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SPORTS FACILITIES and the LAW

How the law affects the sports facilities industry

'Laugh Now, Cry Later' – How a Drake Concert at MSG May Change the Law Regarding Managing the Risk of Large Events

By Charles F. Gfeller, of Gfeller Laurie LLP

Can an arena operator or event promoter be held liable for the actions of third parties during a large event, like a Drake concert? According to a recent decision in New York's First Department, the answer is potentially - yes. In the case at issue, Plaintiff Amanda Giovacco was hit and injured by a thrown aluminum bottle while attending a Drake concert at Madison Square Garden. This concert was promoted by Live Nation, who had a contract with Madison Square Garden that required the venue to provide security officers for the event.

Giovacco sued the performer Aubrey Graham a/k/a/ "Drake," Live Nation, and Madison Square Garden, arguing that the parties were negligent and that they caused her injuries. Giovacco claimed that Drake owed a duty of reasonable care to her and to her fellow concert goers, meaning that as the performer at a large and high-energy event, Drake should have taken steps to ensure the concert goers would be safe from predictable dangers. Giovacco's claims against Drake were not successful because the court found that

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Slur At the Heart of Soldier Field Dispute

By Courtney E. Dunn, of Segal McCambridge

For decades, Mexico national soccer team fans have been known to chant "eeeh puto" from the stands, which translates to a derogatory term for male sex workers. When four1 members of the LGBTQ+ community ("Plaintiffs") attended the 2019 Confederation of North, Central America and Caribbean Association Football (CONCACAF) Gold Cup Final at Soldier Field in Chicago, they were familiar with the common chant that so often echoes throughout the stadium. Still, they opted to attend the Gold Cup Final. Plaintiffs did so clad in Team USA jerseys detailed with rainbow-colored numbers, thus associating themselves with the LGBTQ+ community.

With the chant in mind, Plaintiffs took a preventative measure in an effort to minimize use of the slur by way of an email to Defendants (though it is unclear which Defendants, specifically) four days prior to the Gold Cup Final. In the email, Plaintiff's advised that they expected intervention should the chant be used, and reminded CONCACAF

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1 The Complaint specifies that three of the four Plaintiffs are gay men, while the third was just perceived as being gay – a distinction which has no bearing on the analyses of this matter pursuant to the Illinois Human Rights Act. See 775 Ill. Comp. Stat. 5/103(Q).

INSIDE THIS ISSUE

Oregon Set to Hold ADs Accountable for Fan Behavior

A state representative in Oregon proposed a bill, HB2472, last month, which would hold coaches and athletic directors accountable for the behavior of their fans, starting in the 2023-24 school year.

Rep. Janelle Bynum believes public universities should be required to implement "equity focused policies that address the use of derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule that occurs at an interscholastic activity, including by spectators of the interscholastic activity."

The representative goes on to suggest in the bill that universities should create a "transparent complaint process," which includes a reporting system for people "to make complaints about student, coach or spectator behavior." Universities would need to respond within 48 hours, according to the bill, and should resolve the complaint entirely within 30 days.

If a violation is found, then the athletic director and head coach of the sport in whose game that the incident occurred would be suspended for "at least" one week.

The bill also mandates that all athletic department employees receive training on the university's policies.

If the bill is passed, and public universities fail to implement it, then they "may not receive public moneys in the form of state grants, state scholarship moneys or support from the Oregon State Police."

The state's "Higher Education Coordinating Commission shall work with independent universities, the National Collegiate Athletic Association, professional organizations, student organizations, cultural organizations and religious organizations to develop rules for interscholastic codes of conduct."

The bill includes a "brief statement of the essential features of the measure as introduced," which reads as follows:

"Requires public universities to develop specified policies and accountability mechanisms for behavior at interscholastic activities, including sporting events. Prohibits public universities from participating in interscholastic activities or receiving state moneys in form of state grants, scholarship funds or Oregon State Police support if public university fails to develop or enforce policies and accountability mechanisms. Requires public universities to train all athletic department personnel on policies and accountability mechanisms. Requires public universities to suspend athletic director and head coach for minimum of one week if policies are violated through use of derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule at interscholastic activity hosted by public university. Requires Higher Education Coordinating Commission to work with independent universities, NCAA and professional, student, cultural and religious organizations to develop rules for interscholastic codes of conduct. Declares emergency, effective on passage."

SPORTS FACILITIES and the LAW

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Madison Square Garden Utilizes Facial Recognition

Technology to Block Opposing Attorneys from Entering – But is it Legal?

By Dr. Robert J. Romano, JD, LLM,
St. John's University, Senior Writer

The 2001 Super Bowl in Tampa Bay, Florida was nicknamed the "Snooper Bowl" because fans entering Raymond James Stadium were subjected to face-recognition scanning technology that ran a person's image through a database of known criminals and possible terrorists.1 Fast forward twenty plus years, and similar, more advanced face-recognition technology is still being used by sports venues, this time by Madison Square Garden Entertainment Corporation, the owner of both Madison Square Garden and Radio City Music Hall. However, instead of using the technology for what would be considered legitimate reasons, to identify potential terrorist threats or criminal activity, MSG Entertainment Corporation is utilizing it to prohibit lawyers from entering its facilities if they work for a law firm or company that has initiated any form of litigation against any venue owned by MSG Corporation.2

This all began in the summer of 2022, after MSG Entertainment Corporation informed any 'oppositional' attorney that, "Neither you, nor any other attorney employed at your firm, may enter the Company's venues until final resolution of the litigation."3 The stated reasoning behind MSG Entertainment Corporation barring opposing attorneys is its belief that it needs to protect itself against any unauthorized or improper evidence collection "outside of proper litigation discovery channels."4 In addition, MSG Entertainment Corporation believes, as with most companies, that it is their decision as to whom they want to do business with and that they can forgo a commercial interaction with someone as long as they are not discriminating against that person based on their race, ethnicity, sex, religion, or other protected class. Therefore, since being a member of a state bar is not a protected class, MSG Entertainment Corporation's position is that it can refuse access to its venues for certain 'adversarial' individuals.

