

## Special Episode 2

**Sara Gras:** I'm Sara Gras and this is Hearsay from the Sidelines, a show about the place where law, sports and culture intersect brought to you by Culture in Sports and Seton Hall Law School's Gaming, Hospitality, Entertainment and Sports Law program. This is the second of two special episodes about CrossFit's cultural and organizational issues brought to light by the death of elite athlete Lazar Đukic at the 2024 CrossFit Games. If you haven't listened to the first episode, I'd recommend you start there since this is where I describe what is known publicly about Lazar's death, how his fellow athletes responded, and why it may be difficult to hold CrossFit as a corporation legally liable, regardless of what an investigation reveals. I'd also recommend watching the Buttery Bros. documentary, *Tragedy at the CrossFit Games*, just released on YouTube for a more intimate view of the entire competition, both in the moments leading up to, and following the events of August 8<sup>th</sup>.<sup>1</sup>

In this episode, I'm focusing on what is happening in the CrossFit community now that the Games has concluded and athletes and fans have returned home to continue processing their emotions in the wake of Lazar's death. The community continues to grieve his loss and honor his life. Gyms around the world, including mine, have been doing a tribute workout, one that he had programmed for Morning Chalk Up in 2022.<sup>2</sup> Swimming events have been temporarily suspended at CrossFit - sanctioned events, leading one event organizer, FitGames Venezuela, to issue a public letter declaring an intention to abandon their CrossFit event license if the suspension is not lifted before their national championship.<sup>3</sup> And many high profile members of the community have continued to speak publicly about the need for change within the sport's governing body.

This is an important moment for the sport of CrossFit, one that will have an indelible impact on whether it will grow, fade, or transform. And this is the time to address the rights of athletes who serve such an important role in the viability of elite-level CrossFit competitions.

### **Bob Boland (40:58.109)**

No, and I think you're exactly right that this tragedy hopefully will serve as a springboard for more serious consideration of what the relationship of the athlete to the entity of CrossFit is. That they are valuable, that they need certain protections because those protections don't exist in law, that they need them from the contract, from their participation, and those things need to be negotiated as part of private agreements as opposed to being imposed by law.

And we are seeing it in unique ways in other sports. My mind is popping right now to the National Women's Soccer League, where abusive coaching was something that the players have now tried to root out of the sport or gender -based discrimination from coaches is something they've tried to root out of the sport. Every sport comes with its conflicts and growing pains. Tragedies like this we focus on ways to make them better.

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<sup>1</sup> Buttery Bros, *Tragedy at the CrossFit Games*, YOUTUBE (Aug, 25, 2024), <https://www.youtube.com/watch?v=XZKg86YRU6k>.

<sup>2</sup> Andie Gonzalez and Nicky Freymond, *A Workout Programmed by Laza Đukic is now a Global Tribute to His Memory*, MORNING CHALK UP (Aug. 21, 2024), <https://barbend.com/honoring-lazar-dukic-through-fitness/>

<sup>3</sup> IG @fitgamesorg, (Aug. 16, 2024).

**Sara Gras:** As Bob highlights, this struggle is not unique to the sport of CrossFit. It's one that many have been confronted with.

**Bob Boland:** But almost every great moment in sports in terms of its organization is when a group of players, a group of athletes have withheld their play because of some issue involving mostly safety or recognition to get a better circumstance. I always think of this story as the first NBA All-Star game to be televised live in 1964. The players from both teams were dressing in the same locker room about to go out and play together and Oscar Robertson, the legendary Oscar Robertson said, we're not going go out and play in this game unless the owners recognize us as a union and what we want.

If you were a football player and the demands of the first sets of NFL players back in the 1950s were pretty simple. They wanted a second set of uniforms, two a day practices. They wanted not to be cut while injured. They wanted to apportion the risk of injury so that their contracts for a year, if they were injured, would be observed rather than just being fired from the team if they weren't valuable players. And then the last piece, they wanted a per diem that was consistent across all the teams in the league. These are those moments that we've seen and they're a 50 year period of athletes saying, look, we're not going to play unless we get something for this. We know that our play is valuable. We know that the people promoting our sport are generating revenue from this. What do we get from it? And it takes some time in every sport to do it.

