

The Wells Report in Context

The conclusions of the Wells Report are, at best, incomplete, incorrect and lack context. The Report dismisses the scientific explanation for the natural loss of psi of the Patriots footballs by inexplicably rejecting the Referee's recollection of what gauge he used in his pregame inspection. Texts acknowledged to be attempts at humor and exaggeration are nevertheless interpreted as a plot to improperly deflate footballs, even though none of them refer to any such plot. There is no evidence that Tom Brady preferred footballs that were lower than 12.5 psi and no evidence anyone even thought that he did. All the extensive evidence which contradicts how the texts are interpreted by the investigators is simply dismissed as "not plausible." Inconsistencies in logic and evidence are ignored.

These points, and others, are addressed in greater detail in the following Annotations to the Executive Summary of the Wells Report by Daniel L. Goldberg, a senior partner in the Boston office of Morgan Lewis and who represented the Patriots and was present during all of the interviews of Patriots personnel conducted at Gillette Stadium. Our intention is to provide additional context for balance and consideration.

*Annotations are in **Bold**. Text in [blue](#) links to relevant documents.*

Executive Summary

On January 18, 2015, the New England Patriots and Indianapolis Colts played in the AFC Championship Game at Gillette Stadium in Foxborough, Massachusetts to determine which team would advance to Super Bowl XLIX. During the first half of the game, a question was

raised by the Colts concerning the inflation level of the footballs being used by the Patriots.

As later acknowledged in the report (pgs. 44-45. Ongoing page references are to the pages of the original version of the Wells Report, not to the Executive Summary and these annotations), the Colts actually raised their concern with Senior League officials David Gardi and Mike Kensil the day before the game. Mr. Kensil then forwarded the Colts concerns to James Daniel, the NFL Director of Operations and to Dean Blandino and Alberto Riverton, senior members of the NFL Officiating Department. They, in turn, passed the concerns along to Walt Anderson, the Referee assigned to the game. The League, as is its prerogative, chose not to convey that concern to the Patriots. In pre-game preparations, the League did not consider either the impact of weather on psi or any preventative steps which could have been taken. Nor did the League decide to record in writing the pre-game measurements. The Colts, in expressing their concerns, never asked for any such added pre-game vigilance, instead suggesting that: “It would be great if someone would be able to check the air in the game footballs as the game goes on . . .” (pg. 45).

As a result, at halftime, members of the officiating crew assigned to the game, overseen by a senior officiating supervisor from the National Football League (the “NFL” or the “League”), tested the air pressure of footballs being used by each of the Patriots and the Colts. All eleven of the Patriots game balls tested measured below the minimum pressure level of 12.5 pounds per square inch (“psi”) allowed by Rule 2 of the Official Playing Rules of the National Football League (the “Playing

Rules”) on both of two air pressure gauges used to test the balls. The four Colts balls tested each measured within the 12.5 to 13.5 psi range permitted under the Playing Rules on at least one of the gauges used for the tests.

This statement is not complete. Halftime psi measurements are on pg. 8. The reality is that, on the second gauge, 3 of 4 Colts footballs were below regulation. A more accurate and complete statement regarding the Colts footballs would have been: “Using two different gauges (one of which was used for pre-game psi measurements), the League tested only four Colts footballs at halftime. Three of those footballs measured below regulation on the so-called “non-Logo” gauge. Four measured at or above regulation on the so-called “Logo” gauge. One Colts football averaged below regulation when taking into account both gauges. As soon as that fourth Colts football was measured, League personnel stopped any further gauging of Colts footballs. Relying on the higher Logo gauge measurements of the Colts football, League officials decided not to add air to any of the Colts footballs. Additional measurements using the same two gauges were made post-game. Post-game, each of the four Patriots footballs measured were well above the required level of 12.5 psi on both gauges (including one that had been overinflated to 13.65 on the Logo gauge). Three of the four Colts footballs measured below 12.5 psi on the non-Logo gauge (a violation of League rules), one measured below 12.5 psi on both gauges (also a violation), and three Colts footballs measured above 12.5 on the Logo gauge.”

The most fundamental issue in this matter is: DOES SCIENCE EXPLAIN THE LOSS OF PSI IN THE PATRIOTS FOOTBALLS? That issue turns on what psi numbers are used for the psi levels pre-game and at halftime. Those numbers will show the amount of lost psi. Given the gauges varied from each other, the only relevant halftime psi measurements are those shown by the gauge that was used pre-game. One gauge, referred to as the Logo gauge, was consistently .3 to .45 psi higher in its measurements than the non-Logo gauge. Referee Walt Anderson, who was alerted to psi issues before the game, has a detailed recollection of the unrecorded psi levels of the 48 footballs he gauged pre-game — essentially 12.5 for the Patriots footballs and 13.0 or 13.1 for the Colts footballs. His Recollection of those pre-game psi levels is one of the foundations of this report. MR. ANDERSON SPECIFICALLY RECALLS THAT HE USED THE LOGO GAUGE FOR THESE PRE-GAME MEASUREMENTS (pg. 52). (This is the only recollection of Mr. Anderson that the report rejects.) Therefore, the Logo gauge numbers are the correct numbers to use for halftime psi. The investigators did rely on those Logo gauge halftime psi numbers in dealing with the Colts footballs. Using that gauge, all the Colts footballs were within regulation. That justified the officials not adding air to them. However, when assessing the Patriots footballs, the investigators reject Anderson's best recollection that he used the Logo gauge pre-game, and instead look to the larger psi drop that is shown by the lower psi, non-Logo gauge.

What is the consequence of rejecting Anderson's statement that he used the Logo gauge pre-game? The Ideal Gas Law,

according to the League's consultants, establishes that the psi of the Patriots footballs at halftime would have been 11.32 to 11.52 due solely to the temperature impact on the footballs. (pg. 113). With the Logo gauge, 8 of the 11 Patriots footballs are in the Ideal Gas Law range and the average of all 11 Patriots footballs was 11.49 — fully consistent with the Ideal Gas Law's prediction of exactly what that psi would be. THAT IS, RELYING ON MR. ANDERSON'S BEST RECOLLECTIONS, BASIC SCIENCE FULLY EXPLAINS THE DROP IN PSI OF THE PATRIOTS FOOTBALLS DURING THE FIRST HALF.

Mr. Anderson's recollections are adopted by the investigators for the pre-game psi numbers. His recollection that he used the Logo gauge pre-game is the premise of the investigators' justification for League officials not reinflating Colts footballs at halftime. But his recollection of which gauge he used pre-game is rejected when assessing the psi drop for the Patriots footballs. There is no rationale for this flip-flopping on whether Mr. Anderson's recollections were correct. And it is clear that the investigators, not happy with his recollections on this point, pushed the issue so he would state that, despite his best recollection, it was "possible" he used the other gauge. (pg. 52). The report buries in note 5 of the consultant's report (pg. 65 of the Exponent Report, which is Appendix 1 of the Wells Report) and on pg. 116 of the report, the supposed rationale for rejecting Mr. Anderson's recollection as to the gauge he used. It is convoluted and difficult to understand at best. Even during his May 12 call with the media, Mr. Wells did not even attempt to explain this, and his colleague's

explanation gave no more clarity to it. Perhaps releasing drafts of the consultant's report, and all communications between the investigators and their consultants regarding the development of their opinions, would shed more light on this so the public can have all relevant information.

On January 23, 2015, the NFL publicly announced that it had retained Theodore V. Wells, Jr. and the law firm Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss") to conduct an investigation, together with NFL Executive Vice President Jeff Pash, into the footballs used by the Patriots during the AFC Championship Game.

The hiring of Mr. Wells and his law firm followed the written notice to the Patriots (on the day after the AFC Championship Game) that the League had already made a "preliminary finding" that the Patriots may have tampered with the pressure of the footballs. See [January 18, 2015 Letter from D. Gardi](#). League personnel, thus, with no basis and no understanding of the effect of temperature on psi, had already prejudged the issues. The Colts footballs also lost psi, but no similar "preliminary finding" was made regarding the Colts. The Wells investigators, then, were hired by the League to investigate an issue that the League had already prejudged. The report nowhere questions League personnel having made this "Preliminary Finding" or any other prejudgments by League personnel. The January 18 letter to the Patriots also contained two significant misstatements that set a tone for this investigation and were an apparent source of media misreporting: 1) that one of the Patriots footballs was measured at 10.1 psi at halftime, an obvious misstatement;

2) that all of the Colts footballs measured within regulation — another misstatement. The League never corrected this notice in any respect. Why was the League content to have the Patriots dealing with this investigation for months based on inaccurate information? The investigators were not troubled by any of these obvious errors or by the League’s failure to correct them. The inaccuracies in this letter, combined with subsequent leaks to the media that were never corrected by the League placed this investigation on a footing of misinformation, to the Patriots substantial disadvantage. The report treats these inaccuracies as inconsequential (See page 101), when quite the opposite is true; they fueled international media misinformation to the Patriots serious detriment.

The investigation was conducted pursuant to the Policy on Integrity of the Game & Enforcement of Competitive Rules.

The Commissioner’s Policy on Integrity of the Game requires there be an evidentiary basis for any determinations that there was a violation of competitive Rules: “The standard of proof required to find that a violation of league rules has occurred shall be a Preponderance of the Evidence. THIS IS THE DEGREE OF EVIDENCE THAT IS OF GREATER WEIGHT OR MORE CONVINCING THAN THE EVIDENCE WHICH IS OFFERED IN OPPOSITION TO IT.” A finding of violation cannot be based on speculation or surmise. To be considered evidence, there are detailed requirements relating to reliability. This report sidesteps the scientific issues and speculates that (i) all text references to deflation must have been referring to

the improper deflation of footballs after the referee's inspection, and (ii) because Brady preferred the footballs be at 12.5 he must really have wanted them even lower, and (iii) Tom Brady probably had a "general awareness" of the purported improper deflation of game footballs.

Beyond the speculation about the meaning of joking texts, the report relies not on evidence of any wrongdoing, but of ordinary day-to-day conduct of those involved. For example:

(1) The report relies on the increased level of communications between Mr. Brady and Mr. Jastremski in the days following the AFC Championship Game even though these communications show no knowledge of football tampering. As fully explained to the investigators, there were several readily understandable reasons for increased communications between Mr. Brady and Mr. Jastremski in the days following the AFC Championship Game.

First, the media frenzy over deflated footballs started the day after the AFC Championship Game. Mr. Brady is used to the limelight and to critics; Mr. Jastremski is not. Since Mr. Jastremski prepared the footballs, it was reasonable to expect that this media attention would focus on him. It was also reasonable to expect that (as happened) Mr. Jastremski's boss would question Mr. Jastremski to see what, if anything, he knew. Mr. Brady's reaching out to Mr. Jastremski to see how he was holding up in these circumstances is not only understandable, but commendable.

Second, the team had just won the AFC Championship and was headed to the Super Bowl. Footballs needed to be prepared for the Super Bowl. Since this was Mr. Jastremski's first Super Bowl experience since assuming the role as game football preparer, it is not surprising he and Mr. Brady spoke a lot about football preparation during the days after the AFC Championship Game. Issues that they needed to discuss included: how footballs would be prepared (there were several different ways used for preparation during the season, sometimes dependent on weather); how many more than the required number for the game should be prepared so that, as he always does, Mr. Brady could select game footballs from among a larger number of prepared footballs; when, if at all, would the footballs be available in Foxborough for practice; when were they to be sent to Arizona; when would they be available for use in practice in Arizona; etc. All of these discussion topics were triggered by winning the AFC Championship and needed to be dealt with in the days following that win.

The investigators could have inquired of the Patriots former employee whose responsibility included preparing game balls whether his communications with Mr. Brady had increased during the time period leading up to the prior Super Bowls. They did not.

