

Everyone's an Expert: The CSI Effect's Negative Impact on Juries

Jeffrey Heinrick

The CSI effect can best be described as a phenomenon where television "educated" jurors are more likely to not convict someone who is guilty because procedures and techniques they observed from the fictional television show were not applied in the case. Max Houck, Director of the Forensic Science Initiative at West Virginia University, says "The CSI effect is basically the perception of the near-infallibility of forensic science in response to the TV show". The CSI effect is a recent phenomenon that can be attributed to the influence of mass media. The term started appearing in legal lexicon in 2003; roughly 3 years after the show and its spin-offs became wildly popular television options for the American public.

It is estimated that over 60 million people watch the CSI television shows every week. There is another unexpected side effect from the television series; there has been a huge increase in forensic sciences undergraduate students at universities across the United States. For example, West Virginia University graduated 4 Forensic Science undergrads in 1999. In 2004, that number shot up to 400. Now, there are at least 90 forensic science programs at universities all over the United States. Last year, 180 people applied for 20 graduate position spots at Michigan State University; the field has become extremely competitive (1).

Juries are broken down into two forms, petite and grand. A petite jury has at least 6 jurors, and deals mostly in cases that involve misdemeanors. Grand juries have 12 jurors and deal with offenses that are felonies. Of course there are exceptions to this rule based on different local jurisdictions, but for the most part, this is the standard of the American legal system. In America, a vast majority of criminal cases are settled by plea bargain. In the rare circumstance that a case requires a jury, such cases are often sensationalized by the media and are portrayed as occurring more frequently than the true incidence rate.

Recent high-profile cases that were decided by jury, such as the Robert Blake and Michael Jackson trials, rely not on the fact that either the prosecutor or defense will make a better case, but rather on the ambiguity and uncertainty on the part of an uninformed jury. Juries like these are more likely to fall back on what they know and feel comfortable with – evidentiary procedures they have viewed on television. In

the Robert Blake murder trial, the jury voted to acquit him. The question of the CSI effect was raised in Robert Blake's acquittal. The prosecution felt that it had a strong case against Robert Blake. His alibi was that he "left his gun in the car", went to collect it, and found his wife with a bullet in her head. There was also sworn testimony that Mr. Blake had tried to hire someone to kill his wife and openly discussed having her killed. The prosecution felt that even though the physical evidence was lacking, the witness testimony and the odd behavior of Mr. Blake himself was damning.

The jury, however, needed the hard evidence. Due to a lack of gun shot residue and blood on his clothes, the jury voted to acquit Robert Blake. The Los Angeles district attorney in charge of prosecuting him called the jurors "incredibly stupid" (2). It is rare for an attorney to publicly criticize the

jurors, but in this case, his frustration is understood. The district attorney firmly believes that the CSI effect was involved in the jury's decision to acquit Mr. Blake.

This is not the first time that the CSI effect has blamed in an acquittal where the prosecution felt that they had extremely strong case:

An Illinois man was accused of the attempted

murder of his estranged girlfriend. The jury acquitted him because the police didn't test the blood stained bed sheets for DNA. After being released from jail for a parole violation, he immediately found his ex girlfriend and stabbed her to death (2). In Baltimore, a man was acquitted of murder despite the fact that there were two eyewitnesses to the shooting. The prosecution blames the CSI effect because the jury wouldn't go on witness testimony alone; they wanted more rigorous testing of physical evidence (3). In a recent murder trial in Phoenix, a bloody coat was introduced as evidence. It was not tested for DNA. The jury informed the judge that testing was not performed on the coat even though it was not needed because the defendant admitted that the coat was his. The Judge then determined that "television had taught the jury what DNA tests were but didn't teach them in what circumstances they can be used in" (3).

These are not uncommon examples of the CSI effect on cases. Jurors now demand expensive and often unnecessary DNA tests, handwriting analyses, gun shot residue testing, and other procedures that are not pertinent to the case. This poses a problem for both the prosecution and

"Jurors now demand expensive and often unnecessary DNA tests, handwriting analyses, gun shot residue testing, and other procedures that are not pertinent to the case."

defense sides of a trial case. These procedures are often extremely expensive and time consuming. Crime labs are already backed up to full capacity, often waiting months, or even years to provide tangible evidence. In the case of Richard Ramirez, AKA the Night Stalker, forensic scientists spent two years carefully analyzing and interpreting the evidence. Many juries do not understand that this type of analysis takes time, money, and patience.

A recent study done by the Maricopa County Attorney's Office (MCAO) conducted a survey of 102 prosecutors with jury trial experience. They were asked about their personal experiences with juries who exhibited signs of the CSI Effect. The study conducted by the MCAO concluded that the CSI effect was a "significant influence" on Maricopa County juries (4). The MCAO is one of the biggest prosecutorial bodies in the United States, so it is not a far leap to imagine that the CSI Effect is present in larger cities, such as New York, Los Angeles, and Chicago.

Television has influenced society in many ways since its inception. A recent airing of a show on the History Channel called *How William Shatner Changed the World* explored in great detail how today's society has been influenced by the original series of Star Trek. Our modern devices like extremely compact cell phones and MRIs are analogous to the Communicator and the Biobed. Television shows and mass media bring an expectation that people should have these types of things and procedures available to them, despite the feasibility of the invention. While Star Trek influenced a generation of scientists, physicists, and inventors, the CSI shows are potentially influencing jury trials where people's lives are at stake.

