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SPORTS FACILITIES and the LAW

How the law affects the sports facilities industry

Student's Right to Free Speech Is Not Unlimited in College Football Game Case

By John E. Tyrrell and Sarah Polacek

On September 30, 2021, a United States District Court addressed the limitations on the First Amendment protections of a student's rights to free speech at a school-sponsored event in *Sasser v. Bd. of Regents*, No. 1:20-cv-4022-SDG, 2021 U.S. Dist. LEXIS 188703 (N.D. Ga. Sept. 30, 2021). Judge Steven D. Grimberg ultimately dismissed the Plaintiff student's Amended Complaint which alleged violations of his First Amendment rights.

On September 29, 2018, while attending a University of Georgia (UGA) football game, spectators filmed Plaintiff Jonathan A. Sasser, a student athlete on the UGA baseball team, using a racial slur directed to one of the student football players.

Sasser's coach was notified of the incident the next day. Sasser admitted using the slur but contended the facts of the incident were "out of proportion." After meeting with his coach and officials associated with Defendant University of Georgia Athletic Association (UGAA), Sasser was released indefinitely from the baseball team. Around the same time, Defendant Eryn Janyce Dawkins, director of Defendant University of Georgia Equal Opportunity Office (EOO) conducted an investigation and hearing into the matter, subsequently suspending Sasser for the remainder of the Fall 2018 semester.[1] Both Defendant Jere Wade Morehead, President of UGA, and Defendant the Board of Regents of the University System of Georgia (the Board) upheld the sanctions and Sasser's removal

1 Dawkins later revised the sanctions, allowing Sasser to attend classes remotely, but prohibiting him from participating in UGA athletics, from attending UGA home games for a period of time, and from entering the UGA campus without EEO's permission during the Fall 2018 semester.

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Astroworld Reminds Us — Semper Vigilans

By Gil Fried, University of West Florida

Semper Vigilans is the motto of the Civil Air Patrol, of which I was a Lieutenant several years ago. It means "always vigilant." The motto was to enforce the concept that we should always be vigilant to respond to possible threat and concerns.

Several years ago, my oldest daughter came home for Thanksgiving. During a nice meal, she chimed in "Dad you ruined concerts for me." I was a bit taken aback. Yes, I was a strict dad, but I asked how I had ruined concerts for her. She responded, "Well, you used to always talk about all the cases you handled involving injuries that happened at so many sport and concert events that when I go anywhere, I constantly think about all that can wrong and how crazy all the case you have handled have been. I always look for exits. I look for unusual crowd behavior. I stay away from the barricades … I am always nervous." I lifted a finger into the air and gave myself an imaginary point. Score one for dad! I turned my daughter into a situationally aware person who could grasp hazards and concerns in numerous public crowd situations. Situational awareness was drilled into my head through all my training in Israel. No unattended bag goes unnoticed and there are safety clues all around us- if we look.

This training and mindset came into play recently with the tragic deaths at the Astroworld concerts in Houston where ten concert goers unfortunately passed away. It is too early to examine the facts associated

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from the baseball team.

Sasser filed suit on September 29, 2020 against UGA, UGAA, EOO, the Board, Morehead, and Dawkins, among others. In part, Sasser alleged that Defendants violated his First Amendment right to freedom of speech.[2] The Defendants filed motions to dismiss, arguing they were protected by "Eleventh Amendment, qualified, and/or quasi-judicial immunity" and that Sasser's Amended Complaint failed to state a claim.[3]

A First Amendment retaliation claim requires a plaintiff to show he engaged in (1) constitutionally protected speech; (2) the government's retaliatory conduct adversely affected the protected speech; and "a causal connection [exists] between the retaliatory action and the adverse effect on speech."[4] Sasser argued that that his statement was constitutionally protected speech because he was not threatening or harassing anyone.

The *Sasser* court discussed two United States Supreme Court cases, *Tinker*5 and *Fraser*6, to determine the bounds of Sasser's rights while on university grounds. The *Sasser* Court found that Sasser's conduct was more similar to the conduct at issue in *Fraser*, where the court found "that it was within a school district's authority to discipline a student for making lewd and indecent comments during an assembly attended by approximately 600 other students."[7] The *Fraser* Court emphasized that "fundamental values necessary to the maintenance of a democratic political system," specifically a school setting, must account for the "sensibilities of fellow students."[8] Furthermore, the "undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."[9] Thus, the *Sasser* Court found that Defendants did not violate Sasser's First Amendment rights, that Defendants were entitled to qualified immunity, and that

2 Additionally, Sasser alleged violations of his substantive and procedural due process rights, his equal protection rights, a claim for breach of contract, and a claim for declaratory and injunctive relief.

