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CSI Effect: Exploring Impact Among Mississippi Lawyers

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CSI Effect: Exploring Impact Among Mississippi Lawyers

by

Jennie Odom

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Approved by:

Lisa S. Nored, Ph.D., Thesis Advisor,
School of Criminal Justice, Forensic Science and
Security
Criminal Justice, Forensic Science and
Security

Brenda Rowe, Ph.D., Director,
School of Criminal Justice, Forensic Science and
Security
Criminal Justice, Forensic Science and
Security

Sabine Heinhorst, Ph.D., Dean
Honors College

ABSTRACT

The “CSI Effect” suggests that a growing number of jurors often have unrealistic expectations concerning the amount of forensic evidence which should be reasonably presented to convict an alleged criminal, and this misconception arises from watching heavily dramatized crime shows such as the *CSI* franchise. While many scholars have examined the CSI Effect, one critical perspective is often missing from the existing literature, that of the lawyers. Therefore, this project worked to explore the perspectives of both defense attorneys and prosecutors. Personal interviews were conducted to gain insight and perspective regarding the CSI Effect, whether these perspectives had impacted the way they performed, and whether any differences emerged among the two legal sides of the American legal system. While both groups believed in the existence of the CSI Effect, defense attorneys often had differing viewpoints from each other while prosecutorial responses were internally consistent. Both groups emphasized the need for increased funding of state crime laboratories and the importance of *voir dire* questions during jury selection to mitigate the CSI Effect. Given the limited number of participants in the current project, more examination of these perspectives is warranted for more complete understanding.

Keywords: *CSI, CSI Effect, prosecution, prosecutor, defense attorney, crime laboratories*

DEDICATION

This thesis is dedicated to my advisor, Dr. Lisa Nored, and to all of the professors, family, and friends who pushed me to keep going when I wanted to give up.

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CSI: Crime Scene Investigation; this is also the name of a popular television crime series

CHAPTER I: INTRODUCTION

The term “CSI Effect” describes the idea that a growing number of jurors have unrealistic expectations concerning the amount of physical evidence which should be reasonably presented in criminal cases. The phenomena, whose earliest cited mention is a 2002 article, states that watching crime shows like those in the “CSI” genre causes jurors to wrongfully acquit defendants of crimes in cases where forensic evidence is lacking due to unrealistic beliefs about the nature and quantum of proof for criminal convictions. (Cole & Dioso-Villa, 2009). These shows have socialized the general public into expectations which are not in alignment with the realities of forensic evidence in criminal cases. While science can often be a more objective form of evidence, it may or may not be preferable or more credible to more traditional forms of evidence such as witness testimony (Cole & Dioso-Villa, 2007). These beliefs and perceptions, are now commonly referred to as the “CSI Effect” and have been a source of much dialogue and debate among social and behavioral scholars as well as legal, judicial and policy actors. Some believe it does exist and is allowing the guilty to go free unjustifiably while others believe that the CSI Effect is nothing more than another example of moral hysteria. While scholars have examined the CSI Effect, conceptually, little scientific inquiry has been focused on the effect and impact upon legal actors within the legal system, including prosecutors and defense counsel.

Physical or tangible evidence is evidence that can be analyzed—in a laboratory, for example—and can link together a suspect, a crime scene, and/or a victim. Examples of physical evidence include DNA, trace evidence, fingerprints, and tire treads. Physical evidence is important to the criminal justice system, but is often not present in every case.

Alternatively, many trials rely on testimonial evidence, such as witness testimony, or other circumstantial evidence, including but not limited to the lack of an alibi or the presence of motive.

Several different studies have been conducted, often using mock juries and trials to assess juror expectations and deliberations. A review of the literature and existing scholarship, however, reveals that the perceptions of attorneys who must assess evidentiary value, plan and prepare trial strategy to convince jurors has not been examined closely. These “elites” try real cases and are therefore able to observe real-world perceptions, outcomes, and juror conduct. Lawyers also have the unique ability to observe the real-world consequences of the CSI Effect, if it exists, as it changes the landscape of the legal over time.

As a result, this study will examine the perceptions of attorneys using qualitative interviews to explore the beliefs, experiences and perceptions of the CSI Effect among lawyers in Mississippi.