There is also historical precedent for television's influence on the judicial system. In the 1950's, Perry Mason became a very popular television show in America. Every week, he would regularly approach the jury box, make his case directly to them, and always get a conviction. Before that show, attorneys rarely approached the jury box. By watching this TV show, jurors believed that that kind of behavior from attorneys was normal and expected it. In the 1980's, *The People's Court* with Judge Wapner became very



popular. In a 1989 study, researchers determined that this show "increased jurors' expectations of a quick trial, making more jurors frustrated with the length and nuances of real trials" (5).

The CSI effect has both its proponents and its detractors. One side argues that it has a completely negative effect on the criminal justice system; while the other is that it is creating better-informed jurors on what is needed to prove that someone is truly guilty. The creator of the CSI Television shows, Anthony E Zuicker, has weighed in on the effect. "The CSI effect is, in my opinion, the most amazing thing that has ever come out of the series. For the first time in

American History, you're not allowed to fool the jury anymore".

The CSI effect is exerting an influence on all parts of the criminal justice system. Both the prosecutors and defense attorneys are feeling the need to be more thorough where they didn't need to be before, despite the fact that the extra effort is usually not needed. According to a recent article in USA Today, "some defense lawyers say that CSI and similar shows make jurors rely too heavily on scientific findings, and are unwilling to accept that those findings can be compromised by human or technical errors". Prosecutors are also feeling the effect; they say shows can make it more difficult for them to win convictions in the large majority of cases in which scientific evidence is irrelevant or absent (3). Another problem with the show is that it often uses technology that is either highly stylized, experimental, or is non-existent. Some jurors expect both sides to use this kind of technology, the problem being that most of the times this technology doesn't meet the Frye Standard, a set of procedures used as a benchmark for general acceptance of the way the evidence was tested by the scientific community.

Defense lawyers play on the false idea that crime scene evidence and testing are always accurate. "Jurors expect the criminal justice system to work better than it does" says Betty Layne Desportes, a criminal defense lawyer. Prosecutors say the effect is helping defense attorneys because jurors who are regular viewers expect testable evidence to be present at all crime scenes (3). "Prosecutors fear the CSI effect with juries because, for example, they wonder, "Why hasn't everything been tested? Well in fact,

not everything needs to be tested". The CSI effect has made their job much harder when it doesn't have to be.

Defense attorneys, on the other hand, benefit because it makes the prosecutor's job more difficult and defense attorneys know that jurors are often lay people with little judicial knowledge. In fact, a judge in New York City said that the city's "district attorneys now have so much influence on grand juries that by and large they could get them to indict a ham sandwich." They rely on people who can be easily swayed to one form or another, hopefully delivering a not guilty verdict for their client.



The CSI effect tends to work in favor of the defense, since the prosecution has to work that much harder to prove their case. Defense attorneys rely on the naivety and unrealistic expectations of a trial jury to obtain the desired judgment.

Prosecuting attorneys despairingly echo this sentiment. Wendy Murphy, a former prosecutor, says that the CSI Effect is absolutely real and an impediment on the criminal justice system. "When CSI trumps common sense, then you have a systemic problem. The National District Attorney's Association is deeply concerned about the effect of CSI." She has openly criticized the ability of jurors to understand these intricacies.

"You get jurors who don't have a lot of brain cells asking questions after the case is over about why there weren't any fingerprints on the pillow case. It makes no sense. I actually think one of the problems is we're not screening out these jurors who are way too much under the influence of pop culture programs. They shouldn't be allowed to sit in judgment, frankly" (6).

The long-term consequences of the CSI effect will be difficult to predict. Social scientists have always had difficulties making a methodological study of a cultural phenomenon. It is controversial for both the prosecution and defense to claim that the CSI effect is to blame for lost cases. Is the CSI effect real? The Yale Law Journal says that it is, "an accepted reality by virtue of its repeated invocation by the media" (7).

The American criminal justice system has now been active for 225 years; how well will it react to the ever changing face of science and technology? Molecular biology is

changing the dynamics of the courtroom. Not only do the defending and prosecuting attorneys have to be familiar with the concepts and procedures of biotechnological methods and equipment, but also with their applications in effectively determining the guilt or innocence of a defendant. Eventually, the technology may become mainstream enough that it will be standard procedure in pre-jury screening to ensure that people understand it, both conceptually and in practice. This could eventually lead to more scientifically educated jurors, rather than the

current "television educated" jurors who understand that the technology is there, but do not understand how or when it's used. It is not unreasonable to expect that the CSI effect will eventually become a permanent part of courtroom dynamics, and that it may force both the defense and prosecuting attorneys to present a much more scientifically sound and airtight case.

References:

1. Lovgren, S. CSI Effect is a mixed blessing for crime labs. 2004 *National Geographic*
2. Roan, R.K. The CSI Effect. 2005 *US News and World Report*
3. Willing, R. CSI Effect has juries wanting more evidence. 2004 *USA Today*
4. Maricopa County Attorney's Office, CSI: Maricopa County: The CSI Effect and Its Real-Life Impact on Justice, Maricopa County, AZ, June 30, 2005, [http://www.maricopacountyattorney.org/Pressdefault.asp]
5. Dumble, W.V., Burns, G., Ed., Thompson, R.K., Ed. And Justice for All: The Message Behind "Real" Courtroom Dramas. *Television Studies: Textual Analysis* (Praeger, New York, NY, 1989).
6. CBS News.com [www.cbsnews.com/stories/2005/03/21/earlyshow/printable681949]
7. Tyler, T.R. Viewing CSI and the Threshold of Guilt: Managing Truth and Justice in Reality and Fiction. 2006 *The Yale Law Journal* 115(5): 1050-85

Graphical References:

Page 60: http://www.ornl.gov/info/ornlreview/v38_3_05/images/a19_p26.jpg

Page 61: <http://forensicservices.utah.gov/images/door.jpg>