

PUBLIC INTERESTS SUMMARY
Submitted to the Bureau of Alcohol, Tobacco, Firearms, and Explosives
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Introduction and scope

Through the Freedom of Information Act (FOIA), the records requested regarding the Station Nightclub Fire (West Warwick, Rhode Island, 2003) are the:

- Matthew Pickett DAT audio (digital audio tape)
- Brian Butler video (WPRI)

The goals of this request are severalfold:

- To evaluate ATF fire prevention and investigation methods.
- To encourage by ATF and other relevant federal agencies (e.g., NIST) the development of additional fire safety recommendations, policies, and preventative measures.
- To encourage further evaluation of the details of this nationally significant fire event (even though this fire is already well-studied).
- To obtain primary source records so that they can be examined by the broader research community, to glean the critical public safety insights that they are believed to contain.
- In furtherance of the other public interests encapsulated herein.

This document elaborates on the various public interest arguments supporting release. Some important points to note are:

- This represents my views as a recognized expert in the areas of public safety, risk, disasters, and public policy, and consulting experience for federal agencies. My recent CV is included.
- However, as a non-attorney, this represents my views as a legal layperson.
- This is submitted truthfully, in good faith, and with the aim of improving public safety.
- I have personally reviewed all of the reference materials cited herein.
- The numerous public interests discussed are *independent and severable*, where the lessening or invalidation of one does not diminish the others.

Throughout, two sources are relied upon to establish a factual basis for various aspects of the public interest. These sources, both by Attorney John Baryllick, the lead civil attorney representing the victims of the Station Nightclub fire, are:

- *Killer Show: The Station Nightclub Fire: America's Deadliest Rock Concert* book (2015).
- American Museum of Tort Law presentation (2018).

If ATF has information contradicting these sources, I would be most receptive to it. But absent such information, I shall rely on these sources, as the most reliable accounts that are available. Two other sources that are used heavily are the:

- NIST investigative report on the fire (2005).
- Society of Fire Protection Engineers (SFPE) *Handbook of Fire Protection Engineering* (2016 edition) – an authoritative source in fire safety and protection.

Also included in support of this request is the declaration of fire expert Vytenis Babrauskas,¹ originally submitted in the civil action *McWatters v. ATF*. While addressing the Pickett audio singularly, many of its points apply also to the Butler video.

To assist with public accountability regarding this fire

The records sought document – uniquely – the depths of the horrors that citizens can experience when the special trust that is placed in those public servants who are tasked with fire safety and protection is violated – in this case, in the form of inadequate ATF oversight of fireworks manufactures and suppliers.

This allowed these dangerous pyrotechnic devices to be diverted to the illicit market, where they were then set off by an individual who was not a licensed pyrotechnician, without securing the required local permits, and in a venue entirely unsuited for its use.² This was the heat source that, when combined with the fuel loading present in the club, led to the disaster and 100 deaths.

The factual basis for this derives from Attorney Barylick, who notes:

- “The pyro manufacturer had previously shipped pyrotechnic gerbs interstate to Randy Bast – who sold some to Dan Biechele – using a phony pyrotechnic operator license number. The pyro company thereafter lost its federal ATF license.”³
- “This federally licensed manufacturer of fireworks, out of Alabama, by federal law, can only sell to licensed pyrotechnicians. Well, they weren’t too bothered with that. If they wanted to sell to someone like Dan Biechele, the road manager for Great White – who was not a licensed pyrotechnician – they would just fill in the number of a licensed pyrotechnician on the federal data sheet. We came to find that out. We were able to settle with that manufacturer for their insurance policy limit. And indeed, shortly thereafter, they lost their federal license to produce fireworks and went out of business.”⁴

Attorney Barylick elaborates on the primary sources of this information in the book’s endnotes:

- “Instructions for Pyropak Tube Devices / Gerbs, Luna Tech Inc.; fax from Dan Biechele to Randy Bast containing Great White pyro order, January 2003; statement of Michael A. Roland, S.A., Bureau of Alcohol, Tobacco, Firearms and Explosives, regarding Randy Bast interview of

¹ Babrauskas (2023).

