008 edition, the Pittsburgh Tribune-Review commented about the Steelers organization limiting comment on Spygate, saying:

Which brings us to Sen. Arlen Specter, a lifetime politician who doesn’t have to straddle the Steelers’ company line. He refuses to go away and shut up about the New England Patriots videotaping opposing coaches’ signals. Bless his heart. The Steelers should be glad they have Specter on their side.

Even the Boston Globe had a favorable comment about me in its May 11, 2008 edition by Mike Reiss captioned “Tale of the Tape Re-Visited”: “. . . it would be difficult to argue that (Specter) did not add clarity to the situation.”

Fox Sports on May 14, 2008 criticized the NFL’s investigation, saying:

Kudos to the dogged efforts of the media and Pennsylvania Senator Arlen Specter for demanding more on Spygate after Goodell’s essentially declared “Mission accomplished.”

An article by Jeff Jacobs in the May 13, 2008 edition of the Hartford Courant captioned “Goodell-Walsh Meeting: Only the Truth Will Do”:

. . . but give Specter this much: He did provide some focus, and it was in their meeting Goodell finally confirmed how long Belichick had been videotaping other teams.

As noted by Don Banks in the May 14, 2008 article on Sports Illustrated’s website, SI.com:

I happen to agree with the always-skeptical senior senator from Pennsylvania that NFL commissioner Roger Goodell has an inherent conflict of interest whenever he undertakes to investigate his own league.

The Los Angeles Times edition of May 16, 2008 in a column by Sam Farmer captioned “Arlen Specter Has Good Reason To Keep An Eye On NFL Spygate” challenged my objectivity and added: “Yes he’s a politician. But he could still be right.”

The Bradenton Herald in a May 16, 2008 column captioned “NFL Fumbles Again” supported my position saying:

Again, we stand alongside the senator on his statement: “What is necessary is an objective investigation. And this one has not been objective.”

The NFL’s stand on this scandal is a self-serving “trust us, we did the right thing.”

Would anyone trust the White House with that kind of position? We hold our public officials to high standards, we demand transparency and accountability.

Specter is threatening the NFL’s antitrust exemption. With its highly visible and unique position in our culture, the league owes the public transparency and accountability.

This isn’t just about sports. This is about truth, justice and the American way.

The NFL doesn’t get it—yet.

The Herald added:

Specter is right on target with his outrage: “That sequence is incomprehensible,” he said this week in repeating his criticism of the decision to destroy the materials. “It’s an insult to the intelligence of the people who follow it.”

In an editorial in Chester, Pennsylvania’s Daily Local dated May 17, 2008, captioned “Specter Isn’t Accepting Goodell’s ‘Spygate is Over’ Stance,” the writer notes:

Fortunately for the football fan, Arlen Specter continues to refuse to play by those rules. And because he is a U.S. Senator, he has a high-volume microphone of his own.

Roger Goodell does not get to announce when an alleged NFL scandal goes away. The people do, and the people are represented in Congress. That makes Specter correct: The NFL should be open to independent analysis of the possibility of cheating—cheating by certain teams not against other teams, but against the customers, who have the right to expect fair contests.

Goodell may be right. There may be nothing to Spygate.

But Specter is definitely right: It’s not Goodell’s decision.

The New York Daily News in a column on May 18, 2008 said that it “might not be

enough” to conclude with the judgment “Belichick cheated, was punished, humiliated and now his record is tainted.” Commenting on my involvement, the New York Daily News said:

Specter, the Pennsylvania Republican, has endless and admirable energy, especially for a 78 year-old man undergoing chemotherapy treatments for Hodgkin’s disease, and he says he is concerned about the integrity of the game.

The May 18, 2008 edition of the New York Times contained an article captioned “Politicians Challenge Integrity of NFL,” written by William C. Rhoden, noting:

Sprawling industries cannot adequately police themselves and Specter, to his credit, is questioning whether the N.F.L. has properly handled allegations that Belichick had assistants videotape opponents’ signals. Specter has called for an independent “objective” investigation into the Patriots’ taping practice.

“This one,” he said, referring to the NFL’s in-house investigation “has not been objective.” Specter said Goodell was caught in an “apparent conflict of interest” because the N.F.L. doesn’t want the public to lose confidence in the league’s integrity.

The conflict isn’t “apparent,” it’s tremendous. The N.F.L. is a multibillion dollar industry that sells itself on fair competition and championships that are won fairly and squarely.

Noting that, “Specter is not an objective party. He has two professional football teams in his state,” the Rhoden article continued:

That being said, the issues he (Specter) raises about the NFL’s actions against New England are legitimate. This book has more chapters.

The politics of business and the business of politics usually compromise the sort of fair and honest competition we celebrate in competitive athletics.

What a sad sign of the times: the sports industry has gone so far a field that we need politicians to reel it back in.

