

## An Abuse Of Power

Written by {ga=gdbenz}

Saturday, February 02 2008 7:00 PM -

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There are any number of ways one might choose to conclude that the Super Bowl and all that comes with it has grown beyond surreal to out of control. Take for instance the media circus surrounding Tom Brady, his walking boot, and his supermodel girlfriend. The six hour pre-game show, the endless prop bets. But for Gary Benz, there was another Super Bowl related story that took the cake for him. And he talks about it in his latest.



There are any number of ways one might choose to conclude that the Super Bowl and all that comes with it has grown beyond surreal to out of control.

For some, the woman showing up at media day wearing a wedding dress and asking New England Patriots quarterback Tom Brady to marry her may have been the crowning moment. For others, it might have been the Britney Spears-like treatment that the media gave to Brady's allegedly injured ankle over several days last week. But for me, it was when Senator Arlen Specter of Pennsylvania decided to use the power of his senate office to avenge a grudge he still holds over the Philadelphia Eagles losing to the Patriots in the 2005 game.

The New York Times broke the [story](#) on Friday that Specter wants NFL Commissioner Roger Goodell to appear before the Senate Judiciary Committee, which Specter chairs, to explain the so-called &quot;spygate&quot; incident. What Specter really wants to know is whether or not the reason his beloved Eagles lost the 2005 Super Bowl to the Patriots was because of any spying during

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the game. A more obvious explanation for the loss might be the Eagles four turnovers in the game, but some relationship to "spygate" makes for better grandstanding by a disgruntled public official.

Specter [wrote](#) Goodell back in November merely asking that he be advised if anything in his investigation of the Patriots showed that they were stealing the Eagles signals during the Super Bowl. It was a fair question that any fan might ask, but coming as it did on official Senate letterhead was intended to make it appear as though "spygate" was now a federal matter.

But by asking the question as he did, Specter displayed his overall ignorance of the underlying scandal. Putting aside for the moment whether or not stealing signals in a football game is an issue that should ever show up on the radar screen of a U.S. Senator, the Patriots weren't accused of stealing the New York Jets signals during the game for use in that game. Instead, what they were doing was taping the signals the defensive coach made and then the play that immediately followed for possible use in future games. To the extent it's even useful to do this, which is highly questionable, it is more so against a division rival that you play twice a season.

Even more to the point, the signals that the Eagles defensive coaches may have been making in the Super Bowl were on public display for everyone in Alltel Stadium in Jacksonville to see. Thus, even if the Patriots were gleaning something useful from the gyrations of an Eagles defensive coach on that day, it would hardly be stealing; more like observing.

Specter seemed a little annoyed that Goodell didn't respond immediately to his annoying little missive and followed it up with another far more insidious misuse of his public office. In his second letter, Specter introduced the notion that Goodell's destruction of the case file following the investigation was "suspicious" and that his punishment of Patriots head coach Bill Belichick was "insufficient." Just guessing here, but Specter probably never makes that claim had the Patriots been forced to forfeit the 2005 Super Bowl and the

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rings instead given to a team that didn't earn them, such as the Eagles.

If this all seems a little goofy, hold on, it gets better. In the Times story, Specter actually upped the stakes even further when he said that Goodell's destruction of the tapes was "analogous to the C.I.A. destruction of tapes. Or any time you have records destroyed." If Specter actually said that with a straight face, then it's clear he's lost any perspective or credibility he may have once had, not to mention engaging in a wasteful use of taxpayer money.

Oh where to start? In the first place, the so-called records that were destroyed were not part of an on-going investigation but instead were the work product of a completed investigation. It would be different, I suppose, if the Patriots had destroyed the evidence instead of giving it to Goodell, but by all accounts that didn't happen. Consequently, all Goodell did, basically, was close a case file upon completion of the task undertaken. In that context, Goodell's actions are hardly unusual, let alone suspicious.