CHAPTER 2: LITERATURE REVIEW

The term “CSI Effect” dates back to at least 2002, when an article by Robin Franzen was published (Cole & Dioso-Villa, 2009). However, discussions concerning the effect likely began long beforehand, beginning with prosecutors. Initially viewed as a positive for legal actors, the CSI Effect now describes the idea that jurors have grown so accustomed to media portrayals of the use and abundance of physical evidence in crime shows, that they are reluctant to convict actual criminals despite other legitimate and credible forms of evidence presented in criminal cases. It was believed initially that the CSI Effect facilitated jury comprehension of forensic evidence, but it is now often characterized as a hindrance to lawyers, especially prosecutors and their ability to make arguments using the evidence they have available (Cole & Dioso-Villa, 2009). Additionally, some believe that these crime shows treat forensic evidence as infallible while eye witness testimony is treated as inherently unreliable (Difonzo & Stern, 2007). However, the existence of the CSI Effect has come under scrutiny as experiments and studies in the social and behavioral sciences appear to come into direct conflict with the concerns expressed by Franzen (Cole & Dioso-Villa, 2009). Critics often liken the narrative in the media that criminals are being wrongfully acquitted to similar concerns expressed in the 1970s and 1980s about alleged “litigation explosion” or “hyperlexis.” Hyperlexis is the idea that legal diction is becoming increasingly more complex to an extreme degree (Lipton, 1993). The CSI Effect is a complex, new phenomenon that requires discourse and cooperation between the popular culture, media and media studies, criminology, and forensic science (Byers & Johnson, 2009).

There is a gap in the research of the CSI Effect concerning subjects used and methodology. Few researchers elect to utilize interviews as methodological technique. Additionally, too little focus has been placed specifically on the perspectives of lawyers who actually try cases. However, interviewing is not an uncommon methodology in social science or criminal justice research. One study examined data gathering methodologies in 375 articles across seven criminal justice journals and found that while they are not the most common method, interviews remain an accepted and relatively common medium for qualitative analysis (Kleck et al., 2006).

Specifically, of the 375 articles, about 7.6% of them utilized an informal interview for data collection. The largest category, formal survey, was further broken down into four categories: telephone, face-to-face, mail, and non-mail self-administered. Because formal surveys are further broken down into four subgroups, its significance should not be viewed as the only or best means. Experimental data, which much of the existing research on the CSI Effect relies upon, only accounted for 4.3% of the methodologies in the sample (Kleck et al., 2006).

One example of interviews being used in a criminal justice study examines a study on Dutch defendants for criminal cases (Ansems et al., 2020). One hundred criminal defendants were interviewed about their perceptions on different elements of procedural justice to determine what—if any—concerns they had and which concerns were most serious. The study found that neutrality was the greatest concern among the defendants, more so than commonly cited in literature. While this research does not discuss the CSI Effect, it has a similar methodology to the current project to examine perspectives about the legal process. Interviews and surveys utilized to examine

perceptions of lawyers regarding the CSI Effect include a graduate thesis conducted by Michael J. Watkins in 2004 on Floridian lawyers, a survey conducted by the Maricopa County Attorney's Office (MCAO) in Arizona, and a study conducted in New South Wales on thirty-two legal actors (Cole & Dioso-Villa, 2007; Wise, 2010). Notably, the MCAO study has been scrutinized as biased and misleading (Cole & Dioso-Villa, 2007).

There has also been research that supports the idea of the CSI Effect. A study conducted on judges, lawyers, and other legal actors found that 79% of the participants could cite a specific instance where they felt that a jury was reluctant to convict based on circumstantial evidence alone. Many participants discussed trials where the jury members reported that the lack of forensic testing was the reason a not guilty verdict was issued. One juror allegedly claimed that "they believed DNA was a test that only took a few minutes to do and they had seen it used 'all the time' on *CSI*" (Robbers, 2008, p. 91).

The CSI Effect has experienced pushback, however, as some studies suggest that the CSI effect does not exist or that its power has been greatly exaggerated. For example, "The CSI Effect and the Canadian and the Australian Jury" outlines two different studies into the CSI Effect. The first study, one in Canada, examined jury-eligible college students using 605 surveys. Participants became "jurors" and had to choose whether or not to convict based on the presence or absence of physical evidence found at a crime scene. The second was an Australian study interviewing actual jurors post-trial with quantitative and qualitative strategies. The Canadian study showed that, while people are influenced by the crime-shows they watch, they are not so affected as would be suggested by the CSI Effect. The Australian study concluded that jurors are adequately balanced (Holmgren & Fordham, 2011).

