

7-1-2012

# Major League Security: Overcoming Legal Challenges of Sporting Event Security Systems

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## Recommended Citation

Jorge Martinez, *Major League Security: Overcoming Legal Challenges of Sporting Event Security Systems*, 2 U. Miami Nat'l Security & Armed Conflict L. Rev. 197 (2012)

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## STUDENT NOTE

### Major League Security: *Overcoming Legal Challenges of Sporting Event Security Systems*

Jorge Martinez

#### ABSTRACT

This article will discuss emerging threats to major sporting events and suggest methods to defend fans and athletes through strengthening security systems and procedures. One problem with strengthening security systems, however, is that in many cases, increased security means less personal privacy. This article will briefly review security measures that have traditionally been in place, juxtapose newly developed security measures, assess the effectiveness and constitutionality of each measure, and propose a working security system to be used at such events. Ultimately, an ideal security system of the future will have to incorporate developments in various fields and will take time to successfully implement. To that end, a certain amount of trial and error is necessary to determine what level of security will be adequate, all while not intruding on the liberties of those being protected.

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## I. BACKGROUND

Sporting events are a staple in nearly all societies across the globe. For centuries, people have been gathering in arenas, stadiums, and coliseums to watch bloody gladiatorial contests, perfectly-executed maneuvers, and athletes achieving Olympic glory. Attending a sporting event is intended to be a fun and exciting occasion, yet the potential for disaster looms, especially in the modern age of terrorism. Considering the possibility of having over 100,000 people packed together in one location, as is the case for many modern sporting events,<sup>1</sup> an accident or deliberate attack has the potential to yield disastrous results.<sup>2</sup> Aside from any casualties directly caused by an accident or attack, there will likely be even more deaths or injuries in the aftermath, as people stampede to safety and those injured wait to be rescued and receive medical care.<sup>3</sup> Consider on February 12, 2012, after the soccer game between Al-Ahly of Cairo, Egypt, and Al-Masry of Port Said, Egypt where crazed fans rushed the field and began to riot.<sup>4</sup> Aside from the deaths resulting from the melee itself, many people were “crushed to death in the tunnel trying to escape.”<sup>5</sup>

To prevent such a calamity, it is of paramount importance to have systems and procedures in place to adequately protect people who attend such events. An equally important consideration is providing first-rate security, without trouncing the rights of those in attendance.

In recent years, the threat of terrorist attacks has become a global concern. After the 2001 attacks on the World Trade Center and Pentagon, security experts and everyday citizens began to contemplate the potential that terrorist organizations would attack not only political or military targets, but also “soft targets.”<sup>6</sup> These soft targets can be ones that have cultural meaning or a potentially greater impact than an attack on a military target, in terms of both causing casualties and inspiring fear.<sup>7</sup> When considering the objectives for which a terrorist organization has to attack, major sporting events are a particularly attractive target. For example, an American football stadium, filled with unsuspecting fans, provides a near ideal soft target for anti-American terrorist organizations.

Moreover, the football stadium represents a cornerstone of the American culture, as a sport essentially unique to the United States. An attack on an event that holds such symbolic value would likely draw more recognition and create more public concern than an attack on a military installation. Further, it is possible for one event to not only draw over 100,000 spectators, but to be broadcast live to

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<sup>1</sup> See Calvin Watkins, *Super Bowl misses attendance mark*, ESPN DALLAS/FORT WORTH (Feb. 7, 2011), <http://sports.espn.go.com/dallas/nfl/news/story?id=6096358> (mentioning that the attendance for Super Bowl XLV was over 91,000, which still pales in comparison to the NFL record of 112,376 fans).

<sup>2</sup> *Id.*

<sup>3</sup> See Michael A. McCann, *Social Psychology, Calamities, and Sports Law*, 42 WILLAMETTE L. REV. 585, 603 (2006) (describing how “hospitals would likely struggle to treat tens of thousands of suddenly wounded persons, and even those unharmed by the attack could be kill [sic] or injured while frantically fleeing the stadium”).

<sup>4</sup> Jeff MacGregor, *Rush to explain, forget soccer violence*, ESPN COMMENTARY (Feb. 2, 2012), [http://espn.go.com/espn/commentary/story/\\_/id/7531814/the-rush-explain-forget-soccer-violence-egypt](http://espn.go.com/espn/commentary/story/_/id/7531814/the-rush-explain-forget-soccer-violence-egypt).

<sup>5</sup> *Id.*

<sup>6</sup> “Soft targets” are targets that are not well-protected, so terrorists can gain access to them relatively easily. See CNN Breaking News 15:30: Baghdad Hotel Blast (CNN television broadcast, Mar. 17, 2004) (defining soft targets as those “readily available” to terrorists); See Caitlin M. Piccarello, *Terrorism, Tourism, and Torts: Liability in the Event of A Terrorist Attack on A Sports or Entertainment Venue*, 12 VILL. SPORTS & ENT. L.J. 365, 366 (2005) (describing the vulnerability of “soft targets”).

