

FORENSIC SCIENCE AND THE CSI EFFECT – THE INFLUENCE OF THE MEDIA ON JURORS

JAMES ROBERTSON AM PSM
Professorial Fellow and
Director NCFS

Q: Are Juries Competent To Assess Scientific Evidence?

‘Why should anyone think that twelve persons brought in from the street, selected in various ways for their lack of general ability, should have any special capacity for deciding controversies between persons.’

(Dean Griswold, Harvard Law School)

‘A jury, of course, typically numbers 12. Not just any 12, moreover, but 12 who (as the most cynical put it) aren’t even smart enough to get out jury duty.’

(Huber, 1990)

“it is difficult to determine how well twelve untrained, underpaid and usually inconvenienced strangers comprehend and utilise the evidence they hear in court, especially in cases where the evidence is provided by highly trained experts such as forensic scientists.”

(Wheate, 2006)

*“Jurors are **randomly** selected from the appropriate state or territory electoral rolls, and must serve unless they are ineligible, disqualified or challenged due to occupation, personal association, criminal record or any other of the limited reasons provided for in the various Acts.”*

(see, Wheate, 2006, from all Commonwealth State and Territory Jury Exemption Acts)

*“ the empanelling of a lay jury, chosen at **random** from the general body of citizens, to be the sole tribunal of fact is not some irksome survival from a feudal past, whether real or imagined. The contribution of lay juries to our system of criminal justice is the lynch-pin of that system.”*

(From: R V Lisoff (1999) NSW CCA 364 per Spigelman G.J, Newman and Sully, J.J. at (49))

Juror Eligibility

- ‘..., in New South Wales the following are ineligible for jury service: (ex)judges, (ex)magistrates, (ex)coroners and partners, members of parliament and partners, barristers and solicitors, (ex)Crown prosecutors and partners, clergy, practising dentists, pharmacists, medical doctors, persons over sixty-five, members and secretaries of statutory corporations, mining managers, members of the State Rail Authority (SRA) executive, public servants in the State Attorney-General’s Department; the Department of Corrective Services; the Police Department; the Legal Services Commission; the Corporate Affairs Commission; the Board of Fire Commissioners; the State Emergency Services; the Health Commission, all departmental permanent heads and all members of the State Public Service Board .’

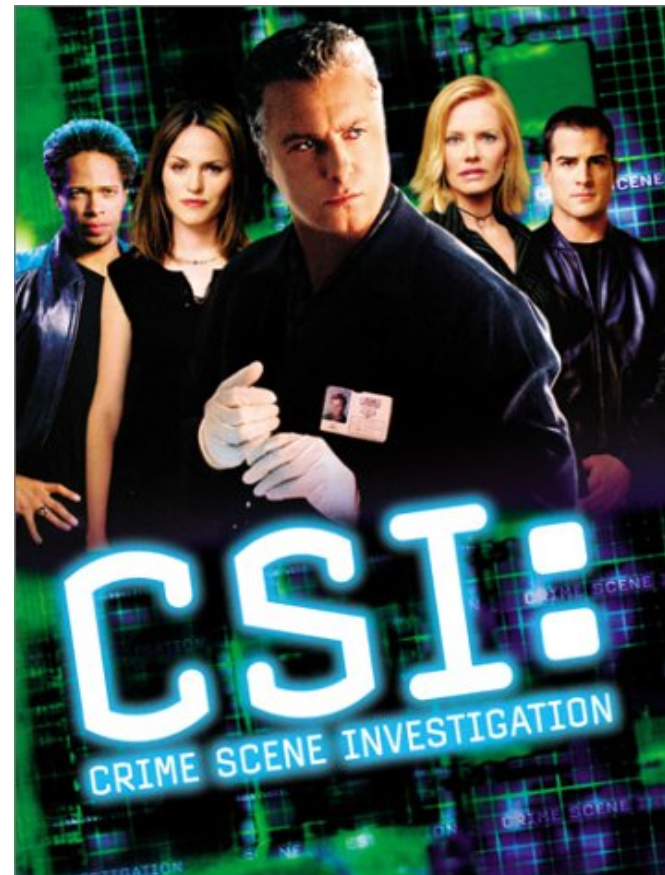
Work status of 146 West Australian jurors in an Australian study of the CSI effect

Occupation	Percent
Clerical, sales and services	34.2
Homemaker	8.2
Manager and administrators	9.6
Professionals	17.8
Retired	4.8
Student	4.1
Tradesperson, laborer, transport and production	19.9
Unemployed	0.7
Other	0.7

(From: Holmgren, J, and Fordham, J. Jour. Forensic Sciences, 2010, doi: 10.11.11/j. 1556-4029.2010.01621.x)

How Might Jurors Be Influenced Before Coming to Court...