In short, increased Brady-Jastremski communications in the days following the AFC Championship Game do not make it more likely than not that there was any wrongdoing or knowledge of wrongdoing. They are totally consistent with complete innocence. It is only speculation to conclude

otherwise. Nonetheless, it forms part of the report's stated rationale for its findings against Mr. Brady.

(2) Mr. Brady's expressed belief that no one would tamper with the footballs without his knowledge and approval is also relied upon, but is scarcely proof that he actually did have that knowledge. It is an objectively reasonable belief, but if tampering actually occurred, the belief is not evidence that Mr. Brady knew of it.

(3) The report relies on three autographs Mr. Brady signed for Mr. McNally and gifts he gave to Mr. Jastremski as supporting its conclusions there was tampering and Mr. Brady knew of it. As to the autographs for Mr. McNally, Mr. Brady explained that he does not recall signing them, but may well have since he routinely does so when asked. Such requests are made multiple times almost every day in the team locker room or equipment room, even on game day. Mr. Brady believes he has never turned down such a request. If receiving an autograph from Mr. Brady is evidence that you are being rewarded by him for nefarious conduct, then hundreds or even thousands of people must be part of a scheme of wrongdoing. What is not disputed is that Mr. Brady, other than signing three items that Mr. McNally handed to him, has never gifted anything to Mr. McNally. That fact cuts against the existence of the scheme the report hypothesizes.

As to gifts to Mr. Jastremski, as Mr. Brady explained, Mr. Jastremski is one of about 15 non-player personnel to whom he annually gives holiday gifts in addition to what they get

from the players' Holiday Gift pool. Mr. Jastremski's gifts are consistent in amount with the gifts to others.

(4) Mr. Brady's agent explained to the investigators why, from the perspective of precedent for other players and the Players' Union, there were good reasons not to turn over his private phone or any phone records or texts. The investigators already had all of Mr. Jastremski's texts with Mr. Brady, since Mr. Jastremski's phone had been given to the League within about 48 hours of notice of the investigation. They also had Mr. McNally's phone records for a period prior to and including the AFC Championship Game. Those records show no texts with Mr. Brady, even in connection with asking for or receiving the three autographs. The absence of any texting between Mr. Brady and Mr. McNally was further confirmed by the uncontradicted testimony by each of them that they had never spoken to each other on the phone, had never texted each other, and had never even had a substantive in-person conversation with each other. The investigators found no witness who contradicted any of these statements even though they had access to countless people who were in the Patriots locker room area or the player's bench area where, on game day, Mr. Brady and Mr. McNally were in the same vicinity. The absence of a single witness who observed some substantive conversation, and the absence of texts during what the investigators felt was a critical time, corroborated their statements that they never had any such communications. If any information about texts on Mr. Brady's phone was really an issue, they could have asked Mr. Brady's agent (who offered at the end of Brady's interview to

respond to further inquiries) to confirm there were no texts with Mr. McNally.

Given the fact that Mr. Jastremski and Mr. McNally had both turned over their phone records, no adverse inferences should be drawn from the fact that Mr. Brady did not make his phone or its contents available.

As to the texts, which are discussed later, there is not a single text which refers to a plan to deflate footballs after the referee's inspection, to having done so, to any Brady instructions to do so, or to any knowledge by Mr. Brady of such conduct. It is pure surmise and speculation that every deflation reference in a text is to improper deflation of footballs after the referee inspected them.

In short, there is simply no evidentiary support for the conclusion that Mr. Brady was aware of any actual or even attempted effort to improperly release air from the footballs. All the evidence — as well as logic — is to the contrary.

That Policy provides that “[a]ctual or suspected competitive violations will be thoroughly and promptly investigated.”¹ This Report is the product of that investigation. It was prepared entirely by the Paul, Weiss investigative team and presents the independent opinions of Mr. Wells and his colleagues.

Any judge sitting on a case needs to reveal any financial relationship he or she may have with either of the parties. It is not an attack on the judge's integrity to expect him or her to do so. Mr. Wells began every interview of Patriots personnel explaining that his role was like that of a judge. It

is not surprising that there have been calls for the law firm of Paul Weiss (acting as prosecutor, judge and jury) to have disclosed in its report the extent of its financial relationships with the NFL, particularly since the conduct of League personnel was part of what was being investigated. The investigation included an assessment of how the League handled the matter (pg. 21, concluding there was no bias or unfairness in anything done by any League personnel). The report buries in footnote 78 on pg. 138 that the League employee who took the kicking football out of play was fired by the League shortly after the AFC Championship Game for a pattern of selling memorabilia intended for the NFL's auction site. The Patriots certainly preferred that a lawyer like Mr. Wells, with an esteemed reputation, investigate these issues rather than have League employees do it. The issue that has been raised in the media is whether public acknowledgment and the disclosure of these extensive relationships with the League was appropriate. Such disclosures would help the public better assess the findings regarding League conduct, of which there is not a single critical comment or single suggestion for improvement in the report. No one should take calls for such disclosure personally.

The primary topic of the investigation has been the circumstances surrounding the use by the Patriots of footballs inflated at below-regulation air pressure levels during the AFC Championship Game, including whether Patriots personnel were involved in deliberate efforts to circumvent the Playing Rules. The investigation also has involved an assessment of the circumstances surrounding a possible

attempt by the Patriots to introduce to the playing field a non-approved kicking ball during the AFC Championship Game.

The Patriots, from the outset, sought to have additional issues regarding conduct of certain League personnel included in the scope of this investigation, including not only failures to take appropriate actions to protect the integrity of the game in the wake of the Colts expressed concern, but also leaks of selective information and misinformation, failures to correct reported misinformation, and prejudgments of wrongdoing. The report does not address these issues.

For the reasons described in this Report, and after a comprehensive investigation, we have concluded that, in connection with the AFC Championship Game, it is more probable than not that New England Patriots personnel participated in violations of the Playing Rules and were involved in a deliberate effort to circumvent the rules. In particular, we have concluded that it is more probable than not that Jim McNally (the Officials Locker Room attendant for the Patriots) and John Jastremski (an equipment assistant for the Patriots) participated in a deliberate effort to release air from Patriots game balls after the balls were examined by the referee.

This conclusion ignores the scientific explanation for the drop in psi, ignores obvious issues concerning gauge inconsistency, and is based on adverse inferences from circumstantial evidence, primarily texts sent in October after the Patriots-Jets game (at which footballs were seriously overinflated by the game officials to levels in violation of League rules). These inferences ignore the testimony given by both the author and the recipient of

various ill-stated attempts at humor contained in texts. No witness gave the texts the meaning that the report attributes to them. No independent evidence confirmed how the report interprets the texts. The report simply speculates that all the selected texts had to do with improper football deflation after the referee's inspection, although not a single text mentions any such thing.

Based on the evidence, it also is our view that it is more probable than not that Tom Brady (the quarterback for the Patriots) was at least generally aware of the inappropriate activities of McNally and Jastremski involving the release of air from Patriots game balls.

The phrasing of this conclusion reflects what a reach it was. Unable to conclude that Mr. Brady had knowledge of, let alone directed, any improper activities, the best the report comes up with is the phrase "generally aware." As noted above, there is simply no evidentiary basis for this conclusion, let alone for the conclusion that there were any underlying inappropriate activities. The texts that form the heart of this report show two persons with quite uninhibited texting history — and yet NOT A SINGLE TEXT REFERS TO DEFLATING FOOTBALLS TO A LEVEL BELOW REGULATION, TO DEFLATING FOOTBALLS AFTER THE REFEREE'S INSPECTION, OR TO ANY DIRECTIONS FROM MR. BRADY — OR EVEN ANY BELIEF THAT TOM BRADY WOULD PREFER TO USE BELOW REGULATION FOOTBALLS.

Based on the evidence, the investigation has further concluded that that there was no deliberate attempt by the Patriots to introduce to the playing field a non-approved kicking ball during the AFC

Championship Game. Although Patriots personnel provided a kicking ball to game officials that did not have the distinctive inspection mark of the referee, we find that the Patriots personnel involved believed the ball to be authentic and appropriate.

The explanation as to why there was no distinctive mark on the kicking football in question was referee Walt Anderson's candid acknowledgement that, despite his practice of putting his initials on such footballs, he may have neglected to do so on this occasion. This is not to criticize Mr. Anderson or his conduct. It simply reflects the reality of the generally casual manner of the pregame football inspections. Even though game officials were advised before the game of concerns about the inflation levels of the footballs, they kept no record of which gauge was used, whether more than one gauge was used, or the psi levels of 48 measured footballs (plus 8 K-football). The referee did his inspection in the shower area of the Officials' Locker Room (pg. 51). The inspections and putting the footballs back into the bags was so informal that it appears that the officials may have put 13 footballs, not the 12 set forth in Rule 2, in the Patriots football bag. The unrecorded psi numbers done in this setting are then used as the basis on which the report assesses the marginal differences in measured psi.

We do not believe that there was any attempt by Patriots personnel, including Patriots kicker Stephen Gostkowski, to deliberately circumvent the rules by offering the kicking ball for play.

We do not believe that the evidence establishes that any other Patriots personnel participated in or had knowledge of the violation of the

Playing Rules or the deliberate effort to circumvent the rules described in this Report. In particular, we do not believe there was any wrongdoing or knowledge of wrongdoing by Patriots ownership, Patriots Head Coach Bill Belichick or any other Patriots coach in the matters investigated. We also do not believe there was any wrongdoing or knowledge of wrongdoing by Patriots Head Equipment Manager Dave Schoenfeld.

In reaching these conclusions, we have considered, among other things, the following facts that we believe are established by the evidence for the reasons detailed in this Report:

1. Rule 2 of the Official Playing Rules of the NFL requires that footballs used during NFL games must be inflated to between 12.5 and 13.5 psi. In particular, the rule states that “[t]he ball shall be made up of an inflated (12½ to 13½ pounds) urethane bladder enclosed in a pebble grained, leather case (natural tan color) without corrugations of any kind.”

Rule 2 goes on to state that the footballs shall remain “under the supervision of the referee until they are delivered to the football attendant just prior to the start of the game.” (pg. 32). The report concludes that “football attendant” refers to the ball boys. Nowhere in the report, however, is there any discussion about whether the referee or other League officials failed to properly maintain this supervision, which one would have expected to have been particularly vigilant in the wake of the Colts expressed concerns. The report acknowledges that game officials specifically allowed Mr. McNally to take the game footballs from the dressing room of the Officials’ Locker Room (where the referee was) into the separate sitting room (pg. 55). No one told Mr. McNally

that he could not then proceed to the field with the footballs. When the NFC Championship Game ended abruptly in overtime and Mr. McNally started from the back of the sitting room towards the door to the hallway, he walked by numerous League officials in the sitting room. As the report states (pg. 55), the sitting room was crowded with “NFL personnel, game officials and others gathered there to watch the conclusion of the NFC Championship Game on television.” Mr. McNally had to navigate this crowd of officials to make it through the sitting room with two large bags of footballs on his shoulders. Mr. McNally, a physically big man, hoisted two large bags of footballs and lumbered past all these League officials and out the door of the Officials’ Locker Room. As is clear from the report, no one objected; no one told him to stop; no one requested that he wait to be accompanied by a League official; no one told him that a League official had to carry the footballs to the field. After he walked past all of these League officials and out the door of the Officials’ Locker Room to the hallway, he then walked past James Daniel, an NFL official and one of the people who had been alerted to the Colts psi concerns pre-game (pg. 45). Mr. Daniel, as seen on the security video, looked at Mr. McNally carrying the bags of footballs toward the field unaccompanied by any League or game official, and made no objection to Mr. McNally continuing unaccompanied to the field. In short, if officials lost track of the location of game footballs, it was not because Mr. McNally stealthily removed them. (Omitted from the investigation were interviews with all those League officials whom Mr. McNally walked past with the bags of footballs on

his shoulders.) Even after halftime, when obvious attention was being paid to game footballs and psi issues by League and game officials, who took control of the footballs at halftime, the security video shows Mr. McNally, with no objection, taking the footballs from the Officials' Locker Room back to the field totally unaccompanied by any League or Game official. Mr. McNally's removal of the footballs from the Officials' Locker Room before the game began was simply not unauthorized, unknown, unusual, or in violation of some protocol or instruction. The report nonetheless portrays Mr. McNally's departure from the Officials' Locker Room before the game as a step in secretly taking the footballs for nefarious reasons.

