

1 the van arrive at the Cleveland Police Department
2 Scientific Investigative Unit?

3 A. September 20th, 2006.

4 Q. So it was a few days after that, is that
5 correct?

6 A. It is.

7 Q. All right. Now, do you have a mutual aid
8 agreement? Or what's the relationship that Cleveland
9 Police have with the Warrensville Heights Police
10 Department that you're doing these things for them?

11 A. They ask permission from Lieutenant Knolls if
12 they could have an examiner look at the prints, and
13 she agreed.

14 Q. And do you provide assistance to other
15 suburban police departments in the Cleveland area?

16 A. We do.

17 Q. Let's go to the four latents in your
18 comparisons.

19 A. There's a correction.

20 Q. Okay.

21 A. The September 20th report was from the
22 identification made of Richard Segines, the September
23 27th report is going to be about this latent that
24 we're talking about right now.

25 Q. Tell us about the correction with Richard

1 Segines. What do you mean, "correction?"

2 A. That from the last packet of the latents the
3 comparison made to Richard Segines, that was done on
4 September 20th.

5 Q. So you made the identification of the Segines
6 latent on September 20th?

7 A. That's correct.

8 Q. The comparison for the Briscoe and Dockery,
9 what date did you do that?

10 A. That was all done the same. Richard Segines
11 was later. And then for this pack of latents all
12 three were compared.

13 Q. At the same time?

14 A. At the same time.

15 Q. So you had at this time everyone's print card,
16 is that correct?

17 A. Yes.

18 Q. Take us through the comparison, please.

19 A. I compared all the suspects, the known
20 suspects, to this pack of latents, and I found one to
21 be identical.

22 Q. And tell us which one. Raise it up. It have
23 an exhibit number on it?

24 MS. TYLEE: Objection.

25 THE COURT: Overruled.

1 A. It's State's Exhibit Number 44. It's one
2 latent that was -- it was finger number two, which is
3 the right index finger. It was found to be identical
4 to Harry Briscoe, sheriff's officer number 200711, my
5 initials, BK, September 28th, 2006.

6 Q. Okay. So you compared that exhibit number to
7 the known of Harry Briscoe and you identified that
8 it's his right index finger, is that correct?

9 A. Correct.

10 Q. And does the latent indicate where it was
11 gathered from?

12 A. It does.

13 Q. Where was that?

14 A. Passenger door Ford van, September 13th, 2006,
15 Don Spera.

16 Q. And these were submitted by Don Spera from
17 Warrensville Heights Police Department, is that
18 correct?

19 A. Correct.

20 Q. So as it relates to the comparisons that
21 you're making, was it difficult for you to make
22 identification? Did you have sufficient amounts of
23 points comparison to do the identification?

24 A. I did.

25 Q. And the quality of that exhibit that you claim

1 to be the fingerprint of Harry Briscoe taken from the
2 van on Banbury, is there sufficient quality for you
3 to make the comparison?

4 A. Yes.

5 Q. Showing you -- this is State's Exhibit 66.

6 A. It's a copy of the fingerprint card containing
7 the prints of Sharon Dockery.

8 Q. So we have three fingerprint cards, is that
9 correct?

10 A. Um-huh.

11 Q. Dockery, Briscoe and Segines, is that correct?

12 A. Yes.

13 Q. And then you have a total of 13 latent prints
14 that you examined in this case, is that correct?

15 A. Yes.

16 Q. Now, you told us of the one fingerprint,
17 latent fingerprint taken from the van that you say is
18 Briscoe. The other three were you able to make
19 comparisons and either include or exclude Dockery,
20 Briscoe or Segines as the source of that latent
21 fingerprint?

22 A. The one is Harry Briscoe, the rest of them
23 were not identified.

24 Q. Did you have Mr. Ali Atiq's? Did you have his
25 fingerprints?

1 A. No, I did not.

2 Q. Did you request them at any time?

3 A. No, I did not.

4 Q. Anything else that you did concerning this
5 case other than what you've testified to here today?

6 A. That was it.

7 Q. All right. At the time that you made these
8 comparisons did you also have your results -- were
9 they checked or were you supervised or monitored by
10 other fingerprint examiners over at the police
11 department?