<sup>7</sup> *Panel I: Legal Issues in Sports Security*, 13 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 349, 366 (2003) (Paul H. Zoubek describing American sports [as] a very symbolic target of terrorism because it is so associated with the globalization of the American economy and the American culture); See, e.g., Roy Masters, *Super Bowl Gets Peak Rating As Terrorists Target Audience*, SYDNEY MORNING HERALD, Feb. 2, 2002 (describing the Super Bowl as “the citadel of American commercialism” and as a potential target for terrorists).

millions of viewers across the world.<sup>8</sup> An attack on such an event could bring the type of carnage and notoriety that terrorist groups seek. Despite popular belief, soft targets may have taken the place as the preferred targets for terrorist organizations, partially due to the steady increase in security at government or military targets.<sup>9</sup> When considering a possible terror attack during a sporting event, it is haunting to realize that terrorists only have to evade security once to be successful. As the Irish Republican Army told the British authorities, after its failed attempt to assassinate British Prime Minister Margaret Thatcher in 1984, “Today we were unlucky. But remember: We only have to be lucky once. You will have to be lucky always.”<sup>10</sup>

A sobering reminder of the potential for an attack on a soft target is the October 2005 suicide bombing in Oklahoma.<sup>11</sup> The attack was carried out by twenty-one-year-old engineering student Joel Henry Hinrichs III, near the University of Oklahoma football stadium.<sup>12</sup> At the time of the explosion, the stadium was filled with 84,000 fans.<sup>13</sup> In addition to the proximity of the explosion to the stadium, “other un-detonated explosive devices were found” nearby.<sup>14</sup> While Hinrichs’s intentions in setting off the explosion are debatable, if the explosive was more capable or closer to the stadium, it could have had catastrophic results. Another example of how occupied stadiums present ideal soft targets is the previously mentioned soccer game between Al-Ahly of Cairo, Egypt, and Al-Masry of Port Said, Egypt. Recall that in addition to the rioting fans, many people were “crushed to death in the tunnel trying to escape.”<sup>15</sup>

Providing adequate security for all those in attendance at a sporting event—the fans, athletes, and stadium employees—is challenging enough, notwithstanding the potential for external attacks.<sup>16</sup> In addition, because the attention of spectators at sporting events is generally narrowly focused on that event, an individual’s behavior that might normally seem suspicious may go unnoticed.<sup>17</sup> This places an added pressure on event security to be on high alert in what is an extremely distracting and deceiving environment. Aside from being on a constant lookout, security guards and police are also charged with the task of keeping fans from becoming disgruntled as they wait to pass through security checkpoints, as well as keeping entrance lines flowing smoothly.<sup>18</sup> This is a tall order for security personnel, especially those who may not be adequately trained.<sup>19</sup> Considering the multitude of factors that ensure security at a major sporting event, it is important to discuss: (1) security measures of the past and present; (2) new security measures to protect guests and athletes and potential legal challenges; and (3) how to develop the most effective, yet legal, security system.

<sup>8</sup> See Jared Wade, *Safeguarding the Meadowlands*, RISK MGMT., Dec. 2002, at 18 (claiming sports venues are attractive targets because, “With tens of thousands of people in attendance, an attack on a stadium could cause massive casualties with maximum media exposure”).

<sup>9</sup> The United States has known for over a decade that increased security at hard targets has shifted terrorists’ attention to soft targets. In 1990, seventy-five percent of all terrorist attacks worldwide were perpetrated against tourist spots, businesses, and other nonofficial targets. Winston P. Nagan, FRSA & Craig Hammer, *The New Bush National Security Doctrine and the Rule of Law*, 22 BERKELEY J. INT’L L. 375, 438 (2004).

<sup>10</sup> Alan Cowell, *What Price to Stay Free of Terrorism?*, NEW YORK TIMES EUROPE (Nov. 5, 2012), <http://www.nytimes.com/2010/11/06/world/europe/06iht-letter.html>.

<sup>11</sup> Cinnamon Stillwell, *Terrorism Strikes the Heartland*, ACCURACY IN MEDIA (Oct. 7, 2005), <http://www.aim.org/guest-column/terrorism-strikes-the-heartland/>.

<sup>12</sup> *Id.*

<sup>13</sup> Cowell, *supra* note 10.

<sup>14</sup> *Id.*

<sup>15</sup> MacGregor, *supra* note 4.

<sup>16</sup> See Caitlin M. Piccarello, *Terrorism, Tourism, and Torts: Liability in the Event of A Terrorist Attack on A Sports or Entertainment Venue*, 12 VILL. SPORTS & ENT. L.J. 365, 366 (2005) (describing the difficulty of security sports and entertainment venues because of the large numbers of people constantly entering and leaving).

<sup>17</sup> McCann, *supra* note 3, at 604.

<sup>18</sup> *Id.* (describing how “stadium security personnel are also disadvantaged by the situational pressure of impatient fans seeking to enter the stadium, as well as by the practical necessity of preventing long and slow-moving entrance lines”).