**Sara Gras:** So is that the answer? Do CrossFit athletes need to unionize? This is something I've heard quite a bit recently. And it makes sense, right? Unions organize and represent labor in negotiations with management. By creating a means through which workers can collectively act, they disrupt the imbalance of power that almost always exists between the individual and their employer. This would be a way that athletes could make changes, to mandatory waivers of their rights before being allowed to compete, for example. This was something John Wooley mentioned when we spoke.

**John Wooley:** I'd feel better about the waivers if the athletes had a better union that was advocating on their behalf. And helping create that waiver to your point, there's an imbalance of power. The corporation holds all of it. The athletes have none of it. So they get no say in one athlete going, well, I don't want to sign this waiver. They're just going to give them the finger and say, well, good luck not competing then. Right. Like I'm not trying to make light of it, but that's what would happen. You need every athlete to stand up and say, I'm not competing and bluntly they'd have to do it on game day to, to make a real impact.

And so, you know, I think, I don't, you know, no one ever expected it to come to this ever. I think we've always, we've always had this feeling that because CrossFit is so good for us and we love it, that everyone has the best of intentions. And, and I hope something that will come out of this is that we start questioning more of these types of things and, and creating an environment that's good for both parties.

**Sara Gras:** But here's the problem – CrossFit athletes are probably not eligible to form a union. The National Labor Relations Act, the federal law that both provides a mechanism through which an organized group of workers can create a union, and also protects the concerted activities of non-

union employees, like strikes, job actions, and protests, explicitly does not cover independent contractors. Here's Professor Bob Boland with a more in-depth explanation.

**Bob Boland:** So we have a very complex definition under American law of what equals an employee. Some jobs are defined under the wage and hour protections. So secretarial administrative jobs that are done on a paid hourly are sort of defined by government. But things that don't fit that particular framework are easy to argue out. And I think in most of the cases, our participatory sports where prize money and sponsorship are the hallmarks of revenue and income to the athletes, that almost never creates an employment situation. So, definitionally, most CrossFitters are not employees of the entity that they're promoting when they're when they're participating in their sport. Now they might be employees of the sponsoring organizations, they might be employees of their boxes, they might be employees of a variety of other entities, but they're not employees in this context. And that's kind of mirrored through the tennis space, the golf space, the Olympic space.

**Sara Gras:** As Bob notes, this classification of an athlete as an independent contractor is common – we see it in individual sports like tennis and golf which bear some similarity to CrossFit. Obviously the sports themselves are completely different but they all have governing bodies who organize or sanction competitions and athletes win prize money as they progress toward a championship event.<sup>4</sup> What specifically makes these athletes independent contractors rather than employees when everything they do is connected to their sport, and in fact, they are the main attraction at competitions that are a huge revenue source for the corporation?

There are a variety of tests that courts can apply when determining whether a worker is an employee or an independent contractor, none of which are particularly well-suited to an analysis of an elite athlete's labor. The most basic test in common law is referred to as the control, or right-to-control test. Essentially it asks whether the employer has the right to tell the employee what to do, as well as when, where, and how to do it. There are many factors considered, but ultimately, other than the requirement that they complete the competition events according to movement standards at their assigned time and location, CrossFit athletes exercise a high level of control over how they, or whether they even want to, compete. The requirement that players follow the rules of the game and observe certain requirements, including mandatory drug testing, did not change the status of PGA golfers and its unlikely that it would be sufficient to reclassify CrossFit athletes.

There is a more detailed test used by the Internal Revenue Service, the IRS, to determine whether someone is an employee called the 20 Factors test. This one has actually been applied to a group of athletes who also share some surface-level similarities with CrossFit athletes – mixed martial arts fighters who compete in the UFC.<sup>5</sup> I don't necessarily want to go through all 20 factors, but there are a couple key ones that support the classification of CrossFit athletes, like UFC fighters, as employees and some that definitely do not.

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<sup>4</sup> *Does the PGA Tour Need a Players' Union?*, ESPN.COM (Mar. 4, 2008), <http://www.espn.com/golf/news/story?page=factfiction/080304>.

<sup>5</sup> Michael Conklin, *Two Classifications Enter, One Classification Leaves: Are UFC Fighters Employees or Independent Contractors?* 29 S. CAL. INTERDISC. L. J. 523 (2020).