2. Several hours before the AFC Championship Game, Jim McNally, the Patriots employee responsible for delivering the Patriots game balls to the game officials for pre-game inspection, brought the balls into the Officials Locker Room at Gillette Stadium. At or around that time, McNally told the referee, Walt Anderson, that Tom Brady, the Patriots quarterback, wanted the game balls inflated at 12.5 psi. McNally has been employed by the Patriots as a seasonal or part-time employee for the past 32 years. His work for the Patriots during the 2014-15 NFL season took place only on a part-time/hourly basis on days on which the Patriots had home games. His legitimate job responsibilities as Officials Locker Room attendant did not involve the preparation, inflation or deflation of Patriots game balls.

3. During the pre-game inspection, Anderson determined that all but two of the Patriots game balls delivered by McNally were properly inflated. Most of them measured 12.5 psi.

The League had advance notice of the Colts concerns about game football psi. They also knew there would be inclement weather at the game (pg. 53, fn. 31). League personnel never considered the inevitable impact of the colder temperatures outside, which would inevitably drop footballs set at 12.5 psi pre-game to below regulation soon after being moved to the field. The Wells Report (pg.113) validates the science behind this conclusion. The League should have been aware of this going into the game, but it appears that the League never considered the impact of weather on psi or on the enforcement of Rule 2 in this game or any game. Using Ideal Gas Law calculations, footballs set pre-game in 71° indoor temperatures at the high end of the Rule 2 range — 13.5 psi — will drop below 12.5 when the outside temperature is at or below 52°. It is safe to assume that countless NFL games have therefore used below-regulation footballs — and no one has even noticed. The League is, however, “generally aware” of the impact of heat and cold on the psi of footballs, having adopted a protocol which prevents footballs from being placed in front of field-level heaters. There was a violation of this protocol that arose during the Carolina game in Minnesota during the 2014 season, when NFL officials told ball boys for both teams not to continue to put footballs in front of heaters — an evident attempt to tamper with the footballs in violation of the rules. That led to only a warning to the teams.

Two tested below 12.5 psi and Anderson directed another game official to further inflate those two game balls, which Anderson then adjusted to 12.5 psi using a pressure gauge. Most of the Colts game balls tested by Anderson prior to the game measured 13.0 or 13.1 psi. Although

one or two footballs may have registered 12.8 or 12.9 psi, it was evident to Anderson that the Colts' inflation target for the game balls was 13.0 psi. No air was added to or 4 released from the Colts game balls pre-game because they were all within the permissible range.

As noted above, Mr. Anderson's "best recollection" is that he used the Logo gauge to check the footballs pre-game (pg. 52). The Logo gauge shows higher psi numbers than the non-Logo gauge. Crediting that Mr. Anderson used the Logo gauge to measure the Patriots footballs pre-game, the halftime psi of the Patriots footballs on that gauge are consistent with the Ideal Gas Law calculations of what would happen naturally. (pg. 113).

4. When Anderson and other members of the officiating crew were preparing to leave the Officials Locker Room to head to the field for the start of the game, the game balls could not be located. It was the first time in Anderson's nineteen years as an NFL official that he could not locate the game balls at the start of a game. Unknown to Anderson, and without Anderson's permission or the permission of any other member of the officiating crew, McNally had taken the balls from the Officials Locker Room towards the playing field. According to Anderson and other members of the officiating crew for the AFC Championship Game, the removal of the game balls from the Officials Locker Room by McNally without the permission of the referee or another game official was a breach of standard operating pre-game procedure. According to Anderson, other members of the officiating crew for the AFC Championship Game and other game officials with recent experience at Gillette Stadium, McNally had not previously removed game balls from the Officials Locker Room and taken them to

the field without either receiving permission from the game officials or being accompanied by one or more officials.

When the NFC Championship Game ended abruptly in overtime, someone in the Officials' Locker Room sitting area said "we're back on." Mr. McNally then stood up, put the two bags of footballs on his shoulders, and proceeded past all of these NFL personnel and game officials (see pgs. 54-55) to the door of the Officials' Locker Room sitting room (described in the report as a "large sitting room" — pg. 54). This was not some clandestine departure — it was in clear view of all those League officials. Once the footballs are taken to the field they are to be taken to the area adjacent to the replay booth. The outdoor security camera shows that is exactly what Mr. McNally did. Anyone actually concerned about the location of the game footballs could simply have checked that location. The security video shows Mr. Anderson coming out to the field and going there. Not surprisingly, he found Mr. McNally was there with the bags of footballs. No one then reprimanded Mr. McNally for having taken the footballs without permission or accompaniment, although the report would have one now believe that officials thought Mr. McNally had done something wrong by taking the footballs himself. No official chastised him; no one re-checked football psi; no official suggested using the back-up footballs. Mr. McNally's departure from the sitting room in the Officials' Locker Room, and his walk from there towards the field, are all on the security video. His walk was not in any way hurried or furtive or secretive. Nothing about his activities supports a

conclusion that he was carrying out a secret plan to deflate footballs.

5. Based on videotape evidence and witness interviews, it has been determined that McNally removed the game balls from the Officials Locker Room at approximately 6:30 p.m. After leaving the Officials Locker Room carrying two large bags of game balls (Patriots balls and Colts balls), McNally turned left and then turned left again to walk down a corridor referred to by Patriots personnel as the “center tunnel” heading to the playing field. At the end of the center tunnel on the left-hand side, approximately three feet from the doors that lead to the playing field, is a bathroom. McNally entered that bathroom with the game balls, locked the door, and remained in the bathroom with the game balls for approximately one minute and forty seconds. He then left the bathroom and took the bags of game balls to the field.

The report does not address whether one minute and 40 is consistent with the time that it takes a gentleman to enter a bathroom, relieve himself, wash his hands, and leave. In fact, it is. Nor does the report consider or acknowledge that, with the start of the game having been delayed, there was no reason for Mr. McNally to rush any efforts to deflate footballs in the bathroom if that was the task at hand. Mr. McNally had already been told that the start of the game had been delayed (from 6:40 to 6:50). He entered the bathroom with almost 20 minutes until game time. There was simply no need to rush were he engaged in releasing air from footballs — a process one would suspect would have to be done very carefully so as not to release too much air from any football. The one minute and 40 seconds in the

bathroom was far more likely to have been for exactly the reason Mr. McNally gave.

The League consultant's report on whether one could actually perform the deflation of 13 footballs in 100 seconds is a bit curious. (Appendix 2 to the Wells Report.) It is in an unsigned letter dated May 6, the date the report was issued. Like the Exponent report similarly dated, there was obviously some form of that letter previously available to the investigators. The stated goal of the experiment was to release air "in as short a time as possible" — which, as noted, would not have been a concern on game day given the delay in the start of the AFC Championship Game. Less than 1 psi of air was released from each of the footballs in this experiment. Less than 1 psi of released air is not even noticeable, but the experiment nonetheless assumed a plan to release an inconsequential amount of air. There is no indication in the report of the size, agility or age of those who raced to complete the task as quickly as possible — and hence no real assessment of whether a person of Mr. McNally's age and physical characteristics could have accomplished this task, which would involve taking the footballs out of the bag, putting them on the floor (which happens to be sloped, increasing the level of difficulty if footballs were laid out on the floor), carefully controlling them to be sure not to deflate any football twice, returning them to the bag, unlocking the door and leaving. In all events, there was good reason for Mr. McNally to stop in the bathroom, since his sideline duties require he be on the field the entire first half.

6. In the weeks and months before the AFC Championship Game, McNally periodically exchanged text messages with the Patriots equipment assistant primarily responsible for the preparation of the Patriots game balls, John Jastremski. In a number of those text messages, McNally and Jastremski discussed the air pressure of Patriots game balls, Tom Brady's unhappiness with the inflation level of Patriots game balls, Jastremski's plan to provide McNally with a "needle" for use by McNally, and McNally's requests for "cash" and sneakers together with the "needle" to be provided by Jastremski. A sports ball inflation needle is a device that can be used to inflate a football (if attached to an air pump) or release air from a football (if inserted alone into a ball). For example, on October 17, 2014, following a Thursday night game between the Patriots and the New York Jets during which Tom Brady complained angrily about the inflation level of the game balls, McNally and Jastremski exchanged the following text messages:

The report bases its conclusions on a relative handful of text strings. It might appear that there are more than a handful only because the report repeats the same texts numerous times. For example, the Oct. 17, 2014 text string between Mr. Jastremski and Mr. McNally (referring to Mr. McNally's "stress" about having to get something "done") is quoted or paraphrased no fewer than fifteen (15) times. (pgs. 5, 15, 17 (three times), 77, 78, 79, 83, 85, 87, 123, 126 (twice), 127) Mr. Jastremski and Mr. McNally were obviously uninhibited texters, sending communications with no thought that anyone else would ever see them. They certainly would not have cursed at the team's quarterback if they thought their texts would ever see the light of day. Perhaps most revealing, then, is that not a single text states that: (i) Brady wanted

footballs set below 12.5 psi; (ii) there was a plan to deflate footballs after the referee inspected them; or (iii) there was any actual such deflation. Nonetheless, the report assumes that every text reference to inflation or deflation of footballs suggests there was a plot to improperly deflate footballs after the referee's inspection. In reality, there is simply no basis to assume that conclusion.

First, the report ignores the information the investigators gathered that Mr. Jastremski's duties in football preparation in fact routinely involve deflating every football at least twice. Every team in the League has developed a standard operating procedure for the preparation of new footballs for game play. The Patriots standard procedures are described in part on pgs. 37-40. Omitted from that description, but as Mr. Jastremski explained, is that the very first thing he routinely does when he opens a new box of Wilson footballs is to take a bit of air out of them. That makes them easier to prepare. The second time he takes air out of footballs is when he sets them for Mr. Brady's pre-game review and selection. (pgs. 39-40). Prior to the Jets game in 2014, Mr. Jastremski set the footballs at 12.75-12.85 for Mr. Brady's pre-game inspection and selection, since that is the range that had been used by Mr. Jastremski's predecessor.

Curiously, the report does not credit this statement, although no witness or other evidence contradicted it, and apparently no game official reported that, in any games prior to the Jets 2014 game, footballs from the Patriots did not routinely arrive at the Officials' Locker Room precisely as Mr. Jastremski described. Nonetheless, the report states disbelief to the statement because it does not support the

report's assumption that Mr. Brady cared about psi levels long before the Jets game over-inflation fiasco. The report discredits this information – about which there was no reason to lie and which could have been checked in all events – solely because of (i) Mr. McNally's May 2014 text reference to himself as the “deflator” (which had nothing to do with what psi the footballs were set at for Mr. Brady's inspection); (ii) Mr. Brady's involvement in the 2006 Rule change (which, as explained elsewhere, dealt with tactile feel and football consistency, not psi levels); and (iii) Mr. Brady's “apparent longstanding preference for footballs inflated to the low end of the permissible range” (although setting footballs at 12.75-85 is not much different from setting them at 12.6, which is what Mr. Jastremski did following the very first time Mr. Brady focused on actual psi numbers). In short, not “crediting” the evidence that footballs were historically set at 12.75-85 demonstrates mostly how the report lets its interpretation of the texts then control how it views all other evidence. In all events, there is no question that Mr. Jastremski had to deflate footballs a second time just before Mr. Brady's selection. To get them to the desired (and permissible) level, one adds air and then releases the air to the desired psi. After mid-season in 2014 – i.e., after the Jets game issues with vastly over-inflated footballs – he set them at 12.6 for Mr. Brady's inspection and selection – again adding air and releasing it to get down to the desired psi. So deflation of footballs cannot be presumed to refer to post-referee inspection conduct. Indeed, Mr. Jastremski does not even have possession of the footballs once they go to the Officials' Locker Room for pre-game inspection.