<sup>19</sup> *Id.* (discussing how “[a]ccording to some experts, stadium security personnel seldom possess sufficient anti-terrorist training”).

## II. SECURITY MEASURES: PAST AND PRESENT

In the past, sports stadiums and arenas around the world have implemented a wide variety of systems and methods for securing their premises. Traditionally, security and crowd control methods relied on having uniformed police officers, security guards, and event staff providing a visible presence to guests of a stadium.<sup>20</sup>

However, in the years since 9-11, many sports organizations have significantly increased their efforts to deter and prevent terrorist attacks, and made security a top priority.<sup>21</sup> Some of the efforts to improve security include stationing more security personnel through the stadium, enhanced video surveillance, and stricter rules on what guests may bring with them into the facility.<sup>22</sup> Drills are also conducted to prepare stadium personnel for any possible attack.<sup>23</sup> For instance, in February of 2011, New Delhi “security agencies conducted a mock drill at the Ferozeshah Kotla stadium, which will host four World Cup cricket matches, to check their preparedness in case of a terror attack.”<sup>24</sup> In addition, federal legislation has been set in place creating permanent restrictions on airspace over certain stadiums.<sup>25</sup>

Yet another recently devised prevention strategy was put forth when the Department of Homeland Security (DHS) designed a “counterterrorism training program for the staff of shopping malls, sports stadiums, amusement parks, office buildings and apartment complexes, amid concerns that terrorists may be planning to strike such targets.”<sup>26</sup> This program covers the “‘four Ds’— devaluing the target; deterring would-be terrorists; detecting attacks and preoperational surveillance or other preparations; and defending against attacks.”<sup>27</sup> DHS has also co-sponsored a “free, four-hour Terrorism Awareness Training Course” to help stadium and arena security to identify and thwart terrorist attacks.<sup>28</sup>

Doing their part to protect their patrons, the major American sports leagues collaborated with the International Association of Assembly Managers (IAAM) Safety and Security Task Force in an effort to help protect sports facilities from future acts of terrorism.<sup>29</sup> This collaboration included the National Football League (NFL), National Hockey League (NHL), Major League Baseball (MLB), National Basketball Association (NBA), and National Collegiate Athletic Association (NCAA).<sup>30</sup> The result was the “Best Practices Planning Guide - Arenas, Stadiums, Amphitheater.”<sup>31</sup> This guide outlined ways to “[assess] risk factors, [determine] threat levels, and [formulate] safety/security plans” for sports facilities.<sup>32</sup> In a more

<sup>20</sup> Thomas A. Baker, III, Daniel Connaughton, James J. Zhang, J.O. Spengler, *Perceived Risk of Terrorism and Related Risk Management Practices of NCAA Division Ia Football Stadium Managers*, 17 J. LEGAL ASPECTS SPORT 27, 28 (2007).

<sup>21</sup> See Thomas George, *N.F.L. Is Tightening Security As Games Resume on Sunday*, N.Y. TIMES, Sept. 18, 2001, at C18, available at <http://www.nytimes.com/2001/09/18/sports/pro-football-nfl-is-tightening-security-as-games-resume-on-sunday.html> (quoting Milt Ahlerich, the N.F.L.’s Senior Director of Security, explaining, “The commissioner said to the owners that the No. 1 priority is security and that we are not going to fall short in that area.”).

<sup>22</sup> Wade, *supra* note 8, at 20; See McCann, *supra* note 3, at 606.

<sup>23</sup> Caitlin M. Piccarello, *Terrorism, Tourism, and Torts: Liability in the Event of A Terrorist Attack on A Sports or Entertainment Venue*, 12 VILL. SPORTS & ENT. L.J. 365, 369 (2005).

<sup>24</sup> *Mock security drill at Ferozeshah Kotla stadium ahead of World Cup*, TIMES OF INDIA (Feb. 9, 2011), [http://articles.timesofindia.indiatimes.com/2011-02-09/news/28546566\\_1\\_mock-security-drill-mock-bomb-blast-security-agencies](http://articles.timesofindia.indiatimes.com/2011-02-09/news/28546566_1_mock-security-drill-mock-bomb-blast-security-agencies).

<sup>25</sup> See, e.g., Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, § 352, 117 Stat. 11, 420-21 (2003) (establishing flight restrictions over stadiums and similar venues); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 521(a), 118 Stat. 3, 343 (2004) (extending flight restrictions over stadiums and other venues indefinitely).

<sup>26</sup> Shaun Waterman, *Training against terrorism uses malls*, WASHINGTON TIMES (Jul. 17, 2003), <http://www.washingtontimes.com/news/2003/jul/17/20030717-095939-8773r/>; *Soft target awareness course*, VIRGINIA DEP’T OF CRIMINAL JUSTICE SERVICES, <http://www.dcjs.virginia.gov/pss/training/alternatives/announcements/307softTargetInfo.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> Baker, Connaughton, Zhang, Spengler, *supra* note 20, at 28.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Best Practices Planning Guide - Arenas, Stadiums & Amphitheaters (June 27, 2002), [http://www.iwi-associates.co.uk/library/2011/iaam\\_sstf\\_planningguide.pdf](http://www.iwi-associates.co.uk/library/2011/iaam_sstf_planningguide.pdf).