Let's start with some that do – first the integration of the worker's services into the business operations. Like the UFC, the sport of CrossFit relies on the performances of athletes, even if one particular athlete is not integral to the competition. An IRS Revenue Ruling states that “[w]hen the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform these services must necessarily be subject to a certain amount of control by the owner of the business.”<sup>6</sup> Then there's the requirement that services be personally rendered - CrossFit athletes who qualify through the CrossFit Open to compete in the Quarterfinals, Semifinals, and finally the Games cannot pass their spot off to another athlete. In fact, for CrossFit Team events, only the specific athletes who start a competition may complete it. If a member of the team is injured, they cannot substitute an alternate member of their team roster to complete the competition.<sup>7</sup> This also supports the classification of athletes as employees. Finally, the furnishing of tools and materials. CrossFit provides the facilities, the equipment, and at some levels, even the clothing worn by athletes in competition. “The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.”<sup>8</sup>

But there are also factors that strongly support the classification of CrossFit athletes as independent contractors – and they are pretty big ones. First, unlike UFC fighters who cannot compete in other combat sports promotions, CrossFit athletes are free to participate in other fitness competitions, which they do, and many also have some form of outside employment, even if that employment is related to the sport, like running a gym, coaching, or working with brands. CrossFit athletes also maintain the right to end their relationship with CrossFit at any time – they do not have contracts to compete. They also don't receive hourly, weekly, or monthly payments. Their only compensation is through competition, and it is based entirely on how well they perform. Ultimately, the IRS 20 Factors do not lean heavily towards classifying CrossFit athletes as employees.

There are other tests – including the economic realities test which was used by the Third Circuit Court of Appeals in determining that college athletes could be considered employees under the Fair Labor Standards Act in *Johnson v. National Collegiate Athletic Association (NCAA)*.<sup>9</sup> However, the CrossFit athlete differs from the college athlete significantly. Most significantly for this test, while their labor does benefit CrossFit, it cannot be fairly said that it is primarily for CrossFit's benefit – the athletes themselves stand to benefit significantly, both financially and professionally, from participating in competition.

So if they aren't employees and they can't unionize, how do they advocate for themselves? I thought it might be instructive to take a closer look at how another individual sport, tennis, works. There are two governing bodies in professional tennis – the Association of Tennis Professionals, who runs men's professional tennis circuits worldwide, and the Women's Tennis Association, the WTA, who does the same. Both organizations have executive management teams with general corporate

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<sup>6</sup> Rev. Rul. 87-41, 1987-1 C.B. 296.

<sup>7</sup> *Let's Talk Teams*, CROSSFIT (Feb. 15, 2024), <https://games.crossfit.com/article/lets-talk-teams>.

<sup>8</sup> *Supra* note 5.

<sup>9</sup> 108 F.4th 163 (2024).

functions, including communications, finances, operations, legal, and so on - very similar to CrossFit.

One key difference is that both the WTA and the ATP were formed to protect the interests of professional tennis players – by professional tennis players.<sup>10</sup> This is in sharp contrast to CrossFit, which has always been, at its core, a business selling a fitness methodology which later expanded to include a sport. This may explain why professional tennis players enjoy a much greater share of their governing body's profits. But this doesn't mean individual players are any more powerful. In fact, a lack of player leverage led to the creation of an independent athletes association called the Professional Tennis Players Association, the PTPA, in 2020.<sup>11</sup>

If this sounds familiar, it's because CrossFit already has an athletes association, the Professional Fitness Athletes' Association, which was formed by athlete Brent Fikowski around the same time for many of the same reasons.<sup>12</sup> Here's how John Wooley describes them:

**John Wooley:** Yeah, the PFAA is a great organization. I haven't done a ton of work with them. I reached out them today to offer more help, to be honest. They advocate for athlete safety. And if I had to sum them up into like kind two or three talking points, would be athlete safety is the top priority, helping athletes figure out how to make a living within the sport as a priority for them. and then, you know, providing support to the athletes in general as a priority for them. know, so they try to collaborate with competitions and not just CrossFit, you know, these athletes are competing in other competitions like Wodapalooza as an example. And so they're partnering with these larger comps to, to ensure those things are happening and it'd be an advocate for those, those, you know, CrossFitters.

**Sara Gras:** While the PFAA does not necessarily maintain a high profile, the athletes and CrossFit professionals involved are among the most elite. The current Board includes Annie Thorisdottir, Brent Fikowski, Dina Swift, Fee Saghafi, Leeverne Engelbrecht, Patrick Vellner, Royce Dunne, Victoria Campos, and until his death, Lazar Đukic.