There was a second way that Mr. Jastremski and Mr. McNally used the term “deflation” or “deflator” which the report disregards. The Wells investigators had the May 9, 2014 “deflator”/espn text string in their possession several weeks before their full day, four lawyer-staffed interviews with each of Mr. McNally and Mr. Jastremski. They came to the interviews with laptops, documentation and had obviously prepared extensively for each interview. They never asked either of them about that May 9 “deflator”/espn text. Perhaps that is not surprising since the word “deflator” appears in only ONE text from among many hundreds of texts that were made available to the investigators. The Report then takes this one word, in this one text, and uses it throughout the Report as a moniker for Mr. McNally. Is this true objectivity? Further, when they sought their additional interview with Mr. McNally, they never candidly said they had overlooked this text and therefore wanted Mr. McNally back for another interview to ask him about it. They never asked Mr. Jastremski about it in his interview. Had they done so, they would have learned from either gentleman one of the ways they used the deflation/deflator term. Mr. Jastremski would sometimes work out and bulk up — he is a slender guy and his goal was to get to 200 pounds. Mr. McNally is a big fellow and had the opposite goal: to lose weight. “Deflate” was a term they used to refer to losing weight. One can specifically see this use of the term in a Nov. 30, 2014 text from Mr. McNally to Mr. Jastremski: “deflate and give somebody that jacket.” (p. 87). This banter, and Mr. McNally’s goal of losing weight, meant Mr. McNally was the “deflator.” There was nothing complicated or sinister about

it. If there was any doubt about the jocular nature of the May 9, 2014 texts, a review of all the texts between these two men that day would dispel it:

12:21:46: JM “Whats up dorito dink”

12:22:53: JJ “Nada”

12:22:53: JM “Whens the pong party....im on fire”

12:23:10: JJ “Omg”

12:23:34: JM “Bring it”

16:29:48: JM “You still with your women”

16:29:59: JJ “Yup”

16:33:21: JM “You must have her [omitted out of respect to Mrs. Jastremski]”

16:34:39: JM “You must have a picture of her [omitted out of respect to Mrs. Jastremski]”

16:36:31: JJ “Omg”

16:37:16: JM “You working”

16:37:53 JJ “Yup”

16:39:40 JM “Nice dude...jimmy needs some kicks....lets make a deal...come on help the deflator”

[After Mr. Jastremski does not respond for several minutes, Mr. McNally sends a follow-up text.]

16:47:15 JM “Chill buddy im just f**n with you....im not going to espn....yet”**

The “espn” reference in this string of jocular texts was part of their banter and related to the “new kicks.” Mr. Jastremski had made it clear to Mr. McNally over time that his (Jastremski’s) boss would not be happy with him were he to give away sneakers to Mr. McNally. That fact is quite

explicit in a number of their texts. (p. 82 — after texting about possibly getting Mr. McNally sneakers and apparel, Mr. Jastremski writes: “unless Dave [his boss, Dave Schoenfeld] leaves the room tomorrow then it’ll wait till next week”). Getting sneakers or apparel for his friend Mr. McNally, in short, meant Mr. Jastremski would have to do so behind his boss’s back. They teased each other about whether Mr. Jastremski would get in trouble for giving him sneakers. The May 2014 McNally text reference to “not going to espn” follows his request for “new kicks,” and was Mr. McNally’s way of saying, in substance: “Hey, don’t worry about whether giving me those sneakers will get you in trouble — I’ll never tell.” The Wells investigators had this text long before their interviews with Mr. McNally and Mr. Jastremski. Had they asked Mr. McNally or Mr. Jastremski about this text when they interviewed each for a full day using four lawyers, they would have learned this.

Certainly there is no way one could reasonably base conclusions that a scheme existed and was implemented to improperly deflate footballs based on these texts, particularly where ball tampering at the AFC Championship Game is belied by science, would have been illogical in concept and improbable in practice, and where it would, if anything, had disserved the quarterback.

The evidence was that the Jets game on Oct. 17, 2014 was the first and only time that Mr. Brady ever complained about how “heavy” or “fat” the footballs felt. That testimony came from several witnesses, and the report identifies no witness who identified any prior focus by Mr. Brady on football psi,

including during his involvement in the 2006 Rule change. Footballs measured after the Jets game showed that they had been inflated to almost 16 psi. (pg. 5). They were, in short, almost 3 psi above their psi level when Mr. Brady had selected them before the game. It appears that game officials must have overinflated the footballs during the pre-game inspections. Mr. Brady's sideline outbursts about the footballs (he readily acknowledged he was a bit "over the top" in his remarks) at the Jets game led both Mr. Jastremski and Mr. McNally to be quite upset. There was nothing they had done to overinflate footballs and nothing they could do in response to Mr. Brady's complaints. Each felt he was being attacked unfairly by Mr. Brady. Their texting is a reflection of their distress over Mr. Brady's strong reactions and feeling unfairly attacked. The content of texts obviously are jokes, exaggerations and sarcasm. One thing they are not are statements of reality. For example, Mr. McNally states he would make the next football a "balloon." Even the investigators do not conclude (or even speculate) that Mr. McNally could or would do so — or even that he actually somehow planned to do so or had the means to do so. So: when Mr. McNally talks about overinflating footballs, no rational interpretation would be that he was really going to do so. Yet the report concludes he actually was engaging in deflating footballs — and doing so after the referee's inspection — although he never states that even in jest. Further, if the game officials statements are right that they always either carried the footballs to the field themselves or accompanied Mr. McNally when he did, there would be no opportunity to inflate (or deflate) footballs. In

short, the report ascribes [CORRECTED FOR TYPO 5/14/15 1:23PM] an unstated meaning to these texts which disregards their content and obvious hyperbole.

The problems with relying on text messages to derive meaning are well known. They do not convey tone of voice. They are not well-suited for humor or sarcasm. Shorthand expressions or terms routinely used by those sending texts to each other may not be understood or appreciated. How many people have sent a joking text which could be misinterpreted if read cold by a third person? The report shows none of the caution that should exist in concluding what a text means or refers to. Although the report recognized the texts between Mr. Jastremski and Mr. McNally were filled with hyperbole and attempts at humor, it arbitrarily decided where the joking ended and what the jokes referred to. Texts and e-mails can be important to any investigation, but relying on texts subject to various meanings without other corroborating evidence is a questionable approach. Here, the other evidence does not corroborate the report's interpretation of the texts — it actually contradicts it.

McNally: Tom sucks...im going make that next ball a fuckin balloon

Jastremski: Talked to him last night. He actually brought you up and said you must have a lot of stress trying to get them done...

This single text and the reference to “him” and “he,” which the investigators concluded must refer to Mr. Brady, is the lynchpin of the investigator's conclusion that Mr. Brady was probably “generally aware” of a scheme to release air from

the footballs. (pg. 78). There are two levels of speculation here. First is the speculation that the references are in fact a conversation Mr. Jastremski had with Mr. Brady and not with someone else. Second is the speculation that, even if it does refer to a conversation with Mr. Brady, any expressions of concern about Mr. McNally's level of "stress" had to do with Mr. McNally's improper deflation of footballs. Neither the sender nor the recipient of this text supported the report's interpretation. Nor does the language of the text. Nor is there any other corroborative evidence.

It being a reference to Mr. Brady is also inconsistent with Mr. Brady's expressed testimony that he never had any reason to — or did — express concern over any "stress" Mr. McNally had. Mr. Jastremski frequently sent texts which did not relate to either a prior text that he sent or the prior text that he received — the investigators have extensive texts from him to various people on numerous subjects and this pattern was apparent. Numerous examples were called to their attention. This pattern of Mr. Jastremski's texting is disregarded in the report.

The "him" and "he" was in fact Mr. Jastremski's friend, as the investigators were told, and the conversation involved issues relating to Mr. McNally's stress relating to reselling family tickets. As Mr. McNally explained, his sister is in charge of the family's long-held Patriots seasons tickets, and she has developing health issues. Keeping track of what was being done with the tickets when not being used by the family was getting stressful. Using the team's Ticket Exchange program provides no opportunity for reselling

tickets at a profit, but using services like StubHub can result in season ticket revocations. These issues had been discussed by Mr. McNally with Mr. Jastremski and shared with Mr. Jastremski's friend, who stayed over at Mr. Jastremski's house the night of the Jets game and knew of Mr. McNally's family issues with his tickets. In conversation that evening, he expressed concern to Mr. Jastremski about Mr. McNally's situation and shared information about another friend who had similar stress about reselling tickets. That was the conversation that Mr. Jastremski explained the text was referring to. After the conversation with Mr. Jastremski's friend was explained by Mr. Jastremski, the investigators did not request the opportunity to interview the Mr. Jastremski friend to determine whether any such conversation had in fact happened. The Patriots tracked down Mr. Jastremski's friend, who is a professional fraud investigator and whose livelihood depends on his honesty. They arranged for a telephone interview with the investigators in which the individual explained in great detail the timing (the night of the Jets game), place (Mr. Jastremski's house) and content of the conversation (dealing with Mr. McNally's sister, suffering some early onset memory loss, trying to sell the family game tickets). The investigators, rather than take further steps to check out this information, simply chose to disbelieve input that did not square with their conclusions.

Mr. Brady, when asked about this text, said that not only did he never have any such conversation with Mr. Jastremski but that, at the time, he did not even know how footballs got from the Officials' Locker Room to the field — whether game

officials took them, whether League officials took them, etc. That is simply not a matter he needs to focus on as the game is about to start.

In sum, the keystone link that the investigators rely on to implicate Mr. Brady is that he is the individual being referred to in this text as “him” and “he” even though all four people in any way involved in or related to this text have rebutted this interpretation. The investigators made up their minds that “him” and “he” referred to Mr. Brady, and dismissed all contradictory evidence as “not plausible.”

The speculation about what the texts all refer to is also based on unsupported speculation that, because Mr. Brady preferred footballs at 12.5, he really wanted them to have even less psi. There is no evidence that Mr. Brady wanted footballs below 12.5 psi. To assume that wanting footballs set at the low end of the permissible range really reflects a desire they be even lower is mere speculation. No evidence exists that Mr. Brady wanted footballs below 12.5 psi — and the investigators were told quite clearly that footballs that are too soft do not roll off his hands as desired. Nonetheless, they assumed Mr. Brady actually wanted footballs to be below 12.5, that Mr. Jastremski and Mr. McNally knew that, and that they went through an elaborate plan all designed to remove about .5 psi beyond what weather would do naturally.

Jastremski: I told him it was. He was right though...