<sup>32</sup> *Id.*; Fordham Symposium, *supra* note 7, at 352.

dubitable move, the NFL instituted a policy in 2005 that mandated that “all persons attending league games must be physically searched before entering any of the venues where the games are played, the aim being to prevent terrorists from carrying explosives into the stadiums.”<sup>33</sup>

### III. NEW SECURITY MEASURES AND POTENTIAL LEGAL CHALLENGES

Important considerations in the fight to protect sports venues and their guests from terrorist threats include making use of newly-developed technologies, learning from security developments being implemented elsewhere (airports, government buildings, etc.), and coming up with innovative methods and systems for providing security. It is equally important to recognize the legal and constitutional issues that certain security measures might present and adapt the systems to not trounce the rights of sporting event patrons.

#### A. BIOMETRICS AND POTENTIAL LEGAL CHALLENGES

Security personnel are now considering the use of a new technology called “Biometrics” in an effort to improve the security of patrons at sporting events. This new technology makes use of “immutable personal characteristics, such as facial features, fingerprints, and retinal patterns, to establish and authenticate identity.”<sup>34</sup> Biometrics come in many different varieties which proves to be useful due to the difficulty of mimicking unique physical characteristics.<sup>35</sup> One form of implementation is the creation of a database of facial features, fingerprints, and other unique physical characteristics of potentially threatening persons. By scanning the faces or fingerprints of fans upon entry, the venue security can screen out those unwanted attendees.

Moreover, biometrics may be useful and practical for preventing attacks from an arena’s less-frequented corridors. Many consider biometric security and surveillance “viable alternatives to PIN numbers, ID cards, security guards, police, and eyewitness testimony.”<sup>36</sup> By using biometric security features, sports venues may improve the access control to sensitive areas. One example is the prevention from people impersonating event staff or security. This idea also applies to those providing deliveries and services to the venue—those who may not be on the stadium’s payroll or have been adequately screened prior to accessing the stadium—yet still have access to areas not open to the public.

Biometric technology does not come without its problems. As with many security systems, a major issue with biometrics is finding a balance between individual liberty and security.<sup>37</sup> Opponents of biometric technology have characterized it as a “widespread, random, electronic search of citizens as they go about their affairs.”<sup>38</sup> Many of the issues arising from the development and implementation of biometric technology relate to an individual’s right to privacy and Fourth Amendment concerns. In *Katz v. United States*,<sup>39</sup> the United States Supreme Court established that the Fourth Amendment protections attach to individuals, not just their homes. Furthermore, the Court held that whether certain actions constitute an illegal search depends, in part, on whether a person under surveillance has a reasonable expectation of privacy.<sup>40</sup> This could pose a significant risk to the establishment of biometric security systems because it could be successfully argued that an individual has a reasonable expectation of privacy in their fingerprints,

<sup>33</sup> *Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1078 (Fla. Dist. Ct. App. 2005).

<sup>34</sup> Mark G. Milone, *Biometric Surveillance: Searching for Identity*, 57 BUS. LAW. 497 (2001).

<sup>35</sup> *Id.* (describing how biometrics includes hand geometry, fingerprints, iris scans, and DNA.).

<sup>36</sup> Milone, *supra* note 34, at 497.

<sup>37</sup> Steven C. Bennett, *Privacy Implications of Biometrics*, Prac. Law, June 2007, at 17.

<sup>38</sup> Milone, *supra* note 34, at 509.

<sup>39</sup> *Katz v. United States*, 389 U.S. 347, 353 (1967).

<sup>40</sup> *Id.*



retina, and other such personally identifiable traits, which are unlike other personal attributes, such as height or gait, that are readily observable by the public.<sup>41</sup>

Whether a system would be found to violate an expectation of privacy would likely depend on how invasive the security system is.<sup>42</sup> For instance, the NFL had once used closed-circuit television cameras to scan the crowd for known criminals during the Super Bowl.<sup>43</sup> After public protest about the invasiveness of this technology, the NFL ceased the use of facial recognition systems during the Super Bowl.<sup>44</sup> On the other hand, with the widespread use of newly-developed technologies that include biometric systems, such as those used in places ranging from airports to public libraries, it is possible that such systems will be seen as being in general public use, making it harder to justify a claim that a privacy expectation is reasonable.

Another concern regarding biometric systems is the threat to privacy arising from the loss of personally identifiable information. As soon as biometric information is recorded into an electronic database, it becomes susceptible to theft and manipulation by hackers, as well as public dissemination.<sup>45</sup> Because a person cannot change his/her biometric data, as may be done with a PIN code, theft of biometric information can be seen as “permanent identity theft.”<sup>46</sup> Ultimately, it seems that whether the use of biometric systems infringes on the privacy rights of the public rests not only on the type of information collected, but also on *how* it is collected and used, efforts must be made to secure personally identifiable data when recorded, stored, and transferred.

