



**CSI: Maricopa County
The CSI Effect and its Real-Life
Impact on Justice**

**A Study by the
Maricopa County Attorney's Office**

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Introduction

Crime Scene Investigation (CSI) is a television series depicting scientific evidence being gathered, processed, and used to solve crimes. The actors in the series use a number of costly and sophisticated techniques to produce compelling scientific evidence connecting the defendant to the crime or determining how events took place. Recent reports indicate that this top-rated show may have a significant impact on the real criminal justice system in the future by creating unrealistic expectations in jurors' minds about the type of physical evidence that must be produced at trial in order to achieve proof beyond a reasonable doubt. The influence of CSI and other forensic crime television shows may soon cause jurors to judge facts through the misleading prism of fiction and reach conclusions contrary to the interests of justice. This new kind of influence has been dubbed the "CSI Effect."

Some prosecutors believe that juries in the past were intimidated or bored by scientific evidence, but now the opposite may be true. Such beliefs and experiences have provoked some key questions. When television viewers who have been exposed to fictional crime scene investigations are selected for jury duty, will they bring with them expectations of irrefutable scientific evidence? Does the science used in these fictional investigations have the potential to sway juries against the prosecution because the burden of proof now includes the requirement of a specific type of scientific examination or an exotic laboratory analysis?

In the criminal justice system, defense attorneys have the duty to advocate for the defendant. Will the influence of CSI shows allow defense attorneys to call the criminal justice process itself into question, and holding police and prosecutors to a different, and higher, television-driven standard? Will juries now favor the defendant when defense attorneys question longstanding evidence-gathering procedures or expect irrefutable physical and scientific evidence of guilt, even in trials that may already have multiple eyewitnesses or even confessions?

According to former Virginia prosecutor Karin Cather, who researched the "CSI Effect" for the National District Attorney's Association, some prosecutors have already acknowledged the existence of the CSI Effect on juries. Those who have seen the impact are changing their strategy to address the possible bias created in jurors who watch these programs.¹

Another source documenting the phenomenon is Michael Watkins' 2004 study "Forensics in the Media: Have Attorneys Reacted to the Growing Popularity of Forensic Crime Dramas?" Watkins, of Florida State University, surveyed a group of Florida

¹ "The CSI Effect: Fake TV and its Impact on Jurors in Criminal Cases" Karin H. Cather, *The Prosecutor*, March/April 2004, National District Attorneys Association.

criminal trial lawyers and concluded, “A miseducated citizenry, weaned on media images, may serve to undermine the court process when called upon to serve as jurors.”²

The purpose of this report is to study whether the “CSI Effect” has begun to contaminate the criminal justice system in Maricopa County, Arizona. After becoming familiar with these potential influences on juries, prosecutors and policymakers can assess the reality of criminal trials today and propose possible reforms. Such remedies are especially important if these developments are compromising the traditional integrity of one of the most important components of the criminal justice system.

About Maricopa County

Maricopa County is the fourth most populous county in the United States, with 3.5 million people and 26 major cities including Phoenix, Mesa, Glendale, Scottsdale, Chandler, Tempe, and Gilbert. The chief prosecutor for the county is Maricopa County Attorney Andrew Thomas, who took office on January 1, 2005.

The Purpose of the Jury

The right to a jury trial is part of our longstanding legal tradition and serves not only as the cornerstone of the criminal justice system but as a right of passage for adult citizens who are called to sit in judgment. Juries are required to listen, consider the evidence, decide upon the reliability of witness statements, address the arguments of prosecutors and defense attorneys, and deliberate upon the merits of the case. While the chance of being called to jury duty and being seated as a juror in a lengthy or high-profile case is small, all jurors are sworn to uphold the law, seek the truth, and honestly discuss the guilt of the defendant.

In Maricopa County, judges and counsel question potential jurors before trial to determine if any of them harbor biases that could taint the verdict. They are told not to discuss any of the evidence or testimony until all of it has been presented in order to avoid premature conclusions. Jurors are also sworn to secrecy for the duration of the trial to protect the integrity of their deliberations from undue outside influences. In high-profile cases, jurors are often instructed not to read newspaper accounts or watch television to prevent one-sided accounts from coloring their opinion.³

² “Forensics in the Media: Have Attorneys Reacted to the Growing Popularity of Forensic Crime Dramas?” Michael J. Watkins, graduate student, School of Criminology and Criminal Justice at Florida State University, August 3, 2004. www.coolings.net/education/papers/Capstone-Electronic.pdf

³ After hearing the case and closing arguments, judges provide further assurance of a fair trial by relying upon any number of 36 typical jury instructions. For example: “*It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence", I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.*” (Standard Criminal Jury Instruction 1)

The large pool of citizens available for service in a typical criminal trial usually results in a fairly diverse group, based on the demographics of a jurisdiction as large as Maricopa County. Many citizens serve on juries without any prior experience with the criminal justice system, but upon hearing closing argument become the sole judges as to the facts of the case and the guilt of the defendant.