3 *Sasser v. Bd. of Regents*, 2021 U.S. Dist. LEXIS 188703 at *5

4 *Ziegler v. Martin Cnty. Sch. Dist.*, 831 F.3d 1309, 1328 (11th Cir. 2016).

5 *Tinker v. Des Moines Indep. Comm. Sch. Distr.*, 393 U.S. 503, 506 (1969) (holding that a school district violated the students' constitutional rights to freely express themselves when it prohibited students from wearing black armbands to protest the Vietnam war).

6 *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682-86 (1986).

7 *Id.* at 686.

8 *Id.*

9 *Id.*

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Nissan Stadium PSL Owners are in the Catbird Seat after Surviving the Tennessee Titan's Motion to Dismiss

By Robert J. Romano, JD, LLM, Senior Writer

In March 2021, eleven Personal Seat License (PSL) holders filed suit against the NFL's Tennessee Titans and Cumberland Stadium, Inc. in the Chancery Court of Tennessee at Nashville. Per their complaint, the plaintiffs sought a declaratory judgment, alleging that the NFL franchise violated Tennessee law by unilaterally changing the terms of their agreed upon PSL contract after labeling them as 'ticket resellers'. In addition to the request for a declaratory judgment, the plaintiffs alleged five additional causes of action: *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing, Violation of the Tennessee's Consumer Protection Act (TCPA)*, *Negligent Misrepresentation*, *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing* (Course-of-dealing), and *Promissory Estoppel*.

The plaintiffs' claim that when they initially purchased their individual PSLs, the Titans, through its subsidiary Cumberland Stadium, Inc., made various representations and assertions which ended up not being accurate. These representations included "the right to purchase season tickets at a fair and reasonable rate comparable to similarly situated seats in the stadium, the right to transfer or sell their PSLs, and that they would be treated fairly and reasonably."[1] The plaintiffs allege that since being classified as 'ticket resellers', wherein they resell single-game tickets associated with their PSL instead of using them for their own personal use, the Titans have unilaterally implemented a series of 'post purchase' policies that discriminates against them. These policies included (a) increasing the price of their season-ticket packages, and (b) restricting their ability to sell single-game tickets to non PSL holders.

After being served with the plaintiffs' lawsuit, Tennessee Football and Cumberland Stadium, Inc. didn't sit idly by the sidelines, but moved quickly to dismiss Counts II through VI of the plaintiffs' six-count complaint. On October 4, 2021, the Chancery Court of Tennessee, after hearing oral argument, ruled on the defendants' motion, finding that the plaintiffs' *Negligent Misrepresentation* and *Promissory Estoppel* counts must take a backseat, while allowing the *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing*, *TCPA,* and *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing* (Course-of-dealing) counts to move forward.

With regards to the *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing* and the *Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing* (Course-of-Dealing) claims, the plaintiffs' position was that the Tennessee Titans violated its implied covenant of good faith and fair dealing when it breached the terms of the PSL contract by instituting subsequent, discriminatory practices against the PSL owners it alone deemed to be 'ticket resellers'.[2] The NFL franchise's defense was that the plaintiffs cannot allege breach of contract since the terms of the PSL agreements were clear and unambiguous and because of this, they, the plaintiffs, cannot rely on the covenant of good faith and fair dealing to modify the terms of the original contract.

The Chancery Court determined that under Tennessee law, "an implied covenant of good faith and fair dealing is imposed in the performance and enforcement of every contract",[3] and that, "after a contract is made, it may be modified by express agreement or by conduct that evidences the contracting parties' consent".[4] Therefore, based on such, the Court concluded that because the plaintiffs properly alleged that the defendants' course of conduct modified the terms of their original PSL agreements, and that the implied covenant of good faith and fair dealing is effectively tied to the underlying breach of contract claim, that this was enough for the plaintiffs complaint to survive the defendants' motion to dismiss.[5]

Regarding the allegation that the Titans violated the *TCPA*, the Chancery Court determined that in order for the plaintiffs to move forward, they must prove: (a) that the Titans engaged in an unfair or deceptive act, and (b) that this conduct caused an "ascertainable loss of money and/or property".[6]