## B. OTHER TECHNOLOGICAL ADVANCEMENTS AND POTENTIAL LEGAL CHALLENGES

The U.S. military has been using a technology called “gunshot detection,” capable of detecting the location of a shooter moments after a weapon is fired.<sup>47</sup> ShotSpotter is one company that has been at the forefront of the development of gunshot detection technology. ShotSpotter’s system works by using preplaced sensors, scattered around a particular location that capture the sound of a gunshot or explosion and relay the information to officers in the field.<sup>48</sup> It has been only in the past few years, however, that ShotSpotter has been able to send information directly to individual officers’ laptops on the street.<sup>49</sup>

As the technology develops concurrently with the advent of smartphones and tablet computers, it is not unreasonable to believe that systems, which zero-in on where a shot or blast originated, could soon have the ability to send a shooter location signal to a handheld device in a police officer’s possession. Sports venues could utilize this technology by spreading sensors across a stadium or arena and equipping officers with portable receivers that can receive instantaneous information about the location of a shooter. While this technology may only be useful *after* an attack takes place, it could be a useful deterrent and could improve the chances of neutralizing a terrorist threat before additional harm is inflicted. Using this device as a deterrent would rely heavily upon publicizing the use of the system and its effectiveness in identifying and assisting with the capture of a shooter. Preventing further harm, through the use of this technology, is especially important in the case of a sniper. In a stadium scenario, a sniper would be extraordinarily difficult to locate and, without SpotShooter’s system, near impossible to pinpoint, even after he/she discharges the weapon.

Concerning systems such as ShotSpotter, which rely on having sensors distributed around a particular location, each of which detect sound and relay information to a central server, a significant legal issue presents itself when considering what sounds these sensors detect and the uses for those sounds. In order to avoid possible

<sup>41</sup> Lauren D. Adkins, *Biometrics: Weighing Convenience and National Security Against Your Privacy*, 13 MICH. TELECOMM. & TECH. L. REV. 541, 552 (2007).

<sup>42</sup> *Id.*

<sup>43</sup> Bennett, *supra* note 37, at 13.

<sup>44</sup> *Id.* at 14.

<sup>45</sup> Bennett, *supra* note 37, at 16.

<sup>46</sup> *Id.*

<sup>47</sup> See *Sniping at US Forces Beginning to Boomerang*, DEFENSE INDUSTRY DAILY (Feb. 14, 2011), <http://www.defenseindustrydaily.com/sniping-at-us-forces-beginning-to-boomerang-01128/> (describing Boomerang III perimeter systems).

<sup>48</sup> Ethan Watters, *Shot Spotter*, WIRED (Mar. 2007), <http://www.wired.com/wired/archive/15.04/shotspotter.html>.

<sup>49</sup> *Id.*

violations of the Fourth Amendment, specifically, that the sensors record conversations or communications in which fans have a reasonable expectation of privacy, it would need to be established that these sensors are tuned to only pick up gunshots and not private conversations. While people attending a sporting event likely do not have a reasonable expectation of privacy in chants or jeers yelled out amidst a crowd of fans, privately-held conversations outside the stadium or in its concourse may qualify; although, the determination of whether there is a reasonable expectation of privacy within a stadium could be muddled by factors such as the volume at which a remark was made, to whom a comment was made, the proximity of the recipient to the person speaking, and whether the fan was in a private box/suite.<sup>50</sup> If a microphone happened to catch a communication for which there is a privacy interest, and this sound bite was sent to the police or used against someone in a criminal proceeding, this security system would be infringing on the constitutional rights of stadium guests. It is reasonable to see why the American public would be unwilling to have sensors, or more specifically, microphones, spread out around their favorite sporting venues.

Another recently developed technology with the potential to be an invaluable asset is “SportEvac,” as developed by the National Center for Spectator Sport Safety & Security (NCS4). SportEvac determines how a stadium can be evacuated in the shortest amount of time, and how to allow civil emergency workers quick and easy access as fans are evacuating.<sup>51</sup> It also helps to establish how a stadium’s guards and ushers can provide valuable information to civil responders and assist them as the evacuation unfolds.<sup>52</sup> This software is being developed and tested with funding from the DHS’s Science and Technology Directorate.<sup>53</sup> SportEvac works by creating “virtual, three-dimensional stadiums based on models of actual sports facilities. The virtual stadiums are filled with up to 70,000 avatars that are programmed to respond to threats as humans would (read: unpredictably).”<sup>54</sup> SportEvac’s ultimate goal is to streamline emergency procedures and improve preparedness.<sup>55</sup> Once SportEvac is fully developed, it will be distributed to universities, and then, ideally, to all other sports facilities.<sup>56</sup>

NCS4 has also made significant headway in developing other technologies that will assist sport venues with securing its guests and ensuring their safety. In addition to SportsEvac, the company is developing a high-definition video system, by which stadium security can screen and maintain a watchful eye over the crowd.<sup>57</sup> Another system being developed utilizes text messaging to “provide a means of tracking observations and activities enhancing safety and security” and “answer any questions or concerns fans may have such as parking situations, specific locations, medical needs, handicap requests and important weather alerts.”<sup>58</sup> DHS has already begun to implement its own version of this, called the “If You See Something, Say Something” campaign.<sup>59</sup> NCS4 is currently testing these technologies at the University of Southern Mississippi—so far with positive results.<sup>60</sup>

<sup>50</sup> See Christopher Benjamin, *Shot Spotter and Faceit: The Tools of Mass Monitoring*, UCLA J. L. & Tech., 2002, at 2 (explaining that the U.S. Supreme Court also held the Fourth Amendment’s requirement for a search warrant only applies to subjective expectations of privacy that the society as a whole would recognize as reasonable or justifiable.).

