

Roberta DiMezza

From: Michael DiLauro <madpd2001@yahoo.com>
Sent: Tuesday, February 4, 2025 8:49 AM
To: House Judiciary Committee
Cc: Rep. Boylan, Jennifer
Subject: 2025--H 5130
Attachments: Cranston-Herald-I.pdf; Cranston-Herald-II.pdf; RI Bar_JF_2025_6_web-pp13-18.pdf

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To Whom It May Concern:

House bill 2025--H 5130 (legislation sponsored by Rep. Boylan that would define “crime gun” and require law enforcement to submit any crime gun or components to the RI State Crime Laboratory, ATF or NIBIN for testing) is scheduled for hearing before the House Judiciary Committee today at the rise. Please find attached the following materials that may be of assistance to the committee in considering this bill:

** Crime-lab rearms ID can miss the mark: What does a senseless murder more than 30 years ago in Rockford, Illinois, have to do with recent events at the Toolmark Analysis/Firearms Identification Section of the Rhode Island State Crime Laboratory? More than you might think...(Cranston Herald 2 part op-ed, January 9 & 29, 2025)*

** Lessons Learned From A Not So Public 'Mismatch': Firearms, Toolmark Analysis, and Rhode Island's Publicly Funded Crime Laboratories (RI Bar Journal, January/February, 2025)*

I have taken the liberty of copying the primary sponsor, Rep. Boylan, as well.

Thank you.

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Crime-lab firearms ID can miss the mark

Posted Thursday, January 9, 2025 12:00 am

What does a senseless murder more than 30 years ago in Rockford, Illinois, have to do with recent events at the Toolmark Analysis/Firearms Identification Section of the Rhode Island State Crime Laboratory? More than you might think...

First of two parts

In what can best be described as a robbery gone horribly wrong, Andrew Asher was shot to death in Rockford, Illinois, on April 2, 1993, at approximately 10 a.m., while sitting in a car with his girlfriend.

The murder remained unsolved until June 10, 1993, when – based on a Crime Stopper report – the Rockford police set up a surveillance of the apartment that Patrick Anthony Pursley shared with his girlfriend, Samantha Crabtree. Shortly after the surveillance began, the two left the apartment. A car chase ensued, and they were apprehended.

Later, the police executed a search warrant of their apartment and found a 9mm Taurus model gun that Crabtree purchased in February 1993, and a 9mm Beretta. After being held for two weeks on an unrelated robbery charge, Crabtree gave a statement implicating Pursley in the murder, which later helped secure a murder indictment against him. The police also seized a spent bullet from the car and spent casings from the obtained by the medical examiner.



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Firearm and toolmark analysis is a forensic science discipline that involves examining marks and impressions left on firearms, tools and ammunition components to identify their origin or link them to a specific crime scene. Samples of unknown origin are compared to those of known origin.

In the Pursley case, the unknown samples (spent bullet from the car, spent casings from the scene and bullet fragment from the victim's shoulder) were compared to known samples (spent bullets and casings test fired from the weapons seized from the Crabtree apartment) by Daniel Gunnell, a firearms and toolmark expert employed by the Illinois State Police Crime Laboratory.

Relying upon the toolmarks and other impressions left during the machining process, Gunnell concluded that the Taurus was the gun that shot Asher; in short, he found that the known and unknown samples matched. Clearly, the firearm and toolmark analysis was a critical component of the state's case against Pursley during its investigation and at trial.

A decades-long and tortured procedural history then ensued. Pursley was initially convicted of murder by a jury (notwithstanding the absence of any positive eyewitness identification and the permitted testimony of "incentivized" witnesses who were given either financial help or leniency in exchange for their testimony), but Crabtree eventually recanted her statement.

Pursley's initial conviction was upheld by appellate courts and, ultimately, the Supreme Court of Illinois. Pursley also pursued a variety of post-conviction remedies in the trial courts, where he was sometimes forced to represent himself. None were successful. Fortunately, later changes in Illinois law allowed him to obtain legal representation and independent-expert analyses of the firearm and toolmark analysis evidence. In one of these proceedings an independent expert, John Murdock, using more discerning testing methods, concluded that:

- 1) He could not conclude that the two bullets recovered from the crime scene were fired from the same gun as the test-fired bullets.
- 2) There was no significant agreement between the two groups.
- 3) The test-fired casings were fired from a different gun than the recovered casings.
- 4) There were sufficient dissimilarities to indicate that the cartridge casings were not struck by the same parts of the firearm that come into contact with the bullet when it is fired.
- 5) Other markings (such as firing-pin aperture marks, ejector marks, extractor marks and magazine lip marks) were also dissimilar.