But not so fast MSG. First, New York Attorney General Letitia James sent an official letter to MSG Entertainment Corporation wherein it is her office's belief that barring opposing attorneys from its properties, together with its use of facial recognition technology, may violate anti-discrimination laws and may dissuade lawyers from taking on cases such as sexual harassment or job discrimination claims against the company.5 As stated in Attorney General James' letter, "MSG Entertainment cannot fight their legal battles in their own arenas. Madison Square Garden and Radio City Music Hall are world-renowned venues and should treat all patrons who purchased tickets with fairness and respect."6 The Attorney General's letter continues, stating that because substantial research suggests that facial recognition technology "may be plagued with biases and false positives against people of color and women,"7 her offices wants to know how MSG, when using the technology, is ensuring compliance with applicable anti-discrimination laws.

Second, three New York State lawmakers have introduced legislation that would prohibit MSG Entertainment Corporation's practice of banning attorneys with whom it is in current litigation with from its entertainment venues. State senators Brad Holyman-Sigal and Liz Krueger, together with assembly member Tony Simone, want to amend an existing state civil rights law, NY Civil Rights Section 40-b, by adding the term 'sporting events' to the list of qualifying public places of entertainment or amusement that cannot legally refuse entry if a person arrives with a valid ticket. The current law, which went into effect in April 1941, was originally passed to prohibit Broadway theaters and other playhouses from refusing critics the right to enter their establishments fearing a bad review. The law's original language also defined places of public entertainment and amusement as 'legitimate theatres, burlesque theatres, music halls, opera houses, concert halls, and circuses', but did not include movie cinemas, sporting venues or racetracks.8

What is interesting, however, neither the Attorney General nor the state lawmakers, or even the banned lawyers involved, directly address the constitutionality of a public venue using facial recognition technology to screen and monitor legitimate ticketholders in a noncriminal context and whether such is a threat to an individual's privacy. As we are all aware, the Fourth Amendment of the U.S. Constitution protects society from unreasonable searches and seizures and the U.S. Supreme Court in Katz vs. U.S. established that a person has a reasonable expectation of privacy, so isn't scanning a person face as a prerequisite for attendance at the Rockettes or a Justin Bieber concert a violation?9 Then again, maybe the bigger question is shouldn't we as a member of society expect more?

1 L. Elmore, Tampa police made it the Snooper Bowl, but high-tech spying's a low-level sin, Street & Smith's Sport Business Journal (Feb. 12-18, 2001), at 34.
2 https://www.nytimes.com/2023/01/16/technology/madison-square-garden-ban-lawyers.html
3 Id.
4 Id.
5 https://apnews.com/article/new-york-knicks-technology-state-government-city
6 Id.
7 Id.
8 NY CIV RTS Section 40-b, See, Mandel v. Brooklyn Nat. League Baseball Club, 1942, 179 Misc. 27, 37 N.Y.S.2d 152 – holding that a baseball ground was not a "place of public entertainment and amusement" within meaning of this section.
9 Katz v. United States, 389 U.S. 347, 361 (1967).

National Center for Spectator Sports Safety and Security (NCS4) Announces the 2023 NCS4 Conference

The National Center for Spectator Sports Safety and Security (NCS4) has announced the 2023 National Sports Safety and Security Conference & Exhibition, which will be held on June 27-29 at the JW Marriott San Antonio Hill Country Resort and Spa in San Antonio, TX.

The keynote speakers for the conference are United States Secret Service (USSS) Director Kimberly Cheatle and David Atkins, author of The Leveled Up Life.

The theme for the 14th annual conference is Level-Up, or "challenging our industry friends and partners to strive for continuous improvement."

"The NCS4 team looks forward to hosting its 14th annual conference, an important event on our calendar where we connect with key stakeholders and share knowledge, tools, and solutions to improve the safety and security of sports and entertainment events," said Dr. Stacey A. Hall, NCS4 Executive Director and Professor of Sport Management. "We are also very excited to welcome USSS Director Kimberly Cheatle and nationally recognized speaker and author David Atkins. Our annual conference is an excellent opportunity to meet and learn from the best in the business."

The conference will offer dynamic programming, solution provider engagement, and opportunities to network with fellow professionals. This highly regarded gathering of sports safety and security professionals is an opportune time to share ideas, tools, and proven strategies to help advance the industry.

"We believe it's important to listen to our industry stakeholders, and leaning on them to guide conference programming is no exception," said Lauren Cranford, NCS4 Director of Operations. "With that said, we are excited to deliver relevant content on hot topics with applications they can take home and put in place."

The NCS^4 is pleased to announce Kimberly Cheatle, Director of the United States Secret Service, as the keynote speaker to kick off the conference's opening general session with "Mitigating Threats and Safeguarding Large-Scale and National Special Security Events." Cheatle is the 27th Director of the U.S. Secret Service and is responsible for successfully executing the agency's integrated mission of protection and investigations by leading a diverse workforce composed of more than 7,800 special agents, uniformed division officers, technical law enforcement officers, and administrative, professional, and technical personnel.

David Atkins, keynote motivational speaker, will follow with "No Excuses, Breakthrough Fear and Adversity to Play a Bigger Game in Business and Life." Atkins is a retired New York State Police Captain with 22 years of service, a first responder at Ground Zero on 9/11, and author of The Leveled Up Life.

Conference programming will include general sessions with panel discussions on topics relevant to today's ever-changing security landscape, while breakout sessions allow participants to engage with panelists and attendees on key issues. Topics slated for the conference include:

- Trends in Stadium Design
- Command Center Best Practices
- Human Trafficking
- SAFETY Act
- Threat and Risk Assessment
- Building Resilient Teams
- Value of Table Top Exercises

Additional information on these topics and others will be announced soon.

"The NCS4 Annual Conference brings together practitioners, operators, technology partners, and leaders across the industry with diverse backgrounds and experiences to collaborate and discuss common challenges, lessons learned, and strategies to continue to improve the safety and security operations at our venues and events," said Billy Langenstein MBA, CSSP, Director Security Services, National Football League. "The education gained, recognition of industry leaders, and relationships made make this conference a must-attend event."

In addition to keynote speakers, an awards luncheon, interactive panel discussions, and breakout sessions, attendees will have the opportunity to explore emerging technologies and network with peers during the conference. A social reception planned for the event's first evening allows practitioners, industry partners, and exhibitors to gather and network with friends and colleagues in a relaxed atmosphere.