<sup>51</sup> Christina Hernandez Sherwood, *Software simulates safe and speedy evacuation of crowded stadiums*, SMARTPLANET (Apr. 15, 2010), <http://www.smartplanet.com/blog/pure-genius/software-simulates-safe-and-speedy-evacuation-of-crowded-stadiums/3287>; Allison Barrie, *High-tech terror testing keeps game day safe*, Fox News (Feb. 2, 2012), <http://www.foxnews.com/scitech/2012/02/02/superbowl-terror-testing-makes-game-day-safe/>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Pixel Velocity High Definition Video System Person Screening and Crowd Surveillance Evaluation*, NATIONAL CENTER FOR SPECTATOR SPORTS SAFETY & SECURITY, 2010, available at [http://www.usm.edu/sporteventsecurity/reports/](http://www.usm.edu/sporteventsecurity/reports/AssessmentreportPixel.pdf)

<sup>58</sup> *GuestAssist*, NATIONAL CENTER FOR SPECTATOR SPORTS SAFETY & SECURITY, 2010, available at <http://www.usm.edu/sporteventsecurity/reports/GuestAssistsnapshot.pdf>.

<sup>59</sup> Janet Napolitano, *Super Bowl XLVI: “If You See Something, Say Something*, DEPARTMENT OF HOMELAND SECURITY (Feb. 2, 2012), <http://www.dhs.gov/files/reportincidents/see-something-say-something.shtm>.

<sup>60</sup> *GuestAssist*, *supra* note 58.

With regards to SportEvac, or any system that assists venues in creating evacuation and emergency response plans, a legal issue to consider is the distribution of liability if a designed plan fails or makes a disaster situation *worse*. For instance, if the company creating the evacuation plan makes a miscalculation with regard to the number of fans attending an event, the estimated evacuation time, or any other clerical error, there is the possibility that this may result in more casualties than had the system not been used. Companies distributing such software and recommendations to venue owners would need to be sure to clarify to what extent their work is guaranteed and as to how much liability they retain for any shortcomings. On the other hand, sport venue management officials need to ensure that they will have adequate corrective remedies if they rely on representations made by outside security and safety advisors.

As an aside, teams and companies using systems designed to maximize the safety and preparedness of their establishments need to be aware of the dangers present if information about their weaknesses and improvements get out. Arguably, allowing the general public to purchase a computer program that assists in identifying faults and flaws in a venue's security or disaster response could pose a significant issue, because an attacker could easily find and use it, which would be a substantial backfire for the program's purposes. If venue owners recognized this and thought it to be a legitimate concern, organizations like NCS4 might face lawsuits, seeking to prevent the sale of their computer programs to non-approved users, because of the potential liability their product could pose.

### C. INTERNATIONAL EFFORTS AND POTENTIAL LEGAL CHALLENGES

In addition to implementing newly-developed technologies and strengthening particular areas of current security systems, it is important to look to security measures being used in other countries and for other purposes. Authorities can then adapt suitable technologies to further improve the security and protection of fans at domestic sporting events. One security system that can be adapted is the Israeli system of interviewing airline passengers.<sup>61</sup> This security screening method is considered one of the most effective worldwide in identifying potential threats and avoiding tragedy.<sup>62</sup> One of the tenets of this system is extensive training of the security personnel.<sup>63</sup> As a practical matter, interrogating 100,000 fans would be out of the question and therefore, a reliable system of selection must be established.

However, the selection process itself presents a legal concern. If security personnel are permitted to question some, but not all guests—on an ad hoc basis—the personal biases of the security officers may take over and they may racially profile or selectively persecute. Furthermore, there are significant differences between questioning sports fans and questioning airline passengers. For instance, an airport security guard could establish if passengers are a threat by asking about what other countries they have been to, if they have luggage, or the purpose of their travel.<sup>64</sup> At a sporting event, there are few questions that are similarly informative; thus, the fine line between determining if someone is a threat and invading their privacy may be frequently crossed. Consider, as an example, if prior to being permitted to enter a facility, a sports fan had to answer why he was attending a game alone, what other games he had been to that season, or why he did not look excited about the game. These questions would be minimally helpful in determining if someone was a threat and would be invading that person's right to privacy.

