

MEMORANDUM

VIA E-MAIL

TO: Theodore V. Wells, Jr. and Lorin Reisner

CC: Robyn Glaser

FROM: Daniel L. Goldberg

DATE: 24 April 2015

SUBJECT: The Patriots' Cooperation In The Investigative Process

From the outset, the Patriots have welcomed a full, fair and thorough investigation of this entire matter. Such a thorough investigation -- including not only of the applicable science, but also of the conduct of Colts and League personnel, as well as, of course, Patriots personnel -- is crucial to correcting the misstatements and misinformation that have permeated media reporting. Indeed, the Patriots requested that the League expand Mr. Wells' jurisdiction to cover the conduct of League personnel, including their mishandling of this matter, their rush to judgment, their selective leaks of information, and their failures to correct misinformation being widely reported by the media. The Patriots also repeatedly but unsuccessfully pressed the League to publicly disclose the half-time psi measurements so that misinformation would not be allowed to fester.

During the course of the initial League Security investigation, which actually began during the AFC game with the questioning of ball boys, and the follow-on Wells investigation, the Patriots have made available for interview every individual that the League has requested and all game day security tapes of relevant areas in the stadium. The individuals provided to League Security and/or Mr. Wells for interview included all four members of the Patriots full-time equipment staff (one of whom was interviewed four times¹); the game day Officials' Locker Room ("OLR") Attendant (who was interviewed four times); the three part-time ball boys who worked the AFC Championship Game (and all the prior games during the 2014 Season); two players; the head coach; the head coach's assistant; the head of security at Gillette Stadium; and the person in charge of HVAC at the Stadium. In addition, the Patriots suggested three individuals for interview who had not been on the investigators' list of requested witnesses -- two security personnel who have staffed the stadium tunnel area where the OLR is located and have observed the movement of the balls from the OLR to the field during the 2014 season and for several prior seasons, and one individual, not associated with the Patriots, who had certain conversations referred to in texts that the investigators inquired about.

¹ In lieu of a requested fifth interview, the Patriots offered to pursue alternative means to obtain any additional information the investigators desired.

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The spirit of cooperation began on the day of the Game itself. League Security, after the Game (and with no notice of any investigation to the Patriots), asked the OLR Attendant when he would next be back at the Stadium so they could interview him. The OLR Attendant, having nothing to hide, suggested they conduct their interview then and there since he was not due back to the Stadium for his game day responsibilities until August. He was interviewed at length then, answering all the questions posed and without even asking to have a representative of the Patriots present with him. The very next day he gave a telephone interview to League Security. He then agreed to return to the stadium for yet another interview with League Security several days later, even though it meant taking a day from his full-time job. At that time, League Security also interviewed the team's equipment staff -- who each appeared without any other Patriots personnel or representatives being present. All of these individuals offered their telephones to the League for complete imaging of texts and call logs without even the protocols or protections of personal information that would exist were this a court proceeding.

After Mr. Wells was retained, he wanted to re-interview all these people. All those re-interviews were facilitated by the Patriots. The OLR Attendant returned yet again to the stadium for his re-interview, which lasted a full day. He again had to take off time from his full-time job. In total, the Patriots facilitated the interviews of 17 people -- including all Patriots personnel Mr. Wells asked for. The Patriots also provided Mr. Wells and his colleagues with three tours of the OLR and two tours of the equipment room, and the team permitted Mr. Wells to use the OLR to interview the AFC Game Referee and other game officials.

Despite starting their investigation on the day of the Game, League Security had not taken the game balls with them after the Game. The Patriots therefore sent to Mr. Wells all the game balls which had been approved by the Referee for use in the AFC Championship Game and were still in the Patriots' possession (with the exception of one Patriots game ball which was taken out of play in the first half after it was caught by James Develin for a touchdown, and two Indianapolis balls which were retained as souvenirs after Patriots' players intercepted them -- and even those three balls were made available to Mr. Wells for inspection). The Patriots also sent to Mr. Wells the ball bags used to transport the balls to and from the OLR, dirt from the collection of dirt used to prepare the balls, the pump that had been used in the equipment room and was provided to the officials pre-game, and the recorded weather information from the day of the game. All witness telephones within the Patriots control were checked for relevant emails; some were imaged in their entirety by the League. All emails on the Patriots' email server of individuals identified by the League were searched for relevant documents using search terms provided by Mr. Wells. All relevant hard-copy documents were also provided to Mr. Wells.