Does the way the media portray forensic science matter?



CSI: Fact vs. Fiction

- Real-life crime scene investigators don't dress like models or zip around in helicopters (or Hummers!)
- They don't serve search warrants, interrogate suspects, or run the investigation (police investigators do those things!)
- Most real CSIs don't wear guns and don't get involved in shoot-outs or car chases!



CSI: Fact vs. Fiction

- On CSI, they process the scene in their own designer clothes – in reality, protective clothing is always worn!



CSI: Fact vs. Fiction

- Real CSIs are much more careful – as many people as possible are excluded from the crime scene.
- Evidence is always recorded in place (notes/photos) before being picked up and looked at!



CSI: Fact vs. Fiction

- On CSI, the scene examiners are the same people doing the work back in the forensic laboratory – this is rarely the case!



CSI: Fact vs. Fiction

- In reality, it can take hours or days to identify a particular chemical (no multipurpose instrument exists that can do this in '20 seconds' as portrayed on CSI!)
- DNA profiling takes days to complete, not 5 minutes!
- The equipment seen on CSI is authentic, but its speed, sensitivity, and the accuracy of the results are vastly exaggerated!
- Backlogs are a reality.
- In CSI, they have one case at a time to focus on.



CSI: Fact vs. Fiction

- On CSI they like to work in the dark with tiny flashlights to add to the drama and atmosphere!
- In reality, crime scene examiners prefer to turn the lights on (if indoors) or use powerful floodlights to illuminate an outdoor scene!



“They can always see the blood too with their shiny lights and they couldn’t do that here...”

(From: Holmgren and Fordham, 2010)

In the USA

- 30 MILLION PEOPLE WATCHED CSI ON ONE NIGHT
- 70 MILLION WATCHED AT LEAST ONE OF THE THREE CSI SHOWS
- 40 MILLION WATCHED TWO OTHER FORENSIC DRAMAS, 'WITHOUT A TRACE' AND 'COLD CASE'

(From a 2006 weekly Nielson rating as report in Shelton, D. NIJ Journal, Issue 259, 2007.)

“Our results indicated that the more frequently jurors watched a given program, the more accurate they perceived the program to be.”

Should we be worried?

“although CSI reviewers had higher expectations for scientific evidence than non-CSI viewers, those expectations had little, if any, bearing on the respondents’ propensity to convict”

(From, Shelton, D, 2007)

“No support was found... for the operation of a detrimental CSI effect. (in that)... jurors will demand DNA and other forensic evidence before they convict and have unrealistic expectations of that evidence”

(Holmgren and Fordham, 2010)

However, a word of caution!

“jurors were more likely to find a defendant guilty than not guilty even without scientific evidence if the victim or other witnesses testified, except in the case of rape.”

“on the other hand, if the prosecutor relied on circumstantial evidence, the prospective jurors said they would demand some kind of scientific evidence before they would return a guilty verdict”

(Shelton, D, 2007)

Is the absence of evidence, evidence of absence?

“we were so upset that.... they never did nail scrapings. It leaves us jurors thinking ‘why not?’...on TV they say that they can get DNA”

(Holmgren and Fordham, 2010)

“The police obviously knew what they were doing... They didn’t get the DNA just because they couldn’t be bothered not because they couldn’t get it. That’s how we all took it. They should have thoroughly explained why it was absent. Not just ‘we haven’t got it, don’t worry about that’ because we do worry about that”

(Holmgren and Fordham, 2010)

The importance of DNA evidence to juries in criminal trials

Juror quotes

“...its (DNA) absence was certainly a contributing factor to my decision”

“what clinched it for me was that there was no DNA evidence that he had been there”

“I don’t know what case could get through without DNA evidence at all”

“....if you didn’t have DNA, you could say well ‘yeah, he could have been in that room’....’you would because of what you’ve seen on TV and all that’...”