A similar study took place in Hong Kong (Hui & Lo, 2017). Here, researchers conducted a mock jury trial to test whether or not the CSI Effect exists among jurors in Hong Kong. The findings suggested that, while the media does influence people's perception of the legal system, it does not influence their decision making in court. That is, although perceptions were augmented, the overall impact on jury deliberation was not. For this reason, researchers have pushed that the CSI Effect discourse cease, as they believe that it clearly does not actually exist (Errikson et al., 2019).

One possible explanation for these findings could be that knowing the trial was not real influenced participants' belief in the innocence or guilt of the defendant. That is, because they knew that there will be no negative consequences to a potentially innocent man or woman, they were biased towards conviction where they would be more likely to acquit in real trials. The Australian jury had a similar methodology to the proposed methodology for this paper. However, the focus in that study was on jurors, who have more reason to say and believe that they were not biased by lack of forensic evidence. A different article provides another possible explanation for the findings of such studies: not all crime shows are created equal. In an analysis of every fourth episode from four different series that fall under the umbrella term "crime show," some shows, namely *CSI Las Vegas* and *Law and Order: SVU* relied heavily upon and frequently mentioned DNA analysis. However, other popular crime shows "Without a Trace" and "Criminal Minds" hardly use or even mention analysis of physical evidence such as DNA (Rhineberger-Dunn et al., 2017). It could be that the participants of some studies are watching crime shows, just not the right ones.

Another study, purported to be the first in its kind, drew a different conclusion. Perhaps jurors have unrealistic expectations about the availability of physical evidence, but these expectations do not stem from watching crime shows (Shelton et al., 2006). This study examined those called for jury duty in Washtenaw County, Michigan between June 5, 2006 and August 7, 2006. The participants were categorized into those that had watched crime shows and those that had not. Then, the participants were asked which, if any, kinds of physical evidences they expected in a given trial and how much of each evidence they needed to find a defendant guilty or not guilty. They did not find any evidence to support the idea that crime show viewers were more likely to expect physical evidence; however, the researchers still noticed an interesting trend. They found that 46.3% of summoned jurors expected a prosecutor to use some sort of physical evidence to argue at every criminal case, and the more serious the crime became, the more jurors expected physical evidence. By the time the study examined murder, almost 75% of jurors expected physical evidence of some sort. They attributed this not to a “CSI Effect” specifically, but rather to an overall “tech effect” whereby shifts in the public reliance on technology indirectly affect public perceptions in all areas of life including jury duty. The “tech effect” would lead to an increased trust in data found by newer technology like DNA analysis and a decreased trust in evidence like witness testimony or circumstantial evidence (Shelton et. al, 2006).

Regardless of whether the CSI Effect actually exists, beliefs in its existence could have grave repercussions on the ways in which the criminal justice process is carried out. For example, an article investigated the changes made by prosecutors in attempts to accommodate the CSI Effect in jurors in New South Wales, Australia. The Wise article

also bore a strikingly similar methodology to that of this project. It used a similar methodology of face-to-face interviews with prosecutors concerning their perceptions of the CSI Effect. However, this research was conducted in a different country and included several other actors in the criminal justice field including police officers, forensic scientists, judicial officers, and scene of crime officers, or SOCOs (also known as crime scene investigators, or CSIs). It is important to add to the research in this field by including the United States, specifically Mississippi, to the discussion on perceptions and by focusing in on lawyers (Wise, 2010). Of the 32 respondents, 14 mentioned the CSI Effect and all 14 reported that the CSI Effect had interfered with how they did their job (Wise, 2010).

These changes include questioning potential jurors about their television habits during *voir dire*, the process by which potential jurors for a case are questioned by both the prosecution and defense and the jury for a case is selected (Cole & Dioso-Villa, 2007). Some judges now report having to instruct jury members not to expect results seen in television at actual trials (Robbers, 2008). Additionally, some lawyers have begun requesting additional tests or asking forensic experts to explain lack of testing while testifying in court. In the Wise study, two of the prosecutors surveyed admitted to requesting additional forensic evidence even though they knew it did little to assist their case. These statements were corroborated by a defense attorney. This additional testing can place serious strain on forensic laboratories and on the taxpayers that fund them. Asking expert witnesses to explain the absence of forensic evidence is an example of ‘defensive law,’ and it can also overburden that criminal justice system as lawyers must work in excess to defend against perceived jury bias in a way that they otherwise would

not. The expert witnesses, usually forensic scientists, must take time out of their already over-burdened workday to needlessly testify and compensate for a perceived effect.