The plaintiffs asserted in their complaint that the Titans indicated to them at the time of purchase that the PSLs "had certain characteristics that they did not actually have", identifying statements made on the Titans' website regarding season tickets prices associated within specific seating zones at the stadium and that PSL holders could transfer or sell their PSL without incident.[7] The plaintiffs also referenced various statements made by the Titians to the media, such as the "resale of tickets to NFL games is a common and accepted practice," a 2010 brochure which referenced how to resell PSL seat-tickets, and statements made by a Titian's employee to a particular plaintiff who encouraged

1 Greg Carl, et al vs. Tennessee Football Inc. and Cumberland Stadium, Inc. Case No. 21-0252-BC.

2 Id.

3 Jones v. BAC Home Loans Servicing, No. W2016-00717-COA-R3-CV, 2017 WL 2972218.

4 Lancaster v. Ferrell Paving, Inc., 397 S.W.3d 606, 611-12 (Tenn. Ct. App. 2011).

5 Greg Carl, et al vs. Tennessee Football Inc. and Cumberland Stadium, Inc. Case No. 21-0252-BC.

6 Audio Visual Artistry v. Tanzer, 403 S.W.3d 789, 809-10 (Tenn. Ct. App. 2012)

7 Greg Carl, et al vs. Tennessee Football Inc. and Cumberland Stadium, Inc. Case No. 21-0252-BC.

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him to buy an additional PSL beyond that PSL's listed purchase price.[8]

Based upon these allegations, the Chancery Court felt that the plaintiffs adequately demonstrated how the defendants' engaged in unfair and deceptive acts. This, together with the plaintiffs' contention that defendants engaged in a practice of what they referred to as 'targeted inflation of ticket prices', while at the same time restricting their ability to resell single-game tickets or their PSL, caused the plaintiffs to lose money and therefore was an ascertainable economic damage sufficient for their *TCPA* claim to withstand the motion to dismiss.

The truth of the matter is that the Tennessee Titans have been trying to find ways to limit the number of opposing fans who attend its home games. During the pre-Covid-19 season of 2019, a large number of Buffalo Bills and Kansas City Chiefs fans were at Nissan Stadium to watch their respective teams and that these 'away' fans purchased their tickets from the so-called PSL "ticket resellers'. This, together with the fact that the Titans have recently partnered with Cole Rubin, a Florida ticket broker, to sell single-game tickets after allegations surfaced that the Titans failed to pay taxes for tickets designated as' military comps' when they were not, are the just some of the reasons behind why the Tennessee Titans have put into place various policies to 'drive out' 'ticket resellers'. However, the Titans may not have such an easy time in the courtroom as they do on the playing field, and as this case works its way through the court system, we will all have a ringside seat – free of charge. ●

8 Id.

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Plaintiff failed to otherwise state a claim that he was entitled to relief. The *Sasser* Court ultimately dismissed Plaintiff's Amended Complaint completely in upholding Defendants' renewed Motions to Dismiss.

The *Sasser* Court's decision demonstrates how a student's right to freedom of speech on school property is not automatically equivalent with rights in other public settings. Although students do not shed their constitutional rights at the school entrance, their right to freedom of speech and expression must be considered given the characteristics of a particular environment. Prohibiting the use of vulgar, indecent, and offensive terms is an appropriative function of schools. Thus, the *Sasser* Court found that educators act within their authority when disciplining a student who uses racially offensive terms to describe another student at a school-sponsored, on-campus event. ●

Former Arena Employee Defeats Summary Judgment Motion in Employment Law Case

By Jeff Birren, Senior Writer

James Sobucki worked at Fox Valley Ice Arena in Geneva, Illinois, for approximately six and a half years. Fox Valley is owned by Centrum-East West Arenas Venture. It is also in Geneva. Sobucki was originally on an hourly basis at the facility but was later converted to a salaried office role. A change at Centrum led to a change in duties for Sobucki, and he began cleaning restrooms. On April 3, 2019, Sobucki sued Centrum in federal court seeking overtime pay. Not surprisingly, Sobucki was not long for Centrum, and he was terminated on May 31, 2019.

Sobucki amended his complaint that July, adding a claim that he was fired in retaliation for filing the lawsuit. Centrum filed a motion for summary judgment in November 2020. Sobucki's opposition came in January 2021, and Centrum replied in February. In August, Judge Mary Rowland denied the motion (*Sobucki v. Centrum-East West Arenas Venture, LLC,* N.D. Ill, E. D., Case No. 19-cv-02279 *(8-5-21)).*

Relevant Facts

Centrum operated two arenas in the area. Craig Welker was the general manager and oversaw operations at both. Matt Leonard was the Director of Operations at Fox Valley and was the second highest executive there. Sobucki was hired at Fox Valley in November 2012. He began as an office employee and was paid on an hourly basis. He was promoted to a salaried position in 2014. Within 18 months Welker told Sobucki that he "was not a good fit for the office manager role" and "Centrum wished to find a role for which he was better suited" (Id. at 2). Sobucki operated the Zamboni and did custodial work, including cleaning the bathrooms. He was given a choice between being on a salary or working on an hourly basis. He chose the salary and earned "at least $455 per week."