"The National Sports Safety and Security Conference is the best in the business," said J.P. Hayslip, Director of Facility Security for the Philadelphia Eagles. "The conference brings together the top professionals in security, facility and venue management, emergency management, and first responders from across the world. This year's Level Up theme generates the opportunity for us as industry professionals to challenge ourselves to be the best we can be to provide the highest qualified, trained staff at our venues worldwide."

Registration is available with fees of $625 for NCS4 Connect members and $675 for non-members. If you register three or more people from the same organization, save $75 off each attendee registration. The group discount will be automatically applied when applicable. Visit the website for additional information and exclusions.

Visit the website to view the agenda or register now at ncs4.usm.edu/conference.

The Consequences of Invading the Pitch

By John T. Wendt, J.D., M.A., Professor Emeritus, Ethics and Business Law, University of St. Thomas

On March 5, 2023, in the Premier League, Liverpool was delivering a 7 – 0 thrashing of archrival Manchester United at Anfield. As the Liverpool players were huddled together celebrating their seventh goal, a 16-year-old young man in the heat of the moment charged onto the pitch to celebrate with the players. Unfortunately, the young man lost his footing and collided with Liverpool's Curtis Jones and Andy Robertson both who went down in discomfort. Robertson went down clutching his ankle and limping was able to finish the match. Jones was also able to finish. As the fan was escorted off by stewards, an incensed Liverpool Manager Jurgen Klopp was described as "visually seething" berating the young man as the Stewards lead the young man away toward the police.[1] Merseyside Police later confirmed that the young man from Winsford, Cheshire had been arrested on suspicion of encroaching onto a football pitch.[2] Under the Football Offences Act 1991, "It is an offence for a person at a designated football match to go onto the playing area, or any area adjacent to the playing area to which spectators are not generally admitted, without lawful authority or lawful excuse (which shall be for him to prove)."[3]

Liverpool FC released a statement that the Club "has begun an immediate investigation to identify and ban the individual pitch runner from Sunday's Premier League fixture against Manchester United at Anfield…There is no excuse for this unacceptable and dangerous behaviour. The safety and security of players, colleagues and supporters is paramount. The club will now follow its formal sanctions process and has suspended the alleged offender's account until the process is complete. If found guilty of the offence of entering the pitch without permission, the offender could face a criminal record and a lifetime ban from Anfield and all Premier League stadiums. These acts are dangerous,

1 Roddy Cons, Liverpool fan arrested and faces lifetime ban for 'tackle' on Andy Robertson, Diario AS (2023), https://en.as.com/soccer/liverpool-fan-arrested-and-faces-lifetime-ban-for-tackle-on-andy-robertson-n/ (last visited Mar 6, 2023).

2 Patrick Edrich & Chris Slater, Teen arrested after pitch invader collision in 7-0 Manchester United loss, Manchester Evening News (2023), https://www.manchestereveningnews.co.uk/news/uk-news/teenager-arrested-after-pitch-invader-26400787 (last visited Mar 6, 2023).

3 Legislation.Gov.UK, Football (Offences) Act 1991, (1991), https://www.legislation.gov.uk/ukpga/1991/19/section/4 (last visited Mar 6, 2023).

illegal and have severe consequences."[4] (Emphasis added).

During the 2021 – 22 seasons there were a number of instances of pitch invasions and fan violence. Crystal Palace manager Patrick Vieira was involved in an altercation with an Everton fan during a pitch invasion. A flare (pyrotechnics) was thrown onto the pitch in the game between Northampton and Mansfield and Mansfield's Jordan Bowery was shoved by a fan who ran onto the pitch. Robert Biggs, a Nottingham Forest supporter, admitted to police that he had downed six pints of beer before the game and another at half-time, before running onto the pitch and headbutting Billy Sharp, captain of Sheffield United who was knocked to the ground and required four stitches. Biggs pleaded guilty to assault and was jailed for 24 weeks.[5]

Responses came from managers and clubs. At the time Jurgen Klopp said, "I don't want to judge. I understand emotions but for the other team it's dangerous. I really hope we learn from that. We should make sure absolutely nothing happens. We can celebrate things without threatening ourselves and the opponent."[6] Dean Smith, then manager of Norwich City said, "I don't think security-wise we're doing enough about it…Football fans, we missed them during the Covid period, but come on, give your heads a wobble, you don't want to be running on and attacking people and managers. In general society you can't go and abuse, verbally or physically, anybody on the street but for some reason you're allowed to do that at football. It is a major concern at the moment."[7]

Clubs have been affected, too. In 2019 the Football Association fined West Ham £100,000 for pitch invasions during their match against Burnley at London Stadium in March 2018. In 2021 UEFA's Control, Ethics and Disciplinary Body fined Manchester City €5,000 for a pitch invasion after the club's 2 – 1 win over PSG at the Etihad Stadium in the Champions League.[8]

If found guilty of the offence of entering the pitch without permission, the offender could face a criminal record and a lifetime ban from Anfield and all Premier League stadiums.

In 2022 the Football Association ("FA" which is the governing body of association football in England), the Premier League and the English Football League (EFL) came together to address the problem and issued a joint statement announcing a plan of new measures and stronger sanctions starting with the 2022 – 23 season. The statement noted that, "All identified offenders will be reported by clubs to the police and prosecution could result in a permanent criminal record, which may affect their employment and education, and could result in a prison sentence…Furthermore, anyone who enters the pitch and those identified carrying or using pyrotechnics or smoke bombs will now receive an automatic club ban. These bans could also be extended to accompanying parents or guardians of children who take part in these activities… This will mean cooperating to achieve a prosecution in these cases will become the default response of the football authorities and criminal justice system, sending a clear and unambiguous message to all who break the law." [9]

About the new measures Premier League Chief Executive Richard Masters said, "These new measures are a strong response to a significant increase in fan behaviour issues, but we know it is the minority who have behaved unacceptably and unlawfully. Premier League football should be a fantastic experience for everyone and we don't want matches to be marred by these sorts of events in the future." FA Chief Executive Mark Bullingham said, "Football stadiums must be a safe, inclusive and enjoyable environment for all, and it is the responsibility of everyone in the game, including governing bodies, clubs, players, coaches, and fans, to ensure that we all play our part in protecting our game and each other."[10] EFL Chief Executive Trevor Birch said, "There is nothing like going to watch your team live and that is why the English professional game has taken strong collective action, to ensure the match day experience remains a safe and welcoming environment for all including fans, players, club staff and match officials."[11] Kevin Miles, Chief Executive of the Football Supporters' Association Chief Executive said, "We are contacted by supporters on a fairly regular basis who have been caught jumping on the pitch, or with pyro in the stands, and without exception they regret doing it. Whether they had positive intentions or

4 Liverpool Football Club, Liverpool FC statement: Pitch runner at Anfield, (2023), //www.liverpoolfc.com/news/liverpool-fc-statement-pitch-runner-anfield (last visited Mar 6, 2023).