12 A. Yes.

13 MS. TYLEE: Objection.

14 THE COURT: Overruled.

15 Q. And when you made these findings would you
16 tell the ladies and gentlemen of the jury the process
17 that you follow over there, as far as verification or
18 checking of individual's work?

19 A. Any identification that anybody makes over at
20 the Cleveland Police Department, it's always checked
21 by another latent fingerprint examiner. They're
22 looking to see if they find the same points of
23 identification to say that it is a hundred percent
24 certainty that it is that person's finger and --

25 MS. TYLEE: Objection.

1 THE COURT: Counsel, can you
2 approach.

3 - - - - -

4 (Discussion held off the record and out
5 of the presence of the Jury at sidebar.)

6
7 THE COURT: Why don't you
8 ask another.

9 Q. Just to complete all of that, these opinions
10 that you've given to the ladies and gentlemen of the
11 jury concerning the comparisons that you made of
12 latent fingerprints that were submitted by
13 Warrensville Heights Police Department, to the known
14 fingerprint cards relating to Segines, Briscoe and
15 Dockery, is that to a reasonable degree of scientific
16 certainty?

17 A. Yes.

18 MR. DEVER: All right.

19 Thank you.

20 THE COURT: Ms. Tylee.

21 MS. TYLEE: Thank you, Your
22 Honor.

23 CROSS-EXAMINATION OF BARBARA KUSZNIR

24 BY MS. TYLEE:

25 Q. Good morning, ma'am.

1 A. Good morning.

2 Q. My name is Mary Cay Tylee. I represent
3 Mr. Briscoe.

4 So you're someone who does fingerprint
5 examinations for the Cleveland Police Department
6 investigations, correct?

7 A. Yes.

8 Q. And you testified that you had a bachelor's in
9 criminal justice, right?

10 A. Yes.

11 Q. How many of your classes as part of the
12 bachelor's in criminal justice involved studying, the
13 examination of, and comparison of fingerprints?

14 A. One.

15 Q. And how many cases -- how many classes did you
16 take all together to get that bachelors?

17 A. I took 128 class hours to get it.

18 Q. So 128 class hours, one of which was in
19 fingerprint examination, correct?

20 A. Um-huh.

21 Q. Do you have a background in the lifting of
22 latent fingerprints?

23 A. Limited. I don't do that.

24 Q. But you do have the opportunity to regularly
25 see lifted latent fingerprints as part of your work,

1 correct?

2 A. Yes.

3 Q. And when you go to lift a fingerprint, what
4 kind of mediums can be used to lift a latent
5 fingerprint?

6 A. I don't do that.

7 Q. Well, what have you seen come in to your
8 laboratory for analysis?

9 A. I look at the work that the detectives turn in
10 to see if it's of value to go on to the next step.

11 Q. Are you aware that you can use light colored
12 powder and dark colored powders?

13 A. Yes.

14 Q. And you've seen both light and dark colored
15 powders in your work, right?

16 A. Yes.

17 Q. And the fingerprints that were taken from the
18 Ford Escort, were those taken with light colored
19 powder or dark colored powder?

20 You can take them out and look at them.

21 That's fine.

22 A. Okay. They were all taken with white powder.

23 Q. White powder.

24 And what kind of a background were those
25 placed on?

1 A. You take a black background and you stick it
2 underneath.

3 Q. So in each of these cases you're indicating
4 that there is white powder with a black background?

5 A. Yes.

6 Q. Except that these all appear to be clear
7 backgrounds.

8 A. That would be a clear -- they go on a clear,
9 transparent, this is called acetate. And we use a
10 black -- it's like an exposed photo sheet. It's just
11 a black background that you stick the latent on top
12 of, and you make your comparison that way.

13 Q. Now, with the four prints that were obtained
14 from the Ford van, were those done with light or with
15 dark powder?

16 A. Three were done with black powder and one was
17 done with white powder.

18 Q. The one that you've previously identified as
19 being the fingerprint of Harry Briscoe, was that one
20 the one you did with light or dark powder?

21 A. Dark powder.

22 Q. So three of the prints were done with dark and
23 then one was done with light?

24 A. Yes.

25 Q. And those are all -- as far as you could tell

1 from that, were all taken at the same time, correct?