The Influence of Television

Diverse as we are, we still have one thing in common: almost all of us watch television. Nine of the top 20 rated shows nationally are forensic crime television dramas: CSI, CSI: Miami, Without a Trace, Law & Order, NCIS, Cold Case, CSI: NY, Law & Order: Criminal Intent, Law & Order. The Law & Order series are on NBC, the remainder on CBS. Cable television and satellite television make past episodes of these programs available twenty-four hours a day.

With the tremendous popularity of network television dramas and the saturation of viewers with crime-oriented programs, the likelihood that jurors watch the same popular forensic crime television shows is extremely high. In fact, a typical group of jurors will include a significant number of those who have watched an episode of a television show such as CSI.

Prime-time Viewership⁴

1. "Dancing with the Stars," ABC, 15.7 million viewers.
2. NBA Finals Game 5: San Antonio at Detroit, ABC, 13.1 million viewers.
3. "CSI: Crime Scene Investigation," CBS, 12.4 million viewers.
4. "CSI: Miami," CBS, 11.3 million viewers.
5. NBA Finals Game 4: San Antonio at Detroit, ABC, 10.9 million viewers.
6. "Without a Trace," CBS, 10.9 million viewers.
7. NBA Finals Game 3: San Antonio at Detroit, ABC, 10.6 million viewers.
8. "Two and a Half Men," CBS, 10.6 million viewers.
9. Movie: "Twelve Mile Road," CBS, 9.9 million viewers.
10. "Law & Order," NBC, 9.6 million viewers.
11. "NCIS," CBS, 9.3 million viewers.
12. "48 Hours Mystery" (Tuesday), CBS, 9.3 million viewers.
13. "Cold Case," CBS, 9.2 million viewers.
14. "CSI: NY," CBS, 9.1 million viewers.
15. "Everybody Loves Raymond," CBS, 8.8 million viewers.
16. "House," Fox, 8.5 million viewers.
17. "Law & Order: Criminal Intent," NBC, 8.4 million viewers.
18. "60 Minutes," CBS, 8.2 million viewers.
19. "Dancing with the Stars" (Wednesday), ABC, 8.1 million viewers.
20. "Law & Order: SVU," NBC, 8.1 million viewers.

⁴ Nielsen Media Research for June 13-19, national market data.

CSI Effect in Maricopa County

In June 2005, the Maricopa County Attorney's Office conducted a survey of 102 prosecutors with jury trial experience. Sixty-four had more than ten jury trials and 38 had more than 30 trials. The prosecutors were asked about their experiences with jurors seeking irrefutable physical and scientific evidence and their perceptions of a possible "CSI Effect" among juries.

This study found a significant CSI influence in Maricopa County juries. Indeed, the survey found a more pervasive influence in Maricopa County than in the Florida State survey. Although the verdicts have not yet noticeably changed from guilty to not guilty, prosecutors have had to take more and more pre-emptive steps to divert juries from reliance on television-style expectations. As forensic programs continue to grow in popularity, those steps may soon be inadequate.

In the Florida State study, 23 prosecutors were interviewed.⁵ Forty-four percent had five years of prosecutorial experience or less.⁶ Half the attorneys reported between one and five acquittals where they felt sufficient non-forensic evidence existed, but forensic evidence was not presented. One-third of the prosecutors felt more than five faulty "not guilty" verdicts had been reached.⁷

In Maricopa County, 38 percent of prosecutors believed they had at least one trial which resulted in either an acquittal or hung jury when forensic evidence was not available to corroborate testimony that should have been sufficient by itself to sustain a conviction.⁸

Unlike the Florida State study, where prosecutors rarely meet with jurors after the verdict,⁹ Maricopa County prosecutors get their feedback directly from the source, with 94 percent of prosecutors having talked to jurors after a trial, and 64 percent of them "usually" talking to jurors.¹⁰ Obviously, prosecutors can obtain a better understanding of the CSI effect on juries by speaking to jurors after the trial. This access to real jurors in Maricopa County provides more direct and more reliable conclusions about the reasoning and expectations of jurors.