The story ends with a just if not entirely satisfactory result. Pursley was granted a new trial and acquitted. On Dec. 28, 2022, an Illinois appellate court upheld the findings of the lower courts that:

- 1) Pursley's innocence had been proven.
- 2) There was no competent evidence that would cause the court to reach a different conclusion.
- 3) The lynchpin of Pursley's original conviction was the firearm "match" evidence offered by the Illinois State Police Crime Laboratory, which was not thorough or complete.

4) Experts offered by the defense were unbiased and the most qualified the court had ever seen. Pursley was therefore entitled to compensation and other benefits provided to the wrongly convicted under Illinois law.

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Comments

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In 2 states, accuracy of gun forensics challenged

Posted Wednesday, January 29, 2025 12:00 am

What does a senseless murder more than 30 years ago in Rockford, Illinois, have to do with recent events at the Toolmark Analysis / Firearms Identification Section of the Rhode Island State Crime Laboratory? More than you might think ...

Second of two parts

Recent events at the Toolmark Analysis / Firearms Identification Section of the RI State Crime Laboratory (RICL) have something in common with the Illinois State Police Crime Laboratory in the Pursley case: both laboratories are controlled by law enforcement.

On September 3, 2024 both the RICL and the Attorney General's Office (RIAG) issued public statements about a problem at the RICL – a nonconformity with laboratory standards in a single case (the 'mismatch' case). Remedial steps were taken, including the suspension of internal examinations, the outsourcing of further examinations to an external, accredited laboratory or qualified consultant, and the retention of an outside, accredited agency to conduct an assessment/technical review of the



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The State Crime Lab Commission (Commission) created by statute to oversee the RICL met twice in August and once in October, 2024, to discuss the issue. Although subject to the Open Meetings Law (OML), the Commission labeled the issue as a “personnel matter,” which allowed its discussions and actions to be shielded from public scrutiny. Curiously, however, at a Commission meeting on April 11, 2024, the Commission disclosed information relating to a non-conformity issue that appears to be nearly identical to the one that is the subject of the current controversy.

What the Nichols Report recommended

This inconsistent application of the OML was partially mitigated by the external agency report prepared in connection with RICL’s remedial steps. This October 9, 2024, report by Ronald G. Nichols, President, Nichols Forensic Science Consulting, Inc. (“report” or “Nichols’ Report”) was the result. It was provided to defense counsel in the ‘mismatch’ and other pending cases potentially impacted by the ‘personnel matter/nonconformity’ issue. Its findings included:

- three examiners misidentified thirteen fired cartridge cases in the mismatch case, incorrectly identifying a submitted Glock firearm as having made the toolmarks in question
- the misidentification came to light when the cartridges were correctly connected to a different Glock pistol recovered by another agency
- the misidentification was attributable to the examiners’ exclusive reliance on a toolmark common to all Glock pistols (a “class characteristic”) while ignoring other markings
- greater attention should be paid to “sub-class characteristics”—toolmarks that are more individualized to a specific firearm

The report’s recommendations included:

- analysts should increase their reliance upon “sub-class characteristics”
- analysts should use language more discerning than ‘conclusive’ or ‘inconclusive’ in reports
- ‘conclusive’ results should be based upon an examination of both class characteristics and sub-class and incidental characteristics.

Lowering expectations about toolmarks

Rhode Island is not the only state dealing with this issue, which was identified in a 2009 National Research Council Report (NRC Report) and the 2016 report of the President’s Council of Advisors on Science and Technology (PCAST Report). Courts across the country have taken steps to improve the reliability and understanding of toolmark analysis. Some of these actions echo the Nichols’ Report recommendations including:

- restrict the degree of certainty in firearm examiners testimony (avoid the use of the word “match” or “conclusive”)
- limit firearms testimony when the opinion is based on class characteristics only
- allow challenges to an individual analysis (as opposed to the entire field)

Policy considerations

Will the RICL voluntarily accept the “best practices” recommended by the Nichols, NRC, and PCAST reports like other jurisdictions, or will litigation be needed? Consideration of prior history may be helpful: In 2009, the General Assembly considered transferring the RI Department of Health’s (RIDOH) Forensic Science Section to the Rhode Island Department of Public Safety, a law enforcement entity. Coincidentally, the aforementioned NRC Report opposed such a move because it would be inconsistent with each agencies’ functions, create problems of perception and conflict of interest, and inhibit the independence of the laboratory. Fortunately, the transfer was rejected by the legislature.

