

## THE EFFECTS OF CRIME MEDIA ON REALITY

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### INTRODUCTION

In today's pop-culture climate, there is no shortage of shows depicting the American criminal justice system. In the 2015–2016 season, thirteen of the top fifty shows on broadcast network television (based on viewership) were crime dramas or police procedurals.<sup>1</sup> Thirteen new network shows of the 2016–2017 season have some kind of criminal justice element.<sup>2</sup> *Law and Order: Special Victims Unit* is currently the longest-running scripted, non-animated U.S. primetime series, followed closely by *NCIS*, another procedural.<sup>3</sup> The public's fascination with the criminal justice system is thus reflected in these media sensations.

Many Americans get their knowledge of the criminal justice system from these television programs, rather than personal experience.<sup>4</sup> Given the overwhelming popularity of the genre, this piece explores the potential effects these programs have on the criminal justice system. Evidence suggests that crime media affects the general public's perception of crime, and commentators have spoken extensively on the effect that crime dramas supposedly have on jury members. Although it

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<sup>1</sup> A police procedural is a story or drama about the investigation of a crime by the police. *Police procedural*, AM. HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992); see Michael Schneider, *These are the 100 Most-Watched TV Shows of the 2015-16 Season: Winners and Losers*, INDIEWIRE, (May 31, 2016), <http://www.indiewire.com/2016/05/most-watched-tv-show-2015-2016-season-game-of-thrones-the-walking-dead-football-1201682396/> (listing *NCIS* (3), *NCIS: New Orleans* (7), *Criminal Minds* (16), *NCIS: Los Angeles* (19), *Hawaii Five-O* (21), *Blindspot* (22), *The Blacklist* (24), *Chicago PD* (34), *How to Get Away with Murder* (35), *Castle* (40), *Shades of Blue* (40), *Law & Order: Special Victims Unit* (42), *Criminal Minds: Beyond Borders* (45), *Elementary* (47)).

<sup>2</sup> See *Fall Preview New Shows*, TV GUIDE, [www.tvguide.com/special/fall-preview/new-shows](http://www.tvguide.com/special/fall-preview/new-shows) (last visited Oct. 9, 2016).

<sup>3</sup> See Kaitlin Thomas, *CBS Renews NCIS for Two More Seasons*, TV.COM, (Feb 29, 2016), <http://www.tv.com/shows/ncis/community/post/ncis-renewed-season-14-season-15-cbs-145677012025/>.

<sup>4</sup> There are approximately 300 million Americans, but there are only 1.3 million licensed lawyers and roughly 1 million law enforcement employees. See U.S. AND WORLD POPULATION CLOCK, <http://www.census.gov/popclock/> (last visited Oct. 9, 2016); see also *Lawyer Demographics Year 2015*, American Bar Ass'n, [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf); *Full-Time Law Enforcement Employees*, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables> (select table 74); RAY SURETTE, *MEDIA, CRIME, & CRIMINAL JUSTICE: IMAGES & REALITIES* 1–3, 82–83 (Roy R. Roberg 1992).

is not clear whether these programs have any significant effects on the outcome of trials, evidence suggests that any such effects are more closely correlated to influences on attorneys, rather than influences on jury members.

### I. THE MYTH THAT MEDIA INTERFERES WITH JUROR INTEGRITY

When a media form becomes popular, researchers and commentators often question its influence on the public.<sup>5</sup> Whether violent rap music and video games cause violent or criminal behavior are frequent topics of discussion by social scientists and researchers<sup>6</sup> and the effects of crime dramas have been similarly questioned. Several studies have shown that crime dramas do affect general, public attitudes towards the topics they portray.<sup>7</sup> This becomes potentially dangerous when these people serve on a jury, a place where these perceptions have a lasting impact on others' lives.