Do prosecutors know what to look for in addressing the CSI Effect? The Florida State study showed that 38 percent of prosecutors had never watched an episode of a forensic crime drama.¹¹ In Maricopa County, 77 percent of prosecutors have at least "seen a few episodes."¹²

While most judges do not specifically ask if a potential juror's understanding of the criminal justice system is based on television shows, 70 percent of Maricopa County

⁵ Watkins, p. 56. Watkins surveyed 53 attorneys, 23 were "felony assistant state prosecutors."

⁶ Watkins, p. 56.

⁷ Watkins, p. 73.

⁸ Maricopa County Attorney's Office (MCAO) Survey Report "CSI Effect, June 2005, Question 10.

⁹ Watkins, p. 63.

¹⁰ MCAO Survey Report, Question 24.

¹¹ Watkins, p. 62.

¹² MCAO Survey Report, Question 3.

prosecutors ask this question during *voir dire*, a stage during the selection of the jury when the attorneys are permitted to ask the jury questions.¹³ Seventy-six percent consider the answer in determining whether to strike that potential juror from the jury.¹⁴ Seventy percent believe that the defense also considers the jurors' television watching habits.¹⁵

Seventy-four percent of Maricopa County prosecutors maintain that they have prosecuted a case in which the jury "expected to be presented with scientific evidence."¹⁶ When both scientific and non-scientific evidence existed, 45 percent of 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.¹⁷

One Deputy Maricopa County Attorney stated, "The jury wanted more crime scene photos...they placed more emphasis on police investigation than on the victim's testimony." Another observed, "Jurors always want fingerprints or some sort of scientific evidence to convict even with a full confession."¹⁸

While some jurisdictions have access to some of the "bells and whistles" equipment depicted in television dramas, those resources are scarce and are usually reserved for the most serious crimes. In Maricopa County, like 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 and other property crimes, drug possession, and assault. These cases bear the brunt of the CSI Effect because these cases often do not yield irrefutable physical or scientific evidence of guilt or innocence. Accordingly, almost eight out of ten Maricopa County prosecutors believe that jurors are disappointed in the lack of forensic evidence.¹⁹

Typical of this phenomenon is the following example from Deputy County Attorney Kristen Knudsen: "I had a drug case...where the officer saw the defendant throw down a baggie of drugs. The baggie was not fingerprinted as the backlog [for laboratory testing] was almost six months at the time. After the trial, the jury complained that the lack of fingerprint evidence suggested that the baggie could have been there all along."²⁰

Jurors often ask questions about evidence using terms or language not used at trial, like "mitochondrial DNA," "latent prints," "trace evidence," or "ballistics." Maricopa County prosecutors respond that this happens in 40 percent of their cases.²¹ Of greater concern is that 72 percent of prosecutors suspect that jurors who may have "expertise" gained from

¹³ MCAO Survey Report, Question 13.

¹⁴ MCAO Survey Report, Question 15.

¹⁵ MCAO Survey Report, Question 16.

¹⁶ MCAO Survey Report, Question 8.

¹⁷ MCAO Survey Report, Question 7.

¹⁸ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.

¹⁹ MCAO Survey Report, Question 26.

²⁰ MCAO Survey Report, Question 31/Narrative Response from Deputy County Attorney Kristen Knudsen.

²¹ MCAO Survey Report, Question 25.

viewing forensic crime television shows unduly influence other jurors who do not watch the shows.²²

Recent Real World Example of the CSI Effect

While the survey numbers show prosecutors are experiencing the CSI Effect in Maricopa County, the cases themselves tell a compelling story of how unrealistic or misinformed expectations from jurors are affecting real-life justice in our courts.

In *State v. Everett Black*, on September 21, 2001, the defendant was caught with drugs which were in a cigarette pack in defendant's pocket. He admitted the pack was his but denied 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.

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 on June 13, 2002. 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.

In *State v. Edward Sierra*, on October 11, 2001 an inmate was caught with drugs in a balloon hidden in the inmate's rectum. The jury found the defendant guilty, but one juror commented that the state should have had DNA from an analysis of the excrement and that evidence would have made the verdict a lot faster.

In another recent Maricopa County case, the defendant was driving a stolen car and was pulled over and arrested by a police officer. The jury still wanted to know if his fingerprints were found in the car—despite the eyewitness testimony of the officer.