Another means of securing a stadium that has been somewhat implemented overseas but can be further developed and used more frequently, is the improvement of stadium designs. For instance, the use of "buffer zones" between ticket collections and stadium entrances, or between fans and athletes, provide security

<sup>61</sup> See *How the Israelis do airport security*, CNN OPINION (Jan. 11, 2010), [http://articles.cnn.com/2010-01-11/opinion/yeffet.air.security.israel\\_1\\_airport-security-isaac-yeffet-el-al?\\_s=PM:OPINION](http://articles.cnn.com/2010-01-11/opinion/yeffet.air.security.israel_1_airport-security-isaac-yeffet-el-al?_s=PM:OPINION) (describing the Israeli system).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See *generally Id.* (outlining the signs shown by attempted terrorists).

personnel room to observe venue guests and free space with which to work if they need to respond to an emergency.<sup>65</sup> Sports facilities architects would be well advised to not only take aesthetic and convenience concerns into consideration when designing or renovating their stadiums, but also how to construct a building that would allow for the quickest and most effective response to an emergency.

Due to most stadiums not being owned by the sports organizations themselves, the amount of control over such design aspects during construction or renovation may be limited. One plausible solution is assigning liability to the stadiums when a league recommendation is not followed. In the alternative, leagues could contractually require that certain safety standards for a stadium be met before the league allows any of its games to be played there.

Another step implemented in Europe, for the enhancement of security at sporting events, is Ukraine's collaboration with NATO to develop and implement anti-terrorism measures for the Euro 2012 European Football Championships, to be played in Ukraine and Poland.<sup>66</sup> The topics they seek to address include "emergency scenarios that could arise during the soccer matches with the aim of developing tight command-and-control cooperation between various agencies" and educational training where "Ukrainian experts [work] with private and public-sector experts [on] bacteriological, radiological and chemical threats aimed at big international sports competitions."<sup>67</sup> Should the U.S. seek to establish a similar arrangement, an agreement between the U.S. and NATO, for the collaboration, partnership, and exchange of information would have to be created.

#### D. SECURING ATHLETES AND POTENTIAL LEGAL CHALLENGES

Many remember the 1972 Munich Olympics, where 11 Israeli athletes and coaches were kidnapped, held hostage, and ultimately killed by the Black September terrorist group.<sup>68</sup> Equally as memorable as the deaths of these athletes and coaches is the preposterous excuse for security around the village where the athletes were residing during the games. "A single chain-link fence protected the village, and athletes looking for a shortcut home often scaled it after a night out. There was no barbed wire, cameras, motion detectors, or barricades. At the entrance, unarmed guards in powder blue shirts looked more like ushers at Disneyland."<sup>69</sup> Only about \$2 million was spent protecting the athletes in Munich, as opposed to \$600 million in Athens in 2004.<sup>70</sup> As the widow of one of those killed, Ankie Spitzer, once said, "Sure the terrorists were responsible, but the Germans were supposed to protect all the athletes . . . [a]fterwards, when [the athletes] were taken hostage, [the Germans] had no clue what to do."<sup>71</sup>

Efforts have been made since then to prevent another incident like the one in Munich including some significant steps made in recent years. Such advances could be used to better protect today's athletes in the U.S. and abroad. One of the more recent security enhancements is Player Protect, a "full-service security company for athletes that provides safe drivers, undercover bodyguards and unofficial angels-on-the-shoulder."<sup>72</sup> Currently Player Protect has contracts with the New York Giants, New York Jets, and New Jersey Nets.<sup>73</sup> Among the services provided are picking up athletes in specialty vehicles driven by police

<sup>65</sup> See Ethan J. Skolnick, *10 years later, how safe are American stadiums?*, NBC SPORTS (Sept. 8, 2011), [http://nbcsports.msnbc.com/id/44392881-other\\_sports/](http://nbcsports.msnbc.com/id/44392881-other_sports/) (describing "buffer zones").

<sup>66</sup> *Ukraine, NATO working on soccer security*, UNITED PRESS INTERNATIONAL, INC. (Mar. 28, 2012), [http://www.upi.com/Top\\_News/Special/2012/03/29/Ukraine-NATO-working-on-soccer-security/UPI-95631333017000/](http://www.upi.com/Top_News/Special/2012/03/29/Ukraine-NATO-working-on-soccer-security/UPI-95631333017000/); *Safety and security crucial for football*, UEFA.COM (Sept. 5, 2009), <http://www.uefa.com/uefa/footballfirst/matchorganisation/stadiumsecurity/news/newsid=882272.html>.

<sup>67</sup> *Id.*

<sup>68</sup> Francie Grace, *Munich Massacre Remembered*, CBS NEWS (Feb. 11, 2009), [http://www.cbsnews.com/2100-202\\_162-520865.html](http://www.cbsnews.com/2100-202_162-520865.html).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Aditi Kinkhabwala, *Putting Athletes in Bubbles*, WALL STREET JOURNAL (July 12, 2011), <http://online.wsj.com/article/SB10001424052702303812104576440341706571306.html>.