While expressing a preference for solutions on “some things that are ‘truly problems,’” the May 18, 2008 edition of the Chambersburg Public Opinion (Pennsylvania) newspaper said:

Congress is not getting into football. It has been involved in it because it is required to do so because of the antitrust exemption given to the league by the government.

If the mega-rich owners will give back their antitrust exemptions, pay their fair share of taxes and stop asking taxpayers to pay for their stadiums, they would be able to tell the likes of Specter to go take a ride.

But that is not the case, and is why Specter is within his right to press the issue.

Lee Jenkins, writing in the May 26, 2008, edition of Sports Illustrated, comments:

It is commendable that Specter, an unabashed Eagles fan, is willing to fight to protect the ethics of competitive athletics.

Jenkins then commented about other areas which might benefit from congressional oversight, saying:

But Congress could use its power in other areas of sports—by scrutinizing readily available sports supplements that aren’t regulated by the FDA, perhaps, or by studying the legality and rationality of using public funds to finance stadiums. There are significant digital-age First Amendment issues relating to how much control leagues have over who covers their games and how the news and images they generate can be used, and there is the wisdom of granting pro leagues antitrust exemptions.

An article in the St. Louis American, dated May 22, 2008, by Mike Claiborne ("NFL Out of Control at the Top, Cheats—and Protects Cheaters"), said:

... the league tried to look the other way as long as they could until Senator Arlen Specter decided he was not satisfied with the answers he had been given.

Noting his preference for more attention to other national problems, Claiborne added:

I have come to appreciate his tenacity. Now that he has rattled the cage, the league cannot wait to have some games be played so the issue can be moved to the back pages. A little cooperation with their TV partners, and it will be 'Spy-Who?'

Sportswriter Dave Fairbank, writing in the Newport News, Virginia Daily Press on May 24th in a column titled "Sports Need Integrity, or Else," said in part:

Specter, that dogged, old cancer survivor, thought the NFL's reaction last fall a little too quick, neat and self-serving, so he continued to talk it up and conducted his own inquiry.

He released the findings in a 2,500 word memo 10 days ago, more than seven months after the initial incident that caused all of the hooah. He said Goodell's remarks and the NFL investigation weren't credible. He believes a Mitchell Report-type of investigation is warranted.

You can make the argument that Congress has more pressing business than NFL cheats and sneaks. But where Specter is correct is the point that the NFL ought not to be its own police force in all instances, any more than Big Oil or the Bar Association or the U.S. government.

After saying it was time to move on, a sports column in the Pittsburgh Post-Gazette May 25, 2008, by Ed Bouchette "On the Steelers" said:

Specter did his job; by raising Cain he rattled the NFL into at least acknowledging the scope of the scandal and forced more details onto the public record.

#### THE PENALTY

I have not taken issue with the penalty. In my May 14, 2008, news conference, I was asked what punishment the Patriots should have received and I said I would not get into that. I said I wanted to find the facts to deal with the issues for the future.

As noted earlier, Harvey Araton, in the New York Times on May 9, 2008, called for banning Belichick for one year. Similarly, Gregg Easterbrook, writing on ESPN.com on May 17, 2008, called for the suspension of Belichick for at least a year. On the subject of discipline toward Belichick, the May 8, 2008, edition of the New York Daily News in an article by Gary Myers captioned "Double-sided Tape for Bill Belichick" stated:

It appears that Belichick will escape further discipline from Goodell. That hardly clears him from cheating all these years.

The Seattle Times, in a May 11, 2008, story by Steve Kelley captioned "Belichick's Penalty Should Match Severity of Violations," stated:

Integrity separates the NFL from the WWE. It is the difference between pro football and pro jai alai.

The toughest position was taken by the Pittsburgh Tribune Review in its May 11, 2008, edition, saying the fines, penalties and even suspension of Belichick were "too lenient" and adding:

Sadly, "cheating" and "sport" have become synonymous. And if the Patriots have any integrity, they'll fire Belichick. And if the NFL has any guts, it will ban Bill Belichick from the league.

Anything less renders sportsmanship meaningless.

The publicity in exposing Belichick and the Patriots conduct has been a far greater punishment than dollars and draft choices. History will impose the final judgment on the penalty for Belichick and the Patriots.

#### SOME NFL REFORMS

The disclosure of the Patriots' taping has produced some potential reforms which, if enforced, could improve the integrity of the game.

During their 2008 annual spring meeting earlier this spring, the Commissioner proposed, and the NFL owners accepted, a new policy that requires all club owners, executives and head coaches to certify annually that they have complied with league rules and policies and have reported any violations they know. They also lowered the standard of proof for establishing any violations of league rules to "preponderance of the evidence." Goodell also reserved the right to expand programs and technology to monitor and enforce compliance by, for example, conducting regular spot checks of game-day locker rooms, press boxes, coaches' booths, coach-to-player communications systems, and other in-stadium communications systems.