Sobucki "worked with customers to coordinate skating competitions and hockey games for the rink" (Id. at 3). This included "scheduling, managing logistics for our-of-state participants, planning the set-up for events, providing directions, and addressing issues related to the rink, bleachers, and locker room." Sobucki testified that "he was essentially a custodian" though he admitted that "he would occasionally ask employees for help in completing tasks" and "would also field questions from other employees and occasionally would divvy up tasks when Leonard and Welker were not present." He did this "because he was the most experienced employee, not because he had any formal management role."

In February 2019 Centrum sold its other arena and sought to eliminate employees. Centrum made the decision to fire Sobucki because, according to Welker, Sobucki "had mentioned that he was looking for other jobs and because his replacement had more experienced, more motivated, and more committed to the company." Welker also testified that Sobucki "was notified in February that changes were coming to his position and he should prepare accordingly." That he did.

Sobucki sued Centrum on April 3, 2019, claiming that Centrum violated federal and state laws for failing to pay overtime. That rarely improves employer-employee relations. Welker and Sobucki met five days later. In his deposition Sobucki stated that Welker "asked questions about why he had filed the suit" but he "declined to respond." In his declaration Sobucki added that Welker "asked if he was sure he wanted to 'go down this road.'" Sobucki "said he would not answer questions without his lawyer" and Welker responded, "that not answering his questions would be considered insubordination."

Ten days later "Welker issued Sobucki an 'Employee Warning Notice' for failing to properly log his hours worked" (Id. at 4). Three days after that Sobucki "was issued another notice for arriving late to the arena, causing the director of tournaments to have to put out the goals himself." This notice "warned that further infractions would result in a "final warning and/or termination." The long knives were out. Sobucki was fired on May 31, 2019. He was told that it was "due to the restructuring." Sobucki amended his complaint on July 30, 2019, to addthe retaliation claim.

The Court's Analysis: Fair Labor Standards Act Claim

Federal law is simple enough: "employers are not required to pay overtime wages to 'executive' employees." The regulations define "an executive when: 1) her pay exceeds a regulatory minimum; 2) her 'primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof'; 3) she 'customarily and regularly directs the work of two or more other employees'; 4) she 'has the authority to hire or fire the other employees or whose suggestions and recommendations…are given particular weight.'" This is "a question of fact to be determined by a jury if there is a dispute." It is "necessarily fact-intensive."

Sobucki did not dispute the first element, and there was "uncontroverted evidence that his suggestions as to hiring and firing were given particular weight." The focus was therefore on the second and third elements of the test. Centrum claimed that Sobucki was "Head of Operations." He admittedly did not set up the department's schedule, but he supervised and assigned tasks to other employees. Sobucki, however, "asserts that his primary duties were driving the Zamboni and custodial work" and that

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he "did not supervise employees or assign tasks, and he had no formal title" though "he sometimes answered questions and divvied up responsibilities as the most experienced employee—a team member coordinating with his coworkers, not manager assigning tasks."

Sobucki's evidence "draw primarily from his deposition and declaration" while Centrum's evidence is "grounded in the testimony of Leonard and Welker. It is, essentially, their word against his. At summary judgment, the Court is required to consider the evidence in the light most favorable to the non-moving party" i.e., Sobucki (Id. at 5). "Given the conflicting testimony as to whether Sobucki was an exempt executive, summary judgment must be denied."

Centrum insisted that Sobucki failed to create a genuine issue of fact, arguing that he simply denied that the was a manager "without addressing the specific factual allegations." The Court disagreed, as "he lays out a coherent account of what his roles and responsibilities were as a Zamboni driver and custodian" and "his account contradicts specific factual claims made by Centrum." Centrum's evidence rests "on the testimony of two of its employees. It is up to the trier of fact to weigh the credibility of his opposing testimony."

Centrum also tried to "undermine the record Sobucki relies upon" by arguing that it had factual contradictions. It cited a case that held that a plaintiff cannot use a declaration to contradict his deposition testimony. "Sobucki's declaration, although at times more detailed, is generally consistent with his deposition." Consequently, "summary judgment on the overtime claims is premature."