<sup>73</sup> *Id.*

officers, researching the destination locations, and generally acting as lookouts.<sup>74</sup> This company even forbids its clients from carrying guns, regardless of whether the player has a license to be carrying it.<sup>75</sup>

A concern that has been raised with regard to Player Protect, is the use of its security personnel to observe the *protected* athletes and reporting any unsavory conduct back to the team management, or possibly law enforcement. This issue would hinge upon whether the athletes had a reasonable expectation of privacy in their conversations or actions during the time in which they were being guarded, and what kinds of discretion the contract between the athlete and Player Protect mandated.<sup>76</sup> While a contract claim might be successful, a privacy claim would likely not be, because a reasonable person who hires a security guard to closely watch and protect them would expect the security team to do just that: closely observe their activities in order to keep them safe. A privacy claim *could* be successful, on the other hand, if a security guard oversteps his/her bounds and begins monitoring the athlete in a way that invades his/her privacy, has no security purpose, and then disseminates that information

Player Protect has addressed some concerns by using a “blind system,” where the invoice that the team gets only shows a randomly assigned number for a player/client and has no personally identifiable information.<sup>77</sup> Additionally, the invoice is essentially nothing more than a bill, and does not give the details of the protection provided.<sup>78</sup> From a practical standpoint, as Charles Way, the Giants' director of player development, agrees, players would not enlist Player Protect if they thought it was a way for their team to spy on them.<sup>79</sup>

Another legal issue could be allocating the liability if a member of an athlete's security team took action and harmed or killed someone, or damaged someone's property. Under the doctrine of *respondeat superior*, the athlete or the team that hired the security guard could be liable.<sup>80</sup> This doctrine provides that “a principal (employer) is responsible for the actions of his/her/its agent (employee) in the ‘course of employment.’”<sup>81</sup> Ultimately, whether a team or athlete who hires a security guard is liable for their actions will depend on whether the guard's actions were within the scope of their employment; for instance, removing a person who the guard deems a threat to the athlete's safety would fall within that guard's scope of employment.<sup>82</sup>

#### IV. CONCLUSION

Considering the legal hurdles to implementing many of the recently developed security methods and technological advancements, perhaps one of the best ways to improve the safety and security at sporting events is to provide more comprehensive training to stadium/arena staff. While simple in theory, the training provided to new employees by the management of a sports facility may lack in-depth coverage, if any at all, related to potential terrorist attacks.<sup>83</sup> According to the National Center for Spectator Sport Safety &

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Katz v. United States*, *supra* note 39.

<sup>77</sup> *Id.*

<sup>78</sup> Kinkhabwala, *supra* note 72.

<sup>79</sup> *Id.*

<sup>80</sup> *Respondeat superior Definition*, DICTIONARY.LAW.COM, <http://dictionary.law.com/Default.aspx?selected=1827> (last visited Apr. 11, 2012).

<sup>81</sup> *Id.*

<sup>82</sup> “Scope of employment” refers to actions of an employee which further the business of the employer and are not personal business, which becomes the test as to whether an employer is liable for damages due to such actions under the doctrine of respondeat superior (make the master answer). *Scope of employment Definition*, DICTIONARY.LAW.COM, <http://dictionary.law.com/Default.aspx?selected=1827> (last visited Apr. 11, 2012).

<sup>83</sup> Stacy Hall, Lou Marciani, and Walter Cooper, *Sport Venue Security: Planning and Preparedness for Terrorist-Related Incidents*, 2008 SMART JOURNAL 6; Peter Keating, *Industry of fear*, ESPN (Sep. 11, 2011), [http://espn.go.com/espn/story/\\_id/6936819/stadiums-increase-budgets-heighten-security-measures-protect-fans-espn-magazine](http://espn.go.com/espn/story/_id/6936819/stadiums-increase-budgets-heighten-security-measures-protect-fans-espn-magazine).

Security at the University of Southern Mississippi, only about one-third of all the sports arenas in the United States are taking the steps necessary to adequately protect their facilities.<sup>84</sup> Before a sporting venue hires contractors to perform security work, the venue management should be proactive and ensure that the personnel it hires has received adequate training.

Increased funding for security would also be of paramount importance in establishing an up-to-date security model for a sports facility. As mentioned beforehand, the difference in funding between the Munich and Athens Olympic Games was about \$598 million, and history has shown that this does have a significant effect.<sup>85</sup>

A proposed model security system must incorporate some aspects of the previously discussed measures, including: biometric scanning, shot detection technology, detailed analysis of emergency exit procedures and plans to implement them, separating fans from the field through use of buffer zones, and trained security personnel to protect athletes. The key is balance; authorities must find an acceptable level of protection that can adequately prevent an attack on one of the countless sporting venues, while preserving the personal liberties of the fans in attendance. This is not something that can be fixed overnight, but with careful monitoring and staggered implementation, security authorities can hopefully soon utilize all the resources at their disposal to make our sporting venues more secure, and allow their sporting events to be enjoyed with peace of mind.

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<sup>84</sup> *Id.*

<sup>85</sup> Francie Grace, *supra* note 68.