2 A. Correct.

3 Q. But the person taking the prints switched from
4 one kind of powder to another when they're taking the
5 prints off the van?

6 A. Yes.

7 Q. You weren't personally present when any of
8 these fingerprints were lifted?

9 A. Right.

10 Q. So you have absolutely no idea from your
11 personal knowledge as to where any of them came from,
12 right?

13 A. Correct.

14 Q. Now, you also indicated as part of your
15 training that you attended a class at the FBI?

16 A. Yes.

17 Q. When did you take that class?

18 A. I believe June of '98 was my first one and --

19 Q. Focusing on that, the class that you took at
20 the FBI, how long?

21 A. Forty hour course in basic classification.

22 Q. What kind of things do you study during that
23 40 hours?

24 A. You learn how to tell the pattern types of
25 fingerprints and how to look for your points of

1 identification to make an identification.

2 Q. Other than information about fingerprint
3 examination, does that 40 hours include any other
4 kind of training?

5 A. It teaches you how to do the Henry class
6 system, the old way of logging a fingerprint.

7 Q. So back in 1998 when you first went to the FBI
8 you learned about a system that's no longer in use
9 today, correct?

10 A. That's how you log a fingerprint.

11 Q. I'm sorry?

12 A. The Henry is how you store your fingerprint,
13 it's a system to store the cards so you're able to
14 find them.

15 Q. That's a system that you're not using anymore,
16 correct?

17 A. Correct.

18 Q. So part of the time was spent actually looking
19 at fingerprints and part was spent with how you log
20 them and keep track of them and store, correct?

21 A. Right.

22 Q. So the whole 40 hours wasn't looking at
23 fingerprints and comparing them, there was also other
24 information being presented, too, correct?

25 A. Right.

1 Q. And you then indicated that you've also had an
2 opportunity to go back to the FBI academy, right?

3 A. Yes.

4 Q. And when did you go back?

5 A. I'm not sure of the date.

6 Q. Do you remember the year?

7 A. Maybe '99. I'm not sure.

8 Q. Is that the only other time that you've been
9 to the FBI academy?

10 A. It's been at the Ohio Peace Officer Training
11 Academy sponsored by the FBI. No. There was another
12 class that I had attended. It was comparison
13 techniques.

14 Q. When was that?

15 A. I believe 2001 or 2002. I'm not sure of the
16 date.

17 Q. How long was that class?

18 A. Forty hour course.

19 Q. Now, you talked about being a member of both a
20 national association and then the Ohio branch of that
21 association?

22 A. Correct.

23 Q. And that's the -- those are the associations
24 that involve individuals who are involved with
25 fingerprint examination, correct?

1 A. Correct.

2 Q. That's the professional associations. Okay.

3 If you know, what is the Ace-V method?

4 A. The Ace-V method is the A means align, C means
5 compare, V means verify. And you do all of those
6 things in order, and that's how you make an
7 identification. That's another term that different
8 authors use to explain to you how you should make a
9 comparison.

10 Q. Does the IAI have a position as to whether or
11 not the Ace-V process should be used in the
12 examination of fingerprints?

13 A. I don't know.

14 Q. This is your association, correct?

15 A. Yes.

16 Q. And we're talking about the system by which
17 people should do that job, right?

18 A. Yes.

19 Q. But you don't know what your international
20 association's position is as to what the correct
21 position is as to what should be used?

22 A. Correct.

23 Q. You indicated that you are subject to peer
24 review. What exactly does peer review mean in the
25 Cleveland Police Department?

1 A. In means that you hand over your case to
2 another latent fingerprint examiner and that examiner
3 goes to see -- they go through the stuff, the
4 fingerprint card and the latent fingerprints, to see
5 if they agree with what you found.

6 Q. When you say you're involved in peer review,
7 that's just the review of the particular
8 identification that you made, not some kind of
9 overall job performance peer review, right?

10 A. They'll go through each latent and look
11 through the fingerprint cards.

12 Q. But you're not subject to yearly peer review
13 certifications of some kind, correct?

14 A. Correct.

15 Q. In fact you -- do you have any kind of
16 certification from any organization with respect to
17 being a fingerprint analyst?