Jastremski: I checked some of the balls this morn... The refs fucked us...a few of them were at almost 16

Jastremski: They didnt recheck then after they put air in them

McNally: Fuck tom ...16 is nothing...wait till next sunday

Jastremski: Omg! Spaz

On October 21, 2014, McNally and Jastremski exchanged the following text messages:

McNally: Make sure you blow up the ball to look like a rugby ball so tom can get used to it before sunday

Jastremski: Omg

On October 23, 2014, three days before a Sunday game against the Chicago Bears, Jastremski and McNally exchanged the following messages:

Jastremski: Can't wait to give you your needle this week :)

As was also fully explained to the investigators, another issue that Mr. Jastremski and Mr. McNally often tweaked each other about dealt with Mr. McNally's duties as the Officials' Locker Room attendant. It was the standard practice for Mr. McNally to deliver a gauge and a pump from the equipment room to the Officials' Locker Room for their use in their pre-game inspection. Sometimes, Mr. McNally was provided with a gauge and pump with only one of them having a needle in it. This would lead Officials relying on the Patriots equipment for their pre-game inspection to have to take out the needle and move it back and forth between the gauge and pump during. (pg. 80). Officials would, on those occasions, often send Mr. McNally back to the equipment room to get a second needle that they could use. Mr. McNally

had to ask Mr. Jastremski for any needles requested by an official. This became a running joke between the two of them. Whatever needles Mr. McNally got in that context went to the officials and were kept in the Officials' Locker Room and then returned to the equipment room after the game. Not a shred of evidence in the report shows Mr. McNally using a needle or even transporting one other than to the Officials' Locker Room. Not a single witness ever saw Mr. McNally handling the footballs as he carried them to the field in two large bags, let alone handling a football with a needle in his hand. There is simply no basis to conclude, as the report does, that every reference to a needle refers to a needle to be used for the purpose of deflating footballs after the referee's inspection.

McNally: Fuck tom....make sure the pump is attached to the needle.....fuckin watermelons coming

Jastremski: So angry

McNally: The only thing deflating sun..is his passing rating

The next day, October 24, 2014, Jastremski and McNally exchanged the following messages:

Jastremski: I have a big needle for u this week

McNally: Better be surrounded by cash and newkicks....or its a rugby sunday

McNally: Fuck tom

Jastremski: Maybe u will have some nice size 11s in ur locker

McNally: Tom must really be working your balls hard this week

On October 25, 2014, McNally and Jastremski exchanged the following messages:

Jastremski: Size 11?

Jastremski: 2 or 3X?

McNally: Tom must really be on you

McNally: 11 Or 11 half.....2x unless its tight fitting

Jastremski: Nah. Hasn't even mentioned it, figured u should get something since he gives u nothing

On January 7, 2015, eleven days before the AFC Championship Game, McNally and Jastremski discussed how McNally would have a "big autograph day" and receive items autographed by Brady the following weekend, before the playoff game against the Baltimore Ravens.

McNally and Jastremski exchanged the following text messages:

McNally: Remember to put a couple sweet pig skins ready for tom to sign

Jastremski: U got it kid...big autograph day for you

McNally: Nice throw some kicks in and make it real special

Jastremski: It ur lucky. 11?

McNally: 11 or 11 and half kid

On January 10, 2015, immediately prior to the game between the Patriots and the Ravens, in the Patriots equipment room with both Brady and Jastremski present, McNally received two footballs

autographed by Brady and also had Brady autograph a game-worn Patriots jersey that McNally previously had obtained.

7. In addition to the messages described above, before the start of the 2014-15 season, McNally referred to himself as “the deflator” and stated that he was “not going to espn.....yet.” On May 9, 2014, McNally and Jastremski exchanged the following text messages:

McNally: You working

Jastremski: Yup

McNally: Nice dude....jimmy needs some kicks....lets make a deal.....come on help the deflator

McNally: Chill buddy im just fuckin with youim not going to espn.....yet

8. During the second quarter of the AFC Championship Game, a ball thrown by Tom Brady was intercepted by a player for the Colts and the ball was taken to the Colts sideline. On the sideline, Colts equipment personnel used a pressure gauge to measure the inflation level of the ball, determined that it was below the minimum 12.5 psi level and informed a game official and other NFL personnel.

Once the game starts, neither team is allowed to gauge the footballs, pump them, or the like. That is solely the province of the referee, who is to be the “sole judge” of whether footballs comply. The Colts, with advance concerns about psi, did not take the issue to the referee. They took the matter into their own hands and had an intern gauge the football. (pg. 63) This conduct was in violation of Rule 2.

Nowhere does the Report identify this conduct as a violation of the Rule.

Prior to the game, Colts personnel had notified the NFL that they suspected that the Patriots might be deflating game balls below the minimum level permissible under the Playing Rules, although they did not support their suspicions with any specific factual information. In response to the pre-game concerns raised by the Colts, NFL Football Operations staff had notified the head of the NFL Officiating Department, Dean Blandino, and a senior officiating supervisor who would be attending the game, Alberto Riveron. During a pre-game conversation concerning various game-day topics, Riveron told referee Walt Anderson that a concern had been raised about the air pressure of the game balls. Anderson told Riveron that he would be sure to follow his usual ball inspection procedure to ensure that the balls were properly inflated.

If the League were concerned about this issue, and wanted to be sure that footballs met the 12.5 to 13.5 psi requirement, one would think they would have put protocols in place for recording pre-game psi levels and for checking psi once footballs were on the field. It would have been easy enough to adopt such protocols that ensured all footballs throughout the game were within regulation psi.

9. After being informed during the second quarter of the AFC Championship Game that the Colts had measured a Patriots game ball and found it to be under-inflated, and having previously been advised of the Colts' suspicions, Riveron decided that the game balls for both teams should be inspected at halftime by the game officials. Two other senior NFL personnel present at the game, Troy Vincent and Mike Kensil, independently reached the same conclusion.

This appears to have been the first time in the history of the NFL that footballs were measured during halftime. No protocols existed for such measuring. NFL Rule 2 (pg. 32) provides that it is the referee who shall be the sole judge of whether a football complies with the Rule. However, the League did not have the referee (who dealt with the pre-game gauging) do the gauging at halftime.

10. At halftime, under Riveron's supervision, two alternate game officials (Clete Blakeman and Dyrol Prioleau) tested eleven Patriots game balls and four Colts game balls. The Patriots ball intercepted by the Colts was not among the eleven Patriots balls tested. Each official used a separate air pressure gauge provided by referee Anderson that Anderson had brought with him to the game, one of which also had been used by Anderson for his pre-game inspection. Each of the eleven Patriots balls tested at halftime measured below the minimum 12.5 psi level established by the Playing Rules on both gauges. Each of the four Colts balls tested measured within the permissible 12.5 to 13.5 psi range on at least one of the gauges. The measurements were recorded in writing by Richard Farley, an NFL security official who has been assigned to the Patriots and Gillette Stadium for approximately twelve years. Only four Colts balls were tested because the officials were running out of time before the start of the second half.

The intercepted football was separately tested three times — and each of the three measurements (apparently using a single gauge) showed a different psi number — 11.45, 11.35, and 11.75 (pg. 70). These significant differences demonstrate the extent to which gauges vary from each other (indeed, the Colts gauged this football at 11.00 psi — see pg. 63) and that even a single gauge used multiple times on the same football

results in different readings. This imprecision is scarcely the basis on which precise conclusions can be based.

Farley recorded the halftime pressure measurements taken by the game officials as follows:

Patriots Ball	Blakeman	Prioleau
1	11.50	11.80
2	10.85	11.20
3	11.15	11.50
4	10.70	11.00
5	11.10	11.45
6	11.60	11.95
7	11.85	12.30
8	11.10	11.55
9	10.95	11.35
10	10.50	10.90
11	10.90	11.35

Colts Ball	Blakeman	Prioleau
1	12.70	12.35
2	12.75	12.30
3	12.50	12.95
4	12.55	12.15

The average of the Prioleau (Logo gauge) measurements — and using an average makes sense given the non-repeatability of even a single gauge — is 11.49 psi, precisely

what would have been predicted by the Ideal Gas Law. According to the League's consultants, the Ideal Gas Law predicted the Patriots footballs which started at 12.5 would have measured between 11.32 and 11.52 psi at the end of the first half (pg. 113). The average of these 11 footballs is within or above that range, as are the actual psi of 8 of the 11 footballs. If air had been intentionally released from each football before the game, these numbers would be significantly lower.

Further, note that the differences between the two gauges vary from .3 to .45 — if the gauges were in fact repeatable, the difference between the two gauges would remain the same on every football gauged.

Mr. Blakeman and Mr. Prioleau apparently switched which gauges they were using when they switched which team's footballs they were gauging. The investigators never consider that Mr. Anderson did the same thing in his pre-game measurements. If Mr. Anderson, pre-game, used the Logo gauge on the Patriots footballs and the non-Logo gauge on the Colts footballs, this helps explain the difference in psi drop between the Patriots footballs and the Colts footballs.

[Click here for Nobel Laureate Roderick MacKinnon's scientific conclusion.](#)

The halftime measurements of the Colts footballs in the table above also demonstrate without question that factors in addition to temperature naturally affect psi levels. Pre-game, all Colts footballs were within about .2 psi of each other. If the only impact on psi was temperature, then at

halftime they would again be within .2 psi of each other. In fact, the psi spread among the Colts footballs had more than doubled . There is no longer a tight consistency of psi. Why? Game play? Different amounts of time exposed to the wet weather? Different handling by the football boys? Different times held in range of sideline heaters? Different permeability of the leather or bladder? Different number of times crushed under the weight of players being tackled? Different extent of prior use before the game? One need not determine precisely what factors came into play to know that there must be natural and/or game play factors other than just temperature that affected the psi of footballs in the first half.

There were some significant differences between the game play and handling of the footballs by the two teams in the first half. The Patriots had far more offensive plays than the Colts, so the Patriots footballs were used more. The Patriots had the football on offense for the last 4:54 of the first half (except for the last 9 seconds when Andrew Luck took a knee) — i.e., just before the footballs came in for halftime measurements, the Patriots footballs were being used while the Colts footballs were being held in trash bags. The Patriots ball boys did not use bags, thereby exposing the footballs more to the rain. The Colts footballs were gauged at halftime after the Patriots footballs were gauged and inflated, and thus had an extra 10 or so minutes in the warm Officials' Locker Room for their psi to equilibrate. In short, there are numerous explanations for the Colts footballs showing less psi loss than the Patriots footballs having nothing to do with tampering. While the League consultants

could not precisely explain all of the difference in psi drop to a scientific certainty, even they acknowledge that non-tampering factors could have led to a difference in the levels of the psi drops.

Before halftime ended, all eleven Patriots balls were inflated and set to a permissible pressure level. The four Colts balls tested were not inflated because they measured within the permissible range on at least one of the gauges used at halftime. The fifteen footballs tested, and the balance of the Colts balls collected at halftime, were returned to the field for use in the second half. The pressure of the Patriots ball that had been intercepted by the Colts was separately tested three times, and the measurements, all of which were below 12.5 psi, were written on athletic tape that had been placed on the ball for identification. The intercepted ball was retained by the NFL and not returned to the field for use in the second half.

11. Following the game, before he left the stadium, McNally was interviewed by members of NFL Security. During that interview, McNally did not mention that he had taken the game balls into the bathroom. Instead, he stated that he walked directly to the field and that nothing unusual occurred during the walk from the locker room to the field. In subsequent interviews, McNally provided varying explanations for the bathroom stop and his decision not to utilize readily available bathroom facilities in the Officials Locker Room and adjacent Chain Gang Locker Room.

With no notice to Patriots management, League security actually began investigating during the second half of the game when they began questioning Patriots ball boys. Consistent with that, Mr. McNally described the focus of his first interview as being on the role of ball boys. It was

accurate for him to have stated that nothing unusual happened during the walk from the locker room to the field, since, as he later explained, his bathroom stop was nothing unusual. When later asked why he did not use the urinals in the Officials' Locker Room or the chain gang room, he fully explained why — and his reasons are supported by the report's conclusions about how crowded the Officials' Locker Room area was (pgs. 54-55). One can draw no adverse inferences from an attendant deciding not to use the crowded facilities. If the investigators had found a single witness who had seen Mr. McNally routinely using the urinals in the Officials' Locker Room prior to other games when the officials were doing their final pre-game preparations, they would have put that in the report. Similarly, no one instructed Mr. McNally not to use the bathroom he used, which is on his direct route from the Officials' Locker Room to the field.