5 BBC News, Billy Sharp: Fan jailed for headbutting player at end of match, BBC News, May 19, 2022, https://www.bbc.com/news/uk-england-nottinghamshire-61505835 (last visited Mar 7, 2023).

6 Katie Falkingham, Pitch invasions and violence - what is happening?, BBC Sport, May 20, 2022, https://www.bbc.com/sport/football/61518907 (last visited Mar 6, 2023).

7 Id.

8 Karen Roberts, What the law says about pitch invasions - and how fans and clubs can be punished, NationalWorld (2022), https://www.nationalworld.com/news/crime/football-pitch-invasions-what-does-law-say-current-punishments-stadium-closures-3703137 (last visited Mar 6, 2023).

9 Premier League, English game unites to toughen measures on fan behaviour, (2022), https://www.premierleague.com/news/2689438 (last visited Mar 6, 2023).

10 Id.

11 Id.

not is irrelevant in the eyes of the law - pyro and pitch incursions are illegal, you will be prosecuted and you will be banned by your club."[12]

Historically English Football had a series of high-profile incidents of hooliganism and violence that led Parliament to enact a number of major pieces of legislation including the Football Spectators Act 1989[13] and the Football Disorder Act 2000[14] to prevent such behavior. Under these Acts the courts can make a Football Banning Order (FBO) to help prevent violence or disorder at or in connection with regulated football matches. Under an FBO individuals can be prohibited from attending football matches. The court must make a FBO where an offender has been convicted of a relevant offence.[15] In the 2021 - 2022 over 350 FBOs were issued, mostly for using pyrotechnics.

Former British Secretary of State William Hague stated that FBOs are an effective cornerstone of the Government's preventative strategy in preventing disorder.[16] And these pre-emptive police interventions have been highlighted by the courts, noting that "the public generally accept that temporary restrictions may be placed on their freedom of movement in certain contexts, such as... attendance at a football match."[17] And again these measures have not been challenged in Britain's higher courts. It appears that fans simply accept these measures as part of their football experience.

Remember, these new regulations are the default position – an automatic club ban, a lifetime ban from all Premier League stadiums, and a ban that could also be extended to accompanying parents or guardians of children who take part in these activities. Some may say that these are too strict for a default position. Or again is this just part of the British Football experience? Finally, how would this play out in the United States? A lifetime ban from every stadium in the NFL? Do we bring back "Eagles Court" and the jail that was inside Veterans Stadium in Philadelphia and presided over by Judge Seamus McCaffery? Would that be just part of the American Football Experience?

12 Id.

13 Legislation.Gov.UK, Football Spectators ct 1989, (1989), https://www.legislation.gov.uk/ukpga/1989/37/contents (last visited Mar 8, 2023).

14 Legislation.Gov.UK, Football (Disorder) Act 2000, (2000), https://www.legislation.gov.uk/ukpga/2000/25/contents (last visited Mar 8, 2023).

15 Legislation.Gov.UK, Football-related arrests and banning orders, England and Wales: 2021 to 2022 season, GOV.UK (2022), https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-england-and-wales-2021-to-2022-season/football-related-arrests-and-banning-orders-england-and-wales-2021-to-2022-season (last visited Mar 8, 2023).

16 Ashley Lowerson, A Critical Evaluation of the Regulation of Football Spectatorship: Defining & Refining the Optimal Method of Spectator Management, (2021), https://e-space.mmu.ac.uk/630459/1/Ashley%20Lowerson%2018003539%20-%20Thesis%20-%20Final%20Copy.pdf.

17 Id.

How New Multi-Sport Facilities Can Be Used After Major Events

Communities that are constructing new multi-sport facilities for major events could run the risk of ending up with expensive under-used complexes, but a new study suggests there are several factors that can keep them productive in the long run.

Researchers found that factors such as the location and design of the facility, the formal agreements between operating groups and the breadth of sport and recreation programming offered at the facility all contributed to promoting a legacy of participation post-event.

"Major sporting events often require the construction of new facilities, but typically these facilities present a significant financial burden for the host community and end up being underutilized after the event," said Kevin Wilson, lead author and PhD candidate in Waterloo's Department of Recreation and Leisure Studies. "Perhaps the most well-known Canadian example of a so-called white elephant is the 1976 Montreal Olympics, which left the city with $1.2 billion in debt."

The researchers examined a successful single-site case study to uncover the factors that led to people continuing to use these sports facilities. The case involved a $205-million construction project funded through a multi-party agreement between the federal, provincial and municipal governments and a local university. The facility was constructed on redeveloped brownfield land bordering a low-income neighbourhood near the university.

The researchers conducted interviews with facility operators five years later and found these factors contributed to greater use: a facility that bridges stakeholder needs, a design that meets pre- and post-event needs, formalized pre-and post-event communications and coordination, and programs that meet diverse community needs.

"Communities need to understand how sport participation works in their area and where there are gaps in service," Wilson said. "They need to take into account age, gender, income, leisure time, availability of facilities and programs, and link participation to a long-term master plan for the community."

Wilson added that not only should host communities conduct a needs analysis to identify capacity and areas of high priority, but they should choose a location to meet the needs of both the event and surrounding community, and they should create cross-sector partnerships to manage post-event operations.

The paper, "Investigating the sport participation legacy of a major event: the case of one multi-use sports facility," is co-authored by Wilson and Dr. Patti Millar at the University of Windsor, and appears in the International Journal of Sport Management and Marketing.