Additionally, to achieve the best results here, the commission must be more diverse. Currently, it is heavily weighted in favor of law enforcement, with the RIAG serving as its chairperson. Additional members should be appointed – specifically other criminal justice stakeholders such as the judiciary, the criminal defense bar, the larger legal community and additional representatives from the academic community, especially from the University of Rhode Island’s renowned College of Engineering, given that field so closely fits with the functions of the RICL.

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Comments

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Lessons Learned From A Not So Public ‘Mismatch’: Firearms, Toolmark Analysis, and Rhode Island’s Publicly Funded Crime Laboratories



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“In response to reports highlighting the limits of toolmark analysis, courts across the country have taken various steps.”

It is no secret that forensic evidence is playing an ever-increasing role in the criminal justice system. Scientific breakthroughs and rapidly advancing technologies not only allow attorneys to present new types of evidence in court, but they also allow us to better understand more “traditional” types of forensic evidence, such as toolmark and firearms analysis. Our knowledge of these areas does not remain static, however, and it is important that we continually improve upon our understanding of this evidence—and its limitations.

A recent investigation at the Rhode Island Crime Laboratory (RICL) reminds us of the importance of remaining vigilant and why it is essential that all stakeholders are involved with developing solutions to the problems that will inevitably arise.

Publicly Funded Crime Laboratories in Rhode Island: A Background

The Rhode Island criminal justice system has long enjoyed high-quality services provided by two publicly funded entities, the RI Department of Health (RIDOH) in Providence and the aforementioned RICL at the University of Rhode Island. The RIDOH, compartmentalized into separate laboratory ‘umbrellas’, provides often-interrelated services such as the identification of controlled substances, DNA sequencing and testing, toxicology and serology analyses, and cause and manner of death determinations.² The RICL, on the other hand, analyzes fingerprint evidence; hair, fiber, and filament samples; toolmarks and other firearm components; footwear and tire impressions; and evidence in arson cases.³

These laboratories are ably led and staffed by thoroughly trained, experienced, dedicated, and hardworking individuals—many of whom have undertaken careers in public service rather than pursue more lucrative opportunities available in the private sector. Some past and present supervisors and employees have been there for decades.⁴

The high-quality work of these institutions is increasingly necessary,^{5,6} expected, and relied upon in the investigation into and resolution of a variety of criminal matters. And unlike a host of other jurisdictions, for many years there has not even been the slightest hint of questionable practices or subpar work—that is, until now.⁷

The Current Controversy

On September 3, 2024, both the RICL and the Rhode Island Department of Attorney General (RIAG) issued public statements regarding an issue that had arisen at the laboratory. The issue was identified as a ‘nonconformity’ with laboratory standards in a single case within the laboratory’s firearms and toolmarks section.

In response, the RICL took immediate and specific remedial action, suspending firearm and toolmark examinations and requiring any further examinations to be done by an external, accredited laboratory or qualified consultant during a remedial period. It was reported that the entity responsible for the oversight of the RICL, the State Crime Lab Commission (Commission), had met on August 21 and 27, 2024, and recommended the following:

- 1) that firearm toolmarks examinations be suspended for the time being;
- 2) that the RICL should arrange and pay for the examination or re-examination of all evidence by an outside laboratory as needed; and
- 3) that an outside accredited agency be retained (in consultation with the RIAG and the Rhode Island State Police (RISP)) to conduct a comprehensive assessment, including technical review of the operations of the firearms section of the RICL.⁸

Soon after, a variety of news outlets reported on the controversy (referred to hereafter as the “mismatch case”).⁹ In addition, defense lawyers with potentially affected cases utilized court-sanctioned discovery mechanisms and motions *in limine* concerning the reliability and admissibility of toolmark and firearms work done by the RICL. At this writing (mid-November 2024) these motions are awaiting decisions by the courts involved.¹⁰

It is important to note that although the Commission is required to meet four (4) times a year, it met twice during the month of August 2024.¹¹ Curiously, the Commission, subject to the man-