Lawyers have also started to make time in their opening and closing arguments to explain forensic evidence or the reason for the absence of forensic evidence in their cases.

Additionally, the perceived CSI Effect translates to unrealistic expectations from lawyers that request too much from forensic scientists (Wise, 2010).

CHAPTER II: METHODOLOGY

While surveys are a helpful, commonly used and accepted research practice, qualitative interviews were selected as the data collection method for this research. This decision was made for two reasons. First, the goal of this study is to examine and gain insight into perceptions of lawyers regarding the impact of the CSI Effect on the practice of criminal law. Interviews allow the interview respondent to interpret, synthesize, and clarify answers more fully than utilization of a survey instrument. Respondents can cite examples from their own life experience or that of colleagues, go in depth with their explanations, and explore or offer responses which lead into areas not originally contemplated by the researcher which often provide a more robust picture of the phenomenon under examination. This is not possible in surveys, which are inherently researcher-driven and not subject driven. Additionally, the interview process allows the researchers to ask follow-up questions if the interview participant mentions something that requires further elaboration or clarification. If a lawyer does bring up a different perspective or go in a direction not previously considered without answering the original question sufficiently, the researcher may follow up with appropriate clarifying questions which ensures that the new idea is explored while still answering the original question.

The efficacy of interviews in social research has, itself, been the subject of research (Babbie, 1989). Findings suggest several advantages to interviews compared to other research methods such as surveys. For example, interviews tend to receive higher response rates of approximately eighty to eighty-five percent. Additionally, interviews tend to decrease the rate at which respondents give “I don’t know” responses. This could be because interviews allow for more clarification if the interviewee is confused or for

elaboration if the interviewee has a more nuanced perspective to the question (Babbie, 1989, p. 244). The use of interviews is also grounded in previous research. For example, a similar study from 2010 in New South Wales, Australia attempted to address a similar research question and utilized interviews to explore perceptions of legal actors. (Wise, 2010). This methodology allowed them to directly cite individual prosecutors, defense attorneys, judges, and other legal actors. Additionally, it allowed the subjects to go in depth on their thoughts of individual issues within the larger concept of the CSI Effect.

More generally, personal interviews are a common and widely-accepted method of collecting data within social science and more specifically, the discipline of criminal justice. For example, Kleck et al. (2006) examined eleven different research methodologies used in the leading criminology and criminal justice journals to determine which methodologies were most common. The study found that formal surveys, or face-to-face interviews were used in approximately forty-five percent of cases (Kleck et al., 2006). As such, interviews as a research technique appear to be well-grounded and appropriate for criminal justice qualitative research.

The present project includes six lawyers within the state of Mississippi, including three prosecutors and three defense attorneys. A convenience sample within a specific geographic location was used. While the choice of a convenience sample increases the possibility of bias in the results, the scope of this research is already narrowed using geography as it only focuses on legal actors within the state of Mississippi, and it should not skew the data so much as to be distracting. While a convenience sample was taken, this choice did not eliminate issues associated with travel. Additionally, the recent COVID-19 pandemic has led to uncertainty and hesitancy to meet in person. As a result,

interviews were conducted using the Zoom© software program. This specific video conferencing software was selected for two reasons. First, it is prevalent within the contemporary context of this research and second, Zoom enables video recording which alerts all parties that the conference is being recorded. The alert appears in a pop-up window that informs the user that the conference is being recorded and gives them easy access to leave with straightforward directions on how to do so if they do not or no longer consent. Participants were also informed of intent to record at the time they were first contacted to participate and again informed upon verbal consent at the beginning of the interview.