"Retaliation Claim"

Sobucki alleged that he was fired "in retaliation for filing the present FLSA claim." Centrum asserted that it was due to the closing of the other arena and had nothing to do with the lawsuit. This claim requires plausible allegations that the plaintiff engaged in protected activity and that the employer took adverse employment action, and a causal link between the two. The "record does not provide any direct evidence that Sobucki was fired because of his lawsuit." He relied on "circumstantial evidence." That allows a jury to infer retaliation, and it may include "(1) suspicious timing, ambiguous statements or behaviors; (2) evidence that similarly situated employees were treated differently; or (3) a pretextual reason for adverse employment action." Close timing alone is not enough.

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Sobucki did not offer evidence related to similarly situated employees, nor did he demonstrate that Centrum's stated reasoning was pretextual. Rather, "his argument rests on Welker's comments to him about the lawsuit five days after" it was filed, the write up ten days later, and then the write up three days after that. In his years with Centrum prior to that he had never received a write up (Id. at 6). The Court stated that this "is a close case." Sobucki's circumstantial evidence "is weaker" than in his cited cases. However, "a reasonable jury could find the rapid issuance of two written warnings, after years without any, suspicious."

The "unusual resort to documented reprimands for relatively mundane missteps might have been intended to 'set the stage' for covert retaliation. This might be true even if" he really had been late to work or forgot to log his time. Moreover, Welker's suggestions that the lawsuit was a mistake and his alleged frustration when Sobucki would not discuss it "may suggest that retaliation was imminent."

"Viewing the suspicious timing, actions, and statements together, Sobucki has raised a question of fact as to the reason for his filing." A "reasonable jury" could conclude that the firing was in retaliation for filing the *FSLA* complaint. The motion was denied.

Conclusion

The Court subsequently scheduled a trial setting conference. It asked if a settlement conference would be productive, and one is scheduled for November 3, 2021. They might be well served to settle. The Court stated that Sobucki's second cause of action was a "close case" and was based "on circumstantial evidence." There is also something strange going on here. In February 2020, one of his lawyers sought to withdraw as his counsel. In January 2021 a second member of his legal team filed a motion to withdraw. Then, less than two weeks after the summary judgment ruling, a third attorney filed a motion to withdraw. All three motions were granted so Sobucki has lost three lawyers in less than three years. Accepting a settlement would put that to bed and allow Sobucki to get on with the rest of his life.

Centrum is hardly covered in glory. To begin with, regularly cleaning restrooms is not the stuff of executives. If he was truly "Head of Operations" documentary proof would have been produced. Furthermore, Centrum needs to learn to step lightly after an employee makes legal claims. The law's requirements fly in the face of human nature, but it is the law, and it will be enforced. ●

The Ethical Implications of Facial Recognition Technology

Last month, Facebook announced that it will soon shut down facial recognition software on its platforms — effectively removing the facial recognition templates of more than a billion Facebook users. The software has been utilized by the social media service for over a decade, allowing people to be automatically identified in photos and videos.

The move to shutter facial recognition on Facebook comes at a time when use of the technology has become exceedingly controversial. Experts have cited privacy concerns when it comes to increased surveillance, underscoring the need for robust laws and regulation. The American Civil Liberties Union (ACLU) has called facial recognition "an unprecedented threat to our privacy and civil liberties."

The Lincoln Center for Applied Ethics at Arizona State University critically examines issues of ethical innovation like these, focusing on humane technology and our relationship to the built environment. Center Director Elizabeth Langland and Associate Director Gaymon Bennett gave insight on the ethicality of facial recognition technology and what this news means for the future of power and privacy on social media.

Question: What ethical implications can facial recognition have?

Elizabeth Langland: Facial recognition isn't always accurate. We have to underline that it›s very good with white men, very poor on Black women and not so great on white women, even. There's stories about people when a man is arrested in front of his children because of a mistake in facial recognition, but the police trust the facial recognition technology more than the individual and he's imprisoned for several hours until they realize. When it goes wrong, it really can go wrong and have serious consequences for people's lives.

Gaymon Bennett: We often talk about things like facial recognition software and other kinds of data aggregation as a privacy problem, and no doubt, in a certain sense, it is, but really what›s at stake as far as I›m concerned is ability to exercise power. This is about powerful actors being able to manage the behavior of people that they are in a position to govern. As a culture, we trust technology. We think technology is neutral. But it's neutral technology amplifying real-world stuff, and the real-world stuff is racist and sexist. So now this hyper-powerful machinery is chewing on this.

Q: What impact, if any, do you think this move from Facebook will have on the use of facial recognition by other tech giants?