The worry that crime dramas warp the public's opinion of the criminal justice system is not a new one. In the 1960s, lawyers and

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<sup>5</sup> See, e.g., Craig A. Anderson et al., *The Influence of Media Violence on Youth*, 4 PSYCHOL. SCI. PUB. INT. 81 (2003); L. R. Huesmann, *The Impact of Electronic Media Violence: Scientific Theory and Research*, 41 J. ADOLESCENT HEALTH S6 (2007); Barbara Frazier, *The Impact of TV Violence on Children and Adolescents*, THE SUCCESSFUL PARENT, (Nov. 15, 2016), [www.thesuccessfulparent.com/categories/children-and-media/item/the-impact-of-tv-violence-on-children-and-adolescents#.WCtFTfkrI2w](http://www.thesuccessfulparent.com/categories/children-and-media/item/the-impact-of-tv-violence-on-children-and-adolescents#.WCtFTfkrI2w); Brittany Bostic, *Does Social Media Perpetuate Youth Violence?*, MICHIGAN YOUTH VIOLENCE PREVENTION CENTER: SAFE & HEALTHY FUTURES, (Feb. 20, 2014), <http://www.yvpc.sph.umich.edu/social-media-perpetuate-youth-violence/>.

<sup>6</sup> See, e.g., Jordan Sargent, *According to New Study, There is No Link Between Violent Crime and Rap Music*, COMPLEX, (Jan. 7, 2014), <http://www.complex.com/music/2014/01/violent-crime-rap-music-connection>; Tio Hardiman, *Gangster Rap and the History of Violence*, HUFFINGTON POST, (Dec. 25, 2012), [http://www.huffingtonpost.com/tio-hardiman/gangster-rap-and-the-hist\\_b\\_2017202.html](http://www.huffingtonpost.com/tio-hardiman/gangster-rap-and-the-hist_b_2017202.html); Susan Scutti, *Do Video Games Lead to Violence?*, CNN, (July 26 2016), <http://www.cnn.com/2016/07/25/health/video-games-and-violence/>; Michael Casey, *Do Violent Video Games Lead to Criminal Behavior?*, CBS, (Aug. 17 2015), <http://www.cbsnews.com/news/do-violent-video-games-lead-to-criminal-behavior/>.

<sup>7</sup> See, e.g., PURDUE UNIVERSITY, *Researchers Rest Their Case: TV Consumption Predicts Opinions About Criminal Justice System*, PURDUE UNIVERSITY, (Oct. 29, 2009), <http://www.purdue.edu/uns/x/2009b/091028SparksCrime.html> (finding that people who watched crime dramas and procedurals estimated the rate of real life murders at 2.5 times higher than the actual rate, consistently inflated the frequency of other crimes, and overestimated the number of lawyers and police officers in the United States); Stacey J. T. Hust et al., *Law & Order, CSI, and NCIS: The Association Between Exposure to Crime Drama Franchises, Rape Myth Acceptance, and Sexual Consent Negotiation Among College Students*, 20 J. OF HEALTH COMM. 1369, 1374–76 (2015) (finding that viewers of Law & Order had lower "rape-myth acceptance," greater intentions to refuse unwanted sexual activity, and greater intentions to adhere to decisions related to sexual consent).

commentators bemoaned “Perry Mason Syndrome.”<sup>8</sup> Named after the popular legal television show *Perry Mason*, the syndrome supposedly influenced jurors into thinking defendants were innocent when they did not spontaneously and dramatically confess as a guilty party often would in the television show.<sup>9</sup> Critics also argued that television confused its viewers as to whether the prosecution or defense had the burden of proof.<sup>10</sup>

Legal professionals today complain of a similar, modern “Perry Mason Syndrome”: The *CSI* effect. There are three primary phenomena allegedly associated with this particular “syndrome.” First, the *CSI* effect refers to an increased public fascination with careers involving crime scene investigation.<sup>11</sup> Second, the *CSI* effect signifies the reality that modern juries demand more forensic evidence to convict.<sup>12</sup> Finally, the *CSI* effect suggests juries put far more weight on forensic evidence compared to circumstantial evidence and oral testimony.<sup>13</sup> This piece focuses on the second and third phenomena allegedly associated with the *CSI* effect, as well as the effect that crime media has on attorneys in the criminal justice system.