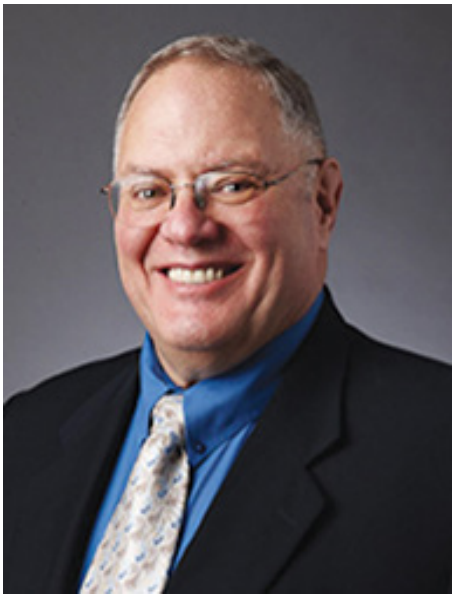
Kranske Presented with Lifetime Achievement Award at the National Sports Safety and Security Conference & Exhibition

Peter Kranske, CSSP, Landmark Event Staffing Services Inc.'s President and Chief Operating Officer, was presented with the Lifetime Achievement Award during the 2022 National Sports Safety and Security Conference & Exhibition last summer in Orlando. The event is presented annually by the National Center for Spectator Sports Safety and Security (NCS4) at The University of Southern Mississippi.

The Lifetime Achievement Award recognizes the long-term accomplishments and contributions of an individual who has earned the respect and admiration of professional colleagues in the sports safety and security community. The award was developed to commemorate exemplary talents and contributions demonstrated by an individual's dedication, loyalty, ability, and integrity. The award is sponsored by Meridian Rapid Defense Group, which provides SAFETY Act Certified barriers for major sporting events across the U.S.

"It is an honor to be recognized by NCS4," said Kranske. "Landmark has been with NCS4 since the beginning, and we value the mission and advances that NCS4 has brought to the crowd management and event security industry."

A pioneer of the crowd management industry, for nearly four decades, Kranske was an owner and officer of Contemporary Services Corporation. During that time, he was responsible for the field operations for thousands of events at venues throughout the United States. In his tenure, he has developed and directed security and crowd management programs for almost every type of sporting and entertainment event.



Peter Kranske

"Peter thoroughly deserves this hon-

or, reflecting an extensive and impactful career in the event staffing industry," stated Dr. Stacey A. Hall, NCS4 Executive Director and Professor of Sport Management. "A successful business leader, Peter's vision and commitment helped grow his company to become a major player in the event staffing space, which plays a significant role in keeping spectators and participants safe at events all over the country. Peter has been attending NCS4 events since its inception and continues to be a valuable supporter of our mission."

Some of the highlights of his career have included directing crowd management operations for 29 consecutive Super Bowls, as well as NFL International events; directing contracted security for numerous college bowl games and NCAA championships, including the BCS Championship; and oversight of the crowd management and security program for five U.S. venues for the 1994 Soccer World Cup and the 1999 Women's Soccer World Cup in Los Angeles. Kranske also directed the security and crowd management operation for the 1984 Jackson Victory Tour and the crowd management operation for the "U.S. 93" concert, with over one million people attending. He was inducted into the Event Industry Hall of Fame in 2004.

Kranske developed the crowd management and security plans for numerous new or remodeled arenas and stadiums. After September 11, 2001, Kranske was appointed by the NFL to the Commissioner's Task Force on Best Practices for Stadium Security and was asked to chair the NFL Stadium Security Training Sub-Committee. In that position, he led and provided significant input into the original NFL Best Practices training program. He has served as a security and crowd management consultant with the NCAA Final Four, Pac-12 Conference, and Wal-Mart Stores, Inc. He has also consulted with the NHL on their Winter and Heritage Classics and served as an expert witness in high-profile cases. Kranske is a Certified Sport Security Professional (CSSP).

Since forming Landmark with Mike Harrison in 2006, Kranske has led Landmark's client support and field operations throughout the United States. Landmark's operations have grown to 13 regional branches serving major facilities and events throughout the country, including major special events such as annual Super Bowls, NFL Drafts, NFL Combines, NFL Kickoffs, CFP Championships, and NCAA Final Fours.

Hackney Publications Publishes Third Annual '100 Law Firms with Sports Law Practices You Need to Know About'

Hackney Publications has announced that it has published the third annual "100 Law Firms with Sports Law Practices You Need to Know About," a portal that serves as a resource for those in the sports industry who need of experienced and capable legal counsel.

The firms are listed alphabetically, an ode to the difficulty in actually ranking such firms. Narrowing the list to just 100 law firms was also a challenge, according to Holt Hackney, who has been editing and publishing sports law periodicals for 25 years.

"More and more firms are introducing dedicated sports law practices," said Hackney. "The list is dynamic. It is better than last year's list. And the list in subsequent years will be better than this one."

Hackney Publications relies on readers, professors, and other industry experts in creating the list. "We're proud of the fact that there is nothing out there quite like it. The fact that anyone can come to the site and search for firms that specialize in certain areas of sports law is an added benefit." Among the many firms included on the list are Ricci Tyrrell Johnson & Grey, PLLC and Segal McCambridge Singer & Mahoney. The portal has synergy with Sports Law Expert, a blog that features regular content on a daily basis as well as a directory of legal experts and their particular specialty. "This directory has been around for a decade and has led to new business for many attorneys as well as expert witness engagements for the academic community," said Hackney.

Bauman Joins Houston Athletics as Associate AD for Facility and Event Management Operations

Jason Bauman has joined University of Houston Athletics as its Associate Athletics Director for Facility and Event Management Operations, bringing nearly 30 years of experience in Division I Athletics including 25 years with the University of Virginia where he most recently served as Associate Athletics Director of Facilities and Operations.

Bauman joined Virginia Athletics in January 1997 as its Assistant Athletics Director for Facilities and Operations before being promoted to his most recent role in November 2000.

"I am grateful to Chris Pezman, Monty Porter, and T.J. Meagher for the opportunity to join the Houston Athletics staff to lead the Facilities and Events Management unit," Bauman said. "This is a unique and exciting time for the University beginning a new era in the Big 12 Conference. Our focus will be to deliver high-level experiences and service to our donors, supporters, and fans for every event they attend and manage the facilities portfolio to support our student-athletes to train and compete, so they achieve success. I am eager to get started and help our teams win."