The PFAA has been working behind the scenes to improve the athlete experience in fitness competitions well before Lazar's death. They conducted athlete surveys before the 2023 Games and provided specific conditions approved by all athletes who qualified for the competition to CrossFit. It's quite illuminating to read CrossFit's responses – most of which lacked express commitment to any specifics - on their website.<sup>13</sup> They also addressed concerns about judging standards for the 2024 CrossFit Quarterfinals and submitted a proposal for changes to the process

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<sup>10</sup> Paul Bonnaud, *The ATP, the Union Which Became a Tour; How Players Took Control of World Tennis*, TENNIS MAJORS (May 12, 2020), <https://www.tennismajors.com/our-features/long-form-our-features/the-atp-the-union-which-became-a-tour-how-players-took-control-of-world-tennis-tennis-majors-245068.html>; *About, WOMENS' TENNIS ASSOCIATION*, <https://www.wtatennis.com/about>.

<sup>11</sup> Ben Rothenberg, *Djokovic and Other Top Men Are Creating a Players' Association*, N.Y. TIMES (Aug. 28, 2020), <https://www.nytimes.com/2020/08/28/sports/tennis/tennis-union-men-djokovic.html>.

<sup>12</sup> *Athletes Assemble! The Professional Fitness Athletes' Association is Born!* MORNING CHALK UP (July 9, 2020), <https://barbend.com/athletes-assemble-the-professional-fitness-athletes-association-is-born/>

<sup>13</sup> *News and Updates*, PFAA (July 15, 2023), <https://www.professionalfitnessathletesassociation.org/news-updates>.

drafted in conjunction with the Association of Fitness Judges.<sup>14</sup> They were most recently successful in partnering with Wodapalooza, a fitness competition that is no longer affiliated with CrossFit, to reach a detailed agreement in 2024 about all aspects of the annual event, including athlete payouts, judging, safety and medical services.<sup>15</sup> The PFAA had raised the issue of how the relocation of the 2024 Games to Texas from Wisconsin might impact athlete health and safety to CrossFit, requesting specific and detailed communication about the amount of outdoor competition that would be taking place. This was the response they received:

“Thanks for all the thoughts about what information will help you prepare for Fort Worth. We reviewed your suggestions and can give you a little more information. It is not to the level you are looking for, but we hope it provides enough to help athletes decide how to manage their heat-related training heading into the Games in August.

- The competition will feature 1 primary field of play, indoors in Dickie's arena
- A much smaller percentage of events than Madison will occur outdoors

~CrossFit Games Team”<sup>16</sup>

So CrossFit athletes are already doing what athletes in other sports do – which is to create an athlete association. But I think what even a brief look at the efforts of the PFAA and their level of success in making change within CrossFit reveals is that the problem is not a lack of athlete advocacy. They are doing the work – but the governing body of the sport has not reciprocated, despite Faul’s assurances following the 2023 Games that he supports the PFAA.<sup>17</sup> And the PFAA, because it is not a union, lacks the authority to call a strike or some other collective action.

Of course, this may be the moment where that changes and athletes who have not previously been engaged with the PFAA may realize that this may be the only group out there focused exclusively on their well-being. And it may also be the moment where CrossFit feels the urgency of actually listening and responding to this group. Here’s what John and Tim had to say:

**John Weeks:** I mean, I think one thing that's going to come out of this for sure is the PFAA, which is the Athletes Association is going to become much more powerful in light of this. I think that it will be more like a legit athletes union. And I think that at that level, they can have some real bargaining rights with CrossFit because if the athletes as a whole say to themselves, we're not going to compete next year unless these substantive changes are made, that gives them real bargaining power and they can kind of hold CrossFit's feet to the coals a little bit in terms of what they want to see.

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<sup>14</sup> *News and Updates*, PFAA (May 16, 2024), <https://www.professionalfitnessathletesassociation.org/news-updates>.

<sup>15</sup> *News and Updates*, PFAA (Nov. 10, 2023), <https://www.professionalfitnessathletesassociation.org/news-updates>.

<sup>16</sup> *News and Updates*, PFAA (April 10, 2024), <https://www.professionalfitnessathletesassociation.org/news-updates>.