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date of the Open Meetings Law, decided to label the non-conformity issue as a “personnel matter.” As a result, although the Commission’s discussions of other items on the agenda (including certain remedial steps to be taken in light of the “non-conformity issue/personnel matter”) were included in the minutes of these meetings and eventually made public, the Commission’s specific discussions—including the names of the three examiners involved—remain sealed.¹² The Open Meetings Law allows but, does not require, that such proceedings be held outside of the public purview, and it is unknown if the individual(s) subject to remedial measures requested proceedings be held in secret.¹³ More troubling is that at its meeting on April 11, 2024, the Commission disclosed information relating to a non-conformity issue that appears to be nearly identical to the one that is the subject of the current controversy. The following appears in the public minutes of that meeting:

The Laboratory underwent a remote accreditation audit by the ANSI-ASQ National Accreditation Board (ANAB) for continued accreditation under the ISO/IEC 17025:2017 guidelines. The audit team cited two non-conformities relating to the substitution of observation-based performance monitoring for a proficiency test even though other options were available, and an internal audit did not include a direct observation of an accredited laboratory activity in Trace. Both non-conformities are being addressed and will be reviewed by the audit team leader. The current Certificate of Accreditation expires on July 31, 2027. It is expected that ANAB will accept the resolution of the non-conformities. An on-site audit will be conducted in Spring of 2025. (emphasis added)¹⁴

The Nichols Report: Findings

Thankfully, what appears to be at best an inconsistent application of the Open Meetings Law was partially mitigated by a report prepared in connection with the Commission’s third recommendation, i.e., that an outside accredited agency be retained to conduct a comprehensive assessment and technical review of the firearms section of the RICL. That assessment/review resulted in an October 9, 2024 report by Ronald G. Nichols, President, Nichols Forensic Science Consulting, Inc. (“report” or “Nichols”) and was provided to defense counsel in the cases previously mentioned.¹⁵ The report’s findings include the following:

- > In the “mismatch” case, three examiners made misidentifications of thirteen (13) fired cartridge cases, incorrectly identifying a submitted Glock firearm as having made the toolmarks in question.
- > The misidentification came to light when the cartridges were correctly connected to a different Glock pistol recovered by another agency in the New England area, which indicated a lack of diligence in the comparison of the cartridge cases.
- > The misidentification is attributable to the examiners’ exclusive reliance on a toolmark known as an “aperture shear mark,” a toolmark commonly found on cartridge cases fired by Glock pistols. Other marks (breech-face marks and firing pin impressions) were not considered. Had these other markings been considered, it would have led to a reconsideration of the disparities between the aperture shear marks on the casings.
- > Greater attention should be paid to “sub-class character-

- istics,” toolmarks that are more individualized and may be linked to a specific firearm and not just a class of firearms.
- > Had the examinations and verifications been as critically performed as each examiner indicated in their interviews, this error should have not occurred.

The Nichols Report: Recommendations

Going forward, the Nichols report makes the following recommendations regarding the RICL’s toolmark division:

1. Analysts should increase their reliance upon sub-class characteristics.
2. Disagreements between examiners on final test results should be made more explicit, and analysts should use language more discerning than ‘conclusive’ or ‘inconclusive’ when in describing results.
3. ‘Conclusive’ results should be based upon an examination of both class characteristics (which are common to all firearms of the same make and model), incidental characteristics (which are unique to a particular firearm) characteristics, as well as additional toolmarks in certain cases.
4. Analysts should use more discerning language when describing final test results.
5. The reports should provide a better explanations of proficiency test results.
6. Analysts should include error rates when appropriate
7. The RICL should improve its training, testing, and testimony reviews.

Reliability, Admissibility & Litigation Involving Toolmarks

Although this “mismatch” controversy is recent news, this is not the first time that Rhode Island courts have had to address the inclusion of toolmark analysis in criminal cases—among other kinds of forensic evidence. Indeed, on rare occasions the Rhode Island Supreme Court (RISC) has excluded scientific or technical evidence as being unreliable or unable to satisfy the evidentiary predicates necessary for admissibility.¹⁶ In order to perform the best possible review, the Rhode Island Supreme Court has encouraged litigants to develop the record via pre-trial admissibility hearings in these cases.