The names, places of employment, and any other identifying information of the respondents will remain confidential and will not be associated with any particular response. Respondents may be referred to by a “D” or “P” for “defense attorney” or “prosecutor” respectively. The letter would be followed with the number at which he or she was interviewed. For example, the fourth prosecutor interviewed may be referred to as “the fourth prosecutor” or “P4.” Likewise, all recordings, and transcribed reports were maintained in a password-protected computer. No attempt was made to paraphrase responses or correct “bad” grammar (Babbie, 1989, p. 247). Any quotation given is a direct quotation but may be given “sic” if deemed appropriate by the researcher. Additionally, only parts of a quotation may be used; various filler words such as “um” or “like” may, likewise, be filtered out. Most of the questions asked in the interviews were open-ended and great care was taken not to accidentally lead the respondents to one particular answer over another. However, if the interviewer felt that a response was too vague, he or she might ask a “probe” in the form of an either-or question in a Likert

format. The Likert format is a method of surveying that uses some form of a spectrum such as “very poor,” “somewhat poor,” or “very good.” For example, an interviewer may further probe a vague response with, “would you say you did this very often, or somewhat often?” This allowed for a more specific response, an advantage of surveys.

The questions asked were separated by the specialization of the subject and are set forth in Appendix B. Questions for each group of subjects were dependent and in alignment with the role of the interview subject in the legal system: prosecutor or defense attorney. That is, while many of the questions were similar or the same, certain questions differed for prosecutors and defense attorneys. This choice was made because the legal system in the United States is an adversarial one. Prosecutors represent the state and are ethically bound to seek justice. While prosecutors present evidence against the accused in pursuit of securing a criminal conviction, they are ethically required to ensure that the constitutional rights of the accused are protected. Defense attorneys represent the accused and must vigorously defend their client throughout the criminal justice process. Due to the adversarial nature of the legal system as well as the distinct goals and objectives of prosecutors and defense attorneys, perceptions may differ regarding the impact of the CSI Effect. As such, certain interview questions differ between the two subject groups. Doing so allows the researcher to explore contrasting views on the CSI Effect and how the impact of this phenomena may differ. Additionally, the results of the study would not be skewed one way or the other in the conclusion.

Because interviews were used, data will be analyzed qualitatively. Qualitative analysis can be difficult within a research context because it is not always as straightforward as quantitative analysis. To alleviate these issues, one overarching or

major research question and two minor questions were utilized. The major research question selected was: “Approximately what percentage of Mississippi lawyers, if any, believe in the CSI Effect?” Discovering the answer to this question is the overarching goal of this research project, and answering it is key to answering the other minor research questions. Additionally, answering this research question can have serious implications on the criminal justice system at large, as the perceptions herein inform the way Mississippi elites perform their roles and the way justice or injustice is carried out.

The first minor research question involved whether there is a difference in the way prosecutors and defense attorneys in Mississippi perceive the impact of the CSI Effect? To this end, defense attorneys and prosecutors were divided into two equal number categories, and defense attorneys and prosecutors were asked a different set of questions.

The second minor research question analyzed was “Has the CSI Effect impacted the manner in which attorneys in the criminal cases prosecute or defend cases?” Specific questions were included to explore perceptions regarding the impact of the CSI Effect on the practice of criminal law and inclusion of forensic evidence. Questions three, five, six, and seven for prosecutors and three, five, six, seven, and eight for defense attorneys were included to explore what strategies may be utilized by attorneys to combat the impact of the CSI Effect.

Forensic laboratories and crime labs throughout the United States are already extremely backlogged. Hiring sufficient staff to process and evaluate forensic evidence as well as the costs of instrumentation and supplies is a significant financial commitment. Such costs may unduly or unnecessarily burden the American taxpayer. In 2020, the state

of Mississippi spent over two million dollars in grants in addition to its public budget to address backlogs in the area of DNA analysis. Backlogs in forensic labs result in many challenges for the legal system such as delays for pending cases, reduced quality of evidence, and overburdened staff, all of which, in turn, weakens how justice is appropriately carried out. The rate at which demand for forensic testing is growing may eventually prove unsustainable with the current funding and qualified manpower. It is hoped that this research can contribute to the existing dialogue and understanding of the impact of expectations regarding forensic evidence in criminal trials.