Langland: I actually think this was an easy thing for Facebook to do that doesn›t impact in any way their financial model and will have no impact on the use of facial

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recognition by other tech giants.

Bennett: I›m happy that we now have a real-world, high-profile example where we can point to something and say, "See, sometimes it›s just worth shutting down." However, in the press release Facebook circulated, they imply that tech is kind of a neutral tool and it can be good sometimes, it can be bad sometimes. I don't buy this. Facebook has 3 billion users, so everything they do has this unbelievable effect on the world.

Q: Do you feel this is a meaningful step in the humane technology movement?

Langland: There's kind of a moratorium right now on facial recognition technology, and Facebook is clearly participating in that. But there are no laws. That's one of the things that concerns the ACLU and other organizations that are focused on human rights. Congress has taken no action. All of these things are so new, so I think people don't want to step wrong, but meanwhile, there's this delay in the system that leaves people very open to these technologies and to abuse. One of the things about Facebook is that they're getting a whole circle of friends and acquaintances, or even just contacts. Google has data on you, but they don't know about your circle. They can't then start affecting the other people you're in contact with. Facebook is able to gather things like that together.

Bennett: Anytime Facebook deletes data, it›s important. A data-centered economy is an economy that›s based on the ability of people to spy on you so that they can manipulate your behavior. These are major social systems that have now become cultural systems. We have a whole set of habits that we do together about how we live together in an age of digitally mediated information and handheld devices, all the way from the physiology of the device. You glance down at your phone, you›re sitting in a restaurant, somebody else›s phone buzzes and you look at your phone — we have this very intimate relationship to the whole networks of data that wrap themselves around us.

Facebook has a pretty unusual position within this economy. Facebook can tie data to real people. This raises lots of red flags. Is this regulated? No. How should it be regulated? Who knows? But Facebook was always kind of a kingmaker in this. Google can tie it back to patterns, whereas Facebook was tying it to a person. The idea that they can then manipulate a whole chain of relationships was always more significant.

Q: How could facial recognition be used in a more ethical way?

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Langland: In *Scotland they used it because of COVID in a lunch line so that kids could go through and get charged for their lunch based on their face without handing cards. I guess I could see going to an airport and if they could just use it to get you on a plane without having to handle things. But of course, once they have it, it›s subject to abuse. You can›t get away from it once they have all these faces identified. How do you limit that? Can you really legislate limits on its use?*

Bennett: I think there are uses that lead to efficiencies, and I think there are uses that lead to entertainment. I think that any powerful technologies whose rationales are efficiency or entertainment will always lead to trouble. There are real questions around facial recognition software and the blind. I can›t speak to whether or not that should be counted as a good thing, because I haven›t asked this question to people I know with disabilities or within disability studies, but it would also be interesting to know whether or not they think that facial recognition is a good idea. For the foreseeable future, who knows if this technology could ever be used for good or not? However, I don't think we should take the position that we shouldn't innovate around potentially powerful technologies simply because we don't know whether or not they can lead to harm. ●

Poor Security Leads to a $25,000 Fine in Waco

In accordance with Big 12 Conference policies, the Conference has issued a public reprimand and $25,000 fine of Baylor University for its handling of field storming incidents during and after Saturday's football game with the University of Oklahoma.

"We have a duty to ensure a safe game environment that provides the visiting team secure egress from the field for players, staff and support personnel, and protection of the team bench area," said Big 12 Conference Commissioner Bob Bowlsby. "I appreciate Baylor's advance planning and communication, and although well planned, the end-of-game circumstances made its field storming plan impossible to execute, resulting in an interruption of play, impeding the visiting team from reaching their locker room and damage to OU bench area equipment."

Bristol Motor Speedway Presents Proposal to Mayor to Bring NASCAR Back to Nashville Fairgrounds Speedway

Following the letter of intent signed in March 2021, Bristol Motor Speedway (BMS) has presented Mayor John Cooper with a proposal to both revitalize the legendary 117-year-old Nashville Fairgrounds Speedway and bring NASCAR Cup Series racing back to Nashville. Mayor Cooper has agreed in principle to the plan.

"This partnership creates an economically viable future for our historic track, spurs hundreds of millions of dollars in economic activity, and completes the last unrenovated part of the Nashville Fairgrounds at no cost to the Metro General Fund," said Mayor John Cooper.

About the Proposal

The Bristol proposal meets Mayor Cooper's objectives: revitalize the speedway at no cost to the Metro General Fund; benefit the overall Fairgrounds campus; implement noise mitigation as part of the redesign; reduce track testing days; and generate hundreds of millions of dollars in positive economic impact for Nashville.