<sup>17</sup> PFAA, *CrossFit CEO Don Faul Supports the PFAA*, YOUTUBE (Sept. 1, 2023), <https://youtu.be/j9Dbgv8VawM?si=-48xmLp3JDBwnMEY>.

**Tim Carroll:** Just going to echo what John said, it just seems like one concrete thing that they could do is they could have some sort of athlete representation involved with the creation of everything surrounding the games. Someone that is looking out and looking at all these things and saying, bring it to the athletes and do we agree to this or not? There's the unknown and the unknowable part of it, but like you said, there's some low-hanging fruit there of things that could be changed from an event standpoint that could still test for the fittest, but not add unnecessary risk.

**Sara Gras:** The PFAA has not been silent the last couple weeks. The members of their Athlete Board and Executive Team collaborated on a short, but impactful list of demands to CrossFit CEO Don Faul. They read:

1. We demand an appropriate level of transparency between CrossFit and the PFAA regarding their 3rd party investigation as to the death of Lazar Dukic and subsequent changes made to protect all athletes going forward.
2. We demand CrossFit create an independent safety team to liaise with the PFAA on an ongoing basis.
3. We demand that Dave Castro be removed from his position in the Sport Team.

This last demand – this is a big one. And the one on which the broader community is most divided. Dave Castro, CrossFit's GM of Sport and creator of the CrossFit Games has many fans, and probably just as many haters, but I think even those who don't love his personality recognize the CrossFit Games as his legacy. So this was a bold move by the PFAA, one certainly designed to start a conversation with an organization that has been conspicuously silent since the Games ended.

What the PFAA has not stated, and what remains to be seen as we all trudge forward, is what will happen if these demands are not met. I do think CrossFit will provide some transparency into the investigation and is certainly likely to step up safety measures – the temporary suspension of swimming events certainly something is in the works – but will Castro actually be removed from the sport team? Will CrossFit bring the PFAA to the table to discuss alternative paths forward? And will that be enough?

Brent Fikowski spoke about his goals for the PFAA in an interview with Men's Health:

'What we're doing now with these demands, this is the worst possible scenario. We've always sought to engage with [CrossFit] in a very professional manner. Create clear lines of communication, keep things private, create systems together, work collaboratively. Having to bring this out into the public is the end result of years of this systematic behaviour and an unwillingness to engage.

This statement and these three demands – this is the beginning. We say more must be done to change the cultural, strategic direction of the sport, and that is very important. We emphasised that as we prepared this statement and spoke with multiple athletes, and that was something they wanted to drive home. It cannot just be, "Hey, these are the three demands," and they abide by them, and both sides go back to operating as we did in years past. That is not our expectation. This

is going to be part of a continued effort to force for some very large change in the coming weeks and months.”<sup>18</sup>

As I see it, the best case scenario would be for CrossFit to embrace the PFAA as their partner in the sport and work with them throughout the planning and execution of the competitive CrossFit season. They could also require every sanctioned competition work with them similarly. This would certainly motivate eligible athletes to join and engage with the PFAA, allowing the organization to grow and increase its bandwidth to address new issues. It would also help avoid more drastic collective action that could negatively impact both the livelihoods of athletes and the company’s reputation. But If CrossFit is unwilling to engage with the PFAA in a more official capacity, another option Bob and I discussed was turning to event sponsors and advertisers for support. After all, it’s in a sponsor’s best interest that a competition they are putting their corporate name on is supported by the athletes whose fans show up to watch.

**Bob Boland:** From the athlete perspective, want to identify who's receiving, who's providing the benefit and deriving the benefits. So in the CrossFit scenario, it's CrossFit as an enterprise that has registrants, puts on events, has a format, and then takes entry fees. But they also receive marketing and endorsement dollars in, sponsorship dollars in. And so I think that the group of people that you would want to involve in any kind of campaign to make things better, to make them safer, to provide greater recognition is an accounting of all those sources. So it could come from a stakeholder potentially. It doesn't have to come from CrossFit. It could come from the people that pay into CrossFit to a degree as sponsors. But I think there's a greater aspect now that athletes are demanding these kind of benefits and standards of competition. And here's where I think it really becomes good business. The leading brands in any space, whether it's mixed martial arts or tennis or golf, establish their brand power by offering events with consistent levels of quality and attracting the best participants. So here's where there actually is some alignment. It becomes good business on some ends for an entity like CrossFit to provide the safest, highest standards, highest level of pay for athletes, and ultimately can emerge as the major league in this space.