² Barylick (2015), pp. 28, 51-52, 237.

³ Barylick (2015), p. 196.

⁴ Barylick (2018), time 25:17-25:58.

February 21, 2003; letter to Ivan Holder (Luna Tech) from Randy Bast, January 16, 2003; grand jury testimony of Randy Bast, July 16, 2003; grand jury testimony of Robert Hutchins, June 18, 2003.”⁵

- “Grand jury testimony of Randy Bast; letter to Dan Biechele from Randy Bast, January 13, 2003; High-Tech Special Effects Invoice no. 412 to Jack Russell Touring, January 16, 2003.”⁶
- “Memorandum to Detective Roland Coutu, West Warwick Police Department, from ATF Audio/Video Forensic Specialist Steve Greene, May 11, 2005 transcription of notes from November 11, 2004, through January 28, 2005, for Case No. 762070-03-0056.”⁷
- “Interview of Scott J. Ward by ATF special agents Josh Legere and Josh Rusk, June 23, 2003, in which Ward stated that the owner of Luna Tech Inc. called him ‘10-14 days after the Station fire’ to give Ward the ‘heads up’ that his [pyrotechnician] license number had been improperly used two years earlier to sell gerbs to Randy Bast, who in turn sold them to Dan Biechele.”⁸

ATF oversight was inadequate, it is argued, if either (or both) of the following statements is true:

- ATF could have prevented the Station Nightclub fire, through enhanced oversight of its fireworks manufactures and suppliers (either by direct detection or through deterrence); *and/or*
- After the Station Nightclub fire, ATF enacted additional policies and/or preventive measures that reduced the likelihood of this kind of illicit fireworks diversion occurring in the future.

This additional oversight, policies, and preventive measures could have taken many forms, potentially including: audits, data cross-checks, enhanced data reporting requirements, stock-flow or input-output analyses, anomaly detection rules, site inspections, educational materials, and so forth.

The more morbid and shocking the contents of the records, the greater the public interest in their release (and the greater the value of prevention). Per Attorney Barylick, regarding the Pickett audio:

“The result of [ATF]’s restoration work is a chilling audio glimpse where no one should ever look. But to turn away is to blind ourselves to the terrible reality of what can happen to people when negligence and greed trump concern for safety.”⁹

Even after the Station Nightclub fire, there remains significant ongoing value in (and challenges) encouraging by ATF the development of additional fire safety recommendations and preventative measures as it relates to fireworks.

In 2011, several years after the Station Nightclub fire, an explosion and fire occurred at a hillside bunker in Hawaii, killing five and injuring another. The site was being used by a federal contractor to store illegal fireworks that had been seized by U.S. Customs and prepare them for disposal. The U.S. Chemical Safety Board (CSB) investigated, and in its report notes that no national entity (governmental or standards-making body) has any best practice guidelines for the safe disposal of fireworks, including ATF.¹⁰ CSB

⁵ Barylick (2015), p. 264.

⁶ Barylick (2015), p. 264.

⁷ Barylick (2015), p. 273.

⁸ Barylick (2015), p. 288.

⁹ Barylick (2015), p. 113.

¹⁰ CSB (2013), p. 63.

recommended the National Fire Protection Association (NFPA) convene a working group to develop and promulgate such standards, and that ATF participate in these efforts.¹¹ ATF expressed support for this recommendation, but took no action, ultimately causing CSB to change the status of the recommendation to: “Closed – Unacceptable Action/No Response Received.”¹²

The release of these records would strongly counter these tendencies, and serve as a stark reminder to all who work in fire safety and protection of the utmost importance of this work.

To assist with public accountability regarding the ATF investigation

Upon forensically recovering the Pickett audio, ATF transferred it to Attorney Barylick, either directly or by way of Detective Roland Coutu (West Warwick Police Department), from whom ATF originally received the recorder.¹³ Attorney Barylick then time-synced it to the Butler video, and used it to incentivize various parties to settle civil lawsuits.