The Metro Charter requires auto racing at the Fairgrounds, so Metro Government has an obligation to maintain the facility. A partnership with Bristol Motor Speedway satisfies those obligations while restoring the second-oldest operating motor speedway in the United States back to the national stage.

The Deal's Benefits

The partnership will result in a modernized track that meets NASCAR series standards and transform Fairgrounds Speedway into a true multipurpose venue that can also host non-racing, revenue-generating events. BMS is a wholly owned subsidiary of Speedway Motorsports, which owns and operates eight state-of the-art sports entertainment venues nationwide.

A renovated, activated Fairgrounds Speedway under experienced leadership would have a significant economic impact for Nashville and the region. A slate of NASCAR series and other major races in addition to an expanded calendar of revenue-producing non motorsports events would generate about $100 million annually in economic activity, through visitor spending in hotels, restaurants, and other local attractions, according to an analysis by Tourism Economics, a division of Oxford Economics.

Recent renovations to the Fairgrounds have included a new state-of-the-art MLS stadium and new expo facilities, but have lacked a vision for the historic speedway's future. In March, Metro Government entered a letter of intent with Bristol Motor Speedway to explore involvement with the experienced track operator.

Next Steps

An independent sports finance consultant is currently reviewing the financial framework of the proposed plan. If the external consultant's report confirms the sound financial footing of the proposal, it will be publicly presented to the Board of Fair Commissioners for consideration once the two open Fair Board seats have been filled. Mayor Cooper is working with Vice Mayor Shulman to create a Fair Board that reflects the cultural diversity of both Fairgrounds visitors and Davidson County overall. If the deal is approved by the Fair Board, the proposal will be submitted to the Sports Authority and the Metropolitan Council with related legislation.

"In keeping with the national profile that Nashville Soccer Club is bringing to the Fairgrounds in 2022, this innovative partnership will bring our historic speedway back to life as a crown jewel in the world of motor sports," said Mayor Cooper. "No other city has professional soccer and NASCAR side by side. Our Fairgrounds will be a unique asset for Nashville's future. I look forward to working with Bristol, the State of Tennessee, the Fair Board, the Sports Authority and the Council on this proposal."

"I grew up going to the Fairgrounds Speedway with my dad on Friday nights, listening to him work as a spotter for racers like Andy Kirby and Steadman Marlin. It would be my honor to sponsor legislation that brings NASCAR back to Nashville and restores the track into something that our whole county can be proud of again," said Zach Young, District 10 Metro Councilmember.

Key terms in the proposal include:

- BMS would lease, manage, and operate the city-owned Nashville Fairgrounds Speedway for a 30-year term.
- The Metro Sports Authority will issue 30-year revenue bonds to finance the speedway renovation.
- BMS will install state-of-the-art sound mitigation components during track renovation and reduce track practice rentals to 20 days per year – a combination that will reduce sound impacts to surrounding neighborhoods by 50 percent, according to analysis conducted by Wrightson Johnson Haddon & Williams, an international acoustics engineering firm.
- Revenue streams to pay for the speedway renovation include rent payments, user fees and taxes paid by patrons of the venue, sponsorship agreements, and event revenue.
- The proposal limits race and practice dates and addresses other quality of life issues that were raised during more than two dozen community meetings conducted by BMS and the Fair Board over the last few months.
- The proposal is contingent on use of "guaranteed maximum price" construction contracts to elimi-

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with the case and the facts will eventually come out. There are investigation and reviews going on at the state level, county level, and eventually in the courts. I do not want to focus on the facts, the false news stories, or the conspiracy theories for now. The key is for us as an industry to examine ourselves and prepare for future events.

The need for better communication could be seen in a recent television interview with a self-proclaimed industry expert who gave three tips for fans caught in a crowd surge. He suggested not yelling, not fighting the crowds, and praying. Frankly, I found that appalling. Here is an opportunity to help educate many people, and a somewhat flippant answer is to pray. A better response could include: don't position yourself right in front of the stage at a GA event, don't try to be the first one to a stage/barricade, try to go to the sides, if you fall- crawl to the sides, have a buddy system, keep a water bottle with you in case you cannot leave and start getting dehydrated, and simialr valuable tips for those navigating the crowd.