The NFL had already made changes to the rules prior to the start of the 2007 season. The New York Times suggested those changes were in response to earlier instances when the Patriots were caught filming. According to a May 11, 2008 story in the Times, the 2007 NFL operations manual shows that many of those changes concern policies on the placement of cameras and microphones. The league also mandated that neutral operators, who have not previously worked that team's home games, run the coach-to-quarterback radio systems, as well as game clocks, for playoff games. In addition, the league required that players with radio components in their helmets wear a decal—a lime-green dot—on their helmet. In the manual, the league also promised to make unannounced visits to teams to make sure no one tampered with the radio systems. It would obviously be useful if the NFL and other sports leagues would publicly disclose rules and procedural changes to provide transparency in their operations instead of waiting for leaks and news media ferreting out their private moves which have a public impact with an arguable public right to know.

#### A THOROUGH, OBJECTIVE, TRANSPARENT INVESTIGATION IS NEEDED

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 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 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.

Commissioner Goodell has conducted a closed door investigation without specifying

what key Patriot personnel have said. He gives only generalized statements and those shift with the wind to accommodate changes in the weather. Uniform comments made by the owners raise the obvious implication that they have coordinated their responses and were issuing statements to the news media from talking points which sought to minimize the seriousness of the taping. They all said it had no impact on the games, specified that they were satisfied with the Commissioner's results even though their teams may have been prejudiced and said that they were ready to move on.

The May 16, 2008 story by Sam Farmer of the Los Angeles Times highlighted the credibility issue when decisions are made among 32 owners behind closed doors:

The NFL is a \$6-billion-a-year enterprise. Thanks to Congress, it also enjoys an exemption from antitrust laws, a luxury rarely afforded other businesses. With that comes responsibility, especially when the league's credibility is called into question. Making decisions among 32 owners in closed-door meetings is not always the most forthright way to go about things.

It wasn't so long ago that people wondered why the government should be meddling with the big business of Wall Street. Few people question that now.

A greater degree of transparency is essential the next time a Spygate-type situation arises. That might help stem the flood of rumors, half-truths and outright myths that swirled around the New England story.

Congress conferred an antitrust exemption upon professional sports, including football, because it was viewed as necessary to their ability to organize a successful football league. Over the years, the exemption, which allows the NFL teams to jointly sell their television rights, has yielded incredible profits for the NFL. It has been reported that the NFL will generate \$7.6 billion in revenue this season. Congress has provided the antitrust exemption without any guarantee of accountability. In light of the NFL's investigation of the Patriots' taping, I thought it necessary to ask the important questions to determine how widespread a practice taping opponents' signals was and whether more could be done to ensure the integrity of the game.

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 6th 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.

It may be that the entire matter will have to percolate for a while. The attention span of the American people, including sports writers, is limited by the rush of ongoing superseding events on compelling national and international issues. Sports fans and others may have lost interest for reasons stated by Dave Fairbank in the Newport News, Virginia Daily Press on May 24, 2008 when he commented on why the public tires of investigations and has not demanded a Mitchell-type inquiry:

Granted many of you who eyeball pro sports have reached the saturation point.

You don't care which baseball players used steroids. You don't want to hear if the Patriots filmed games and tried to steal signals.

You are so over Donaghy and the idea of fixed NBA games. You don't want to know which Olympic athlete tested positive when.

You want games. Period. Scores, rivalries, matchups, pennant races, playoff runs.

There are signs bubbling below the surface that potential imminent events could stimulate renewed interest in the NFL's integrity. The NFL is mentioned in investigations of other sports.

The New York Times, on May 25, 2008, sounded an alarm on fixing in sporting contests noting:

With Internet gambling predicted to surpass \$20 billion in 2008, and with illegal wagering accounting for \$150 billion in the United States, by some estimates, the temptation for those seeking to influence the outcome of games has never been greater. Now, a raft of gambling scandals in sports, from cricket to soccer and most recently tennis, has raised an uncomfortable question: Are the games we watch fixed?

A report commissioned by the major tennis governing bodies recommended that 45 matches played in the last five years be investigated because betting patterns gave a "strong indication" that gamblers were profiting from inside information. And those matches, the report said, may be only the tip of the iceberg.

Betfair offers betting on major sports based in the United States, like the NFL, the NBA and Major League Baseball. But it does not take any wagers from the United States or China, Japan, Hong Kong or India, places where online gambling is illegal. (Emphasis added.)

In a May 29, 2008 Philadelphia Inquirer article, Phil Sheridan begins with analyzing the basketball scandal involving referee Tim Donaghy and then moves to other sports including the NFL:

Instead of being critical of an official's call, fans now openly suspect the NBA (and the NHL and the NFL) of dictating the outcomes of postseason games. Instead of trusting in the fundamental integrity of the games, fans have good cause to wonder whether there isn't some secret script.