At Virginia, he directed and coordinated operations and game management for 27 Division I athletics programs, managed a facilities portfolio of approximately 1 million square feet and served as department representative on capital and non-capital projects.

Bauman was involved in several key capital projects including the addition of natural grass football practice fields, the expansion of Scott Stadium, baseball stadium, and the construction of Palmer Park (softball stadium). He supervised several locker room renovations, upgrades and repairs at Scott Stadium and the installation of numerous synthetic and natural grass fields.

While managing all aspects of the athletics facilities, Bauman oversaw all facility maintenance, operating and security systems, sports turf, and grounds, including preventative maintenance programs.

He also served as tournament director for the Atlantic Coast Conference (ACC) championship events and NCAA events such as Men's and Women's Soccer, Men's and Women's Lacrosse and NCAA Baseball Regional and Super Regionals.

Before joining Virginia, Bauman spent three-plus years at the University of Kentucky including the final 1 ½ years as its Assistant Athletic Facilities Coordinator. There, he was involved with the management of athletic events, was a management team member who oversaw construction of the Wildcats new soccer/softball complex.

The native of Allison, Iowa, earned his bachelor's degree in business education from Buena Vista (Iowa) in 1990. While there, Bauman was a four-year letterwinner, two-time all-conference, and an all-region selection on the baseball team.

Bauman earned his master's degree in sport management from Western Illinois in 1991.

Madison, Wisconsin Prohibited 'Friday Night Lights' at a Catholic High School: Was It NIMBY or Discrimination?

By Gary Chester, Senior Writer

The term ''NIMBY" was first used in a 1980 Virginia newspaper article by Emilie Travel Livezey, who was describing opponents of hazardous waste material sites such as landfills. The acronym for "not in my backyard" applies to community resistance to unwanted development in residential neighborhoods. It is normally reserved for objections to power plants, apartment complexes, wind turbines, and similar uses of land.

Now, add sports facilities to the list. In the progressive college town and state capital, Madison, Wisconsin, some vocal neighbors vehemently opposed the installation of stadium lights for night football games at a Catholic high school. Amidst community opposition, the city denied the school's application to install lights at its field.

Was this a typical NIMBY case or was there something more sinister afoot?

In Edgewood High Sch. of the Sacred Heart v. City of Madison, 2022 U.S. Dist. LEXIS 233570 (W.D. Wis. 2022), the court dealt with the issue of whether the municipality's conduct constituted religious discrimination.

The road to litigation

Edgewood High School was founded in Madison in 1881. It is a private Catholic school in the Sinsinawa Dominican tradition. In 2011, the city created Campus Institutional Districts (CIDs) for Edgewood, the University of Wisconsin-Madison (UW), and other local schools that were invited to submit master plans for future growth and development. In 2014, Edgewood and UW submitted master plans.

In 2018, Edgewood decided to upgrade its athletic field to include seating, lighting, restrooms, and concessions. The city interpreted Edgewood's master plan as restricting the use of the field to practices and physical education classes while strictly prohibiting "athletic contests." The zoning administrator in 2019 cited Edgewood for a violation of zoning ordinances by holding girls' soccer contests on the field.

Edgewood appealed to the zoning board. The board denied the appeal even though UW had arguably used its property for purposes not disclosed in the master plan and had never been cited for a violation.

Nevertheless, Edgewood did not amend its master plan to include athletic competition. Instead, the school applied for a lighting permit under a municipal ordinance. The city refused to issue the permit because the lights could be used for athletic contests that were not permitted under the master plan.

Edgewood then filed a request to repeal its master plan, a move that would put it on equal footing with other schools and enable it to install lighting. But before considering Edgewood's application, the city enacted a new outdoor lighting ordinance that would make it more difficult to install lighting.

The plaintiff filed a conditional use application in 2020 that met with the building department's approval. However, the municipal plan commission denied the application and the city common council upheld the denial in 2021. In viewing the landscape, Edgewood believed the city was treating it differently from public institutions.

Did UW receive preferential treatment?

On May 3, 2022, Edgewood brought suit against the city, its zoning board of appeals, its planning commission, the common council, and three individuals. The complaint asserted that the defendants violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause, and other statutes and constitutional provisions. Trial judge William M. Conley decided the defendants' motions for summary judgment on December 30, 2022.

In its decision, the court indicated that one purpose of CIDs noted in the city's zoning regulations was to "[b]alance the ability of major institutions to change…with the need to protect the livability and vitality of adjacent neighborhoods." Judge Conley also noted that Edgewood's master plan proposed 22 new projects, but did not include a proposal for improvements to a new athletic field.

Edgewood played its home football games off-campus at Breese Stevens Field, which is also the homefield for Madison East High School, a public institution. After receiving a million-dollar grant from a private donor, Edgewood sought to install lights at its field and upgrade the track surrounding the field. Nearby neighborhoods expressed opposition to putting lights on the field. This opposition dates back to at least 1996. Edgewood was permitted to resurface the track because it could be classified as maintenance and repair.

However, in denying Edgewood a permit to install lighting, both the plan commission and the common council considered evidence from neighboring homeowners suggesting that lighting would have a "substantial negative impact on the uses, values, and enjoyment of surrounding properties" and that Edgewood had produced no evidence to the contrary.

RLUIPA prohibits city ordinances or

zoning rules from treating religious land uses worse than secular land uses. Edgewood argued that the city was wrong to interpret its master plan as precluding all athletic contests, as opposed to practices and physical education classes. The court said that the distinction was beside the key point that outdoor lighting was never identified as a future project in Edgewood's master plan. In addition, the school held athletic competitions at its field during daylight hours and had never been cited for a violation.

The court also rejected Edgewood's argument that the city had treated UW and a public high school, Vel Phillips Memorial, more favorably. The court noted: "To establish a prima facie equal-terms violation, the plaintiff must come forward with evidence of a similarly situated secular comparator that is more favorably treated." Edgewood argued that UW was permitted to install lights at its tennis stadium in 2018. Yet, the court found that UW applied for this installation prior to submitting its master plan, in contrast to Edgewood's application that was made after it had submitted its master plan.