Further, there is no reason to not give Goodell the benefit of the doubt on why he decided to destroy the case file and all that went with it. As he noted in his [response](#)

to Specter, he destroyed the tapes and other information that the Patriots had gathered and also had the Patriots certify that no other copies existed, in order to ensure that no competitive advantage could be obtained by the Patriots. In other words, the investigation was complete and no rational reason remained to hold on to the material. Destruction, as opposed to locking the material in a cabinet where it could later come up "missing," seemed like a reasonable approach to concluding the matter.

Second, rather than tossing out wild accusations against Goodell, Specter is the one that should be challenged on why he thinks it's even appropriate to compare an insignificant football issue with a serious issue like an on-going investigation into the CIA's alleged destruction of tapes it made of potentially unlawful interrogation techniques it used on suspected terrorists. If Specter actually

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believes the two issues are at all on par, then the good folks of Pennsylvania ought to consider recalling Specter now. He's obviously lost his mind.

To Goodell's credit Goodell offered a response to Specter that was far more dignified than he deserved. In it he noted that nothing in the investigation revealed that the Patriots stole the Eagles signals during the Super Bowl. As Goodell worte, the only other time the two teams even played during this decade was a preseason game in 2003. Probably to Specter's chagrin, Goodell stated the obvious when he said that there is no reason to believe that the outcome of the Super Bowl was at all affected by improper taping of the Eagles defensive signals.

This gets us back to the underlying seriousness of the offense. Belichick and the Patriots were rightly punished for violating a league rule against videotaping the opposing team's sideline during a game. They had been warned previously, continued in the conduct and paid a pretty heavy fine.

But simply because the NFL has the rule doesn't mean that the rule itself makes any sense. It is more than fair to suggest that the NFL's rule about taping borders on the idiotic. Even though Belichick obviously felt it would give his team some sort of competitive advantage when playing the Jets down the road, it's hard to imagine how and I've yet to hear a cogent explanation from anyone, including either Belichick or the NFL, on that point. Moreover, it's not as if a team couldn't accomplish the same thing anyway by having a member of its staff watch the opponent from across the field, jot down each and every arm gesture or hand movement of a coach and then write down the resulting play. Notably, there is no rule against that nor could there be since, again, all of it is taking place in very public view on every sideline of every stadium every week.

But the NFL is well within its right to establish even goofy rules and enforce them, which it did in this case. But all that doesn't give someone like Specter the right to overstate the seriousness of the situation in order to assuage his hurt feelings, or that of his constituents, over the failure of their favorite team to win the Super

Bowl.

The other salient point that Specter glosses over is that neither Goodell nor the NFL were hiding the material they collected from anyone or trying to stifle any other investigation. Though government agents torturing suspects raises significant legal issues, a paranoid coach taping the public display of an opposing team's defensive signals raises no legal issues whatsoever.

&quot;Spygate&quot; was and always will be solely a league investigation of a league matter and wasn't conducted, directly or indirectly, under any sort of Senate or Congressional oversight or mandate. More to the point, the league wasn't under any legal obligation to even announce that it was undertaking the investigation, let alone under a legal obligation to keep copies of its investigation on the off chance that an equally paranoid senator still holding a grudge might be interested in it several months later. Thus, despite the haughty language used by Specter, there was no destruction of records of an active investigation but the destruction of evidence gathered to ensure it wouldn't be further misused. It's akin, actually, to destroying drugs confiscated during an arrest following the trial and conviction of the perpetrator. As a former prosecutor, surely Specter understands this difference.

There is a place, certainly, for governmental oversight of major business enterprises like the NFL or Major League Baseball, particularly where the integrity of the game is threatened. But there is a huge difference between players or officials who gamble and thus might be tempted to fix games, or players who use illegal performance enhancing drugs that can unfairly alter the outcome of the game, than stealing otherwise visible coaching signals on the sideline. If that threatened the integrity of any sport, then baseball is exhibit A where a team trying to steal another team's hitting or pitching signals is not only not frowned upon, but an acceptable form of conduct.

It's nice that Specter could find the time in his busy schedule to use the power of his office and the taxpayer-funded resources of the federal government to weigh

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in on &quot;spygate&quot; and bring Goodall before the Senate Judiciary Committee. After all, it's not as if a tanking economy or a foreign war with no end in sight that is bankrupting the economy and killing thousands of Americans demands much of his attention.