The factual basis for this, from Attorney Barylick, is as follows:¹⁴

- “[ATF] transferred its data to a computer, which ‘burned’ it onto a CD.”¹⁵
- “Federal ATF people reconstructed that digital tape, and gave us a pristine sound record of what was going on during these horrific last minutes from inside the club, and we synced it to the cameraman’s footage.”¹⁶
- “With the permission of Matthew Pickett’s family [what about ATF permission?], we were able to use it in the civil litigation, to show certain defendant groups what a jury would hear.”¹⁷
- “It was wrenching for those few people that had to listen to it, but we were able to make productive use of it in advancing settlements with some of the defendant groups.”¹⁸

Some of the specific uses were:

- *Clear Channel Communications*. “We also played Matthew Pickett’s audiotape ... It is unknown whether the audio image ... played any role in Clear Channel’s final settlement offer of \$22 million. That offer was, however, accepted.”¹⁹
- *West Warwick Town Council*. “Finally, I played them some of Matthew Pickett’s ghastly audiotape of The Station’s last minutes. ... A few weeks later, the West Warwick Town Council agreed to settle all claims against the town for \$10 million.”²⁰

¹¹ CSB (2013), pp. 75-76.

¹² CSB (2022).

¹³ Barylick (2015), p. 112.

¹⁴ See also: Associated Press (2005).

¹⁵ Barylick (2015), p. 113.

¹⁶ Barylick (2018), time 1:09:48-1:10:05.

¹⁷ Barylick (2018), time 1:27:08-1:27:19.

¹⁸ Barylick (2018), time 1:28:16-1:28:27.

¹⁹ Barylick (2015), p. 201.

²⁰ Barylick (2015), pp. 201-202.

- *Sealed Air Corporation*. “Finally, we wrapped up the presentation with a sampling of what a jury would likely experience when considering evidence of the pain-and-suffering endured by those killed in the fire. I ran the Butler video, with Matthew Pickett’s chilling sound recording from inside the club time-synched to it. When the lights came up, no one spoke for a full minute. ... The same group reconvened two weeks later ... to see if the two sides could agree on a settlement. They finally did. Twenty-five million dollars. The last defendant had settled.”²¹

Additionally, regarding the Butler video, Attorney Barylick notes:

- *Brian Butler and WPRI*. “We turned to the Butler video itself, which our experts had examined frame by frame. ... What that analysis revealed was striking. For approximately thirty seconds after the fire’s ignition, Butler’s camera moves with him toward the main doors; then it appears to stop. ... His position for the next eight to ten seconds appears relatively static. People in the crowd behind Butler can be seen pressing forward against him, trying to get to the main doors. ... the insurer eventually agreed to settle all claims against Butler and his employer for \$30 million. ... the first chink in the Station defendants’ collective armor.”²²
- “The Brian Butler videotape of the fire was ... available to the public for several years on DVD through the federal court clerk’s office [U.S. District Court for the District of Rhode Island] as an exhibit to pleadings filed in the consolidated civil cases.”²³

These activities significantly reduce any expectations of privacy that might otherwise exist. As a citizen, it also raises a series of troubling questions, including:

- What restrictions did ATF place on Attorney Barylick’s (or Detective Coutu’s) use of the Pickett audio?
- Was Attorney Barylick’s use of the Pickett audio as part of settlement negotiations sanctioned by ATF? What about its inclusion in his *YouTube* presentation?
- Why is a private citizen (Attorney Barylick) in such full and direct control of this vital government record, seemingly able to release it however he wishes?
- Is it appropriate for a taxpayer-funded agency (ATF) to work so directly to facilitate a private civil suit? Was that the primary impact of ATF’s restoration work of the Pickett audio?
- Does ATF normally have these kinds of relationships with attorneys who are pursuing civil cases alongside ATF investigations?

The records are sought to better understand these questions. One central question emerges:

If these records have already been used in such cinematic and thematic ways, and socialized with such a diverse array of stakeholder groups (governmental and non-governmental), and in service of such proprietary and pecuniary interests, why cannot they be released to conscientious members of the research community to be studied to improve public safety?