CHAPTER III: RESULTS

Over the course of one and a half weeks, three prosecutors and three defense attorneys were interviewed for a total of six interviews. The interviews ranged from approximately 8 minutes to approximately 40 minutes in length, and they averaged approximately 17 minutes in length. The interviews with the defense attorneys, labeled D1, D2, and D3, respectively took an average of approximately 21 minutes, and they also represented the most varied data, both in terms of length of responses and in kinds of responses. The prosecutor interviews, labeled P1, P2, and P3, respectively, lasted an average of approximately 14 minutes. For the first question asked of both prosecutors and defense attorneys, “Are you aware of the ‘CSI Effect’?” all participants answered in the affirmative. This preliminary question ensured that all of the participants understood the nature of the other questions, among other implications. Various themes were explored in these interviews, which are addressed in the sections below.

Effects on Trial and Defense Strategy

Questions 2, 3, 4 for prosecutors and 2, 3, 4, and 6 for defense attorneys examined to what extent lawyers believed that the CSI Effect influenced jury behavior and how these beliefs may or may not have influenced the lawyers’ trial or defense strategies. The responses of the defense attorneys varied especially on these two questions. D1 responded “I don’t think it’s real...I’ve never once actually encountered a situation where a lack of forensic evidence prevented the state from convicting my client.” Whereas, responding to Question 2, “In your experience, has the CSI Effect impacted criminal trials?”, D2 responded, “I think it definitely has...it sets a expectation for jurors in felony

trials of what that they should see [sic] as far as police work...[and] a predisposition that a defendant is already guilty.” Whereas D3 simply responded, “Oh yes, absolutely,” affirming that the CSI Effect impacted criminal trials. However, D3 also stated that the CSI Effect was useful in aiding in the defense of the client. Here there appears to be some interesting divergence. Both D1 and D3 follow a newer understanding that the CSI Effect results in jurors that are reluctant to convict, while D2 follows the more traditional understanding that the CSI Effect results in jurors that more readily accept that the defendant is more likely to be guilty.

Among prosecutors, the consensus was that the CSI Effect had impacted jury behavior. P1 reported that “we see it in a lot of ways...even with *Law and Order* [in the early 2000s]...it was hard for jurors to understand...the timeline—how slow things process, but certainly, when we got the *CSI* [sic] even in *voir dire*.” P1 cited difficulty managing juror expectations regarding “the difference in ...the expectations of what really is possible; just because they do it on tv doesn’t mean doesn’t mean it’s truly scientific, and...how realistic is it.” P1 also discussed a mistrust forming about forensic evidence saying, “we’re starting to see people believe that the scientific evidence is so readily available on tv shows and podcasts...that it can be manipulated...to frame you.” Prosecutors acknowledged emerging beliefs which involve placing another person’s DNA at a crime scene or “stealing” someone else’s fingerprints to place at a crime scene.

P3 cited several specific instances, particularly in sexual assault cases, where jurors admitted voting to acquit due to the lack of forensic evidence saying, “I tried a fondling case where...we didn’t have the ability to get touch DNA like we do now...Since it was a touching-only case...--he put his mouth on the child’s breast. ...[It

resulted in] a hung jury the first time we tried it, and some of the juror feedback we got was that they didn't know why we didn't get DNA from the child's breast. At that time, it [touch DNA] didn't exist yet, but on *CSI: Miami*, it did." Regarding another case, P3 discussed reluctance on the part of jurors to convict someone for drug possession because, although the defendant had the drugs in a vehicle with him, the prosecution had not fingerprinted the drugs. The drugs in question were in a sunglasses case, the texture of which made lifting a fingerprint unfeasible.

With regards to Question 4, defense attorneys reported a more nuanced understanding. D1 stated, "it really depends on the nature of the case. My experience is, in some cases [drug cases] you absolutely have to have it ...this is the number one way that I encounter forensic evidence." However, D1 also provided case examples where forensic evidence was pivotal in deciding if the client should plead guilty or if they could continue with a trial, such as a manslaughter case involving a firearm. Similarly, D2 claimed that the impact of the forensic science depended on the kind of crime, but had an opposing viewpoint. D2 mentioned drug cases as crimes where there is less likelihood of a "victim," and so said, "when we're dealing with a case where there is an actual person...forensics are going to be very important." D3 was more direct saying, "I think it's very important, whether it's from the defense side or the prosecution side...because of technology these days and the TV shows, *CSI, etc...*, jurors expect there to be some type of technical evidence. Both D2 and D3 affirm that the CSI Effect is real and in some way impacts jurors, while D1 rejects this idea entirely.