18 A. No.

19 Q. There is in fact a certification, though,
20 that's done by IAI?

21 A. Yes.

22 Q. And you don't have that, do you?

23 A. No.

24 Q. So you started out and you -- first thing you
25 want to do is you want to check the quality of the

1 prints to see whether this is something you can do
2 anything on, right?

3 A. Correct.

4 Q. And you did that for both the prints that
5 came -- or labeled as having come from, because you
6 don't know, the prints that were labeled, labeled as
7 coming from Ford Escort and the prints labeled coming
8 from the Ford van, correct?

9 A. Correct.

10 Q. And you indicated that the ones that came from
11 the Ford Escort, I believe you used the term very
12 good quality, they were AFIS quality?

13 A. Correct.

14 Q. In fact you put them into your local AFIS
15 computer?

16 A. Yes.

17 Q. The one with the Cleveland database?

18 A. Yes.

19 Q. But you did not submit the fingerprints that
20 were obtained or were identified as being obtained
21 from a Ford van into AFIS, right?

22 A. Correct.

23 Q. It said you weren't requested to do so,
24 correct?

25 A. Yes.

1 Q. Does the individual who submitted the evidence
2 determine whether or not something can go into the
3 AFIS computer?

4 A. No.

5 Q. Who determines that?

6 A. The individual examiner.

7 Q. But you said that the reason you didn't do it
8 because you weren't asked to do that?

9 A. I identified the print that I could identify,
10 so I didn't have to put it in to AFIS.

11 Q. By the way, you indicated that when you did
12 the first set with respect to the nine prints taken
13 from the Ford Escort, that the -- on -- your national
14 database --

15 A. Local.

16 Q. Your national database computer was not
17 functional that day?

18 A. Yes.

19 Q. That's why you only did the local?

20 A. Yes.

21 Q. Was your computer working when you did the
22 examination of the latent prints taken from or
23 labeled from the Ford van?

24 A. Which computer are you talking about?

25 Q. Your national database.

1 A. That would be state. And, no, it was still
2 down.

3 Q. Still down?

4 A. Yes.

5 Q. So it was down when you looked at the first
6 set and still down by the time you looked at the
7 second set?

8 A. Correct.

9 Q. You made the comment when the prosecutor asked
10 you that it's never been proven that people may have
11 the same prints?

12 A. Correct. That's correct.

13 Q. Can you cite to a specific study in which an
14 examination was made of a large pool, hundreds of
15 thousands of people, and comparisons were made for
16 the purpose of attempting to determine whether or not
17 any of those people's prints were identical?

18 A. No.

19 Q. In fact no study like that has ever been done,
20 has it?

21 A. No, not to my knowledge.

22 Q. And you're the person who's here as the
23 state's expert, right?

24 A. Yes.

25 Q. So when you said nothing has never been

1 proven, the fact of the matter is studies have never
2 been done?

3 A. We've never seen.

4 Q. Did you -- by the way, did you bring any
5 blowups of these fingerprints for the jury to see
6 what you're talking about when you say you have
7 points of comparison?

8 A. No, I did not.

9 Q. Were you asked to prepare something like that
10 so the jury could actually see what you're talking
11 about?

12 A. It wouldn't be a good idea to do that.

13 Q. Wouldn't be good?

14 A. When you look at white powder latent prints
15 you are looking at the furrow. If you look at your
16 hand, the raised portion is called a ridge,
17 underneath is called a furrow. When you look at it
18 on the fingerprint card, the image is reversed. That
19 is very confusing and it's hard to see it if you're
20 not trained to know where to look to see it. So
21 that's why.

22 Q. So basically the jury doesn't get to see what
23 it is you're talking about, right?

24 A. Not on the blowup.

25 Q. Because you think it might be confusing to

1 them if they saw what you're talking about in your
2 comparison, right?

3 A. Yes.

4 Q. You said that your definition of identical
5 means that you like to have between seven and twelve
6 points of comparison, a fingerprint, correct?

7 A. Correct.

8 Q. Is that the standard for the laboratory that
9 you work in?

10 A. We don't have a standard.

11 Q. You don't have any standards?

12 A. No.

13 Q. So you just decide how many as a fingerprint
14 examiner you want to have and that's whatever the
15 standard is, right?