²¹ Barylick (2015), pp. 216-217.

²² Barylick (2015), pp. 200-201.

²³ Barylick (2015), p. 253.

Background on next two sections

The premise of the next two sections is that, while ATF used the Pickett audio to understand the details of this particular fire event, there is no evidence that it was ever used for the wider purpose, of creating generalizable knowledge that could improve fire safety.

Chapter 5 of the NIST report begins:

“The WPRI-TV video tape provided information to the investigation of the start and spread of the fire that was almost unprecedented in fire forensics. Supplemented with first person interviews and examination of the scene after the fact, a clear overall picture of the event emerged rather quickly. However, a number of important details could not be gleaned from the evidence, nor was it possible to examine the impact of the fire on the occupants. Both would have helped to understand the fire’s effect on the evacuation process and to determine the relative importance of different contributors to the building failure.”²⁴

The video camera operator exits the building rather early in the fire, about 70 seconds after ignition.²⁵ From this point onward, the only known recorded account from inside the building is the Pickett audio. However, this resource was not used as part of the NIST investigation, nor for any other federal agency published reports (this is undisputed in the District Court proceedings of *McWatters v. ATF*).²⁶

While some firsthand accounts from inside the building during this period of the fire may exist, video/audio evidence are generally far superior, for several reasons (time-stamped, invariant over time, without emotional involvement, and free of cognitive impairments from smoke or adrenaline).

When performing fire hazard and risk analysis (and related risk management and policy-making), three key elements or inputs are:²⁷

- Survivability in fire environments.
- Occupant emergency egress behavior.
- The interaction between the above two factors.

This forms the content of the next two sections. Unfortunately, the portions of the Pickett audio that were withheld from the release to Mr. Pasteris²⁸ obscure the periods of the fire that would be the most valuable for these purposes, greatly limiting the public interest value in that particular release.

Improved understanding of survivability in fire environments

The tenability criteria used by NIST in its computer modeling and report are trifold:²⁹

²⁴ NIST (2005), p. 5-1.

²⁵ NIST (2005), pp. 2-13, 5-39.

²⁶ *McWatters* (2024), pp. 7-8.

²⁷ Yung (2008); Ramachandran & Charters (2011); Hurley & Rosenbaum (2015); SFPE (2023).

²⁸ ATF (2025).

²⁹ NIST (2005), pp. 4-46, 5-19.

- Air temperature > 120 ° C
- Heat flux > 2.5 kW/m²
- Oxygen concentration < 12 %

If one or more threshold is surpassed, lethality is generally assumed. The report adds: “These levels provide guidelines generally accepted by the fire protection engineering profession as leading to quick incapacitation, but may be tolerated for a short (unspecified) time.”³⁰

Although well-considered, and based on the best available research and information, these tenability criteria are limited in that:

- Their true accuracy and full scope of applicability are not well understood (and whether improved threshold values might be available).
- They do not directly incorporate a temporal component or rigorously address the duration of exposure.
- They do not consider that some exposed persons may be more vulnerable than others, or other potential sources of variability.

Outputs from fire safety models tend to be *point estimates* that do not directly incorporate uncertainty or variability.³¹ Physical phenomena generally do not behave in this way – with sharp, rigid boundaries – but instead are gradual or probabilistic. The population also contains numerous heterogeneous subgroups that vary considerably in their susceptibility to the effects of fire environments.³²

Information on survivability in fires derives mainly from three sources, each of which has its own associated uncertainties and limitations:

- *Actual fire incidents and industrial accidents.* However, there is often a lack of data relating to exposure concentrations, fuel loads, and configurations.³³
- *Experiments conducted on animals.* However, it is uncertain how well the results extrapolate to humans.³⁴
- *Experiments conducted on humans.* However, these were conducted at generally low exposures and sub-incapacitating levels.³⁵

Accordingly: “Predictive fire models have limitations that are not well documented or widely understood.”³⁶ Overly conservative tenability criteria drain limited economic resources that could be better spent otherwise, while inadequate safety margins expose the public to unacceptable risk.