The trial judge also found that since the plaintiff and a comparator were subject to different standards it "compels the conclusion that there was no unequal treatment."

Did a public high school receive preferential treatment?

Edgewood argued that the city treated it worse than Memorial High School because the city permitted Memorial to install lighting on its field. The court found that Memorial was not a valid comparator because it did not submit a master plan and was not subject to those zoning rules. Moreover, Memorial had replaced existing lighting which constitutes maintenance and repair.

The court concluded that Edgewood failed to show that either comparator was treated better under the same approval process as Edgewood, since their lighting applications were submitted at different times, under different rules, and under different circumstances. Even if Edgewood had shown that a comparator was treated more favorably, which would have shifted the burden of proof to the defendants, the court found that the defendants offered "overwhelming evidence of permissible reasons for treating plaintiff's proposed lighting project differently" in view of proximity to neighbors and the lighting, noise, and crowd concerns surrounding high school football games.

In denying Edgewood a permit to install lighting, both the plan commission and the common council considered evidence from neighboring homeowners suggesting that lighting would have a "substantial negative impact on the uses, values, and enjoyment of surrounding properties" and that Edgewood had produced no evidence to the contrary.

The court does not see the light(s)

Edgewood further argued that the city has substantially burdened its religious exercise. In rejecting the argument, the court noted that conducting athletic events at night is not necessarily an inherent element of the Sinsinawa Dominican faith. Moreover, the Eighth Circuit and three other circuits have found that in similar circumstances the religious exercise is merely inconvenienced, but not substantially burdened.

The court stated that it "cannot conceptualize how Edgewood's religious exercise is seriously violated simply because it must schedule night games just a 15-minute drive east of its campus. In fact, the school has barely supported its assertion that playing any sports games at night is important to Edgewood's sincere religious beliefs."

The court rejected the plaintiff's free speech claim on similar grounds.

In considering state law claims, the court found that Edgewood had no vested right to outdoor lighting because its application did not strictly comply with zoning requirements. Judge Conley also followed the rule that a court should not substitute its judgment for that of decision-making bodies where there is substantial evidence to support their decisions.

Here, the plan commission considered Edgewood's application for nearly five hours and the city common council considered evidence for nearly four hours. Neighbors testified and studies were presented to show that noise levels from Edgewood were already excessive and additional noise and lighting would negatively impact property values. Edgewood's own sound study found that nighttime noise levels would exceed 70 decibels.

In granting summary judgment to all defendants, the court stated, "The Council further noted that Edgewood might not comply with suggested limits and had been dishonest with neighbors…All of this constitutes substantial evidence sufficient to support the Council's ultimate decision on appeal."

THE TAKEAWAY

Even though the facts may show that what on the surface appears to be religious discrimination this may not always be the case. Finally, if you can't fight city hall, then surely you can't fight city hall and your NIMBY neighbors.

Drake

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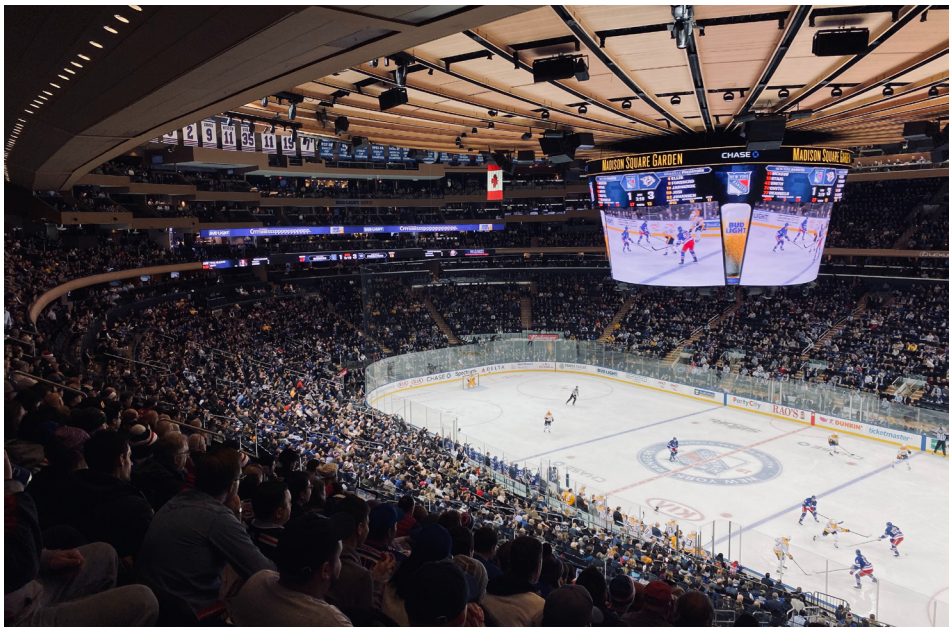

(1) Drake did not have control over the safety of Madison Square Garden, (2) Drake did not launch the instrument himself, and (3) Drake did not have any contractual obligation to provide security at the concert.

Giovacco also claimed that Madison Square Garden had a duty, as owner of the property and as the entity responsible for security, to act reasonably and to protect concert goers from foreseeable dangers. The court was not persuaded by Giovacco's arguments and dismissed this claim as well. Specifically, the court determined that Giovacco failed to prove that Madison Square Garden knew of the dangers or reasonably should have known of the dangers that created the environment in which she was struck with a metal bottle. Giovacco also failed to prove the causation element of negligence, meaning that Giovacco did not adequately prove Madison Square Garden directly or indirectly caused her injury.

Finally, Giovacco argued that as promoter and facilitator of the event, Live Nation had a duty to ensure that the large crowd attracted to the event did not pose an unreasonable risk to attendees. The court found that Live Nation had a responsibility to ensure the foreseeably large crowd attracted to Drake's concert did not pose an unreasonable risk of injury to attendees. Live Nation knew the concert would be well-attended because it sold the tickets. Giovacco also argued that Live Nation knew this concert could be dangerous and had the potential to injure but failed to act accordingly.