Within the past week, two major newspapers have carried comments calling for an extended investigation. The May 29, 2008 Philadelphia Inquirer editorial noted its change of position on my activity:

Sen. Arlen Specter (R., Pa.) criticized the NFL for prematurely shutting down the investigation and destroying any related evidence.

The senator's involvement initially prompted this Editorial Board to conclude that he should be spending his time and taxpayers' money on weightier issues. But, in retrospect, Specter may be on to something.

Given the inherent conflict that the NFL has with its teams—after all, it prospers when they prosper—an independent investigation seems warranted. That's the route the governing bodies of professional tennis took after allegations surfaced regarding match fixing.

An independent review recommended that 45 pro tennis matches played in the last five years be investigated. The review found betting patterns in those matches that showed large wagers had been placed on underdogs, an indication that bettors might have had inside information. The inquiry continues.

Meanwhile, what's most disturbing about the betting and taping scandals in the NBA and NFL is how both of those leagues' commissioners seem more eager to move beyond the controversies than to get to the truth.

Independent, thorough investigations are needed to ensure fans of the integrity of the games.

After commenting that I appear vulnerable because Comcast of Philadelphia is at war with the NFL and the Eagles lost the Super Bowl to New England in 2004, Skip Rozin wrote in the May 31, 2008 edition of the Wall Street Journal: "But neither of these facts blunts the point of his (my) inquiry; the NFL seems to beg for intervention." Rozin then references the response to the 1919 World Series White Sox/Black Sox scandal where newly appointed commissioner (formerly federal judge) Kenesaw Mountain Landis banned the eight players involved for life, even though a court found insufficient evidence to convict them. Rozin concluded:

When steroid abuse recently threatened to turn that same sport and its records into a joke, it took the threat of congressional intervention to force Major League Baseball to act.

Throwing games, taking steroids, spying on opponents—it's all cheating. And any attack on the credibility of the game is a serious threat. The NFL had a chance to act decisively to clean its own house, but it failed to do so, leaving the door open to Congress.

In a March 3, 2008 Philadelphia Inquirer column, Michael Smerconish called Commissioner Goodell's response to the Patriots' videotaping "odd," characterized responses by other franchise owners as "teams seem to be reading from timid talking points . . ." and said "if the NFL appears lax in this matter, it risks being compared to professional wrestling where nothing is 'real.'" Smerconish concluded:

What's needed is (a) truly independent investigation, and (b) an NFL commissioner who is intolerant of cheating—in the mold of baseball commissioner Kenesaw Mountain Landis, who took the helm in 1920 after the Chicago Black Sox scandal—to protect pro football from itself.

After thinking and rethinking this matter, it is hard for me to understand the willingness of the public, the media and even the NFL to accept the status quo. There is no higher value in our society than integrity. Americans' addiction to sports, with the NFL at the top, is based on the excitement generated by the potential for the unexpected great play which can only happen with honest competition from great athletes. The clouds are heavy and getting heavier.

My strong preference is for the NFL to activate a Mitchell-type investigation. I have been careful not to call for a Congressional hearing because I believe the NFL should step forward and embrace an independent inquiry and Congress is extraordinarily busy on other matters. If the NFL continues to leave a vacuum, Congress may be tempted to fill it.

**COLLATERAL CONSIDERATIONS: I CHALLENGED THE NFL'S CONDUCT LONG BEFORE COMCAST BECAME A MAJOR PENNSYLVANIA COMPANY**

Occasional rumors have been floated to the media that I am motivated to protect Comcast in its battles with the NFL. The solid historical record demonstrates that I have been concerned about the NFL's conduct long before Comcast became a power.

In 1982, I was approached by the NFL to request Senator Strom Thurmond, Chairman of the Senate Judiciary Committee, to have hearings on the proposed move by Al Davis and the Oakland Raiders from Oakland to Los Angeles. I had introduced S. 2821 on August 9, 1982, to prevent a professional football team from leaving a city where it has established ties unless it could not survive as a profitable business. In my statement introducing S. 2821, I said:

This legislation is premised on the judgment that sports fans in a city have a form of a 'proprietary interest' in their team which should preclude the owners from moving the franchise unless it is a failing business. In my judgment, a sports team is "affected with the public interest."

I believe a sports team is different from a regular business entity. If an ordinary business moves away another such business will take its place if a reasonable profit could be made. That is customarily not so with a sports team.

It is my sense that two generations of sport fans still resent the movement of the Brooklyn Dodgers and the New York Giants baseball franchise. Conversely people understood that the necessity for the relocation of the St. Louis Browns and the Philadelphia, and later Kansas City, Athletics.

On August 16, 1982, the Senate Judiciary Committee began hearings on that legislation. The key witnesses were NFL Commissioner Pete Rozelle and Al Davis, owner of the Oakland Raiders.