When prosecutors complain of the *CSI* effect, they usually refer to juries’ heightened expectations for evidence that prosecutors simply cannot produce. DNA specialist Dan Krane discussed the depiction of crime investigations in the media, noting that on television, viewers “never see a case where the sample is degraded or the lab work is faulty or the test results don’t solve the crime. These things happen all the time in the real world.”<sup>14</sup> Similarly, Betty Layne DesPortes, a criminal defense lawyer with a degree in forensic science, points out that human error and corruption skew test results on several occasions, but jurors put too much faith in the system.<sup>15</sup>

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<sup>8</sup> See Kimberlianne Podlas, Symposium, *The Potential Impact of Television on Jurors* 11 (2010), [http://projects.nfstc.org/ipes/presentations/Podlas\\_tv-jurors.pdf](http://projects.nfstc.org/ipes/presentations/Podlas_tv-jurors.pdf).

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See Kimberlianne Podlas, “*The CSI Effect*”: *Exposing the Media Myth*, 16 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 430, 442 (2006).

<sup>12</sup> See *id.* at 433.

<sup>13</sup> See *id.* at 437; see also Young S. Kim et al., *Examining the “CSI-Effect” in the Cases of Circumstantial Evidence and Eyewitness Testimony: Multivariate and Path Analyses*, 37 *J. CRIM. JUST.* 452, 454 (2009).

<sup>14</sup> Richard Illing, ‘*CSI effect*’ has Juries Wanting More Evidence, *USA TODAY*, (Aug. 5, 2004), [http://usatoday30.usatoday.com/life/television/news/2004-08-05-CSI-effect\\_x.htm](http://usatoday30.usatoday.com/life/television/news/2004-08-05-CSI-effect_x.htm).

<sup>15</sup> See *id.*; see also Tom Jackman, *When a State’s Drug Chemist Lies for Years, Should all Her Cases be Thrown Out?*, *THE WASHINGTON POST*, (Sept. 29, 2016), [https://www.washingtonpost.com/news/true-crime/wp/2016/09/29/when-a-states-drug-chemist-lies-for-years-should-all-her-cases-be-thrown-out/?tid=sm\\_tw](https://www.washingtonpost.com/news/true-crime/wp/2016/09/29/when-a-states-drug-chemist-lies-for-years-should-all-her-cases-be-thrown-out/?tid=sm_tw) (providing an example of corruption in a forensics lab).

Some attorneys have complained that jurors expect forensic evidence when collecting or introducing that evidence would be useless or unnecessary. For instance, during a murder trial in Phoenix, jurors questioned why a bloody coat that had been submitted as evidence was not tested for DNA.<sup>16</sup> However, because the defendant had admitted to being at the scene of the crime, a DNA test would not have provided any new information.<sup>17</sup> Finally, a jury may expect evidence that is, frankly, impossible to collect. Judge Donald E. Shelton stated that he once heard a juror complain "they didn't even dust the lawn for fingerprints."<sup>18</sup>

Crime dramas tend to exaggerate the forensic technology available to law enforcement. In an early episode of *CSI*, technicians determined the knife used to make a wound by pouring plaster directly into a wound—technology that does not exist in real life.<sup>19</sup> The television show *Bones* features computer genius and forensic facial reconstruction expert Angela Montenegro, who developed the Angelator<sup>20</sup> and Angelatron<sup>21</sup>: holographic and computer displays that simulate attacks, reconstruct faces, and do almost anything else the plot demands. Additionally, almost every crime lab on television operates without worrying about budget issues or backlogs of work spoiling the pace of the show. It is true that fiction can foreshadow real scientific advances.<sup>22</sup> However, it does not always accurately reflect current technological realities.