Rhode Island is not the only state to grapple with toolmarks evidence. In response to reports highlighting the limits of toolmark analysis,¹⁷ courts across the country have taken various steps. The similarities between these courts’ holdings and the Nichols recommendations are striking, and include:

1. **Limiting to firearms examiners’ testimony.** In some cases, courts have admitted the proffered testimony along with a limiting instruction that restricts the degree of certainty to which firearm and toolmark identification specialists may express their identifications.
2. **Limiting conclusion testimony and non-class-based opinions.** Some courts have limited testimony to opinions offered on class characteristics only, i.e. an expert can explain that the same type of gun fired the bullets or cartridge cases, but the expert cannot say that the same gun fired the bullets or cartridge cases.
3. **Requiring enhanced qualifications and proficiency testing of experts.**
4. **Allowing “as applied” (case by case) challenges.** Some courts have allowed challenges to an individual analysis

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The Rhode Island Bar Association’s Superior Court Bench/Bar Committee is sponsoring a free-to-Bar-members, one-credit, virtual Committee CLE seminar on **Thursday, February 6, 2025, from 4:00 – 5:00 pm**. Titled ***How to Stay Technologically Competent as a Rhode Island Legal Practitioner***, the program will feature Hon. Brian P. Stern, Rhode Island Superior Court Associate Justice; Brian Murphy, Esq., of the Rhode Island Supreme Court; and Jared Correia of Red Cave Consulting. This timely seminar will explore the essential skills attorneys need to navigate today’s complex technological landscape, emphasizing the importance of digital proficiency for effective legal representation. Participants will gain valuable insights from a Superior Court Associate Justice and receive practical recommendations for maintaining competence in an evolving digital environment.

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(as opposed to the entire field). For example, such a challenge might focus on a specific analyst's lack of documentation or methodology.¹⁸

Conclusion

At this point, Rhode Island is facing a choice: Will the Commission and RICL voluntarily accept and implement the Nichols report's recommendations in this jurisdiction, or will they be forced upon them piecemeal through litigation, as has been the case in other jurisdictions? Only time will tell. And although it goes beyond the scope of this article, many options exist to help ensure that these thoughtful recommendations and other necessary improvements are carefully considered, vetted by stakeholders, and implemented by the RICL.¹⁹ The Rhode Island criminal justice system has long enjoyed the availability of the high-quality forensic science services necessary for the full and fair administration of justice. Although this is due in large part to those who lead and staff our state's publicly funded crime laboratories, all options should be on the table so that this important work may continue at the highest level.

ENDNOTES

- Owner-Manager, The Just Criminal Justice Group, L.L.C. AKA 'JCJG' provides training, consulting, and advocacy to and for those interested in and impacted by the criminal justice system especially under-resourced and therefore under-served systems and communities. The author wishes to acknowledge the invaluable contributions of fellow Rhode Island Association of Criminal Defense Lawyers (RIACDL) Executive Committee members Angela M. Yingling and Kara Hoopis-Manosh to the preparation of this article.*
- Programs, State of Rhode Island Department of Health (RIDOH) Forensic Science Services, https://health.ri.gov/programs/detail.php?pgm_id=135 (last visited November 13, 2024); What we do, RIDOH State Medical Examiner's Office, https://health.ri.gov/programs/detail.php?pgm_id=149 (last visited November 13, 2024).
- Rhode Island State Crime Laboratory (RICL) Services and Functions, The University of Rhode Island, <https://web.uri.edu/risc/services/> (last visited November 13, 2024).
- These observations are informed by the author's almost forty-two years of criminal defense experience and frequent dealings with both RIDOH and RICL personnel in connection with a wide variety of criminal cases.*
- This is sometimes referred to as the "CSI Effect," first described in the media as a phenomenon resulting from viewing forensic and crime-based television shows. This effect influences jurors to have unrealistic expectations of forensic science during a criminal trial and affect jurors' decisions in the conviction or acquittal process. John Alldredge, The "CSI Effect" and Its Potential Impact on Juror Decisions, Volume 3 THEMIS: RESEARCH JOURNAL OF JUSTICE STUDIES AND FORENSIC SCIENCE (Spring 2015).*
- Some forensic science applications (in the experience of the author, these can include fingerprint analysis, accident reconstruction, and determination of blood alcohol levels) are performed internally by the police department investigating the case or outsourced to other out-of-state public or private laboratories for analysis. Although the allocation within Rhode Island is difficult to determine, at the national level it is estimated that state-run forensic crime laboratories received almost 60% of all requests in 2020 (totaling nearly two million requests for service from law enforcement). Connor Brooks, Publicly Funded Forensic Crime Laboratories 2020, CENSUS OF PUBLICLY FUNDED FORENSIC CRIME LABORATORIES (December 2023).*
- Newer research has revealed weaknesses in the scientific foundations of several methods that were once widely accepted by the criminal legal system (and used to help secure earlier convictions). For example, the reliability of bite mark analysis, hair comparisons, arson investigation, fingerprint analysis, dog scent evidence, comparative bullet lead analysis, shaken baby syndrome diagnosis, and bloodstain pattern analysis have all been called into question. Moreover, specific problems have been reported in over 130 crime lab scandals across the country, most recently in Massachusetts, Washington, DC, New Jersey, California, and Oregon. The Innocence Project Misapplication of Forensic Science, <https://innocenceproject.org/misapplication-of->*

