

9 AFTER THE GREAT WHITE TRAGEDY – WHERE NOW WITH CROWD SAFETY LEGISLATION?

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The Station nightclub fire began just after 23.00 on February 20th 2003 and ended with the deaths of 100 people, the fourth deadliest nightclub fire in US history. The club, in West Warwick, Rhode Island, in the United States of America, was host to the rock band Great White and the fire began when sparks from pyrotechnics set off by the band's tour manager Dan Bichele ignited low cost, unsuitable and flammable sound insulation foam in the walls and ceilings around the stage, creating a flash fire which engulfed the club with astonishing speed - in less than five and a half minutes the entire venue was ablaze (Pollstar Vol 23, Issue 10). Today the site where the one story wooden building once stood has been cleared and is empty, apart from numerous small crosses remembering the dead.

Indeed February 2003 was a dark month for safety in US nightclubs as just four days earlier (on the evening of September 17th) twenty one audience members had died at the E2 nightclub in Chicago when security staff set off pepper spray to break up a fight, causing the crowd to panic in a venue which had failed fire checks. Indeed the earlier disaster was one of the reasons why there was a cameraman at the Station nightclub on the 20th; WRPI-TV news from Providence were reporting on a story on nightclub safety which was presented by Jeffrey Derderian, one of two brothers who owned the Station nightclub and who was also a presenter for WRPI.

The flames from the burning venue were first thought to be part of Great White's act and it was only after they had reached the ceiling did the audience (and the band) begin to realise the severity of the problem. The WRPI video shows the band's lead singer walking up to a microphone some twenty seconds after the pyrotechnics had finished saying "*Wow...this ain't good*". In less than a minute, the entire stage was engulfed in flames and the tragedy was described by State Governor Don Carcieri as "*a real disaster. The building went up so fast no one had a chance*". Some 330 people were killed or injured in the fire, with the causes of death and injury ranging from burns and smoke inhalation to trampling as stampeding fans ran to and then blocked the main (front) entrance when they tried to exit. Among those who perished in the fire were Great White's lead guitarist Ty Longley and the show's compere, local radio station DJ Mike "the Doctor" Gonsalves. 132 people escaped uninjured. A number of facts are important to note:



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A National Institute of Standards and Technology (NSIT) investigation into the fire using computer simulations concluded that a sprinkler system would have contained the fire long enough to give everyone time to get out safely.

Because of the building's age (built in 1946) and small size (4,484 square feet or 404 m²), many reports at the time stated that the Station was exempt from sprinkler system requirements. In fact, the building had undergone an occupancy change when it was converted from a restaurant into a nightclub and should have had sprinklers installed, although it seems West Warwick fire inspectors had neither noticed nor enforced this requirement (Boston Globe, May 10th 2006).

The foam installed as sound proofing was to appease neighbours who had complained about noise. The material is said to have resembled packing material rather than professional wall cover. It is important to note that the foam was not installed by professionals and indeed evidence showed that the material chosen by co-owner Michael Derderian lacked proper soundproofing qualities and was ineffective, in particular in quieting bass noise. The chosen foam was less than half the price of that similar flame-resistant material.

There remains some dispute about whether or not the band (or Bichele) had verbally told the Derderians that they would be igniting fireworks on the night but the fact remains that the Great White tour contract was silent on the matter of pyrotechnics and Bichele in turn admitted deploying the pyrotechnics without first obtaining the permit required by Rhode Island. The Derderians have said that as they were unaware of the pyrotechnics they would have been unable to obtain the requisite permit certainly in advance, and indeed it is arguable that the lack of this basic information prevented the owners from warning the band against igniting pyrotechnics on the night of the fire (Ballestrieri, 2007)

After a ten month investigation following the disaster, the Grand Jury issued criminal indictments. In these indictments, the former Great White tour manager Dan Biechele, and club owners Michael and Jeffrey Derderian were each charged with 100 counts of involuntary manslaughter with criminal negligence (resulting from a legal act in which the accused ignores the risks to others and someone is killed) and 100 counts of involuntary manslaughter in violation of a misdemeanor (resulting from a petty crime that causes a death). The Derderians also were charged with failing to carry workers compensation insurance for their employees, four of whom died in the blaze. The three defendants were separately arraigned in Kent County Superior Court and all three pleaded not guilty (innocent). Bail was set at \$50,000 for the Derderians and \$100,000 for Biechele, who then lived in Florida.