In another, a handgun was removed from the defendant's waistband and the defendant admitted that he possessed the gun and hid it under his clothing. Nevertheless, the jury did not find the officer's testimony or the defendant's admission compelling. One of the jurors said that the jury wanted the prosecutor to prove that the defendant's fingerprints had been found on the weapon.

Similarly, another prosecutor observed, "Sometimes after defense arguments, juries are not satisfied with merely testimonial evidence, especially when police have the evidence but have chosen not to test it due to costs and policies."²³

In *State v Curtis Poole*, a victim looked out his front window on January 15, 2005, and saw the defendant inside the victim's truck that was parked in front of his house. The

²² MCAO Survey Report, Question 27.

²³ MCAO Survey Report, Question 31/Narrative Response from Deputy County Attorney Noble Murphy.

defendant noticed the victim looking at him, jumped out of the truck with the victim's stereo in his hands and ran away. The victim went outside, looked inside the truck and found the stereo missing. The defendant was detained a few minutes later a few blocks away. The victim came to the scene and identified the defendant as he was wearing the same clothes. Phoenix Police did not take photos, fingerprints or information on the truck. At trial, the officer testified that he did not take fingerprints because the truck was contaminated by the victim who went into the truck after the crime. In closing, the prosecutor reminded the jury that the one person in the courtroom who was trained and experienced with fingerprints was that officer, and that his training and experience told him that trying to find fingerprints in the truck would be pointless.

After the verdict, the jury told the prosecutor that the police should have taken fingerprints. They said that if fingerprints had been taken, the trial could have been avoided. They also felt that the police should have photographed the truck and the area where the stereo was taken. The jurors told the prosecutor that he did not give them enough credit for "being smart." They told him that they know all about fingerprints and that they know that fingerprints can be left on different surfaces, and are more easily retrievable off certain surfaces. They talked about rough surfaces and smooth surfaces, glass, metal and plastic surfaces (none of these matters were introduced at trial). They told him that police officers normally take prints in all cases. The prosecutor asked why they did not give any weight to the testimony of the eyewitness, and was told that the only lighting at the crime scene was from a street light. They told him that streetlights with certain chemical bulbs cast a light that alters the appearance of the color of items it shines on (e.g., making a blue car look black.) They felt that because this could have been one of those kinds of street lights (though there was no testimony to support that idea), and that the victim was probably mistaken about his identification and description of the defendant's clothing.

Defense Attorney Strategy and the CSI Effect

Eighty percent of Maricopa County prosecutors believe defense attorneys play on perceptions created by forensic crime television shows to counter the argument and evidence the state presents in court.²⁴ Sixty-eight percent of those Maricopa County prosecutors believe the defense uses this tactic at least half the time.²⁵

Impact on Plea Agreements

Is there a CSI Effect when cases do not go to trial? Fifty-two percent of prosecutors have engaged in plea negotiations in which they felt the defendant may have received a more lenient plea offer because of anticipated problems with the CSI Effect if the case were to be presented to a jury.²⁶

²⁴ MCAO Survey Report, Question 19.

²⁵ MCAO Survey Report, Question 20.

²⁶ MCAO Survey Report, Question 29.

One prosecutor commented, “Juries always prefer scientific evidence, but if you are lucky enough to have DNA/fingerprints, then it is unlikely that the case will go to trial – the defendant is going to plead guilty.”²⁷

MCAO Prosecutors Respond to the CSI Effect

The vast majority of Maricopa County prosecutors have changed the way they prepare arguments and evidence to counteract the CSI Effect. Several began to do so three to four years ago,²⁸ and for good reason: More than half (61%) of prosecutors who ask jurors if they watch forensic crime television shows feel jurors “seem to believe the shows are mostly true.”²⁹

“I have been asking to have evidence submitted for fingerprints and DNA on a regular basis, sometimes even with admissions [of guilt] just to show the jury we are all doing our jobs,” said one prosecutor.³⁰

Some prosecutors use *voir dire* to try to better inform the jury about the nature of this evidence. Said one, “I often explain to the jury that analysis of evidence takes considerable time, not the 24 hour turnaround time frequently depicted on CSI and other television shows.”³¹ Another attorney noted, “I have made it a practice to have the detective explain the investigation, especially in sex crimes prosecutions where very little scientific evidence exists.”³²

Almost all Maricopa County prosecutors (90%) explain to juries why police might not collect the kind of evidence depicted in television shows.³³ Seventy-five percent try to have fingerprint or other expert witnesses available to counter the effects on juror perceptions created by forensic crime television shows.³⁴

The Judicial Reaction

Judges in cases with heavy reliance on forensic evidence have an additional burden when instructing the jury after both sides make closing arguments. Still, only 19 percent of Maricopa County prosecutors experienced cases in which judges communicated with juries about the CSI Effect, either through jury instructions or in response to questions arising during deliberations.³⁵

²⁷ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.