On January 3, 1985, I introduced S. 172 with the same objective when the Eagles threatened to move to Phoenix. In my floor statement, I said:

According to media accounts, the estimated cost to Philadelphia taxpayers of the concessions made by the city to retain the Eagles is at least \$30 million over the next 20 years. On December 17, [1984,] I wrote to Commissioner Rozelle and stated that the National Football League, rather than the city of Philadelphia, should bear the cost of any concessions which have been made to keep the Eagles in Philadelphia.

Commissioner Rozelle answered on December 19, 1984 without responding to my question concerning the cost of the concessions made by the city of Philadelphia and my belief that such costs should be born by the National Football League.

On March 19, 1987, I introduced similar legislation, S. 782, The Professional Sports Community Protection Act of 1987.

On March 19, 1996, I again introduced similar legislation, S. 1625, The Professional Sports Franchise Relocation Act of 1996.

On March 19, 1999, I introduced the Stadium Financing and Franchise Relocation Act of 1999, S. 952, conditioning the NFL and MLB antitrust exemptions on their paying part of construction costs for new stadiums by requiring the Leagues to deposit ten percent of the amounts received under the joint agreement for the sale or transfer of the rights in sponsored telecasting of games to finance the construction or renovation of playing facilities, upon request of a local governmental entity.

Comcast was not affected by the NFL's antitrust exemption. Paul Tagliabue, attorney for the NFL, appearing with Commissioner Rozelle in the 1982 hearing, confirmed the point that the antitrust exemption did not cover pay and cable when he said:

[T]he words "sponsored telecasting" in that statute were intended to exclude pay and cable. That is clear from the legislative history and from the committee reports. So, that statute does not authorize us to pool and sell to pay and cable.

COMCAST HAS ONLY IN THE LAST DECADE  
BECOME A POWERFUL MEGA-CORPORATION

1982

Total Assets: \$171,404,000  
Total Revenue: \$62,838,000  
Basic Cable Subscribers: 284,000  
Employees: 994

1985

Total Assets: \$360,998,000  
Total Revenue: \$117,312,000  
Basic Cable Subscribers: 516,000



Employees: 1318

1987

Total Assets: \$1,034,876,000  
Total Revenue: \$309,250,000  
Basic Cable Subscribers: 1,336,000  
Employees: 2794

1996

Total Assets: \$12,088,600,000  
Total Revenue: \$4,038,400,000  
Basic Cable Subscribers: 4,300,000  
Employees: 16,400

1999

Total Assets: \$28,685,600,000  
Total Revenue: \$6,209,200,000  
Total Cable Subscribers: 6,200,000  
Employees 25,700

2007

Total Assets: \$113,400,000,000  
Total Revenue: \$30,900,000,000  
Total Video Subscribers: 24,100,000  
Employees: 100,000

MY WORK ON THE PATRIOTS VIDEOTAPING DID NOT INTERFERE WITH OTHER SENATE DUTIES

I take very seriously any suggestion that this matter impacted on my other Senate work. The facts are that the few hours I spent on the NFL issue did not detract from my Senate duties. For twenty-eight years in the United States Senate and before that as Philadelphia's District Attorney, I have established a record of comprehensively covering all my responsibilities.

A few hours were involved in writing an occasional letter, meeting with Commissioner Goodell and Matt Walsh and being interviewed by sports columnists and radio-TV talk show hosts. A listing of some of my Senate activities from October 2007 to May 2008 confirms I was diligent in attending to my Senate duties.

During that period I missed only two votes out of 180 (98.8% attendance). Those two votes were missed on April 4, 2008 when I was getting a PET scan at the Hospital of the University of Pennsylvania.

It is with some reservation that I am inserting this section because it may appear overly defensive. But the facts are the facts and I think the record should be documented on this important issue.

SOME OF MY SENATE ACTIVITIES: OCTOBER 2007—MAY 2008

## LEGISLATION

Gas Prices, S. 879—Cosponsored S. 879 with Senator Kohl to take away the OPEC's anti-trust protection exemption to increase oil supply thereby reducing the cost of oil at the barrel and gasoline at the pump.

Patent Reform, S. 1145—Cosponsored S. 1145 with Senators Leahy and Hatch to provide comprehensive patent reform.

Climate Change, S. 1766—Cosponsored S. 1766 with Senator Bingaman to provide comprehensive legislation to combat global warming.

Mortgage Default Protection, S. 2133—Introduced legislation to authorize bankruptcy courts to modify the terms of variable rate mortgages, mortgages where there frequently was misrepresentation by lenders and/or misunderstanding by borrowers.

Economic Stimulus Measure, S. 2539—Introduced S. 2539 to give businesses 50% bonus depreciation for purchases made during 2008 and 2009, a modified version of which was included in the 2008 stimulus package.