I also started thinking about our society and whether social media is having a negative impact on how crowds (and the public at large) behave, especially in the post-COVID environment. The availability of smartphones is great for documenting what might have happened, but as seen in the horrific Philadelphia train rape case earlier this year- many people who in the past might have tried to help- are now too busy filming rather than helping. Second, when I was growing up there were no fan codes of conduct. People acted with civility. The uptick in road rage, confrontations on airplanes, and even shooting at high school football games, as well as all sort of milder unruly behavior might, unfortunately, indicate a more violent or aggressive society with less regard for others and their safety. Even if we as an industry implements numerous safety strategies, *all it takes are several idiots acting in an inappropriate manner to cause chaos and possible loss of lives*

With all these concerns as part of our reality, what can, and should we do as an industry?

1. We must be transparent. We have to share with the public some of the strategies we undertake to make sure the public is safe, even if in the past those crowd strategies were covert or not disclosed for legitimate security reasons. Clearly, we do not need to cover safety strategies to reduce the threat of terrorist acts, but we should be candid with our patrons about the types of strategies utilized such as coordinated efforts with various law enforcement agencies, presence of medical personnel, management

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receptiveness' to hear from and actively listen to various stakeholders, and similar concerns. Stakeholders might think we, as an industry, have an agenda to generate revenue at any cost. We must dispel this vicious industry smear, with showing how we take so many steps to produce safe events. A safe event is always the top (and some may even say only) priority.

2. We must communicate more effectively. Whatever elements contributed to the Astroworld tragedy, the perception among many is a lack of communication. Mixed messages came from various sources. What did the artist know/do? What did the incident command center know, and when? What did security/law enforcement know, and when? So many of these questions will focus on the communication chain and its apparent breakdown. It is easy to say lets document everything, and our incident command systems help us tremendously in this regard. However, were all these voices listened to at Astroworld? Were past incidents analyzed and communicated with all relevant parties? I share with attorneys in crowd management cases a list of hundreds of questions they should ask in a deposition for a crowd management case- many questions revolve around the need for communication. The best policies and procedures have little value if there are communication lapses.
3. We must understand fans and their motivations. People's behaviors in sport and entertainment settings are changing –quite drastically, and we have to understand them and what motivates them. We might need more experts in fan behavior who can help us understand what messages resonate with people. We might have had specific industry best practices that we relied upon in the past, but those might fly out the window if they have not been modified over the years to go along with how people have changed and how they act, especially now given social distancing and crowd capacity considerations. Simialr to how the medical field is not static, the venue management industry is not static, and we must stay one step ahead of our customers. This is the key to hosting a safe event.
4. We must speak with a unified voice. Major events are often used as a tool to divide and attack an industry. After we hopefully surmount the COVID crises, we do not need another high-profile event such as Astroworld provides to attack our industry. That is why we need to go on the offensive and tell our story. We need to explain to everyone that the number one rule for facility managers is, was, and always should be the safety of everyone in our buildings. There will be calls for government oversight and new regulations. Such is the nature of the knee-jerk reaction after crowd tragedies. There will inevitably be finger pointing and the eventual blame game, with both lawyers and crowd managers included in this ongoing debate. However, if we as an industry speak with one voice and accentuate all the good we do (and have done recently) (e.g. using stadiums as mass vaccination clinics, etc.), and diligently work to address any shortcomings, we can respond in a positive and healthy manner that benefits all venue management stakeholders.

We are fortunate enough to work in a great industry. Every industry goes through certain hardships. The test of our character is how we respond to these challenges. Semper Vigilans! ●

Bristol Motor Speedway Wants to Return NASCAR to Nashville Fairgrounds

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nate the risk of construction cost overruns.

"We're thrilled to have the opportunity to work with the mayor, government officials and Nashville community to breathe new life in the legendary Fairgrounds Speedway," said Marcus Smith, president and chief executive officer of Speedway Motorsports and Bristol Motor Speedway. "In addition to bringing major NASCAR series races back to the historic facility, we'll create a calendar for local racing and special events that generates a positive economic impact for the region."

Jerry Caldwell, executive vice president and general manager of Bristol Motor Speedway, said, "Once the renovations are complete, Nashville Fairgrounds Speedway will be a new destination for motorsports and entertainment. We'll operate to maximize event opportunities while mitigating the impact on area residents. Our goal is to create something that Nashville and the surrounding community can be proud of."

Preserving the Historic Speedway

Historic preservation is a priority of the plan, Mayor Cooper said. Nashville Fairgrounds Speedway, which opened in 1904, is the second-oldest operating motor speedway in the United States and hosted an annual NASCAR Cup Series event from 1958-1984. It has a celebrated history, with past champions that include Dale Earnhardt, Richard Petty, and local drivers Darrell Waltrip and Sterling Marlin. ●