As part of the investigation, scientific consultants were engaged to assist the investigative team. These consultants included Exponent, one of the leading scientific and engineering consulting firms in the country, and Dr. Daniel R. Marlow, the Evans Crawford 1911 Professor of Physics at Princeton University and former Chairman of the Princeton University Physics Department, who served as a special scientific consultant, coordinated with Exponent on its testing and analytical work, and advised the investigative team.

Among the issues discussed with our expert consultants was the magnitude of the reduction in air pressure of the Patriots footballs and the apparent greater drop in air pressure of the Patriots balls as compared to the Colts balls when tested at halftime.

Note the use of the word “apparent.” This is significant because any purported greater drop in psi is dependent on which of the gauges was used on which footballs pre-game.

All of the game balls tested at halftime measured at lower pressure levels as compared to the pressure levels measured prior to the game. Our consultants confirmed that a reduction in air pressure is a natural result of footballs moving from a relatively warm environment such as a locker room to a colder environment such as a playing field. According to our scientific consultants, however, the reduction in pressure of the Patriots game balls cannot be explained completely by basic scientific principles, such as the Ideal Gas Law, based on the circumstances and conditions likely to have been present on the day of the AFC Championship Game.

Neither the report nor the consultants address gauge manufacturers’ own disclosures about the expected accuracy range of gauges despite this having been suggested to them. As set forth in information provided to the investigators, relatively inexpensive air gauges bought at sporting goods stores (which appears to be what all of the gauges in question were — pgs. 37 and 51) generally have manufacturer identified variances of accuracy. The manufacturers of these gauges generally identify a range above and below the shown measurement which reflects its anticipated deviation from accurate. At best, what exists in this situation is looking at how relatively inexpensive air pressure gauges compare to each other and compare to themselves in repeated uses. The changing differences between the two gauges used at halftime in post-game

gauging, and on the intercepted football, all reflect how imprecise they are.

In addition, the average pressure drop of the Patriots game balls exceeded the average pressure drop of the Colts balls by 0.45 to 1.02 psi, depending on various possible assumptions regarding the gauges used, and assuming an initial pressure of 12.5 psi for the Patriots balls and 13.0 psi for the Colts balls.

We asked Exponent to evaluate, among other things, the data collected at halftime and consider whether the data provided a basis to reach any conclusions about the likelihood that Patriots personnel had or had not tampered with the game balls. In particular, we asked Exponent to consider the reliability of the gauges used by the game officials, the potential impact of game-day use and other physical factors that might reasonably be expected to affect the internal air pressure of footballs, and the potential impact of environmental factors that were present on the day of the AFC Championship Game. As part of its evaluation and assessment Exponent: (1) conducted a thorough statistical analysis of the data recorded at halftime of the AFC Championship Game; (2) conducted a comprehensive examination, both physical and statistical, of the gauges used to measure the air pressure of the footballs pre-game and at halftime and (3) evaluated the effects that various usage, physical and environmental factors present on game day would have had on the measured pressure of a football.

According to Exponent, regardless of the assumptions made with respect to the gauges used pre-game and at halftime, the measurements recorded for the Patriots game balls at halftime cannot be entirely explained by the Ideal Gas Law (or variations thereof) when applied to the most likely game conditions and circumstances.

Exponent also concluded that the difference in the magnitude of the reduction in air pressure between the Patriots and Colts footballs based on the halftime measurements is statistically significant. Dr. Marlow agreed with Exponent's conclusions.

Why is there no letter or written report from Dr. Marlow? Why are all of Exponent's reports, relied on in the report issued May 6, dated May 6? How many draft Exponent reports were sent to the investigators for input and comment before the final May 6 reports? What comments were made on these drafts? How did drafts change over time? What notes are there of discussions with the consultants?

In addition, Exponent found that the gauges used on the day of the AFC Championship Game appear to have worked reliably and consistently. Exponent further concluded that the difference in the pressure drops between the teams was not caused by a malfunction of either gauge or by "human factors" (i.e., variability caused by the particular individual who used the gauge). Based on extensive testing, Exponent determined that the gauges would have read consistently and with good repeatability when used in the range of temperatures to which they were exposed in the Officials Locker Room and when used to measure a range of pressures that includes those measured on game day.

Based on tests designed to evaluate the impact of a variety of physical factors on the air pressure of footballs, Exponent ruled out as factors that impacted the pressure levels measured at halftime variations in the way a football is used (i.e., the amount of impact a football has sustained) and differences in ball preparation—including the vigorous rubbing described by Coach Belichick during his January 24, 2015

press conference. Among other things, Exponent also ruled out as factors that impact air pressure levels the repeated insertion of an inflation needle or gauge, the natural leak rate of properly functioning footballs and the relative humidity of the air in the rooms in which the footballs were inflated. None of the physical factors tested by Exponent, at the levels applicable on the day of the AFC Championship Game, were found to contribute in any material way to changes in the internal pressure of footballs or to the difference in the observed pressure drops between the Patriots and Colts balls when measured at halftime.

Exponent also conducted a series of experiments to evaluate the impact of environmental conditions on the air pressure of footballs. Among other things, these experiments attempted to replicate the likely conditions and circumstances on game day and the results recorded by the game officials at halftime.

During the course of play — where the Patriots had far more offensive plays than did the Colts, the Patriots footballs were subject to far more use, more crushing multiple times under hundreds of pounds of player weight, more exposure to the rain, etc. Also, the consultants did not use any footballs in their simulations that were subjected to the type of actual football game preparation as the balls at issue — the Patriots personnel were never asked to replicate that process, the Patriots facilities were never used in the simulation, and actual game play usage was not replicated. The well-worn footballs used in the simulations had already been subjected to vigorous game day play and were no longer in the same condition as the footballs used in the first half of the AFC Championship Game. Where fractions of psi

are critical to an analysis, greater precision should be expected.

In these experiments, the Colts footballs and the Colts halftime measurements were used as a “control” group because there was no plausible basis on which to believe there had been tampering with the Colts balls. According to Exponent, the environmental conditions with the most significant impact on the pressure measurements recorded at halftime were the temperature in the Officials Locker Room when the game balls were tested prior to the game and at halftime, the temperature on the field during the first half of the game, the amount of time elapsed between when the game balls were brought back to the Officials Locker Room at halftime and when they were tested, and whether the game balls were wet or dry when they were tested at halftime. Based on these experiments, Exponent concluded that the average pressures recorded for the Patriots game balls during halftime of the AFC Championship Game were lower than the lowest average pressures attained by the simulations. In other words, when tests were run using the most likely game-day conditions and circumstances, the Patriots halftime measurements could not be replicated, and the pressures observed for the Patriots footballs by Exponent during its experiments were all higher.

Finally, Exponent was asked to investigate how quickly an individual can partially deflate thirteen footballs in a ball bag using a sports ball inflation needle, if that individual is reasonably experienced in performing that task. Based on a series of simulations, Exponent determined that the air pressure in thirteen footballs could be readily released using a needle in well under one minute and forty seconds.

Our scientific consultants informed us that the data alone did not provide a basis for them to determine with absolute certainty whether

there was or was not tampering, as the analysis of such data is ultimately dependent upon assumptions and information that is uncertain. Based on the testing and analysis, however, Exponent concluded that, within the range of likely game conditions and circumstances studied, they could identify no set of credible environmental or physical factors that completely accounts for the Patriots halftime measurements or for the additional loss in air pressure exhibited by the Patriots game balls, as compared to the loss in air pressure exhibited by the Colts game balls. Dr. Marlow agreed with this and all of Exponent's conclusions. This absence of a credible scientific explanation for the Patriots halftime measurements tends to support a finding that human intervention may account for the additional loss of pressure exhibited by the Patriots balls.

Note how soft the conclusion is — not that human intervention (i.e., tampering) accounted for pressure loss — only that it “may” account for pressure loss. Once again, this soft conclusion rests on rejecting Anderson's best recollection of using the Logo gauge pre-game.

In reaching the conclusions set forth in this Report, we are mindful that the analyses performed by our scientific consultants necessarily rely on reasoned assumptions and that varying the applicable assumptions can have a material impact on the ultimate conclusions. We therefore have been careful not to give undue weight to the experimental results and have instead relied on the totality of the evidence developed during the investigation. Even putting aside the experimental results, we believe that our conclusions are supported by the evidence in its entirety.

If scientific evidence explains the drop in psi of the Patriots footballs, it is definitive there was no tampering. Rather

than engage in that analysis, this investigation made certain assumptions about gauge usage and then speculated about the meaning of texts taken out of context. The report rejects the simple and fully supported scientific explanation for the psi drop and instead builds adverse inference upon adverse inference from speculative and circumstantial evidence in order to develop even the soft conclusions it reaches.

Our conclusion that it is more probable than not that McNally and Jastremski participated in a deliberate effort to release air from Patriots game balls after the balls were tested by the game officials is significantly influenced by the substantial number of communications and events consistent with such a finding, including that the same person (Jim McNally) referred to himself as the “deflator” and stated that he was “not going to espn.....yet,” was involved in a series of communications about his impact on the inflation-level of Patriots game balls and using a “needle” surrounded by cash and sneakers (when his legitimate responsibilities as a locker room attendant did not involve the preparation, inflation or deflation of footballs), violated standard pre-game procedure by removing the game balls from the Officials Locker Room without permission of the game officials, brought the game balls into a bathroom before the game (for a period long enough to deflate them), and received valuable items autographed by Tom Brady the week before the AFC Championship Game. Similarly, the evidence establishes that John Jastremski knew that McNally had referred to himself as the “deflator” and stated that he was “not going to espn.....yet,” was involved personally in a series of communications with McNally about the inflation and deflation of footballs using a “needle” and providing McNally with a “needle,” was involved in providing McNally with items of value, and had himself received a particularly valuable autograph from Brady earlier in the

season. In addition, Jastremski spoke with McNally almost immediately when suspicions first arose (speaking by telephone three times in the hours after the game for a total of 37 minutes and 11 seconds) and communicated with Brady by telephone or text message with significantly increased frequency in the following days, as described below.

The confluence of communications and events considered included:

- The text messages between McNally and Jastremski discussing:
- The inflation level of Patriots footballs and McNally's impact on the inflation level of the balls ("im going make that next ball a fuckin balloon"; "Make sure you blow up the ball to look like a rugby ball so tom can get used to it before Sunday"; "16 is nothing...wait till next sunday");
- Jastremski's plan to provide McNally with a "needle" for use by McNally ("Can't wait to give you your needle this week :)"; "Fuck tom....make sure the pump is attached to the needle.....fuckin watermelons coming");
- McNally's request that the "needle" be surrounded by cash and new sneakers and other items of value to be received by McNally ("Better be surrounded by cash and newkicks....or its a rugby sunday"; "Maybe u will have some nice size 11s in ur locker"; "Remember to put a couple sweet pig skins ready for tom to sign"; "U got it kid...big autograph day for you"; "Nice throw some kicks in and make it real special"); McNally's references to Brady as the catalyst for Jastremski's offers of sneakers and clothing ("Tom must really be working your balls hard this week"; "Tom must really be on you"); and
- That game balls for a Sunday game would not be deflated because of anger at Brady ("The only thing deflating sun..is his passing rating").

- Text messages most plausibly read as describing a conversation between Jastremski and Brady during which Brady mentioned McNally and said that McNally must have “a lot of stress” trying to get the footballs “done” (“Talked to him last night. He actually brought you up and said you must have a lot of stress trying to get them done...”).
- Text messages from McNally referring to himself as the “deflator” and suggesting that he might contact the media (“jimmy needs some kicks....lets make a deal.....come on help the deflator”; “Chill buddy im just fuckin with youim not going to espn.....yet”).

In fact, as noted above, there is only one such text reference and its meaning is described in a prior annotation.

- McNally’s knowledge that Brady prefers footballs inflated at the low end of the permissible range and his express request that the referee set the balls at a 12.5 psi level.