²⁸ Deputy County Attorney Shawn Steinberg email 6-9-05.

²⁹ MCAO Survey Report, Question 14.

³⁰ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.

³¹ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.

³² MCAO Survey Report, Question 31/Narrative Response from Deputy County Attorney Dante Alegre.

³³ MCAO Survey Report, Question 17.

³⁴ MCAO Survey Report, Question 18.

³⁵ MCAO Survey Report, Question 21.

Indeed, 88 percent of prosecutors felt that judges rarely or never address the burden of overcoming the CSI Effect.³⁶ “Most judges think it’s silly I even address these questions in *voir dire*,” said one prosecutor.³⁷

As a result, 83 percent agree that jury instructions should include directing jurors not to use outside standards like those used in forensic crime television shows when making judgments of guilt or innocence.³⁸

Possible Reforms

While judges, prosecutors and defense attorneys are able address this issue to some extent during trial, the CSI Effect is still a significant factor in Maricopa County criminal trials. Even though most MCAO prosecutors are already addressing the CSI Effect, nevertheless, as the above cases and data show, the CSI Effect persists.

Maricopa County prosecutors will soon, by office policy, be directed formally to fully address the techniques used by defense attorneys who use the CSI Effect to sway juries. This will involve countering the CSI Effect through *voir dire*, opening and closing arguments, and presentation of other evidence and testimony. By properly countering the defense tactics of questioning the work of investigators or pointing out the absence of forensic evidence, prosecutors will help to restore greater balance to the criminal justice system.

Court officials might also take action to preserve the opportunity for fair trials. 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. In instructing the jurors before deliberations, judges also could include in the body of jury instructions that jurors should not use outside standards like those presented in forensic crime television shows.

Many television shows provide disclaimers during broadcast, from Dragnet’s famous “The following story is true...the names were changed to protect the innocent” to the ever-popular “viewer discretion is advised” used today by several networks. Although “Law & Order” and its spinoffs do provide a disclaimer, it appears designed to defend its portrayal of the parties depicted in the cases, not the criminal justice system.

If CSI and similar programs were to use an effective, authoritative disclaimer at the beginning of its shows, potential jurors could be informed and reminded that the entire show is fictional and does not represent the kind of evidence or investigation results they would likely see as a juror. From this, the potential jury pool would be informed clearly not to expect the criminal justice system to operate the way Hollywood productions portray it.

³⁶ MCAO Survey Report, Question 22.

³⁷ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.

³⁸ MCAO Survey Report, Question 23.

Another possibility would be for CSI or other law or courtroom dramas to show the CSI Effect in action. A television program in which jurors display some of the unreasonable demands depicted in the anecdotes mentioned above might be both entertaining and effective in demonstrating the side effects of these programs. Programs in which jurors use outside influences and prejudices to “supplement” the facts of the case presented in court, or in which a jury foreman with an addiction to television crime dramas uses his “expertise” to intimidate and cajole young, inexperienced jurors, might be instructive. It might also be possible to present a case in which both sides put on heroic court performances but the jury ends up freeing a criminal who committed a serious crime, like child molestation, because of these influences.

Television producers should take notice of their potential to unduly influence citizens by causing them to have unrealistic expectations of the criminal justice system.

Conclusion

With a national audience of over twelve million per episode, “CSI” will remain a substantial influence on American criminal justice through its impact on potential jurors. It is an acknowledgement of the power of broadcast media that the CSI Effect exists.

One prosecutor observed:

The general public really does not understand how long it takes to get prints, DNA, handwriting, and that no magic button focuses on some small part of a video frame, for that matter, we can’t even really clean it up to make it clearer. There is no appreciation for the overburdened labs and the fact that every piece of evidence can not be printed or tested for DNA. They get the ideas from television so television is probably the best way to “re-educate” the public.³⁹

It is appropriate for all of us to take stock of this phenomenon, and for television to help correct the misunderstandings these programs are creating regarding our criminal justice system.

³⁹ MCAO Survey Report, Question 31/Narrative Response from anonymous attorney.