**Sara Gras:** Another perhaps more radical option I just want to float would be to consider a non-profit, non-professional models of governance for the sport of CrossFit like those we see in Olympic sports. These are certainly not perfect and have seen plenty of controversy over the years – just look at USA Gymnastics – but there are benefits this model could offer. As a member of the Ethics Committee for USA Weightlifting, Bob had some insights into this possibility:

**Bob Boland:**

We've talked a little bit together outside of this conversation about the Olympic movement, the 51 sports and the USOPC that are part of the IOC. And they have certain standards, requirements and coaching. They have also due process standards and to be sanctioned as an event you have to meet certain things. I'm on the Ethics Committee of USA Weightlifting, which is one of my funnier part-time activities. And sometimes I'm dealing with weigh-in fights, and sometimes I'm dealing with complaints about social media, people complaining about each other. And I wouldn't say necessarily that it's an optimally functioning business model, but...But it does provide as a national

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<sup>18</sup> Andrew Tracey, *Following Lazar Dukic's Death, Here's How CrossFit Can Move Forward*, MEN'S HEALTH (Aug, 21, 2024), <https://www.menshealth.com/uk/fitness/a61875017/crossfit-games-safety-concerns-ignored/>.



governing body in the Olympic movement, it provides recourse, it provides due process, it provides standards. It also provides other things in terms of what could a sanction meet could be. That it will have certain medical protections, it will have trainers on site, it will have weigh -ins that are neutral, it will have policies about judging. And, interesting, one of the ones that we've seen. It will also have policies that prevent discrimination. It's a better model than we're seeing in some of the more purely entrepreneurial sports.

**Sara Gras:** The USA Weightlifting model would certainly be a change for CrossFit, an almost-180 to complete transparency, governed by comprehensive bylaws and policies voted on by a membership that includes current and former athletes, coaches, and judges. And that does seem like a pretty radical step for a private company to take with its competitive division which is why I mention it only briefly.

But there's also the possibility that athlete engagement may not ultimately matter because the company may simply give up control of CrossFit competition, an idea that I've heard more than one person suggest. Perhaps they will hand the responsibility for the Games over to another entity, or more drastically, simply put an end to the event altogether and allow other competitions unsanctioned by CrossFit to take its place.

For the everyday member of a CrossFit affiliate, this probably won't make much of a difference. And some may welcome the separation between competing in the sport of fitness and working out in the gym. Both John and Tim acknowledge that this tragedy specifically, but also the Games and other elite-level CrossFit competitions, create challenges for them as affiliate owners.

**John Weeks:** I think that's the elephant in the room coming out of this. And this is just from a business owner standpoint is this could be an opportunity for CrossFit HQ to potentially sell the games to a third party provider for the event. And I don't know if that's the direction that they're thinking to go or leaning right now, but for a long time as a business owner, having to manage the messaging of CrossFit as a methodology versus CrossFit as the sport of fitness has been a challenge.

And a lot of times as an affiliate owner, I feel like a lot of the resources go to the games, a lot of the media goes to the games, and that can be good or bad or indifferent, but this could be something that potentially comes out of this situation. So I'm curious to see how that develops.

But where I think that the deeper impact that is yet to be unpacked is really...moving forward people that have never experienced CrossFit. What is their perception of my business as a local affiliate? How is that skewed now through their perception because of this? if they see this on the national news and that's their first real exposure to CrossFit, then now how do they look at it?

**Tim Carroll:** We're not attempting to put anyone to semi -finals or to the games or anything like that. It's about, you know, we have a lot of 40 year olds, 50 year olds, husbands, wives, families that come to the gym and it's about that. And so I feel like we've spent a long time, not necessarily trying to disassociate from the CrossFit Games, but trying to separate working out in a gym from the sport of fitness, right? Those are two dramatically different things. And so the unfortunate thing is when people see CrossFit at the games level, they think that's exactly maybe what's happening in an affiliate, right? Where you have to these heavy weights and you have to these high skill movements

when it's not really the case, right? We kind of follow the ideal of the strength and conditioning program, but then we modify it to the needs of our everyday client. And so I, unfortunately, I think it's like another blemish on CrossFit's record that is only going to negatively impact affiliate owners who, like John and myself, have poured our entire career up until this point into it.