## II. STUDIES ON THE *CSI* EFFECT

Surprisingly, very little research has actually been done on the *CSI* effect, and the research that has been done shows mixed results.<sup>23</sup> A study by Media Law Professor Dr. Kimberlianne Podlas, polled 291 jury eligible adults on their television habits, focusing on legal drama, reality

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<sup>16</sup> See Michael Mann, *The "CSI Effect": Better Jurors Through Television and Science?*, 24 BUFF. PUB. INT. L.J. 211, 220 (2006).

<sup>17</sup> See *id.*

<sup>18</sup> Donald E. Shelton, *The 'CSI Effect': Does It Really Exist?*, 2008 NAT. INST. JUST. J. 1, 2.

<sup>19</sup> See Tamara F. Lawson, *Before the Verdict and Beyond the Verdict: The CSI Infection Within Modern Criminal Jury Trials*, 41 LOY. U. CHI. L.J. 119, 132 n.53 (2009).

<sup>20</sup> See David A. Keeps, *Bones: More of Your Burning Questions Answered!*, TV GUIDE, (Nov. 28, 2006), <http://www.tvguide.com/news/bones-burning-questions-35748/> (explaining Angelator technology exists but would not typically be used in a forensic setting due to rarity and expense).

<sup>21</sup> See Debra Kaufman, *VFX Files: Khaos Digital Helps Bones Tell Its Stories*, CREATIVE COW, [https://library.creativecow.net/kaufman\\_debra/Khaos-Digital-Bones/1](https://library.creativecow.net/kaufman_debra/Khaos-Digital-Bones/1).

<sup>22</sup> Sherlock Holmes used fingerprint evidence in 1890—eleven years before Scotland Yard started using it. See James O'Brien, *Sherlock Holmes: Pioneer in Forensic Science*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Sherlock-Holmes-Pioneer-in-Forensic-Science-1976713>.

<sup>23</sup> See Podlas, *supra* note 10, at 431.

courtrooms, and *CSI*.<sup>24</sup> Participants were given a hypothetical rape scenario to read which hinged on witness credibility and presented no issues that forensic evidence could illuminate.<sup>25</sup> Participants were to vote for a verdict of guilty or not guilty and then to explain their verdict by selecting any answers that affected their choice from a list of options.<sup>26</sup> Participants were not told that, of the options, four were “*CSI*-marked” reasons, such as “not checking for fingerprints.”<sup>27</sup> Because the scenario hinged entirely on witness credibility, and the participants did not have live witness testimony to examine, it should have been impossible for participants to find the defendant guilty beyond a reasonable doubt.<sup>28</sup> Therefore, any guilty verdicts had to be influenced by external factors like personal bias.<sup>29</sup> Only 12% of the participants, who were frequent viewers of *CSI* and chose “not guilty,” checked *CSI*-marked reasons less than the 16% of non-frequent viewers who made the same selections.<sup>30</sup> Although these results were not statistically significant<sup>31</sup> and the author concluded that not only was there no evidence for the anti-prosecution version of the *CSI* effect, there was some evidence suggesting a pro-prosecution effect.<sup>32</sup> Similarly, an article by Simon Cole, an assistant professor of criminology, pointed out that there is little non-anecdotal evidence for the *CSI* Effect.<sup>33</sup>

### III. THE REAL EFFECT: EXACTLY WHO ARE CRIME SHOWS AFFECTING?

Whether *CSI* and its contemporaries affect juries, evidence suggests that they do in fact have an effect on attorneys. The supposed phenomenon has spawned much commentary from the legal community and attorneys on both the prosecution and defense, who have purported to have felt its effects. Lawyers seem aware enough of its potential effects to either use it to their advantage or guard against it. In the 2003

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<sup>24</sup> *Id.* at 454–55, 457.

<sup>25</sup> *Id.* at 455.