In February 2006 Biechele pleaded guilty to 100 charges of involuntary manslaughter and admitted in court that he set off the fireworks that accompanied Great show. Four months later both Michael and Jeffrey Derderian pleaded no contest to 100 counts of involuntary manslaughter and at the conclusion of the trials the court handed down the following sentences (Tucker, 2007):



- Michael Derderian received a four year prison term and three years probation to follow his release on the grounds that he authorised the installation of the flammable foam that fed the flames.
- Jeffrey Derderian received 500 hours community service and three years probation.
- Dan Biechele received a fifteen-year sentence at a minimum-security correctional institution (eleven of those suspended), with three years of probation to follow his release.

The Derderian's were also fined £1.07 million for their failure to carry employer's insurance. Both Michael Derderian and Dan Biechele served less than half of their prison terms (16 months) and were freed on parole although there was public anger from many victim's families at the time of release as some (although not all) believed that the full term should have been served (Frehsee, 2007).

The human cost of the tragedy is immense and it is perhaps prudent to note the following:

- Half of the fire victims who were hospitalized had no health insurance
 - At least sixty children lost one or more parent in the blaze
 - Twenty-three people lost a spouse (Arsenault, 2007)

In the short term, the Station Nightclub Fire Relief Fund (SNRF) raised \$3.2 million from private donations and paid out relatively small sums of money to cover medical bills, food, rent, funeral costs, ambulance costs and counseling amongst other things, but the sum is dwarfed by the cost of medical care in the US, with one survivor calculated her (insured) medical bills at over \$2 million to date. Nine months after the fire, having distributed about \$2.2 million, The SNRF announced that the remaining \$1 million would be earmarked for mental-health aid and the future needs of the 141 children whose parents died or were badly hurt at the Station; Governor Carcieri has estimated that the cost of the fire will total more than \$100 million, when the victims' long-term care, for both rehabilitation and counseling, is factored in. Many of those who survived received injuries and trauma which will be with them for the rest of their lives and, along with the families who lost a loved one; they launched over \$1 billion in civil law suits.

The civil law suits have, in the ensuing six years, made some progress and a plethora of potential defendants have settled with survivors and victim's relatives. At the time of writing these settlements now exceed \$175 million and those who have settled include both the State of Rhode Island (£10 million) and Town of West Warwick (\$10 million). Others who have settled include:



Providence television station WPRI who made an out of court settlement of US \$30 million. It had been alleged that their video journalist was obstructing an escape and not helping people exit (projo.com, February 2008,);

- In late March 2008, sound company JBL Speakers settled out of court for \$815,000. JBL was accused of using flammable foam inside their speakers. The company denied any wrongdoing (Associated Press, 2009)

- Brewer Anheuser-Busch has offered \$5 million and McLaughlin & Moran, Anheuser-Busch's distributor has offered \$16 million (International Herald Tribune, May 23rd 2008);

Home Depot, Inc and insulation company Polar Industries have made a settlement offer of \$5 million (prosoundnews.com);

Sealed Air Corporation, who manufactured the soundproofing foam, agreed to pay \$25 million in settlement (Associated Press, 2007);

- US radio conglomerate Clear Channel has agreed pay \$22 million. Clear Channel's WHJY-FM had pre-promoted the concert by running ads, giving away tickets and providing their DJ Mike Gonsalves to MC the night although WHJY-FM pointed out neither itself nor it's employee had any control over activities in the Station club that night, nor did they hire, pay or have any control over Great White or their performance

In September 2008 the insurers of the surviving Members Great White agreed to pay \$1 million to survivors and victims' relatives. The band did not admit any wrongdoing as part of the settlement: Tour manager Biechele is covered under the settlement, as are lead singer Jack Russell and other members of the band at the time of the fire. The settlement also covers the record label, manager and management company of the band at the time of the fire (Wenner, 2008; Challis, 2008)

The \$1 million is the extent of the band's insurance cover but at least two lawyers representing victims and their families have said that they will not further pursue individual band members and have dropped them from a list of potential final defendants (Wiederhorn, 2003)

Club owners Jeffrey and Michael Derderian have offered to settle for \$813,000, which is to be covered by their insurance plan. There seems that little more can be gained from civil action against the brothers as the pair now have bankruptcy protection from lawsuits. There are other named defendants who have not yet made a settlement offer at the time of writing including the American Foam Corporation who sold the insulation to the Station Nightclub (Tucker, 2008);