**Sara Gras:** The possibility that other organizations could host the Games or create a new annual competition for elite fitness athletes certainly exists – here's what John Wooley said when I asked him about it.

**John Wooley:** I think if, if, it's a huge if in hypothetical, if the CrossFit game ceased to exist, I think somebody else would pick up the mantle. You can see it with Hyrox as an example of a sport that's come into the space two years ago and now there, you know, seems like they're thriving. I only use them as an example though, to say that it's proof point that there is a want and a desire for competitive fitness. And I think someone would pick up that mantle like Rogue or Waterpalooza. Waterpalooza is already trying to, like they have two competitions now. They're launching their second competition this year. I suspect it'll be wildly successful. If CrossFit went under, I'm pretty confident they would name themselves the championship event. And all these athletes would go compete there, you know, and, and, and continue on just fine.

**Sara Gras:** And this would be great for the athletes who have worked so hard to reach this level of competition. It would allow them to continue making a living in the sport and building their personal brands. But I think the impact on the CrossFit brand would be significant and could eventually erode the strength and viability of affiliates. Even though no one in my affiliates could ever even dream about, or frankly seems interested in, making it to the CrossFit Games, the entire Games season, beginning with the community-wide CrossFit Open, is part of what unites us.

**John Wooley:** Well, the CrossFit Games plays a much different role than say a local competition. You know, think a local competition fills the void for...I make this joke all the time, that CrossFit was just full of former high school athletes trying to relive their glory, myself included, right? Like it's no secret there. So I think that local competitions often fill that space. They also to some degree, probably fill in some revenue gaps for some of those businesses and...and allow people to test what they've been training for, which is also pretty important when you think about it. There are a lot of people that want to test the things they've been working on, such as gymnastics or weightlifting or whatever it may be. The CrossFit Games is different in the fact that it's the, I guess I would call it an example or a demonstration of the definition of fitness. know, CrossFit believes...and I believe that we've defined fitness and what it truly means.

And CrossFit Games allows us to demonstrate kind of the extreme perspective of that. Meaning what we define as fitness, you know, this constantly varied, you know, across all time domains mentality applies to you and I the same way it applies to the athletes that compete at the CrossFit Games. But you and I are nowhere near at the level that they are. Like they're just, you know, have taken it to the the most extreme level. And so I think it allows us to show the world what's possible. know, men, women, age groups, masters, teens, adaptive athletes, all of them. And so I do think it's important to have the Games in that regard because it allows us to showcase what we know to be, you know, the most efficient, fastest, and we believe the, you know, the best methodology around fitness.

**Sara Gras:** The Games is an opportunity for the CrossFit community and watch these superhuman athletes workout just like us, well, much faster and harder and for way, way longer. But in that moment we feel like we belong to the same club – that feels good. And while it shouldn't matter, it helps us feel like we've made the right choice, investing time and money in this particular methodology.

**John Weeks:** Yeah. And I think that the games has kind of always served as this spectacle that draws attention to the space. And, you know, it's like if you watch the NBA, right, you watch these people do these amazing things and it makes you want to go pick up playing basketball. Right. And I think the, the idea of the games is that, you know, it is this very elite, extreme example of what the methodology can produce.

**Timothy Carroll:** I mean, to echo John's point about the NBA thing, it's like you play pickup basketball and the NBA, they play the same game as you. They're just a lot better, right? But at the CrossFit games level, it's like, yeah, you do CrossFit in a gym, but they're not doing the same CrossFit as you at the games. And they're doing like probably five times the amount of volume that they were doing 10 years ago. And it's impressive to see how human performance can just keep going.

**Sara Gras:** Seeing what the most elite CrossFit athletes can do - it may scare some but it draws others in. And whether it's curiosity, name recognition, or grand ambition that brings new members to the door, this is part of affiliate growth which is CrossFit's North Star.

It feels to me like the CrossFit Games is a piece of the brand worth holding onto. It isn't everything – but CrossFit works because it's a formula, a careful mix of movement and nutrition, science and grit, community and competition. And I suppose part of me is afraid that if a piece of the formula changes, everything will fall apart.