<sup>26</sup> *Id.* at 455–56. The options listed to participants who chose “not guilty” were (1) victim had reason to lie, (2) evidence not tested for fingerprints, (3) defendant may have committed offense, but prosecution did not prove beyond a reasonable doubt, (4) prosecution did not perform forensic tests that could have shown defendant was innocent, (5) no DNA evidence or no DNA test completed, (6) defendant’s story seemed more believable, (7) prosecution did not perform forensic tests to prove defendant was in apartment or bedroom, and (8) other.

<sup>27</sup> *Id.* at 459.

<sup>28</sup> *Id.* at 458–59.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 459–60.

<sup>31</sup> *See id.* at 461.

<sup>32</sup> *See id.*

<sup>33</sup> *See* Simon Cole & Rachel Dioso, *Law and the Lab*, THE WALL STREET JOURNAL, (May 13, 2005), <http://www.wsj.com/articles/SB111594466027532447>.

murder trial of Robert Durst, a jury consultant for the defense, recommended the defense select jurors who watched shows like *CSI* to take advantage of the fact that the victim's head (a crucial piece of evidence) could not be found.<sup>34</sup> Attorneys spend more time selecting juries and focusing on questions relating to their television watching habits as a precautionary measure.<sup>35</sup> For example, a study by the Maricopa County Attorney's Office found that seventy percent of Maricopa County prosecutors asked potential jurors about their TV watching habits during *voir dire* and 76% percent took that factor into account when determining whether to include them in the jury pool.<sup>36</sup> Additionally, 70% believed that the defense also considered that question in crafting their legal strategy.<sup>37</sup>

Evan Durnal, a member of the University of Central Missouri's Criminal Justice Department, claims that prosecutors are being forced to bring experts to the stand as "negative evidence" witnesses—someone to explain why no evidence was found at the crime scene.<sup>38</sup> Similarly, in *State v. Cooke*, the defense filed a series of motions to exclude expert testimony on ten pieces of state evidence, in part because most of the results were either inconclusive or exculpatory and, thus, unreliable and possibly prejudicial.<sup>39</sup> The prosecution argued that they needed the evidence to prove that they had done a thorough investigation, and to meet the juror's heightened expectations, specifically citing the *CSI* effect.<sup>40</sup> While acknowledging the doubt about the existence of the *CSI* effect, the *Cooke* court ruled the testimony admissible with regards to five pieces of evidence.<sup>41</sup>

Some prosecutors warn potential jurors not to expect the real-life courtroom to reflect a television courtroom.<sup>42</sup> The Ohio State Bar Jury Instruction specifically tells jurors not to rely on television programs

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<sup>34</sup> See Mann, *supra* note 15, at 229.

<sup>35</sup> See Corey Call et al., *Seeing Is Believing: The CSI Effect Among Jurors in Malicious Wounding Cases*, 7 J. OF SOC., BEHAV., & HEALTH SCI. 52, 54 (2013).

<sup>36</sup> Maricopa Cty. Attorney's Office, *CSI: Maricopa County*, (2005), <https://web.archive.org/web/20080517070103/http://www.maricopacountyattorney.org/Press/PDF/CSIReport.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> *The "CSI effect"*, THE ECONOMIST, (May 13, 2005), <http://www.economist.com/node/15949089>.

<sup>39</sup> See *State v. Cooke*, 914 A.2d 1078, 1080-83 (Del. Super. Ct. 2007). The pieces of evidence were (1) DNA prediction analysis, (2) video enhancement, (3) trace (hair) analysis, (4) toolmark analysis, (5) hair comparison, (6) fingerprint analysis, (7) voice identification analysis, (8) footwear analysis, (9) fabric impression analysis, and (10) handwriting comparison. *Id.* at 1080-1081.

<sup>40</sup> *Id.* at 1082-83.

<sup>41</sup> *Id.* at 1111.