In a landmark decision, New York's First Department found in favor of Giovacco, holding that Live Nation may have had a responsibility to ensure that concertgoers remained safe from foreseeable dangers arising out of attending the Drake concert. The First Department sent this case back to the trial court for further clarification on certain facts, including what conduct Live Nation was and was not aware of based on past conduct occurring at other Drake shows. This decision represents a potential departure from a longstanding legal principle that people or entities are generally not liable for the actions of others. This decision could have far-reaching implications for venues and event promoters in the future and may necessitate changes in long-standing operating procedures.

This decision makes clear that if hazardous conduct is occurring throughout an event and someone gets injured by a third party, the arena or promoter may be held liable for that injury if they were reasonably aware from prior, similar events that the hazardous conduct could occur. Factors a court may examine include the size and behavior of the crowd. Following this decision, arena operators should take care when entering contracts with promoters to ensure that the promoters are fully prepared for the size and scope of the given event and the kinds of foreseeable risks and dangers associated with the same. Arenas and promoters should take care to ensure that security is equipped to handle any and all foreseeable risks associated with the type of event expected. In other words – know the crowd before it arrives and be prepared.

Arenas and promoters should implement plans that govern how any foreseeable danger will be handled, including how and when the arena or promoter should step in if a crowd becomes dangerous in the middle of an event. If the event is expected to produce rowdy conduct like dancing, jumping, crowd surfing, etc., the promoter or the venue should have adequate security measures in place to handle these scenerios. While this decision only applies to some locations in New York, venues everywhere should prepare for this ruling to impact how courts may look at risks and dangers arising at large events.

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Slur

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of the three-step protocol in place for addressing racist and/or discriminatory behavior, including chants. CONCACAF's three-step protocol includes: (1) stopping the game and making a stadium announcement; (2) suspending the game for five to ten minutes while teams are sent to the locker rooms and another stadium announcement is made; and (3) abandoning the match if the behavior is continued.

Plaintiffs' email went unanswered and, as they expected, Plaintiffs had front row seats to the Mexico fans' chant during the Gold Cup Final. Plaintiffs further alleged that the fans in their surrounding area directed the chant at them in particular, especially after noticing Plaintiffs' disdain for the vulgarity. In response, Plaintiffs first sent a text message to the phone number contained in the stadium's online guide for Soldier Field security, which ultimately was not the correct number. Then, Plaintiffs complained to stadium officials and a security guard, who refused to take action, though the reasoning for the refusal remains unclear.

As a result, Plaintiffs claim they suffered harms including physical distress, anxiety, "apprehension from the Discriminatory Chant and the fear that the chant would escalate to a physical altercation," and mental anguish that persisted after the match, including "injury to their dignity." The Illinois Department of Human Rights (IDHR) investigated the incident at Plaintiffs' request and found "substantial evidence" that Plaintiffs were denied full and equal enjoyment of the game due to their sexual orientation. Upon the IDHR's findings, Plaintiffs sued Defendants in state court, and Defendants removed the case to federal court (JORDAN PENLAND, KARL GERNER, EDWARD R. BURKE, AND PAUL C. BURKE v. CHICAGO PARK DSITRICT, SOLDIER FIELD, AND ASM GLOBAL).

The removal allowed Defendants to challenge the sufficiency of Plaintiffs' claim under Federal Rule of Civil Procedure 12(b)(6), which requires sufficient factual allegations to show a plausible right to relief.

Plaintiffs asserted two claims – first, that Defendants violated the Illinois Human Rights Act's (IHRA) prohibition on public accommodations discrimination, and second, that Defendants engaged in civil conspiracy. The Court took issue with multiple facets of Plaintiffs Complaint, and ultimately held that the Complaint failed to provide proper notice of how Defendants' actions or inactions proximately caused the denial of a publicly available facility, and whether Defendants allegedly acted because of Plaintiffs' protected status.

While the Court provided analyses and criticism for multiple aspects of Plaintiffs' Complaint, the Court most interestingly noted that the Complaint's allegations failed to specify whether Defendants failed to act because of their own homophobic motives, or whether the fans' alleged sexual orientation discrimination can somehow be attributed to Defendants. The Court noted Plaintiffs' differing theories of legal accountability, finding that whether fans behaved in a discriminatory manner created separate questions of fact. For example, the issue of whether Defendants acted or decided not to act on a prohibited basis. See, .e.g, Clark v. Safeway, 478 F. Supp. 3d 1080 (D. Or. 2020) (distinguishing between the discriminatory behavior of a public accommodations provider and that of a third party, as well as between inconsistent enforcement and discrimination). The Court decided that the lack of clarity between these two theories created a substantial issue in moving forward with Plaintiffs' claims. This, coupled with additional inconsistencies and Plaintiffs' inability to specify which Defendant was allegedly responsible for which claims, led the Court to dismiss the claim of the IHRA's prohibition on public accommodations discrimination.

Regarding Plaintiffs' second claim, the Court agreed with Defendants' position that civil conspiracy fails as a matter of law because the IHRA preempts it. Under Illinois law, civil conspiracy cannot be asserted as a claim on its own. Rather, it is merely a mechanism to hold potential tortfeasors accountable for a separate, tortious action. See, e.g., Adcock v. Brakegate Ltd., 645 N.E.2d 888, 894 (Ill. 1994). Overall, the IHRA unambiguously preempts common law remedies, including conspiracy, for civil rights violations.

Notably, however, Defendants argued rather generally that Plaintiffs' civil conspiracy claim was "foreclosed by statute." Defendants were referring to an IHRA exception which refers to free speech and expression of any individual or group that is protected under the First Amendment. In turn, Plaintiffs argued that the exception was inapplicable because, not only were Plaintiffs suing Defendants rather than the fans, but, more substantively, because Defendants were arguing that the fans had the right to chant a slur "puto." It is well-established that, while the First Amendment protects free speech, there are specifications regarding time, place, and manner restrictions, which would raise a more complex, constitutional analysis. The Court did not decide this issue. Regardless of these latter complexities, the Court dismissed Plaintiffs' civil conspiracy claim without prejudice.

Factual analyses regarding the responsibilities of each Defendant separately may have assisted in delineating and resolving some of Plaintiffs' allegations, though the Court did not allow this matter to proceed to the discovery stage so those specificities will remain uncovered. Therefore, it does not seem like the well-known chant will be whispered any time soon.