(From: Wheate, R. The Int. Journal of Evidence and Proof, 2010, **14**, 129-145)

The importance of DNA evidence to juries in criminal trials

Author conclusions

For jurors who believed the accused was guilty.

They accepted that he had so carefully covered his tracks and removed all traces of himself from the scene that no DNA evidence was ever likely to have been found. For these jurors, the lack of DNA evidence was entirely explicable and made no difference to their verdict (guilty)

For jurors who believed the accused was not guilty.

The lack of DNA evidence linking him to the scene was acceptable and unsurprising. The fact that there was not DNA evidence in a way confirmed that he had not been present for the second incident and did not change their verdict.

For jurors who believed the accused was guilty but voted for a verdict of not guilty.

The lack of DNA evidence was crucial. Without DNA evidence connecting the accused to the crime scene, these jurors could not place the prosecution case beyond a reasonable doubt. The lack of crucial identification evidence created enough doubt that even if they thought the accused had committed the crime, their verdict was nevertheless not guilty.

(From: Wheate, R. The Int. Journal of Evidence and Proof, 2010, **14**, 129-145)

The importance of DNA evidence to juries in criminal trials

- Many commentators have observed that jurors expect to hear DNA profiling evidence and as a result many of them will focus on it beyond its rational worth
- There are many legitimate reasons why DNA may not be detected. If this is not explained in court, jurors are left dissatisfied and speculating about the significance of the 'missing results'
- Perhaps the prosecution might have managed the jurors reactions more adequately through specifically raising the issue with the forensic biologist

(From: Wheate, R. The Int. Journal of Evidence and Proof, 2010, **14**, 129-145)

Fighting the CSI effect – the consequences!

To fight the ‘CSI’ effect, prosecutors are now careful to show jurors that these tests have been done, even when the results are negative. In drug cases, for example, a detective will often take the stand to testify that the small glassine bags dealers use to sell crack were dusted for fingerprints, even though these tests are usually fruitless.

“We never find usable fingerprints on these bags.... multiple people handle them, but we have to show the jury that we tried”

- Deputy Bucks County Attorney, Robert James

(Accessed 22/04/2010 at www.phillybucks.com/news/news)

Fighting the CSI effect – managing expectations

- Many laypeople know – or think they know- more about science and technology from what they have learned through the media than from what they learned at school. It is these people who sit on juries.
- When scientific evidence is not relevant, prosecutors must find more convincing ways to explain the lack of relevance to jurors.
- Most importantly, prosecutors, defence lawyers, and judges, should understand, anticipate, and address the fact that jurors enter the courtroom with a lot of information about the criminal justice system and the availability of scientific evidence.

(From: Shelton, D. NIJ Journal, Issue no. 259, pp 1-6)

One man against 10 . . the jury that went to war

By **BERNARD LAGAN**
and **SHERRILL NIXON**

Ten days ago, as the rest of Sydney enjoyed a mid-autumn Sunday, five women and six men walked off a bus and into the old ground-floor jury room in Oxford Street's Central Criminal Court.

There they ended their three months together in acrimony and bitterness.

One, an Australian citizen of African descent, in his early 40s, rose from the jury table and asked who among them had read Robert Bolt's play, *A Man For All Seasons*.

There was no answer. The man told them a theme of the play was that silence amounted to consent; he expressed his anger that no other juror had come to his defence the previous Friday when the jury foreman had called him a fool upon learning he was a rogue juror.

He was the one dissenting juror out of 11 in the trial of the former Fairfield councillor Phuong Ngo, charged with the 1994 murder of the State Labor MP John Newman.

The African strode to the jury room whiteboard, took a marker and wrote in large letters: J1 = J2 = J3 = J4 . . . all the way to J11.

He wanted to make the point that all jurors were equal; each had a duty to evaluate evidence.

"All of you are pawns," he told the silent jurors. "None of you are trying to help the court dispense justice."

That was how the second trial of Ngo and his co-accused, Tu Quang Dao, ended in frustration for both the Crown and the defence – a jury split 10 to 1 after three months of evidence from 90 witnesses and six days of deliberation.

It is a result that has once again led to calls for the Government to abolish the requirement for unani-

High Tide

By
Neil Matterson

