

ESPN IS GUTLESS, CHRIS MORTENSON HAS TINY DEFLATED BALLS AND OTHER DEFLATEGATE TRASH TALK

Hi there! Been a while, hope this account still works and State Secrets or something has not overcome due process on this here blog.

So, here we are in the waning days of summer. I would have written more about the Formula One Circus but, frankly, it has mostly bored the heck out of me this year. The, still, best driver in F1 is stuck in a crappy underperforming McLaren and has to drive his ass off and hope for attrition to even score a point. That would be Fernando Alonso if you haven't guessed. While lesser drivers, with far better machinery, you know, those like the two insolent crybabies at Mercedes, have such superior equipment that they wrongfully think they are kings. It is all enough to make an old school fan like me puke. Well, enough about the circus, let's get to the real meat and potatoes of this blog's sports coverage, the NFL.

As you may have heard, there is a little kerfuffle called #Deflategate that has been going on since before the last SuperBowl. On one side, we have an arrogant all powerful giant human jackass (no, not Dick Cheney this time) named Roger Goodell, and on the other, we have the epitome of bright and light, the All American Hero, and lover of supermodels, Tom Brady. If you think this is not a fair fight, and Brady is the clear winner, advance and collect your winnings.

Okay, back to Chris Mortensen's apparently shriveled journalistic balls. Let me be clear, this is just opinion (even if putatively well founded opinion), but what kind of "balls" does

a man who is spoon fed lying ass bullshit by
"NFL Sources" in the form of a tweet that said:

The NFL found 11 of the Patriots' 12
game balls for Sunday's 45-7 AFC
Championship Game win over the
Indianapolis Colts were under-inflated
by two pounds per square inch each,
league sources told ESPN's Chris
Mortensen on Tuesday.

Obviously, as the actual testing (not to mention
the late great "Wells' Report) confirmed, that
was an outright giant flaming LIE. Call it what
it is, it was not a minor discrepancy, it was an
outright flaming lie. A lie that led directly to
the public outcry that begat what we now know as
the multi-million dollar boondoggle bullshit
"#Deflategate".

Peter King (no, not the militant chickenhawk
moron from Long Island, the other one from
Sports Illustrated) was fed the same blatant
inflammatory lie by what appear to be NFL
officials, but King had the balls, and
intellectual integrity, to apologize.

Did Chris Mortensen or THE WORLDWIDE LEADER,
ESPN, have the intellectual and moral integrity
to apologize? No, of course the craven bastards
did not. In fact, Mortensen silently deleted his
original tweet. What a gutless and tiny balled
coward. And ESPN has proved itself to be an
oppressive behemoth that is willing to put
itself, and its allegiance to the NFL, above
their journalistic ethics. How pathetic.

That blatantly false report germinated the
entire waste of time that is now #Deflategate.
Seriously, without Mortensen's and ESPN's
relentlessly trumped up and featured false
report, tagged on by King and SI, there would
simply never have been #Deflategate. But it was
clearly something the NFL wanted pushed, and
they got their want, one way or another. Oh, by
the way, is there further evidence that ESPN and
Chris Mortensen may be dishonest news sources

without a shred of credibility? Yes, yes there is. Mortensen reported that the Kraft family and Patriots had apologized to him. Was that true? No, according to the Krafts on behalf of the Patriots, that was blatantly false.

Here is the thing: #Deflategate is a house of cards built on a pile of dung. If you have an iota of concern for fundamental fairness and due process, you ought be offended – even if this is only a civil labor law mess involving millionaires against billionaires. It all matters, and the labor law principles in play here are beyond critical to all union workers and collective bargaining agreements, not just those of rich athletes. So, yeah, don't kid yourself, this matters. A lot. If Tom Freaking Brady cannot get fundamental fairness and due process on a collectively bargained agreement, how the hell do you think a UAW, Teamster, teacher, or any other union member will? If you haven't noticed, labor in this country is under direct attack. Don't be the guy (or girl!) that aids that attack just because this iteration of the conflict involves Tom Brady and/or rich athletes. This matters, both in general as to all workers under labor agreements, and to *your* hometown sports teams and players too.

So, there you have Chris Mortensen and his tiny disingenuous balls, but what about some overall facts and law on #Deflategate? Got you kind of covered. And this is especially timely since the last big actual live court day is coming up on Monday, August 31st. So, here we go with some various background resources for you. If you are interested, please read them, you will be better informed. If not, that is cool too, but understand there are very good reasons I take the stances I have on #Deflategate. Off we go!

