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The CSI Effect: Fact or Fiction


As chief prosecutor for Maricopa County, which includes the city of Phoenix, my office prosecutes about 40,000 felonies each year and includes a staff of 300 prosecutors. In June 2005, we surveyed 102 of those attorneys, all of whom had trial experience, and they reported that the CSI effect is no myth: Of the prosecutors we surveyed, 38% believed they had at least one trial that resulted in either an acquittal or hung jury because forensic evidence was not available, even though prosecutors believed the existing testimony was sufficient by itself to sustain a conviction. In about 40% of these prosecutors’ cases, jurors have asked questions about evidence like “mitochondrial DNA,” “latent prints,” “trace evidence,” or “ballistics” – even when these terms were not used at trial.

On television, if the CSI people do their job right, the jurors will have little choice but to convict. In real life, the false expectation of plentiful scientific evidence can create a bias in the jury if this issue is not properly addressed at trial. The investigative techniques portrayed on CSI are not always available or even reasonable. Yet almost eight out of ten Maricopa County prosecutors believe that jurors are disappointed in the lack of forensic evidence presented at trial.

All of the prosecutors we surveyed had jury trial experience. Sixty-four had more than ten jury trials and thirty-eight had more than thirty trials. Our prosecutors frequently talk to jurors after their verdicts about the cases they just decided. On the basis of these conversations with juries, 74% of our

prosecutors maintained that they have prosecuted a case in which the jury “expected to be presented with scientific evidence,” and that when both scientific and non-scientific evidence existed, 45% of our prosecutors felt “the jury focused so much on presented scientific evidence that they paid too little attention to unscientific evidence” like witnesses and police testimony.

In one drug case, the officer saw the defendant throw down a baggie of drugs. The baggie was not fingerprinted by the time of trial because there was a backlog for laboratory testing that was up to six months. As Deputy County Attorney Kristen Knudsen explained: “After the trial, the jury complained that the lack of fingerprint evidence suggested that the baggie could have been there all along.”

Even statements by defendants themselves have failed to persuade some juries. In State v. James Calloway, Arizona Department of Corrections officers found a syringe in a cell with a note signed by “Jimbo” attached to it. Inmate “Jimbo” was found with a fresh mark on his arm consistent with syringe use, and admitted the syringe was his when he retrieved it from prison officials and signed the receipt. The jury criticized the prosecution because there was no DNA or fingerprint analysis on the syringe, and the jurors wanted a handwriting comparison on the note and the receipt.

Real prosecutors’ offices are constrained by their limited resources. While some jurisdictions have access to some of the “bells and whistles” equipment depicted in television dramas, those resources are usually reserved for the most serious crimes. In Maricopa County, as in other counties, most felonies do not involve high-profile crimes and lengthy trials. The majority of prosecutions are for lower-level offenses like auto theft, drug possession, and assault. These cases often do not yield irrefutable physical or scientific evidence of guilt or innocence.

What may be of greatest concern is what goes on in the jury room, after arguments have been made. In 72% of cases, prosecutors suspect that jurors who watch shows like CSI claim a level of expertise during jury deliberations that sways other jurors who do not watch those shows.

In State v. Everett Black, the defendant was caught with drugs that were in a cigarette pack in defendant’s pocket. He admitted that the pack was his but denied that the drugs were his or that he knew the drugs were there. The foreperson later said he watched CSI and that investigators should have done extensive fingerprinting, DNA testing, and other forensics, and that he did not think the prosecutors did enough. He had convinced the entire panel that on television they do so much more and that the police officers did not do a good job.

This is the kind of example that makes prosecutors worried that justice is not being done. Although verdicts have not yet noticeably changed from guilty
to not guilty, prosecutors have had to take more and more preemptive steps to divert juries from reliance on television-style expectations.

Maricopa County prosecutors have begun to counter the CSI effect through voir dire, opening and closing arguments, and presentation of other evidence and testimony. While the defense often questions the work of investigators, prosecutors can restore balance to the criminal justice system by pointing out the reasons why there is no forensic evidence in a certain case.

Court officials could also take action to preserve the opportunity for fair trials. More judges could actively acknowledge the existence of the CSI effect and take steps during voir dire to prevent biased jurors from improperly influencing the jury. When they instruct juries before deliberations, judges could also mention that jurors should not use outside standards like those presented in forensic crime television shows.

These solutions are temporary, but as CSI continues to grow in popularity, and as more shows continue to follow its lead, these steps may soon be inadequate.

Andrew P. Thomas is Maricopa County Attorney, the chief prosecutor for Maricopa County, Arizona. Maricopa County is the fourth most populous county in the United States, with 3.5 million people in the greater Phoenix area. Mr. Thomas is a graduate of Harvard Law School and the author of four books.