³⁰ NIST (2005), p. 4-46.

³¹ Notarianni & Parry (2016), pp. 3000, 3018, 3044.

³² Yung (2008), p. 175; Purser (2016), p. 2261; Purser & McAllister (2016), pp. 2309, 2321, 2333, 2343.

³³ Purser (2016), pp. 2217-2218, 2249-2250.

³⁴ Yung (2008), p. 175; Purser (2016), p. 2218; Purser & McAllister (2016), pp. 2321, 2329, 2343.

³⁵ Purser (2016), pp. 2218, 2260; Purser & McAllister (2016), p. 2347.

³⁶ Notarianni & Parry (2016), p. 3000.

The Pickett audio could greatly assist in reducing these uncertainties, because it contains valuable information about fire safety that cannot be gleaned elsewhere. In particular, these quotes in the literature stand out:

- “The proposed tenability limits can never be precisely verified since the human experiments needed cannot be performed.”³⁷
- “For ethical reasons it is never going to be possible to obtain direct data for effects on humans so that estimates ... must be based on existing data and the judgment of physiologists.”³⁸
- “Since it is not possible to expose human subjects directly to fire [environments] to measure the effects, it is not possible to produce precise calculation expressions to predict effects of exposure, or to quantify probability distributions for different endpoints.”³⁹

By time-correlating the sound data on the Pickett audio to the parameters of the fire environment (temperature, heat flux, and oxygen), available from NIST modeling, the tenability thresholds could be evaluated and their probabilistic component and variability elucidated. This implications of this could be broad – from flammability standards for materials, to design of fire safety interventions and mitigation measures, to requirements codified in building codes.

While the *total* deaths from the Station Nightclub fire is known, the *time path* of those deaths is not known. And far from anecdotal, the pool of 100 deaths represents a broad cross-section of persons: mix of both sexes (66 men, 34 women), and ages ranging from 18 to 46 years (average: 33 years).⁴⁰ Instead, at present, the lone such insights (qualitative) available are those of Attorney Barylick:

“As fire science suggests, many victims were instantly rendered unconscious by smoke, and thereby spared suffering. However, Matthew Pickett’s audiotape also teaches that pain and despair do not discriminate by sex, and pleas to be rescued by God or man may go unheard.”⁴¹

Improved understanding of human behavior in fire and emergency egress

There is a general lack of data on (and therefore, uncertainty relating to) human behavior in and response to fire, and many fire safety and emergency egress models are based on *assumptions* about these things.⁴² Particularly on point is recommendation #8 from the NIST report:

“NIST recommends that research be conducted to better understand human behavior in emergency situations, and to predict the impact of building design on safe egress in fires and other emergencies (real or perceived), including the following: a) the impact of fire products (gases, heat, and obscuration) on occupant decisions and egress speeds; ... c) conditions leading

³⁷ Purser (2016), p. 2262.

³⁸ Purser (2016), p. 2260.

³⁹ Purser (2016), p. 2219.

⁴⁰ *Providence Journal* (2003); Barylick (2015), pp. 247-248.

⁴¹ Barylick (2015), p. 113.

⁴² Notarianni & Parry (2016), pp. 3000, 3040.

to and mitigating crowd-crush; ... e) theoretical models of group behavior suitable for coupling to fire and smoke movement simulations.”⁴³

The NIST report also notes that details regarding the formation of the pile-up in the entrance and hallway area of the club is not available from the WPRI video.⁴⁴

Review of the Pickett audio by the wider research community (particularly, disaster sociologists)⁴⁵ could greatly enhance this understanding, and allow the safety recommendations derived from this fire to be better applied to other circumstances. In particular, the emergence (or absence) of panic in fires has been identified by researchers as being of particular interest,⁴⁶ especially in the case of nightclub fires.⁴⁷

To address differential past FOIA releases

Past FOIA requestors seeking to obtain the Pickett audio from ATF have experienced vastly different outcomes. Cases in point:

- *Ken McWatters*. ATF released only the final four minutes of the Pickett audio; subject of civil action *McWatters v. ATF*; decision affirmed by District Court and Court of Appeals.⁴⁸
- *Joseph Pasteris*. ATF released the supermajority (but not all) of the Pickett audio.⁴⁹

As a citizen, this seemingly disparate treatment of requestors is troubling (this when bureaucracies strive to treat similarly-situated persons the same). These differential releases also suggest that ATF’s interpretation of the public interest value in release may be changing – revealing greater preferences for transparency over time. To address these differential past releases, the entire record is requested. At minimum, this should include the universe of audio that was released to the two requestors above.

Public domain doctrine exception

The U.S. Department of Justice’s *Guide to the Freedom of Information Act* notes:

“Under the public domain doctrine, information that would otherwise be subject to a valid FOIA exemption must be disclosed if that information is preserved in a permanent public record or is otherwise easily accessible by the public. ... a requester must be able to point ‘to specific information in the public domain that appears to duplicate that being withheld.’”⁵⁰

⁴³ NIST (2005), p. 8-18.

⁴⁴ NIST (2005), p. 6-4.

⁴⁵ Tierney (2019).

⁴⁶ Quarantelli (1979); Clarke (2002); der Heide (2004); Fahy *et al.* (2009); Gantt & Gantt (2012).

⁴⁷ Fischhoff & Kadvany (2011), p. 91.

⁴⁸ ATF (2022); USDC (2024); USCA (2025).

⁴⁹ ATF (2025).

⁵⁰ DOJ (2022), pp. 26-27.

Accordingly, the entire Butler video is releasable, on the grounds that similar information appears in numerous public locations, including (five total):

<https://www.youtube.com/watch?v=rO0ioCCiEe8>

https://www.youtube.com/watch?v=N_PP_4MPDsw

<https://www.dropbox.com/s/5u8tqp18wnokdhc/Video%20Jun%2011%2C%208%2007%2029%20PM.mp4?dl=0>

<https://drive.google.com/file/d/0B1FWXWcUSCRDTR3emFYT0wyNnM/view?resourcekey=0-HKqrg3Qqfq15xcXI08AZAA>

<https://drive.google.com/file/d/0B1FWXWcUSCRDTR3emFYT0wyNnM/view?resourcekey=0-4FBblQptc1gB0TYhZhgQAA>

Also releasable is every moment of *both* the Butler video *and* Pickett audio that is included in Attorney Barylick's *YouTube* presentation,⁵¹ including the coughing/choking heard at the end. All of these are sufficiently similar for the public domain doctrine to apply.

Residual privacy concerns and privacy thresholds

If lingering privacy concerns exist regarding any portion(s) of the records, it is argued that it should be withheld only if:

- The content is of a particular private nature (being cognizant that the recordings occurred in a public place, and more than 22 years ago); *and*
- It can be linked to a specific individual, or constitutes a sufficiently small group of persons to make the risk of identification unreasonable.

When assessing what constitutes “sufficiently small,” ATF is encouraged to consider the privacy thresholds used by various federal agencies.

For example, the Centers for Medicare and Medicaid Services (CMS) instructs that beneficiary counts be censored only when the number of persons (“cell size”) is fewer than 11.⁵² This threshold is a quantitative marker that balances transparency with privacy protection – the minimum uncertainty deemed sufficient to obscure personal identities, and the point at which the presumption is for openness and data availability. Many other federal agencies have established similar privacy thresholds as well.

The Station Nightclub fire was not a case of a single or small number of deaths, but rather a mass casualty event, with many deaths inextricably overlapping. Among the 100 deaths, the smallest “cell size” is the 34 women victims⁵³ – considerably in excess of the CMS threshold (11 persons), and well on the “transparency” side of the decision equation.

⁵¹ Barylick (2018), time 14:39-16:35.

⁵² CMS (2020).

⁵³ *Providence Journal* (2003); Barylick (2015), pp. 247-248.

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