State Secrets, S. 2533—Cosponsored S. 2533 with Senator Kennedy to require courts to evaluate state secrets claims as a check to avoid potential executive branch abuse.

Terrorist Surveillance Program and DOJ/FBI Oversight—Held extensive oversight hearings with the Attorney General, the FBI director, and the Homeland Security Sec-

retary to provide judicial oversight for wiretapping.

Foreign Intelligence Surveillance—Committee and floor amendment to substitute the U.S. government for the telephone companies to secure judicial review for warrantless wiretapping.

Recidivism Reduction, S. 1060—Cosponsored S. 1060 with Senator Biden which was signed into law by President Bush on April 9, 2008 entitled "Second Chance Act of 2007."

Journalist Protection, S. 2977—Cosponsored S. 2977 with Senator Lieberman to protect American journalists from libel suits brought in foreign countries with less protections of free speech.

Intellectual Property Enforcement, S. 2317—Cosponsored S. 2317 with Senators Leahy and Cornyn to help the Justice Department combat copyright infringements.

Media Shield, S. 2035—Obtained vote of 15-4 in Senate Judiciary Committee on a bill co-sponsored by Senators Schumer and Lugar that provides evidentiary privilege to reporters.

Foreign Maintenance of Aircraft, S. Amdt. 4590—Cosponsored S. Amdt. 4590 with Senator McCaskill to significantly increase government oversight of airline repair work performed abroad.

Alternative Minimum Tax, S. Amdt. 4189—Sponsored S. Amdt. 4189 to eliminate the unfair alternative minimum tax (AMT).

Court Security Improvement, S. 378—Cosponsored S. 378 with Senator Leahy to improve court security. Held hearings and helped pass the bill, which was signed into law by President Bush on January 7, 2008.

## APPROPRIATIONS SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES &amp; EDUCATION

Nov./Dec. 2007—Helped negotiate a \$146 billion FY08 appropriations bill, providing increases for the NIH, CDC, special education, children's graduate medical education, nursing program, mentoring, low income home energy assistance, community health centers, and advance directives.

April 2, 2008—Chaired hearing on the National Labor Relations Board regarding representation elections and initial collective bargaining agreements to safeguard workers' rights.

May 7, 2008—Attended FY 09 Budget Hearing with Labor Secretary Chao to discuss issues of concern to Pennsylvania including funding for mentoring, elimination of the employment service state grants, Job Corps, worker safety fines, and mine safety.

May 2008—Helped negotiate funding in the FY08 Supplemental, including additional \$400 million for NIH; \$110 million for Unemployment Insurance Administrative Costs; \$26 million for CDC; \$1 billion for LIHEAP; and to delay SCHIP regulation.

May 1, 2008—Wrote to Andy von Eschenbach, Commissioner of FDA asking for his professional judgment regarding the budget needs of the FDA to protect the public's health resulting in an additional \$275 million for the FDA.

## JUDICIARY COMMITTEE: OCTOBER 2007 TO MAY 2008

Nominee	Floor statements	Executive Judiciary Committee statements
Leslie Southwick 5th Cir. ....	Oct 23-24, 2007 ..	
John Daniel Tinder 7th Cir. ....	Dec. 18, 2007 .....	
David Dugas 1A .....	Feb. 13, 2008 .....	
Robert Conrad 4th Cir. ....	Mar. 3-4, 2008 .....	Feb. 14, 2008, May 15, 2008.
	April 1, 10, 16, 2008 May 6, 19, 20, 2008.	
Peter Keisler D.C. Cir. ....	Mar. 3-4, 2008 .....	Feb. 14, 2008, May 15, 2008.
	April 1, 10, 16, 2008 May 6, 19, 20, 2008.	
Steve Matthews 4th Cir. ....	Mar. 3-4, 2008 .....	Feb. 14, 2008, May 15, 2008.
	April 1, 10, 16, 2008 May 6, 19, 20, 2008.	

## JUDICIARY COMMITTEE: OCTOBER 2007 TO MAY 2008—Continued

Nominee	Floor statements	Executive Judiciary Committee statements
Catharina Haynes 5th Cir. ....	April 10, 2008 .....	
Stanley Thomas Anderson WD TN. ....	April 10, 2008 .....	
John Mendez ED CA .....	April 10, 2008 .....	
James Randal Hall SD GA .....	April 10, 2008 .....	
Brian Stacy Miller ED AR .....	April 10, 2008 .....	
Stephen Agee 4th Cir. ....	May 20, 2008 .....	May 15, 2008.
Raymond Kethledge 6th Cir. ....	May 20, 2008 .....	May 15, 2008.
Helene White 6th Cir. ....	May 20, 2008 .....	May 15, 2008.