16 A. We pretty much all agree that we like to have
17 between seven and twelve.

18 Q. But the bottom line, you have no published
19 standard for that at the Cleveland Police Department,
20 correct?

21 A. Correct.

22 Q. Your laboratory with a -- no published
23 standards?

24 A. Correct.

25 Q. Now, basically what are the kind of

1 conclusions that you can make when you look at
2 fingerprints are of value, exclusion,
3 individualization or inconclusive, correct?

4 A. Correct.

5 Q. Value means whether or not the item is
6 something that can be compared, right?

7 A. Correct.

8 Q. Exclusion means you're saying I've decided
9 it's not the person, right?

10 A. Correct.

11 Q. Individualization means that you're going to
12 say it is the person?

13 A. Correct.

14 Q. And inconclusive means that you can't tell one
15 way or the other?

16 A. Correct.

17 Q. Of the fingerprints that you have examined
18 during the course of your career with the Cleveland
19 Police Department, approximately what percentage of
20 those prints have been of value for comparison versus
21 those that have not been?

22 A. Hundreds.

23 Q. I'm asking you the percentage, value versus no
24 value, looking over the prints, do you have maybe 70
25 percent are of value and 30 percent are not? What

1 would be the percentages that you've seen?

2 A. It's probably close to 50/50.

3 Q. So about half the time the fingerprints that
4 you're presented with are not of value, sufficient
5 for you to do anything else with them?

6 A. Correct.

7 Q. But of the nine fingerprints from the Ford
8 Escort and the Ford that were supposed to have been
9 taken from the van, you found that a hundred percent
10 of them were of value for purposes of comparison,
11 correct?

12 A. Correct.

13 Q. Now, if you determine that there is the
14 exclusion of an individual for a fingerprint, you
15 then turn that information over to have one of your
16 peers review that conclusion, right?

17 A. Sometimes. If you exclude and it's without
18 certainty that it's not, then that's it.

19 Q. You can make an exclusion all by yourself?

20 A. Correct.

21 Q. Nobody has to review that decision, right?

22 A. Right.

23 Q. What about an inconclusive, do you then have
24 to turn that over for a peer review?

25 A. No.

1 Q. So again if you don't make a finding, you
2 can't tell one way or the other, nobody else ever
3 looks at that, right?

4 A. It would be called nothing of value, or it's
5 called negative when there's no ridge detail present.

6 Q. I'm talking about one where -- let's -- I'm
7 not -- I'm not talking about the value question, I'm
8 talking about a finding of inconclusive. You found
9 some points of reference, but maybe not enough, so
10 you're not willing to say that, yeah, that's the
11 person, that you are reviewed by another scientist in
12 your department every time you make that finding?

13 A. Sometimes we'll have another examiner to look
14 at it to see if it could possibly become value of a
15 known suspect. But we call that nothing of value.

16 Q. If you make -- if you make a judgment of
17 individualization, where you're saying this is -- is
18 that true?

19 A. Yes.

20 Q. Is that always reviewed?

21 A. Yes.

22 Q. So maybe they might -- when someone is called
23 upon to do one of these peer reviews, they know that
24 the chances are probably 90 percent that the person
25 has made some kind of an identification or it

1 wouldn't be coming to them?

2 A. Yes.

3 Q. So they already know that before they even
4 start, basically they're aware of your findings,
5 right?

6 A. Yes.

7 Q. Can you explain to the jury what the concept
8 of distortion is in fingerprints?

9 A. We don't have distortion, it either is or it
10 isn't.

11 Q. Well, put it this way: If a print is left on
12 a surface, the surface is going to effect how that
13 print appears when it's lifted, correct?

14 A. Correct.

15 Q. You're going to get -- it's not the same print
16 from the same person's finger, isn't going to look
17 exactly the same if it's on a piece of perfect glass
18 versus a wooden surface, right?

19 A. Correct. But the points don't change.

20 Q. I'm just asking you if there's a difference in
21 how things are going to appear?

22 A. Correct.

23 Q. So if you're trying to make a decision about
24 whether or not the points match or not, you're also
25 having to try to make a value judgment about what