Alongside the criminal prosecutions and the ongoing civil actions, the

State of Rhode Island set up a Special Legislative Commission to “Study all Aspects of Law and Regulations Concerning Pyrotechnic Displays and Fire Safety”. In less than four months of research, investigation and public hearings, the 17 members of the Commission presented to the Rhode Island legislature, the governor and the people of Rhode Island their final report on June 5, 2003 titled, “Making Rhode Island the Safest State”. On July 7th 2003, state legislators passed every recommendation in the report which pays particular attention to “special amusement buildings” requiring them to:

- adopt the National Fire Protection Association (NFPA) codes NFPA1 (Uniform Fire Code) and NFPA 101 (Life safety Code)
- have sprinklers installed in all special amusement buildings of 150 persons or more and fire alarms connected to municipal authorities in accordance with strict timelines (with certain exceptions such as places of worship)
- for special amusement buildings with less than 150 capacity use fire retardant paint or coverings or have a sprinkler system
- for all buildings a requirement to reduce capacity where sprinklers are not present (20%) or where there are no fire alarms and/or fire officers in attendance (10%) when they are being used for special amusement.

The legislation also restricts the use of pyrotechnics, gives fire marshals extensive new enforcement powers and requires that special amusement buildings must have better signage and must have an emergency plan (Wertheimer , 2003).

Legislation enacted in haste is often poor legislation – and poor regulation at its worst is often counter productive – and often routinely ignored. And legislation enacted without enforcement, particularly health and safety legislation – can put new burdens on responsible operators whilst allowing rogue operators to effectively ignore new laws and carry on regardless – with significant commercial advantage. Here the state legislature really do seem to have made every effort to enact sensible and practicable new rules – but even so some business owners in the State have balked, citing the costs of improvement as prohibitive, whilst others cited the cost of enforcement, wondering how the State would fund the new regime. Indeed State officials, already grappling with huge budget deficits and a reputation for cronyism, acknowledge that Rhode Island needs a new corps of fire inspectors if the mandated changes are to have any real impact.

I write from a United Kingdom perspective and we too have had our fair share of tragedies, two of the most well reported were directly connected with disasters at football (soccer) stadia. In Bradford in 1985 a flash fire engulfed one side of the Valley Parade stadium and 56 people lost their lives. The inquiry by Sir Oliver Popplewell led to new legislation and new wooden stands were banned.



Four years later the appalling scenes at Hillsborough 1989 when 96 Liverpool fans lost their lives in Sheffield through overcrowded fenced in pens and police mistakes led to the Taylor Report which itself led to many all seater stadiums and the crowd control fencing in front of fans removed – and a safer environment for soccer fans (HMSO, 1990) and yet on a global scale, frighteningly, similar incidents repeat themselves with unnerving regularity. You will remember at the start of this article I mentioned that the Station nightclub tragedy was only the fourth worst in US history – in 1940 at the Rhythm Nightclub in Natchez, Mississippi, 209 died; in 1942 at the Coconut Grove Fire in Boston, Massachusetts, a fire left 492 dead; in 1977 the fire at the Beverly Hills Supper Club in Southgate, Kentucky, left 165 dead; and remember too that just four days before the Great White tragedy twenty one people had died in part of a venue that should have been closed to the public having failed a fire check and which had locked fire exits. To add to these tragedies there have been nightclub fires in Eire, Spain, China, Argentina, The UK and Sweden to name but a few. And the basic facts often remain the same and mistakes are repeated – and then repeated again – often with fatal results. Even after The Great White fire, which received massive international publicity, two more incidents happened that deserve attention.

On the 30th December 2004 a fire at the in Buenos Aires, Argentina left 194 dead. Here a fire swept through a crowded Buenos Aires nightclub during a rock concert, killing and injuring more than 700 people as young concert-goers scrambled for the exits. The building quickly filled with smoke, setting off a stampede for the emergency exits and television images showed the bodies of youngsters curled up on the sidewalk as bystanders and shirtless teenagers carried people out of the burning building. There is also the Bangkok Nightclub fire on the 1st of January 2009 in Watthana, Thailand: here a devastating fire at a New Year's event in a Bangkok nightclub left 66 dead with more than 212 injured in a stampede to escape from the blaze which broke out at the Santika Club just after midnight when the band Burn were performing. This was the second Asian club tragedy in less than a year after the Wuwang Club fire on the 21st September 2008 in Shenzhen in the People's Republic of China - which left 43 dead. In Thailand Police Lieutenant Colonel Prawit Kantwol said *"It appears that the fire started from the area of the stage where a band was playing. There were some pyrotechnics and it appears that they started the blaze"*, adding: *"Most of the victims died from suffocation, but some were also killed in a stampede when people were trying to get out"*. Fireworks, a packed venue, panicking audience It sounds horribly familiar doesn't it ? In October 2003, in my article "Regulated to Death: Safety Regulation in the Live Event Industry" I argued that *"improvements in health and safety will only take place where governments and authorities involve those in the live concert industry. At the same time it is pointed out that those in the live concert industry must be pro-active on health and safety issues – or they will find their industry "regulated to death"*(Challis, 2003)