## BREAKDOWN IN CONFIRMATION PROCESS

Floor statements	Executive Judiciary Committee statements
.....	Feb. 28, 2008
March 3, 2008 .....	
March 4, 2008 .....	
April 1, 2008 .....	
.....	April 3, 2008
April 10, 2008 .....	
April 16, 2008 .....	
.....	April 24, 2008
May 6, 2008 .....	
.....	May 8, 2008
.....	May 15, 2008
May 19, 2008 .....	
.....	May 22, 2008

Reporter's Privilege—Wrote op-ed on Reporter's Privilege that appeared in the Washington Post on May 5, 2008 and the Philadelphia Inquirer on May 11, 2008.

Rural Violent Crimes—On March 24, 2008, travelled to Rutland, Vermont with Senator Leahy to hold a Senate Judiciary Committee field hearing on "The Rise of Drug-Related Violent Crime in Rural America: Finding Solutions to a Growing Problem."

## MENTORING AT-RISK YOUTH

October 15, 2007—Mentoring event with juveniles at the Eagles stadium attended by Jevon Kearse.

November 12, 2007—Hosted "Philadelphia Mentoring Awareness Day" with over 170 Philadelphia elementary school children and professional and former professional athletes.

January 7, 2008—Met at CIGNA headquarters with Philadelphia mentors from Big Brothers Big Sisters program and other mentoring organizations in Philadelphia.

February 4, 2008—Held meeting, site visit, and media availability at the National Comprehensive Center for Fathers with the Rev. Dr. Wilson Goode to promote mentoring initiatives in the Philadelphia region.

February 21, 2008—Met with Mayor Nutter at City Hall regarding crime issues including mentoring and held a media availability to discuss our efforts to support mentoring as a key element in fighting crime.

## PENNSYLVANIA TRAVEL

11/05/07—Lehigh Valley, Dauphin County, Cumberland County.

11/12/07—Chester County.

11/16/07—Lehigh Valley, Delaware County.

11/17-18/07—Chester County.

11/19/07—Montgomery County, Delaware County.

11/20/07—Lehigh Valley, Dauphin County, Luzerne County, Lackawanna County.

11/26/07—Allegheny County, Westmoreland County.

11/26/07—Allegheny County.

12/01/07—Montgomery County, Dauphin County.

12/10/07—Dauphin County, Montgomery County.

12/15/07—Bucks County.

01/08/08—Lackawanna County, Dauphin County.

01/14/08—Allegheny County, Westmoreland County.

01/15/08—Allegheny County.

02/04/08—Montgomery County,



02/08-09/08—Dauphin County, Cumberland County.

02/11/08—Lackawanna County, Luzerne County, Dauphin County.

02/18/08—Chester County, Delaware County.

02/19/08—Allegheny County, Washington County.

02/20/08—Allegheny County.

02/21/08—Montgomery County.

02/22/08—Chester County.

02/29/08—Montgomery County.

03/08/08—Montgomery County.

03/10/08—Lackawanna County, Dauphin County.

03/15/08—Delaware County, Montgomery County.

03/16/08—Chester County.

03/17/08—Berks County, Montgomery County.

03/21/08—Chester County.

03/22/08—Lehigh Valley, Luzerne County, Northampton County.

03/27/08—Allegheny County.

03/28/08—Allegheny County, Armstrong County, Delaware County.

03/29/08—Delaware County.

03/31/08—Montgomery County.

04/04/08—Dauphin County, Cumberland County.

04/07/08—Allegheny County.

04/14/08—Lehigh Valley, Dauphin County, York County.

04/18/08—Allegheny County.

04/19/08—Allegheny County.

04/21/08—Bucks County.

#### VISITS/LEGISLATION ON DEPORTATION OF CRIMINAL ALIENS

Introduced S. 2720 on March 4th to deny visas and foreign aid to countries which refuse to take back their criminal aliens.

#### VISITS

February 8, 2008 at SCI Camp Hill.

February 11, 2008 at the Luzerne County Prison.

February 18, 2008 at the Chester County Prison.

February 19, 2008 at the Allegheny County Prison.

March 31, 2008 at the Philadelphia County Prison.

April 4, 2008 at the Dauphin County Prison.

#### FOREIGN TRAVEL

December 22, 2007-January 3, 2008 (Israel, Pakistan, Jordan, Syria, Austria, and Belgium).

Dec. 23-26 (Israel)—Met with Prime Minister Ehud Olmert, President Shimon Peres, Likud Chairman Benjamin Netanyahu, Foreign Minister Tzipi Livni, and Defense Minister Ehud Barak.

Dec. 25 (West Bank)—Met with Palestinian Authority President Mahmoud Abbas, Prime Minister Salam Fayyad, and Chief Negotiator Saeb Erekat.

Dec. 26-28 (Islamabad, Pakistan)—Met with President Pervez Musharraf, chairman of the Joint Chiefs of Staff General Tariq Majid, and Afghan President Hamid Karzai. Scheduled to meet with Pakistan People's Party leader Benazir Bhutto on Dec. 27 at 9 PM—she was assassinated three hours earlier.