forensic-science/ (last visited November 13, 2024); Jeannie Naujeck, Autopsy of a Crime Lab, 40 DUKE LAW MAGAZINE 2 (Fall 2021) (reviewing Brandon L. Garrett, Autopsy Of A Crime Lab: Exposing The Flaws In Forensics (2021)).

⁸ Press Release, Rhode Island Attorney General (RIAG), Attorney General issues statement on the State Crime Lab and firearms examinations (Sept. 3, 2024), <https://riag.ri.gov/press-releases/attorney-general-issues-statement-state-crime-lab-and-firearms-examinations>; Press Release, RICL, Statement from the Crime Laboratory (Sept. 3, 2024), <https://web.uri.edu/risc/>.

⁹ E.g., Mark Reynolds, Crime lab work draws attention—Attorneys question gun-related evidence reliability, THE PROVIDENCE JOURNAL, September 14, 2024; Mark Reynolds, ‘Nonconformity’ at state crime lab raises questions, THE PROVIDENCE JOURNAL, September 5, 2024; Christopher Shea, Rhode Island State Crime Lab suspends firearms forensic testing pending review, THE RHODE ISLAND CURRENT (September 4, 2024); WPRI, Community Focus interview of RIAG Peter Neronha (ABC television broadcast Sept. 11, 2024), <https://www.wpri.com/video/community-focus-attorney-general-peter-neronha/10033044/>. Critically, the Attorney General stated during this interview that the non-conformity issue involved the crime lab incorrectly labeling a firearm component (such as a spent casing or bullet retrieved from a crime scene or victim) and a particular firearm as a match: “[T]he crime lab called it a match and it wasn’t.”

¹⁰ Upon information and belief *State v. Martinez-Scarlet*, P1-2022-0296 AG, is the ‘mismatch case’ at the center of the current non-conformity controversy. Similarly, the same individuals and section of the RICL are involved in: *State v. Mann*, P1-2022-3059 AG; *State v. Brown, Veng, Castillo*, P1-2020-1885 AG, BG, CG.; and *State v. Martinez-Scarlet*, P1-2022-0296 AG. It is anticipated that additional cases involving a ‘mismatch’ by the RICL may be revealed later.

In making discovery motions, attorneys relied upon Superior Court Rules of Criminal Procedure 16(a)(5); 17(c) (disclosure of physical or mental examinations, scientific tests or experiments, and pre-trial subpoena to access information necessary to prepare case); *Brady v. Maryland*, 373 U.S. 83 (1963) (due process requires disclosure of exculpatory evidence); *Giglio v. United States*, 405 U.S. 150 (1972) (impeachment evidence is exculpatory-disclosure required); *Kyles v. Whitley*, 514 US 419 (1995) (prosecutions duty to seek out discoverable material); *State v. Wyche*, 518 A.2d 907 (RI 1987) (information that alleged rape victim consumed alcohol was exculpatory-failure to disclose required reversal of the conviction).

Similarly, “gatekeeper” motions in limine are grounded in, *inter alia*, *DiPetrillo v. Dow Chemical Co.*, 729 A.2d 677, 686-687 (R.I. 1999) (encouraging the use of pre-trial admissibility hearings in criminal cases and the trial judge’s enhanced role as a ‘gatekeeper’ to determine the reliability and admissibility pursuant to the applicable RIRE’s).

¹¹ R.I. GEN. LAWS § 12-1.1-7 (Commission is required to meet at least four (4) times a year as called by the chairperson); the first four meetings of 2024 were held on 1/21/24, 4/11/24, 8/21/24, and 8/27/24. A fifth meeting was held on 10/23/24 to review the Nichols report discussed in the next section. At that time the Commission again went into Executive Session on the ‘non-conformity / personnel’ issue. See Rhode Island Department of State (RIDOS), State Crime Laboratory Commission Meetings, <https://opengov.sos.ri.gov/OpenMeetingsPublic/OpenMeetingDashboard?subtopmenuId=201&EntityID=750&MeetingID=1062365> (last visited November 13, 2024).