P1 also agreed that the importance of forensic evidence varied by case and that a confession was usually more powerful, but they also said that "without a doubt, juries

prefer if you can give them...DNA...; they want to get it right.” P2 found forensic science “extremely” important in securing a conviction saying, “if it’s not there, people want to know why.” Prosecutors discussed the jurors’ expectation of a “smoking gun” or an “AHA moment” that usually occurs on television, but not in reality.

There was, however, consensus among the defense attorneys regarding the question of whether they had ever used the CSI Effect as a defense strategy. D1 responded “All the time,” before elaborating, “you can really make the officers look dumb because [you can point out inconsistencies between evidence collection and police reports] after a couple of times they [law enforcement officers] say that [they don’t know why they collect evidence or did not collect evidence]...the judge will usually say... ‘I think you’ve established that he doesn’t know anything’...which is always what we’re trying to get the judge to say.”

D2 also answered in the affirmative for somewhat different reasoning, saying they definitely used the CSI Effect and that there are times when they would say, ‘hey, they [the prosecution] had resources...they absolutely could have done more in this case..., and when we’re dealing with a burden beyond a reasonable doubt ...the police should [have] absolutely done everything they could to make sure they had the right person, so that’s something you guys as jurors need to consider when you’re making your decision.”

D3 also said he had used the CSI Effect as a defense theory “many times, whether it’s DNA testing, fingerprint” before adding “as a criminal defense attorney, you’re really just trying to muddy the water, so most criminal defense lawyers will tell you ‘the strategy is to point out everything that the state or law enforcement didn’t do that they could have done.”

Effects on The Legal System at Large

Questions 5, 6, and 7 for prosecutors and 5 and 7 for defense attorneys focused on the broader impact of the CSI Effect upon the legal system, specifically as it pertains to the laboratories, the courts, the defendant and, often, the taxpayer. Among the defense attorneys, many different themes were cited. D1 answered “in the few cases where we’ve tried to do that [request forensic testing], we’ve gotten no benefit from it...so far I have not had an affirmative defense where I would need to have an expert witness testify.” D2 responded, “It...depends on the case. We only have...a limited resource of state crime labs. My background is public defense, so I don’t have a lot of clients who can pay. If I am going to get an expert, I have to beg for one from a judge who doesn’t want to give us money for one anyway, so I have not personally tried a case where I have asked for an expert on the defense side, but it would be...very helpful [to have access to those resources].” D3 stated, “If I’m defending someone, and I’m convinced that they’re not guilty, then yes, I’m jumping up and down wanting some type of forensic evidence,” before adding, “[Of] course, if I think they’re guilty, and that evidence is there then I’d probably keep my mouth shut and hope everybody just looks over it.”

The prosecutors often believed that there was difficulty trying to obtain a conviction without forensic testing, but it could depend on the case. P1 stated, “if I catch you with the drugs in your pocket, there’s probably no reason to fingerprint it and perform a DNA test on it.” However, they claimed that they did require DNA testing to combat or neutralize the CSI Effect saying “if we see something that can be tested...we certainly will request that it be followed up on.” P1 also admitted to bringing in expert witness to justify a lack of forensic evidence, but preferred to use the term “explain” or

“educate.” Likewise, P2 said that they requested forensic testing “depend[ing]... on the case,” but had not requested expert witnesses to combat or neutralize the CSI Effect. P3 also admitted to using experts to justify a lack of forensic evidence saying, “we have to call experts now, not just to show what we do have, but to explain what we don’t have, because of that expectations [sic]...from tv shows.”

With regards to *voir dire* questions, the defense again took varied stances. D1 stated that they only used *voir dire* questions if the prosecution did so, saying “I take my cue in *voir dire* from what the prosecution says.” D2 emphasized the importance of the using *voir dire* questions saying, most of the CSI Effect is dealt with when you’re trying to pick a jury.” Further, D2 stated “I think you would be failing your client if you did not [mention the CSI Effect in *voir dire*].” D3 claimed they only discussed the CSI Effect in *voir dire* sometimes but that they saw “prosecutors routinely doing that in *voir dire* when there is a lack of forensic evidence.”