In addition, because the Patriots wanted a thorough investigation, Patriots' counsel periodically supplied Mr. Wells with suggested questions and lines of inquiry. The Patriots also supplied Mr. Wells with extensive scientific information that had been sent, unsolicited, to the Patriots. The Patriots also supplied information to Mr. Wells about a prior reported incident of actual ball tampering which took place during a Vikings-Panthers game in 2014. Evidence was also provided that Indianapolis ball boys, in a prior season, had been seen by Jacksonville personnel with ball needles hidden under their long sleeves. There was also evidence provided that game officials had over-inflated the balls they had approved for use in the October 16, 2014 Patriots-Jets game. In short, consistent with their desire for a thorough, fair and complete

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investigation, the Patriots went beyond mere cooperation and encouraged and facilitated the investigators getting information beyond what they specifically asked for.

There are a number of additional things the Patriots did to make this investigation as thorough as possible. First, while the investigators sought to understand the pre-game ball preparation undertaken by the Patriots (so their consultants could try to replicate the game-day events and their impact on psi), they did not ask to have that process replicated in connection with any testing or scientific experiments. Coach Belichick's experiment, which actually replicated such pre-game ball preparation, was explained to the investigators, along with a detailed report of the results of that experiment.

Second, the security videotape from the stadium tunnel outside the OLR showed several TeamOps (the Patriots-affiliated security company) personnel who were stationed where they could see the OLR Attendant carry the balls out of the OLR and toward the field. Whether the OLR Attendant routinely made that journey without being accompanied by any game officials or League personnel, as he did on the day of the AFC Game, was of obvious relevance in this investigation. Since security videotape for prior games does not exist (it is taped over every 10 days), the next best evidence of what was observed in those corridors was: what did those security personnel observe from prior games? Was it routine for the OLR Attendant to carry the balls from the OLR to the field unaccompanied by any game or League official or was his doing so before the AFC Game somehow unusual and therefore suspect? The Patriots identified two security persons who have been positioned for years where they could see that movement of the ball bags by the OLR Attendant from the OLR toward the field. The Patriots brought those two individuals in for interviews by Mr. Wells. (They both stated that the OLR Attendant routinely took that journey unaccompanied by League personnel and there was nothing unusual about him doing so before the AFC Game.)

Third, an issue that arose during the investigators' interviews was the identity of an individual to whose the Patriots' Equipment Assistant stated he was referring in certain texts. The accuracy of the Equipment Assistant's statements about his conversations with this person could be confirmed by speaking to this individual to see if the referenced conversation actually occurred and when it occurred. The Patriots therefore suggested the interview and arranged for this person to be interviewed by telephone. (He confirmed the timing and substance of the conversation to which the Equipment Assistant was referring in the texts.)

Fourth, after Patriots' counsel's repeated requests to participate in the investigators' questioning of League personnel were rejected, Patriots' counsel suggested lines of questioning to be pursued. Since the League retained the investigators, permitting actual participation by Patriots' counsel in the interviews of League personnel would have eliminated any public perceptions that the investigators might not vigorously pursue issues with respect to conduct, misconduct and biases of League personnel. Cross examination is the time-tested method for probing the truth, and since certain League personnel prejudged the cause of any psi drop, already blaming it on the Patriots' misconduct as soon as halftime ended, and since the League made a "preliminary finding" the very next day that the Patriots may have tampered with the balls, the Patriots wanted to confront their accusers and ascertain not only why they made their prejudgments, but also whether certain subsequent League actions were designed not to seek the

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truth but to confirm those prejudgments. Because this investigation involved the conduct of League personnel, it was different from other investigations undertaken by or on behalf of the League where team cross-examination was not permitted (like that of Miami in connection with player harassment, or New Orleans in connection with bounties for injuring opponents since in neither case was the conduct of League personnel at issue). The Patriots were denied the opportunity to confront those who prejudged their culpability, those who did the psi measurements that led to this entire matter, those who failed to present concerns about psi at a time when protocols could have been put in place to assure that weather conditions would not lead to balls being below required psi, those who selectively leaked information, and those who chose not to correct reported misinformation. Submitting lines of inquiry to be pursued by the investigators was the only available option remaining, which the Patriots did, and which Mr. Wells encouraged, but it is a poor substitute for the basic right to question key witnesses employed by the League.

Finally, after the Patriots received the actual halftime psi measurements (months after having requested them), the Patriots provided the investigators with scientific input from a Nobel prize-winning scientist and a Ph.D. physicist, along with other scientific input. Mr. Wells invited the provision of such scientific information, making it clear that he wanted to be sure the consultants retained by the League had not overlooked any relevant matters. (The scientific information explained that weather conditions accounted for the measured drop in psi of Patriots balls during the first half and addressed questions about the comparative drop in psi of a handful of measured Colts balls.)

The above non-exhaustive summary demonstrates what should be seen as a model of team cooperation in a League investigation and is consistent with the Patriots' desire for a fair, thorough, and independent investigation.

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