<sup>42</sup> See Thaddeus Hoffmeister, *Did 'CSI' Effect Sway Anthony Jury?*, CNN, (July 7, 2011), <http://www.cnn.com/2011/OPINION/07/06/hoffmeister.anthony.jury/>.

when making decisions.<sup>43</sup> At least one state has put limits on these "anti-*CSI* effect" instructions. In Maryland, anti-*CSI* effect instructions are only allowed curatively (rather than preemptively) and the ability to give an anti-*CSI* effect instruction "is only triggered when a material misstatement of the law occurs."<sup>44</sup> In a recent Maryland case, the defense's opening statements focused on the lack of scientific evidence against the defendant.<sup>45</sup> The trial judge responded with the jury instruction that "there is no legal requirement that the State utilize any specific investigative technique or scientific test to prove its case."<sup>46</sup> The Maryland Court of Appeals called the instruction an abuse of discretion and ordered a retrial for the defendant.<sup>47</sup>

If the *CSI* effect exists only in the minds of the attorneys in our criminal justice system, it seems possible these shows do have an effect, but everyone is pointing a finger in the wrong direction. As Dr. Kimberlianne Podlas recently noted, "I think there's an effect of believing in the effect. If judges, prosecutors, and law enforcement think there is some kind of effect going on — whether they're correct or not — then that will necessarily influence their behaviors in the courtroom...."<sup>48</sup>

#### CONCLUSION

The public fascination with crime media is not waning. Recently, series following real life murder mysteries have captured public interest

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<sup>43</sup> Thaddeus Hoffmeister, *New Ohio Jury Instructions: "Don't Rely on Judge Judy"*, JURIES, (May 26, 2010), <http://juries.typepad.com/juries/2010/05/new-ohio-jury-instructions-dont-rely-on-judge-judy-.html>. The instruction, in part, reads:

The effort to exclude misleading outside influences information also puts a limit on getting legal information from television entertainment. This would apply to popular TV shows such as Law and Order, Boston Legal, Judge Judy, older shows like L.A. Law, Perry Mason, or Matlock, and any other fictional show dealing with the legal system. In addition, this would apply to shows such as *CSI* and *NCIS*, which present the use of scientific procedures to resolve criminal investigations. These and other similar shows may leave you with an improper preconceived idea about the legal system.

*Id.*

<sup>44</sup> *Robinson v. State*, 84 A.3d 69, 75 (Md. Ct. App. 2014).

<sup>45</sup> *Id.* at 72–3.

<sup>46</sup> *Id.* at 70.

<sup>47</sup> *Id.* at 81.

<sup>48</sup> Kenny Herzog, *From the CSI Effect to Making a Murderer: Will True-Crime Docuseries Change How Jurors Think?*, VULTURE, (Jan. 15, 2016), [http://www.vulture.com/2016/01/making-a-murderer-jurors-CSI-effect.html?mid=twitter\\_nymag](http://www.vulture.com/2016/01/making-a-murderer-jurors-CSI-effect.html?mid=twitter_nymag).

and critical acclaim. One of the latest, *Making a Murderer*, focuses on Steven Avery, a man wrongfully convicted of sexual assault and, once released, arrested for a murder he maintains he did not commit.<sup>49</sup> Though this documentary focuses on a real crime and the real processes used to investigate and try it, the prosecutor claimed crucial facts were left out and that the series "really presents misinformation."<sup>50</sup> The prosecutor for the case is obviously not an unbiased judge of the facts. However, his comments illustrate that not even true crime media is immune from claims of inaccuracy.

Though it is not clear what effect crime media has on jurors, it is clear there is some effect on the parties to a criminal case. More empirical research should be done to shed light on whether the effects are as far reaching as some say, or if the effect remains in the minds of the attorneys who orchestrate the show.

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<sup>49</sup> Daniel Victor, *'Making a Murderer' Left Out Crucial Facts, Prosecutor Says*, N.Y. TIMES, (Jan. 5, 2016), <http://www.nytimes.com/2016/01/05/arts/television/ken-kratz-making-a-murderer.html>.

<sup>50</sup> *Id.*