

## The CSI Effect

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I may be the only person in America who has never seen an episode of [CSI: Crime Scene Investigation](#). Nonetheless, I am interested in the so-called CSI effect. As *The Economist* explains in [this succinct article](#), jurors who have been exposed to television crime dramas may have unrealistic expectations about the ability of forensic science to provide complete certainty about who perpetrated a given crime. In other words, jurors may expect a scientific "match" -- or a scientific exclusion -- even when such an expectation is unfounded.

I say "may" because there is considerable controversy about whether there is a CSI effect; the extent of any such effect; and which side is benefited by any such effect. See generally *State v. Cooke*, 914 A.2d 1078 (Del. Super. Ct. 2007) (summarizing studies on both sides). I'm not well-informed enough to have reached any firm conclusions about those questions, and I'll keep my speculation to myself. Instead, I'll focus on the concrete steps that some prosecutors, judges, and others have taken to address the CSI effect.

1. Some prosecutors are asking jurors about CSI during voir dire. For example, in *Goff v. State*, 14 So.3d 625 (Miss. 2009), the prosecutor asked prospective jurors whether they watched CSI; whether they "can separate what they see on TV from what [they] see in the courtroom"; and whether they would decide the case based on the evidence presented without speculating about evidence that was *not* presented. During closing arguments, the prosecutro reminded the jurors about what they had said in voir dire. On appeal, the Supreme Court of Mississippi found no error.

2. Some courts are attempting to use jury instructions to prevent the CSI effect from taking root. In Ohio, the state bar association recently promulgated a [new standard jury instruction](#), which reads in pertinent part as follows:

WARNING ON OUTSIDE INFLUENCE. The effort to exclude misleading outside influences [and] 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. As far as this case is concerned, you are not prohibited from watching such shows. However, there are many reasons why you cannot rely on TV legal programs, including the fact that these shows: (1) are not subject to the rules of evidence and legal safeguards that apply in this courtroom, and (2) are works of fiction that present unrealistic situations for dramatic effect. While entertaining, TV legal dramas condense, distort, or even ignore many procedures that take place in real cases and real courtrooms. No matter how convincing they try to be, these shows simply cannot depict the reality of an actual trial or investigation. You must put aside anything you think you know about the legal system that you saw on TV.

It isn't clear to me how widely the instruction will be used; apparently the bar association jury instruction committee is "independent of the Ohio Judicial Conference Ohio Jury Instructions Committee."

3. On the other side of the coin, in *Commonwealth v. Seng*, 924 N.E.2d 285 (Mass. 2010), a somewhat similar instruction was criticized. The defendant in *Seng* was charged with murder, and defended the case on the theory that the police had focused on him after an inadequate investigation. CSI was mentioned briefly at several points during the

testimony. After the close of the evidence, the trial judge instructed the jury that "this is real life and not CSI. . . . It's been observed across the country that people who've watched that particular program and similar programs tend to think that life is all that sort of science fiction and it's not." The reviewing court found no prejudicial error, but made clear that it did not endorse the instruction and was not certain that the CSI effect is real. The court suggested that when CSI or similar programs are mentioned during the course of trial, an immediate cautionary instruction is appropriate, but that no instruction should normally be given at the end of the case.

4. Finally, the CSI effect may have an impact on how relevancy issues are determined. For example, it may suggest that the prosecution should be given considerable leeway in explaining why forensic evidence is not available or is inconclusive. *Cf. United States v. Fields*, 483 F.3d 313 (5th Cir. 2007) ("In this age of the supposed 'CSI effect,' explaining to the jury why the Government had little in the way of physical or scientific evidence was arguably critical to the Government's case."); *Cooke, supra* (concluding that, especially in light of a possible CSI effect, "the State should be allowed to show, up to a point, the 'exhaustiveness' of its investigation," including tests that were inconclusive). In an appropriate case, the same leeway should presumably be given to the defense.

I'm not aware of any cases or other authorities in North Carolina regarding the CSI effect. If you are, or if you've had an interesting encounter with the CSI effect in court, please post a comment or send me an email. My guess is that lawyers and judges are grappling with this issue on an ad hoc basis now, and we might be able to learn from one another's efforts.