But maybe it already is. And maybe, given the magnitude of what has been lost, it has to. The PFAA has stepped up in this moment, ready to be a voice for athletes. But CrossFit itself has been fairly silent. Since Lazar's death, CEO, Don Faul, has issued a singular statement. While heartfelt, the message essentially announced the initiation of a third-party investigation and promised transparency around that investigation as it unfolds.<sup>19</sup>

**Bob Boland:** They're taking a step to have a neutral investigation. I think a neutral dialogue with their athletes is maybe the most important part, whether that's a study involving involving a law firm or consulting firm to survey the athletes, whether that is a series of dialogues with the athletes. But you're right. This this event, this tragedy comes also to time or magnifies a lack of trust. And I think that that the way to rebuild that is to to show that you care about the athletes with reason and purpose because again, you can't show more profit, better competition without showing that care.

**Sara Gras:** As Bob points out, the investigation is a good first step. But that act alone will not do anything to address the broken trust of the athlete community. As CEO, Faul clearly serves many masters and must abide by the advice of counsel and wishes of a board. And he is undoubtedly still working on the inside where the company is finding its way after the departure of founder Greg

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<sup>19</sup> CrossFit, *Statement from CEO Don Faul on the 2024 CrossFit Games*, YOUTUBE (Aug, 11, 2024), [https://youtu.be/VFVuEZZuf0k?si=H8O\\_WVXQ5fEKKCyD](https://youtu.be/VFVuEZZuf0k?si=H8O_WVXQ5fEKKCyD).

Glassman in a flurry of controversy in 2020.<sup>20</sup> While I know very little about Faul, John Wooley has interviewed him for his podcast and felt he was a strong leader confronted with a difficult task.

**John Wooley:** I really like the CEO. I've talked to him multiple times, had him on my show two or three times and have met him in person, half a dozen. And I think he's genuine, caring. I think he's a thoughtful leader. I think he's, he wants to change the culture within CrossFit. And when I've talked to him about it, he's mentioned a couple of things. One was that he wanted to build what he's describing servant leadership within the organization, which I think is, was his way of telling me they're not humble enough and that they need to learn to serve others, not serve themselves.

He also mentioned to me that he is trying to build a culture which ties into this of, know, when they make a decision, it's okay to debate it and argue it. But once you make the decision, you all stick together and lock arms around it, which again, I think is speaking to a culture that he's recognizing that this is a very siloed business where people are trying to get credit for their individual widgets and don't really care about the greater cause, you know, which is pretty common in corporate America for the record. And, you know, probably CrossFit's no different in that regard.

**Sara Gras:** But it does seem like Faul could and should do more especially when so many of his athletes are struggling with a crisis of confidence, a loss of direction. Only time will tell. The Instagram account for Mike Halpin's Known & Knowable posted on August 13<sup>th</sup>, "CrossFit's future will be defined on what they did in: the first minute, the first hour, the first day, the first week, the first month, the first year from 7:37 am on August 8<sup>th</sup>."<sup>21</sup>

Thanks for joining me for these two special episodes and thank you to John Wooley, John Weeks, Tim Carroll, and Bob Boland for your contribution.

I'm grateful to have a platform where I can bring together a diverse group of knowledgeable voices to share their insights on this pivotal moment in a sport I love. I hope that in the wake of tragic loss, this community emerges on the other side wiser, stronger, and more united.

*Hearsay from the Sidelines* is a collaboration of [Seton Hall Law School](#) and [Culture in Sports](#); All research and writing by Sara Gras; music by [Battle Flag](#); produced by Sara Gras and Dr. Jeremy Piasecki, Executive Director of Culture in Sports. Links to all available academic and primary legal sources, media, music, transcription, and other materials mentioned in this episode are available on the Hearsay from the Sidelines show page, [hearsayfromthesidelines.com](https://hearsayfromthesidelines.com). And if you like this show, check out [cultureinsports.com](https://cultureinsports.com) where you'll find more articles, shows, webinars, summits, and courses for sports leaders of all levels.

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<sup>20</sup> Katherine Rosman, *CrossFit Owner Fostered Sexist Company Culture, Workers Say*, N.Y. Times (June 20, 2020), <https://www.nytimes.com/2020/06/20/style/greg-glassman-crossfit-sexism.html>.

<sup>21</sup> Known & Knowable (@known\_knowable), INSTAGRAM (Aug. 13, 2024).