Mr. McNally did know, after the Jets game over-inflation situation, that Mr. Brady wanted the footballs set at 12.5. This knowledge would scarcely induce him to set the footballs to some other level. The investigators assume that preference for 12.5 psi is really a preference for lower than 12.5 psi — although no text, statement, or any evidence supports that Brady wanted a psi level below 12.5 psi.

- Referee Walt Anderson’s inability to locate the game balls at the start of the game (for the first time in nineteen years) and the breach in standard pre-game procedure when McNally removed the game balls from the Officials Locker Room without the permission of the referee or other game officials.

- McNally bringing the game balls into the bathroom during his walk from the Officials Locker Room to the field, locking the door and remaining inside the bathroom with the game balls for approximately one minute and forty seconds, an amount of time sufficient to deflate thirteen footballs using a needle.
- McNally's failure to mention taking the balls into the bathroom in his initial interview with NFL Security and his subsequent varying explanations for the bathroom stop and decision not to utilize readily available bathroom facilities in the Officials Locker Room and the adjacent Chain Gang Room.
- McNally's receipt on January 10, 2015, in the Patriots equipment room with both Brady and Jastremski present, of two footballs autographed by Brady and Brady's autograph on a game-worn jersey, and Jastremski's receipt earlier in the season of a particularly valuable autograph from Brady.
- The timing and frequency of the telephone communications between Jastremski and McNally, as well as Jastremski and Brady, immediately after suspicions of ball tampering were raised by NFL Security and in media reports.

Indeed, in our view, a contrary conclusion requires the acceptance of an implausible number of communications and events as benign coincidences. Although we believe that a number of the communications between Jastremski and McNally were attempts at humor, based on the evidence and the communications in their entirety, we believe that McNally and Jastremski were joking about events in which they were actually participating that involved the deflation of footballs in violation of the Playing Rules.

When interviewed, McNally claimed, among other things, that he brings game balls to the field when he deems fit, that he generally does

not receive permission from or inform the game officials before leaving the Officials Locker Room and taking game balls to the field and that he often has taken game balls into the tunnel bathroom near the entrance to the playing field.

What Mr. McNally actually described was exactly what the report stated happened before the AFC Championship Game — that he gets permission from the game officials to remove the footballs from where they reside in the dressing room of the Officials' Locker Room. As the report acknowledges (pg. 55), Mr. McNally received precisely that permission: “Anderson also recalls that Mr. McNally, with Anderson’s permission, had moved the bags of footballs from the dressing room area towards the sitting room shortly after the officials returned from the player’s walk-through.” Thus, Mr. McNally had the referee’s permission to remove the footballs from the part of the dressing room where game officials congregate pre-game. He sat with the footballs in the sitting room and then, when the NFC Championship Game that everyone was watching in that sitting room ended, he took the footballs from the sitting room and out into the hallway in full view of numerous League and game officials. Even after halftime, when psi measurements had become an issue, Mr. McNally is seen on the security tape walking the footballs back to the field totally unaccompanied by any game or League official, but obviously with their full knowledge — even more than “general awareness” — that he was doing so. Again, no one told him to wait, to stop, or that he was doing anything wrong in taking the footballs from the Officials' Locker Room to the field.

We do not find these claims plausible and they were contradicted by other evidence developed during the investigation. Counsel for the Patriots also contended that the text messages between McNally and Jastremski referring to the inflation levels of footballs and related topics were not serious and should be seen as nothing more than attempts at humor and hyperbole.

The assertion about attempts at humor and hyperbole were not made just by counsel for the Patriots, but by the witnesses themselves, and are confirmed by a broader examination of text messages sent to and from Mr. Jastremski. Mr. Jastremski's usual approach to texting is attempts at humor and hyperbole. Anyone looking not only at his extensive texts with Mr. McNally, but also with others (all of which were provided to the investigators for their review) would conclude that there is very little connection between reality and the substance of his texts.

Nowhere does the report address what their motivation would be to deflate footballs after Mr. Brady had selected them for use in the game, let alone after the referee had inspected them and had acknowledged they were set at 12.5, precisely where Mr. Brady said he wanted them. There is no evidence that Mr. Brady ever expressed a desire for footballs lower than 12.5, ever asked to practice with footballs set at lower than 12.5, or ever felt he would be advantaged in any way by using a football set under 12.5. Quite to the contrary, what Mr. Brady explained to the investigators is that the consistency of the footballs and their tactile feel are most important to him, and he cannot even tell the difference if a football is within regulation or a psi or so above or below

regulation. His performance is, simply, not affected by where the psi of footballs is in that very broad range. This is confirmed by the AFC Championship Game itself. Not only did the Patriots score 28 points in the second half with footballs reinflated significantly above 12.5, but no player or game official noticed that any below-regulation footballs were being used in the first half. Who handled the footballs the most during the first half of the AFC Championship Game? The game officials. They handled Patriots game footballs before and after each of the over 44 offensive Patriots' plays. They held the footballs. They put them on the ground. They lateraled them. They caught them. They could even compare them with the Colts footballs they also handled. No single game official noticed anything different about the footballs. In sum, even those experienced in handling footballs cannot tell if they are at or a psi or two below regulation. The footballs remain firm and hard.

What Mr. Brady does know is how the footballs feel when he selects them for game play. As explained to the investigators, football preparation is a very elaborate process. (pg. 49). After preparation and being set at an identical psi (12.75-85 before the Jets game; 12.6 after the Jets game), footballs are laid out on a trunk for Mr. Brady's selection. He picks up every football, checks how it feels, and decides which will be used in the game. He wants to know the footballs he uses in the game are the same as the footballs he selected. He wants them consistent with those he used in other games. He does not want those footballs adjusted after his selections. To have someone, particularly someone who would do so in a haphazard fashion, release air from footballs after they have

been set at 12.5 could only result in inconsistency of the footballs. Speculation that Mr. Brady wanted footballs deflated by tampering is also illogical. Cold weather naturally deflates footballs. If there was some psi lower than 12.5 psi that Mr. Brady wanted, all involved in this hypothesized scheme would have had to have detailed knowledge of the Ideal Gas Law, what game time temperature would be, and precisely how much air to release so that game-time psi would be exactly what Mr. Brady desired. Of course, there is no evidence of any of this. Moreover, as further explained by Mr. Brady to the investigators, a football that is too soft is actually more difficult to pass with than a football that is firm. The only time that psi became an issue for Mr. Brady was after the Jets game when, as noted above, the footballs were significantly over-inflated. (pg. 5).

We also find these claims not plausible. As noted above and described more fully in the Report, we believe that although a number of the communications between McNally and Jastremski were attempts at humor, McNally and Jastremski were making jokes based on actual events.

Our conclusions with respect to Tom Brady also are based on an analysis of the substantial and credible evidence. The evidence does not allow us to reach conclusions as to when McNally and Jastremski began their efforts to release air from Patriots game balls on game day (although McNally referred to himself as “the deflator” prior to the start of the 2014-15 season), exactly how long those efforts have been ongoing, how frequently they occurred, how the idea originated or the full scope of communications related to those efforts. We also note

that there is less direct evidence linking Brady to tampering activities than either McNally or Jastremski. We nevertheless believe, based on the totality of the evidence, that it is more probable than not that Brady was at least generally aware of the inappropriate activities of McNally and Jastremski involving the release of air from Patriots game balls. Evidence of Brady's awareness appears in text communications between McNally and Jastremski. For example, in text messages exchanged with McNally in October 2014 discussing Brady's unhappiness with the inflation level of Patriots game balls, Jastremski told McNally that "[h]e actually brought you up" and "said you must have a lot of stress trying to get them done." In relevant part, the text message exchange stated:

McNally: Tom sucks...im going make that next ball a fuckin balloon

Jastremski: Talked to him last night. He actually brought you up and said you must have a lot of stress trying to get them done...

Jastremski: I told him it was. He was right though...

Jastremski: I checked some of the balls this morn... The refs fucked us...a few of them were at almost 16

We believe that the most plausible reading of this exchange, based on the context and the evidence, is that Brady "brought up" McNally, told Jastremski that McNally "must have a lot of stress trying" to get the footballs "done" and that Jastremski told Brady that it was stressful for McNally. Jastremski's text message thus attributes to Brady knowledge of McNally's efforts to get the footballs "done" and the stress involved. We reject as implausible the reading offered by Jastremski, McNally and counsel for the Patriots that certain portions of this exchange refer to a person other than Brady.

Moreover, taking the text messages as a whole, Brady is a constant reference point in the discussions between McNally and Jastremski about inflation, deflation, needles and items to be received by McNally.

In response to Jastremski's offers of sneakers and clothing, for example, McNally identifies Brady as the catalyst for those offers ("Tom must really be working your balls hard this week"; "Tom must really be on you"). And unhappiness with Brady is referenced by McNally as a reason for using the "needle" to inflate rather than deflate footballs ("Fuck tom....make sure the pump is attached to the needle.....fuckin watermelons coming"). Brady is thus central to the discussions of inflation and deflation in the text messages.

There is nothing in these texts which identifies Mr. Brady as a "catalyst" for provision of anything of value to Mr. McNally, let alone that anything was actually provided to Mr. McNally — or that Mr. McNally was to be rewarded for improper deflation. Construing texts in this fashion is another demonstration that all information was filtered through the assumption that there was wrongdoing. Texts are interpreted to fit the conclusion. They do not drive the conclusion.

Additional evidence of Brady's awareness includes a material increase in the frequency of telephone and text communications between Brady and Jastremski shortly after suspicions of ball tampering became public on January 19. After not communicating by telephone or text message for more than six months (based on data retrieved from Jastremski's cell phone), Brady and Jastremski spoke by telephone at least twice on January 19 (calls lasting a total of 25 minutes and 2 seconds), twice on January 20 (calls lasting a total of 9 minutes and 55

seconds) and twice on January 21 (calls lasting a total of 20 minutes and 52 seconds) before Jastremski surrendered his cell phone to the Patriots later that day for forensic imaging. These calls included conversations relatively early during the mornings of January 19 (7:26 a.m. for 13 minutes and 4 seconds), January 20 (8:22 a.m. for 6 minutes and 21 seconds) and January 21 (7:38 a.m. for 13 minutes and 47 seconds). Brady also took the unprecedented step of inviting Jastremski to the QB room (essentially Brady's office) in Gillette Stadium on January 19 for the first and only time that Jastremski can recall during his twenty-year career with the Patriots, and Brady sent Jastremski text messages seemingly designed to calm Jastremski ("You good Jonny boy?"; "You doing good?"). For his part, Jastremski sent Brady text messages confirming that he was okay ("Still nervous; so far so good though") and cautioning Brady about questioning ("FYI...Dave will be picking your brain later about it. He's not accusing me, or anyone...trying to get to bottom of it. He knows it's unrealistic you did it yourself...").

In addition, we believe it is unlikely that an equipment assistant and a locker room attendant would deflate game balls without Brady's knowledge and approval. Based on our interviews and assessment of McNally and Jastremski, we also do not believe that they would personally and unilaterally engage in such conduct in the absence of Brady's awareness and consent.

Brady has also acknowledged publicly that he likes game balls inflated at the low end of the permissible range. The inflation level of game balls clearly is important to Brady, as demonstrated by his reaction when he believed that game balls were inflated at an undesirable level. In addition, Brady personally was involved in the 2006 rule change that allowed visiting teams to prepare game balls in accordance with

the preferences of their quarterbacks. During the process of advocating that rule change, it is reasonable to infer that Brady was likely to be (or become) familiar with the NFL rules regarding game balls, including the 12.5 psi minimum inflation level, although Brady denies having been aware of Rule 2 or the minimum inflation level until 2014 (despite approximately fourteen years as an NFL quarterback).