Soooo...where to start? How about a prediction, you want a prediction?? Sorry, don't have one. BUT, I will say this, I have read most of the transcripts and filings, and I do not subscribe to the thought that Judge Richard Berman's clearly antagonistic position to the NFL/Goodell

side is all posturing trying to force a settlement. Is there some of that going on? Trust me, almost certainly. By the same token, by my experience, and I have a little, there is simply no way Berman is being as consistently pointed and dubious of one side, the NFL/Goodell, as he has been without being convinced their argument is lame. Yes, judges often play "devil's advocate", but what Berman has engaged in strikes me as well beyond that.

So, while I won't make a prediction, the Brady/NFLPA side must feel pretty positive about how it has gone so far. I am understating that a little.

So, on what grounds do I think Brady and the NFLPA may win on? Two grounds – 1) Notice and 2) Process denial regarding evidence and witnesses by the NFL, to wit, Jeff Pash and related evidence.

First off, the "Notice" argument. A new net friend I have met in this process, but one I greatly respect, Dan Werly, has summarized "Notice" quite well here.

Then there is the "Pash preclusion". Jeff Pash is the General Counsel to the NFL. He is also its Executive Vice President. Those are not necessarily copascetic if a corporate entity wants to maintain even the reduced semblance of "attorney/client privilege" of having a "corporate counsel". Seriously, this kind of privilege comes close to vapor when you commingle your attorney with corporate leadership. But that is exactly what the NFL has done here, and much more. And that is peanuts compared to the fact that the NFL made Pash the effective, really *de facto*, co-independent "investigator" (they even stated it in a press release) along with Ted Wells and then gave Pash editorial control over the so called "Independent Wells Report". then Goodell refused to make Pash available for testimony, stating that he was irrelevant and privileged.

Ooops, did the arrogant Goodell and the NFL

bugger their own ruse beyond belief as to Pash? Yes, and it is crystal clear. Even Judge Berman was incredulous.

8 THE COURT: Well, Mr. Pash, as I understand, he's a
9 very senior executive in the NFL, also a Harvard-trained
10 lawyer, former partner at Covington & Burling, et cetera, and
11 if I'm not mistaken, instrumental in negotiating the collective
12 bargaining agreement in 2011.
13 MR. KESSLER: Yes.
14 THE COURT: So he would be someone who would be
15 expected to have the kind of information that would have helped
16 you in this.
17 MR. KESSLER: No question. And exactly for the same

Then, later...

9 THE COURT: How about Mr. Pash? Why didn't you
10 produce Mr. Pash for testimony? You're saying they're trying
11 to knock out the Commissioner as arbitrator, but the Mr. Pash
12 thing is totally different. He's a senior executive, co-author
13 of the Wells Report. What's the problem with having him
14 testify?

Yes, arbitration decisions are given “great deference” by courts, and generally are not disturbed. But they can be when they present genuine issues of fairness and partiality. #Deflategate may be a silly case to most of the lay public, but these are serious and critical issues in labor law, and if the exacerbated issues in the Brady case cannot be addressed by a court, then pretty much no labor arbitration can ever be. For a far more detailed explication of the Pash problem, see this outstanding piece by Ian Gunn.

I invent the wheel only when I need to (and mostly when clients pay me to); I try to not do so when it has already been done by worthy people before me. Dan Werly, Dan Wallach, Michael McCann, Brian Holland, Alan Milstein, Raffi Melkonian and Ian Gunn are folks that did the hard lifting while I was, mostly, away frolicking at the beach in La Jolla when the most critical filings came out. All fantastic people that I came to know because of Roger Goodell’s #Deflategate folly. Hat’s off to them, as well as Stephanie Stradley with some fantastic early scene setting. These are all serious people that you should follow, not just for #Deflategate, but for any sports related law and thought. I think all, including me, feel Brady and the Players Association have the far better hand, in both posture and presentation,

than Goodell and the NFL. Really, it is not even close, though there is no telling what Berman will do in the end. By this time next week, we will know.

Welp, I may have focused on #Deflategate more than I intended. Or not. This post was meant as an acerbic discussion point, not a full on explication, which would have consumed thousands of additional words. F1, and sports in general have just been boring lately, as you can tell by how often I have bothered to write about them. But the legal machinations in #Deflategate have been fascinating, at least to me. The All American boy Brady, the Boris Badanov evil Goodell, the flamboyant crusading Player's Association lawyer Jeffrey Kessler, the Snidely Whiplash Ted Wells to the calm but annoyed judge Richard Berman. The characters are all there.

So, that's it. Rock on lug nuts. Trash talk like you are Michael Jordan. Do it up. But, if you don't agree with my #Deflategate thoughts, you can send some Dead Flowers. By the US Mail. And don't forget the roses...