Dec. 29-30 (Damascus, Syria)—Met with President Bashar al-Assad, Foreign Minister Walid al-Mouallem, and opposition leader Riad Seif.

Dec. 30-Jan. 2 (Vienna, Austria)—Met with International Atomic Energy Agency (IAEA) Director General Mohammed ElBaradei.

Jan. 2-3 (Brussels, Belgium)—Met with US Ambassador to NATO Victoria Nuland.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Rhode Island is recognized.

#### REMEMBERING SENATOR CRAIG THOMAS

Mr. WHITEHOUSE. First, let me join in the condolences for our colleague,

Senator Thomas. Let me also recognize what for many of us is a sad anniversary of a day when one of America's brightest lights was extinguished and a distinguished Member of this body was lost.

You have heard him described as a good and decent man who saw wrong and tried to right it, saw suffering and tried to heal it, saw war and tried to stop it.

#### IRAQ WAR INTELLIGENCE

Mr. WHITEHOUSE. Mr. President, 5 years ago President Bush and this administration misled this country into a war that should never have been waged, a war that has cost our Nation the lives of more than 4,000 courageous men and women, squandered many hundreds of billions of our tax dollars, and diminished the world's faith in our country.

This morning, the Senate Intelligence Committee, led by our distinguished chairman, Senator JAY ROCKEFELLER of West Virginia, released a report confirming what many have long feared: that the Bush administration ignored or swept aside substantial reliable intelligence that portrayed something other than what the President and his political allies wanted America to see.

The decision to take the Nation to war, as Chairman ROCKEFELLER indicated, is among the gravest and most momentous that a leader can make. In our democracy, we expect and deserve to be sure that when our troops are sent in harm's way, when their families are made to watch and wait through sleepless nights, when our security and national welfare is put on the line, that that decision has been taken for the right reasons. This is a sacred compact, an article of faith between our people and our Government.

This administration broke that compact, betrayed that trust. For years, the evidence has been mounting that this administration's reasons for the war were a sham. This week, the President's own former spokesman indicated that the White House ran a "political propaganda campaign" building the case for war.

This morning's report is a chilling reminder of the Bush administration's willingness to overlook or set aside intelligence that does not confirm to its preordained view of the world. Over and over, again the committee documented instances in which public statements by the President, the Vice President, and members of the administration's national security team were at odds with available intelligence information. By leading the American people to believe the situation in Iraq was significantly more drastic than it actually was, the Bush administration took this country into an unnecessary war, a war it still refuses to end.

In a speech in Cincinnati a little over a year after al-Qaida attacked America on September 11, President Bush said:

We know that Iraq and al-Qaida have had high-level contacts that go back a decade. We have learned that Iraq has trained al-Qaida members in bomb-making and poisons and deadly gasses.

In his 2003 State of the Union Address, a few short weeks before giving the order that began this war, the President said:

Evidence from intelligence sources, secret communications and statements by people now in custody, reveal that Saddam Hussein aids and protects terrorists, including members of al-Qaida.

It was not true. The President of the United States told these things to our people and to the world, and they were false.

According to the report released this morning by our committee:

Statements and implications by the President and Secretary of State suggesting that Iraq and al-Qaida had a partnership or that Iraq had provided al-Qaida with weapons training were not substantiated by the intelligence.

The committee found that multiple CIA reports and a National Intelligence Estimate, released in November 2002, even as the administration was in the drumbeat to war, "dismissed the claim that Iraq and al-Qaida were cooperating partners." It was not true, and yet this President used this claim to convince the American public that there was a link between the Iraqi Government and the terrorists that perpetrated the crimes of September 11, 2001.

Again, in an October 2002 speech in Cincinnati, the President said:

We know that the regime has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, VX nerve gas. Saddam Hussein also has experience in using chemical weapons. . . . Every chemical and biological weapon that Iraq has or makes is a direct violation of the truce that ended the Persian Gulf war in 1991. Yet, Saddam Hussein has chosen to build and keep these weapons despite international sanctions, U.N. demands, and isolation from the civilized world.

The report concludes:

Statements by the President and Vice President prior to the October 2002 National Intelligence Estimate regarding Iraq's chemical weapons production capabilities and activities did not reflect the intelligence community's uncertainties as to whether such production was ongoing.

The intelligence community knew Saddam Hussein wanted to be able to produce chemical weapons. It could not, however, confirm President Bush's claim of certainty that Hussein's regime was actually producing chemical weapons. Yet the President made that argument, stirring up unfounded fears among the American people.

This administration not only asserted that Saddam Hussein possessed chemical weapons and intended to use them, the President also said in his speech on October 2002:

We could wait and hope that Saddam does not give weapons to terrorists, or develop a nuclear weapon to blackmail the world. But I'm convinced that is a hope against all evidence.