The 2006 Rule change was focused not on psi, but on consistency of the tactile feel of the footballs that were used at home and away. The key for the quarterbacks was tactile feel of the footballs, since under the pre-existing rule the home team prepared all the footballs. Thus quarterbacks would have to use significantly different-feeling footballs at each away game. This was the important issue that motivated Tom Brady, Peyton Manning, and numerous other quarterbacks (each of the 20-plus quarterbacks approached to sign the petition readily agreed) [ADDED FOR CLARITY 5/14/15 1:28PM] to sign on to a petition to have the rule changed so that footballs would be consistent in feel whether at home or on the road. Nothing in that petition referred to psi levels. Rather than interviewing quarterbacks who were involved in that rule change (such as Mr. Manning, who, along with Mr. Brady, spearheaded the petition) to see if psi was a focus of Mr. Brady's attention, the investigators simply assumed (contrary to what Mr. Brady told them) that psi was an important issue and therefore that Mr. Brady's focus on psi dated back to 2006 (rather than to the 2014 Jets game, as Mr. Brady explained to them). This is yet another example of looking to fit the evidence into the conclusion and failing to take some simple

investigative steps to see if there was independent corroboration of what witnesses said (that psi was not a focus of Mr. Brady's in connection with the 2006 Rule change).

During his interview, Brady denied any knowledge of or involvement in any efforts to deflate game balls after the pre-game inspection by the game officials. He claimed that prior to the events surrounding the AFC Championship Game, he did not know McNally's name or anything about McNally's game-day responsibilities, including whether McNally had any role relating to game balls or the game officials. We found these claims not plausible and contradicted by other evidence. In fact, during his interview, Jastremski acknowledged that Brady knew McNally and McNally's role as Officials Locker Room attendant.

Mr. Jastremski recounted to whom he thought Mr. Brady directed his outbursts on the sideline during the Jets game. He and Mr. McNally took offense at Mr. Brady's complaints, so not surprisingly he included both himself and Mr. McNally as those Mr. Brady was referring to. Not a single witness ever observed a substantive conversation between Mr. Brady and Mr. McNally although there are numerous people in the areas they both were on game days, which are the only times Mr. McNally is at the stadium.

There are thousands of game day employees at Gillette Stadium, hundreds who have duties in the areas where the players are. Players see hundreds of game day employees on game days, but with no substantive interaction or knowledge of who they are. Mr. McNally was one of them. His primary duties involved tending to the Officials' Locker Room

(putting out soap, towels, razors, etc.) and cleaning up cups and the like around the Patriots bench during a game. These are obviously not matters on which Mr. Brady is focused on game day. Mr. Brady said that until stories broke after the AFC Championship Game, he did not know Mr. McNally was responsible for taking footballs to (or from) the Officials' Locker Room — and, in fact, did not know whether game or League officials carried the footballs to the field. When asked about Mr. McNally's nickname, Mr. Brady insisted that it was "Burt" not "Bird" — that was how little he knew about him even by the time of his interview. Other than pleasantries that might have been exchanged in passing in the locker room or equipment room area (Mr. Brady exchanges those pleasantries with most people he comes in contact with, as could have been readily confirmed by the investigators) and Mr. McNally's recollection of asking Mr. Brady to sign some autographs, there is not even a single communication between them — oral, written, text, email, etc. — which exists or which a single witness identified. Indeed, Mr. McNally felt he needed to ask for permission to get the autographs on the day he thought could be Mr. Brady's last game of the season — that is how non-existent any relationship with Mr. Brady was.

Similarly, McNally told NFL Security that he had been personally told by Brady of Brady's inflation level preference.

The evidence was that after the Jets game over-inflation issues arose, Dave Schoenfeld showed Mr. Brady a copy of Rule 2. Mr. Brady did not want overinflated footballs again, and asked what psi footballs left for his inspection were set

at. He was told they were in the 12.75-85 range. Mr. Brady then told Mr. Schoenfeld that he wanted a preference for 12.5 psi to be conveyed to the referee. He even wanted the officials to be shown a copy of Rule 2 — with its 12.5 to 13.5 range — since he did not want another incident of vast over-inflation. This request was passed along to Mr. McNally. Mr. McNally's telling the referee that Mr. Brady's preference was for 12.5 is scarcely evidence that shows Mr. Brady knew what Mr. McNally's game day role was. Mr. Brady would often reiterate this request in connection with selecting the footballs in the Equipment room pre-game, and Mr. McNally was often in the equipment room at that time, within earshot of Mr. Brady.

In sum, with respect to all of our conclusions regarding the Patriots, McNally, Jastremski and Brady, we believe that the totality of the evidence, including the text communications, McNally's breach of pre-game procedure, McNally's disappearance into a locked bathroom with the game balls for a period of time sufficient to deflate the Patriots game balls using a needle, the post-game communications between Jastremski and McNally, the increase in the frequency of text and telephone communications between Jastremski and Brady post-game, the halftime data showing a larger reduction in air pressure in the Patriots balls as compared to the Colts game balls, which our scientific consultants inform us is statistically significant, together with other facts developed during the investigation and set forth in this Report support our conclusions.

* * *

The Patriots provided cooperation throughout the investigation, including by making personnel and information available to us upon request.

The Patriots provided exceptional cooperation throughout the investigation. Among other things, they provided 17 witnesses, access to relevant stadium facilities (e.g., equipment room, Officials' Locker Room, the bathroom off the hallway) on multiple occasions, the game footballs and bags of footballs, information on the stadium heating system, recorded temperature information from game day, the equipment room pump, email searches, access to phones, etc.

Since the Patriots were the target of this investigation and since information coming directly from game officials and League officials was crucial — and it was the League that also employed the investigators — Patriots' counsel requested to be present during interviews of such League personnel. That request was rejected. Patriots' counsel also requested from the outset that he be provided with the actual halftime psi measurements. That information was not provided until March 23, over two months into the investigation. It was provided then only on the condition that it not be disclosed and, particularly, that it not be disclosed to the media until the final report was issued. This condition was imposed in the face of the extensively reported misinformation about halftime football psi that the League had refused to correct. One can only speculate why it was so important for the League that the accurate halftime information be withheld

from the public until it was ultimately part of a report that downplayed the science and instead relied on selective texts.

Counsel for the Patriots, however, refused to make Jim McNally available for a follow-up interview requested by our investigative team on what we believed were important topics, despite our offer to meet at any time and location that would be convenient for McNally.

Counsel for the Patriots apparently refused even to inform McNally of our request.

By the time Mr. Wells was retained by the League, the League had all of Mr. Jastremski's texts, Mr. McNally had already been interviewed three times, and Mr. Jastremski had been interviewed twice. The first of Mr. McNally's interviews happened the evening of the AFC Championship, when Mr. McNally volunteered to stay at the stadium for an interview since he would not be back for his game-day responsibilities until August. Patriots management had not yet been advised that an investigation had started, but Mr. McNally, having nothing to hide, talked freely to the League personnel without even asking if someone from the team should be there with him. The second and third interviews happened within the next several days. Again, Mr. McNally gave these interviews without any Patriots representative with him. His phone was offered to League personnel for imaging, but they advised that they did not need his phone. (His phone data was later provided to the Wells investigators upon their request and prior to their interview with him.) At his third interview with League Security personnel, he was subjected to very aggressive questioning and demeaning assertions that he was lying when he denied

any knowledge of improper football deflation. This approach to the issues by League personnel was consistent with their prejudgments of wrongdoing by the Patriots. Notwithstanding that he had already been interviewed three times, when Mr. Wells asked to interview him again, the Patriots agreed to facilitate that fourth interview. That agreement was based on an explicit understanding reached with the Wells investigators: **barring unanticipated circumstances, individuals would only be interviewed by the Wells investigators one time. [AMENDED DOCUMENT ADDED WITH ADDITIONAL INFORMATION, 5/16/15 8:47AM]**

Based on this understanding, the Patriots asked Mr. McNally, a game day only employee with whom the team had no ongoing employment relationship, to leave his full-time, out-of-state job in order to be available for an interview at the stadium. Prior to the interview, the Patriots prevailed upon Mr. McNally to allow his personal phone to be checked for any relevant information, all of which was provided to the Wells investigators before the interview. The investigators therefore had all of Mr. Jastremski's texts (which were provided three weeks before Mr. McNally was interviewed) as well as Mr. McNally's phone records. The Wells investigators brought four lawyers to the McNally interview. They spent the entire day with him. He gave over seven hours of testimony. He answered every question. Among other things, the Wells investigators inquired at length about texts with Mr. Jastremski. Having taken a day off work, he was willing to stay as long as it took

to finish. The interview did not end until the investigation team exhausted every topic and question they had.

Thus, when subsequently asked for what would have been a fifth interview of Mr. McNally, Patriots counsel wanted to understand what unanticipated circumstances warranted this, including whether the interview would be limited to matters that were simply not available to the investigators during Mr. McNally's prior interview. The Patriots advised the investigators of their reluctance to have Mr. McNally back yet again, particularly given the media harassment he and his family had suffered as a result of prior leaks of Mr. McNally's name and hometown. The distress to him and his family caused by the ensuing media attention was described in detail to the investigators. With this background, there was a high hurdle before the Patriots would ask Mr. McNally to appear yet again for what would be his fifth interview, and a particular desire to be sure that the standard for another interview — unanticipated circumstances — was met.

While the report states that certain of Mr. Jastremski's texts were not "discovered" until after this interview (pg. 75, footnote 47), there is no question that the investigators had all such texts in their possession and available for the questioning. They apparently just overlooked them, identifying them now as a matter they wanted to cover in yet another interview. (pg. 75) Although asked numerous times for the reason for their request for yet another interview with Mr. McNally, the Wells investigators never stated the reason that now appears evident from the Report: They had overlooked texts in their earlier

interviews and wanted the opportunity to ask about them. This information would have confirmed what is now clear. The request was inconsistent with the interview protocol agreed to at the outset.

Although receiving no assurances that the requested additional Mr. McNally interview would satisfy the agreed-upon interview protocol, Patriots counsel nonetheless suggested that there might be ways other than another in-person interview to get whatever further information was sought. Patriots counsel offered to be of assistance in those respects. There was no follow-up from the investigators. It now appears that the Patriots are being severely punished because the Wells investigative team apparently overlooked materials they had in their possession long before their interview with Mr. McNally — scarcely an “unanticipated circumstance” calling for yet another interview — and refused to disclose their reason for an additional interview. There was no refusal to cooperate by the Patriots.

We believe the failure by the Patriots and its counsel to produce McNally for the requested follow-up interview violated the club’s obligations to cooperate with the investigation under the Policy on Integrity of the Game & Enforcement of League Rules and was inconsistent with public statements made by the Patriots pledging full cooperation with the investigation.

Similarly, although Tom Brady appeared for a requested interview and answered questions voluntarily, he declined to make available any documents or electronic information (including text messages and emails) that we requested, even though those requests were limited to the subject matter of our investigation (such as messages concerning

the preparation of game balls, air pressure of balls, inflation of balls or deflation of balls) and we offered to allow Brady's counsel to screen and control the production so that it would be limited strictly to responsive materials and would not involve our taking possession of Brady's telephone or other electronic devices. Our inability to review contemporaneous communications and other documents in Brady's possession and control related to the matters under review potentially limited the discovery of relevant evidence and was not helpful to the investigation.

At various points in the investigation, counsel for the Patriots questioned the integrity and objectivity of game officials, various NFL executives and certain NFL Security representatives present at the AFC Championship Game or otherwise involved in the investigative process. We found no evidence to substantiate the questions raised by counsel. Specifically, we identified no evidence of any bias or unfairness. We believe that the game officials, NFL executives, NFL Security representatives and other members of the NFL staff who participated in the testing of the footballs and the subsequent investigative process acted fairly, properly and responsibly.

Footnotes

¹ Under the Policy, the "standard of proof required to find that a violation of the competitive rules has occurred" is a "Preponderance of the Evidence," meaning that "as a whole, the fact sought to be proved is more probable than not."