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It seems almost unbelievable that the two recent US tragedies could have happened in one of the most modern and regulated nations on the planet: In Chicago, how could the venue not have been shut down after it failed fire checks? How could fire doors be locked? How could security staff create such a panic? In West Warwick why did no-one consider the effects of pyrotechnics? How could there be no sprinkler system? How could a venue ignite in seconds? But since then I worry even more – how can similar tragedies still happen so frequently? And how can we effectively improve matters.

Evidence from these cases and others shows that it is not the basic legislation or regulatory infrastructure that is at 'fault'; it is the implementation (or lack of) and enforcement of those provisions that seem to be the root cause of the real problems. The Station nightclub *did* require sprinklers and the foam insulation should never have been installed. In Chicago the part of the venue where the deaths occurred should not have been in use and clearly fire doors should not have been locked shut; In Argentina audience members had brought in flares into a overcrowded venue where four of the six exit doors were improperly locked shut; In Thailand the venue did not have valid building safety certificate, had been illegally modified, was operating without a valid licence, had only one marked exit and had no third party insurance – but nevertheless was operating as a music venue (Prasomsap, 2005; Milliken, 2005; Bell, 2009). No one wants unworkable or counter-productive regulation. This can be self-defeating, and corners can be cut. Surely, what the industry needs to do is be pro-active: formulate workable policies; ensure the whole industry adopts basic levels of safety and welfare for all live events; ensure that staff have the right levels of training; think about health, safety and welfare when planning events and when implementing change. It *can* work. The Event Safety Guide, the health and safety bible used by most in UK concert industry is produced by the Health and Safety Executive with substantial and real input from the UK concert industry. But one only has to look at the "complex, restrictive and expensive" licensing regime regulated for by the Licensing Act 2003 (HMSO, 2009), the impracticable provisions found in the Control of Noise at Work Regulations 2005 or the 2005 Conduct of Employment Agency and Business Regulations to see what damage, poor and ill considered regulation can cause to the live events industry. Modern day legislation, certainly in the UK, is partially governed by knee jerk reactions to media pressure. Certainly when looking at the Rhode Island State legislation on event safety one can only but admire a competent effort, but the fact remains that the previous laws should have prevented the tragedy. But these laws didn't prevent the death of 100 people. Passing more and more laws is the natural reaction of modern day legislators to problems; in the UK we have ever increasing tidal wave of initiatives, guidelines, regulations and expensive regulatory authorities nominally set up to improve our lives, but often having the reverse effect.



Whilst governments publicly bemoan the number and ever increasing cost of new quangos (non governmental bodies), rather than rid themselves of them, it seems they would rather create yet more bodies and authorities to “review” and report on the other’s efficiency and purpose – which ultimately produces a never ending vicious circle of bureaucracy, cost and waste. Equally and globally, modern day politicians seem to be perfecting the art of unintended consequences – passing laws which have the opposite effect to often well meant legislation. Crowd safety is quite simply too important to be left solely to politicians and the live events industry needs to maintain a professional watching brief and proactive approach to audience safety if it is to proactively prevent future tragedies - or the death of our industry by incompetent legislation.

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I always say one thing to a friend’s teenage children - if you go into a club and you see any instance of poor health and safety management – get out and stay out! Poor door management, overcrowding and locked fire doors are just some of the examples of poor safety management and a dangerous – and frankly sometimes, lethal attitude to health and safety. It’s sad to point out that such practices are often the tip of the iceberg – so the only real advice is to take responsibility for yourself and get out of danger – get out of the club and don’t go back. But what the live entertainment industry can do to make itself safer for paying patrons remains an ongoing challenge.

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Postscript

Postscript: After Professor Challis submitted his article; news reached the Journal of the tragedy at the Lane Horse Nightclub in Perm Russia where at least 118 revelers were confirmed dead after a fire. Initial investigations showed that the fire was started by pyrotechnic fountains let off inside the venue which ignited the ceiling. Many of the dead were crushed as patrons tried to leave the crowded venue in thick black smoke. Russian premier Vladimir Putin accused officials of being negligent in failing to enforce fire regulations at the nightclub telling reporters he also suspected corruption saying that officials had failed to follow up a warning issued to the club owners a year ago.

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