Foster Garvey

Sports & Entertainment Beat

# Brady's Burden: A Legal Perspective on "Deflategate"

06.23.15

Deflategate has taken its well-deserved place in the annals of all-time sports infamy. The recent allegations against Tom Brady have not only polarized NFL fans and players alike, but have given legal professionals reason for pause as to the manner in which the investigation was conducted and the burden of proof that was applied. The mantra repeatedly used in the report filed by league investigator Ted Wells was "more probable than not." This burden of proof standard is akin to "by a preponderance of the evidence," the burden of proof used in civil trials where a plaintiff only needs to convince a jury that his legal argument is more plausible than the defendant's version, even if the percentage in his favor is only 51%. Conversely, in criminal trials, the burden of proof that is applied is much more onerous given the higher stakes involved. A prosecutor is required to prove his case "beyond a reasonable doubt" to merit conviction of the alleged offender. One could reasonably argue that Ted Wells should've applied a raised burden of proof, equivalent to "beyond a reasonable doubt," to implicate Tom Brady in this scandal, given the severity of the allegations and the erosive impact on the Rushmoreian legacy of arguably the greatest quarterback of his generation, if not in the history of the NFL.

As expected, Tom Brady is not going down without a fight. He has hired Jeffrey Kessler, a prominent sports litigation attorney who is no stranger to taking on the NFL juggernaut, to launch an appeal of the charges levied against him. I would expect him to fight these charges tooth and nail, no matter what the cost, in order to preserve and defend his legacy, one that he has worked painstakingly to build, brick by brick, through clutch performances and championships over the course of his fifteen-year NFL career.

Just as Brady is readying himself for a long, drawn out legal battle, expect the NFL to do the same. The league took a public relations beating last year due to its handling of the Ray Rice and Adrian Peterson cases, and with the integrity of the game at stake, I would undoubtedly expect the NFL to call in high-powered legal reinforcements to defend the findings of the Wells report with the savage ferocity of a mother bear protecting her cubs. Tom Brady is a lightning rod of sorts for the NFL. If the league is willing to hold the most acclaimed, decorated player in the game accountable for his transgressions, no player is untouchable and above the law.

*******

Eugene Lee is Of Counsel at Garvey Schubert Barer, working out of its New York office. He is also a licensed NFL agent and President of MBK Sports Management Group, LLC.

© 2026 Foster Garvey PC. All Rights Reserved.

*Posted in NFL, Sports*

*Tagged as deflategate, Jeffrey Kessler, NFL, Ted Wells, Tom Brady*

© 2026 Foster Garvey PC. All Rights Reserved.