¹² R.I. GEN. LAWS §§ 42-46-5(a)(1), (5) (public body may hold a meeting closed to the public in order to discuss job performance, character, or physical or mental health of a person or persons or any investigative proceedings regarding allegations of misconduct, either civil or criminal) (emphasis added); Commission meetings, agendas, and minutes available at the RIDOS website, <https://opengov.sos.ri.gov/OpenMeetingsPublic/OpenMeetingDashboard?subtopmenuId=201&EntityID=750&MeetingID=1062365> (last visited November 13, 2024).

¹³ R.I. GEN. LAWS § 42-46-5 (a)(1) (public body may hold a meeting closed to the public pursuant but the failure of the body to provide notification to the person subject to remedial action shall render any action taken against the person or persons affected null and void).

¹⁴ (RIDOS), State Crime Laboratory Commission Meetings, <https://opengov.sos.ri.gov/OpenMeetingsPublic/OpenMeetingDashboard?subtopmenuId=201&EntityID=750&MeetingID=1062365> (last visited November 13, 2024). It is unclear if the two ‘non-conformities’ that were the subject of the April and August meetings are related to one another and, if so, how.

¹⁵ Nichols Forensic Science Consulting, <https://www.nichols-fsc.com>. The report and the review of it by the Commission at its meeting on 10/23/24

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was the subject of online and front-page articles. At that time the Commission again went into Executive Session in order to discuss the non-conformity / personnel issue; therefore, the substance of its discussions are not publicly available. Mark Reynolds, Experts says RI crime lab in need of reform after troubling findings on bullet examination, *THE PROVIDENCE JOURNAL* (October 24-25, 2024). The Commission agenda and minutes can be found at <https://opengov.sos.ri.gov/openmeetings>.

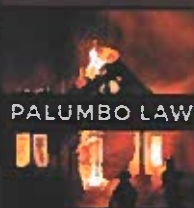
16 In the following cases the court reversed / remanded for the trial court to conduct a pre-trial reliability / admissibility hearing: *State v. Quattrocchi*, 681 A.2d 879 (R.I. 1996) (repressed memory); *State v. Quattrocchi*, C.A. 92-3759 (R.I. Super. Feb 01, 2001-Clifton, J.) (on remand repressed memory inadmissible); *State v. Webber*, 716 A.2d 738 (R.I. 1998) (dog sniff alert for arson); *State v. Walters*, 551 A.2d 15 (R.I. 1988) (trajectory check by police officer); *State v. Dery*, 545 A.2d 1014 (R.I.1988) (polygraph).

17 See The National Research Council, Strengthening Forensic Science in the United States (2009) (NRC REPORT), available at <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf>; President's Council of Advisors on Science and Technology (PCAST), Report to the President, Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods, (PCAST REPORT) (2016), available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf. A pre-publication copy of the NRC Report was relied upon in the ground-breaking decision of *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 318 (2009) holding that a defendant's right to confront and cross-examine was violated when written lab results were substituted for the live testimony of the lab technician doing the work. Justice Scalia, writing for the court, stated that "[t]he majority of [laboratories producing forensic evidence] are administered by law enforcement agencies.....Confrontation is one means of ensuring accurate forensic analysis." *Id.* at 318.

18 Motions in limine and requests for admissibility hearings have been filed in several of the pending Rhode Island cases cited herein. For further information, Brandon L. Garrett, et. al., Judging Firearms Evidence, 97 S. CAL. L. REV. 101, 146-153 (2024) is an excellent and comprehensive overview of courts decisions across the country made in response to our better understanding of the limits of toolmark analysis.

19 Strict adherence to basic scientific precepts is an improvement worth considering, something that appears to be lacking in the Commission's approach to the current controversy. For example, it's resort to a series of partial closed meetings and limited access to relevant information is inconsistent with the 'scientific method' which requires free and unfettered access to any and all relevant data. That data is then subject to experimentation and testing, formation of hypotheses, and reaching conclusions based upon them. Alina Bradford, Ashley Hamer, Science and the scientific method: Definitions and examples. *LIVESCIENCE* (1/16/22) <https://www.livescience.com/20896-science-scientific-method.html>. ◊

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