P1 stated “in *voir dire*, it’s [the CSI Effect] is one of the first things I address is ‘Horatio Caine [a fictional character in *CSI: Miami*] is not going to make an appearance. P2 stated that they did feel that questions regarding the CSI Effect were important during *voir dire*, but that “they tend to come up anyway.” P3 also discussed *voir dire* saying “one of the questions we always ask in a case where we do have some CSI-type evidence or don’t have any but think they [jurors] would want us to is about that... ‘who thinks you should have DNA in every sexual assault case?’”

Effects of the CSI Effect on Court Rules

Question 8 examined a potential effect of the CSI effect on the rules of the court. Many defense attorney felt very strongly about the idea of jury instructions on the CSI

Effect. D1 stated “I think that if the prosecution dared to offer such an instruction in front of the judges that I practice in front of, the judges would lose their minds..., and I think that even the Mississippi Supreme Court...would say the prosecution is not entitled to an instruction like that.” D2 also said, “I don’t believe that we’re allowed to do that here; I know that that’s not something in practice ...where I’ve traditionally practiced.” They also predicted, “I feel certain that the state would absolutely utilize something that if they could, [but] I have never personally tried to use one...that’s something that our jurisdiction prefers to be handled in jury selection.” D3 agreed simply saying “I have never seen a jury instruction on the CSI Effect.”

None of the prosecutors claimed to have seen any jury instructions regarding the CSI Effect either. P1 claimed to have never requested one or experienced the defense request one, but expressed interest in such an instruction. P2 was also not aware of any jury instructions regarding the CSI Effect, but thought perhaps that it would be allowed.

Positive Impact of the CSI Effect

Question 9 for both prosecutors and defense attorneys focused on the positive aspects, if any, to the CSI Effect. As D1 did not believe in the CSI Effect, he did not see any potential benefit to the Effect saying, “I’ve never seen where it’s super important.” D3 could not cite any positives to the CSI Effect. The prosecution, however, could cite some positive element to the CSI Effect. P1 appreciated that, “it has definitely made people interested in criminal justice and maybe in jury duty. [People are] less avoidant and may be a little more interested in jury duty.” P2 agreed that the CSI Effect had led to an increased interest in sitting for jury duty as well as citing an increased interest in good information to be gained regarding the criminal justice system from the the CSI Effect.

CHAPTER IV: DISCUSSION AND CONCLUSION

There was a great deal of discussion from both sides regarding the way the CSI Effect influenced juror perceptions of time a trial should take, with many people from both sides agreeing that care needed to be taken during jury selection to emphasize that trials were lengthy processes and that the quick time span depicted in many shows was unrealistic. Perhaps a time direction on crime shows, such as a character commenting on the length of time passing or an “x weeks later” could help alleviate the need lawyers feel to emphasize that point to potential jurors.

There was also some discussion regarding who should be responsible for managing the CSI Effect; D2 stated “I honestly feel like there should be some responsibility in the media...because of this effect. Maybe [shows should] have some sort of a disclaimer...or maybe we should just move on from that being so entertaining in our social and pop culture.” Maybe by continuing to discuss true crime or engaging with media involving sensationalized crime, the public also bears some responsibility for furthering the effect.

While no one had heard of the use of jury instructions regarding the CSI Effect there was some disagreement between the two sides regarding the efficacy of the uses. D1 and D2 were firmly against such a change. D1 called such an idea “fascist” and remarked that “it creates the presumption in the jury’s mind that the prosecution can’t do its job effectively, and ...it would undermine confidence in the system.” D2 felt that such an instruction would be unnecessary as the CSI Effect would already be discussed in the beginning of the trial during *voir dire*. Whereas all of the prosecutors expressed interest in the idea of creating a jury instruction regarding the CSI Effect and looked at the

suggestion favorably. More research is needed on the efficacy and potential harm to such a change, but keeping the burden on the lawyers to discuss the CSI Effect during *voir dire* would be safer,

Several lawyers on both sides remarked on the underfunding of the crime laboratories and the lack of available resources to both sides to receive testing or acquire expert witnesses. The defense attorneys discussed the difficulty in acquiring funding for clients, especially those that were indigent. For example, D1 discussed a 2016 law that appropriated funding for defendants to consult and/or hire independent expert witnesses, but discussed difficulty accessing these funds. D1 recalled, “We always hear ..., ‘Well, this expert’s going to cost money’ ... My response to that is, ‘Well judge, my client could be going to prison for life, so is it not worth spending the money to at least find out if we need and expert witness?’” D2 noted:

“My background is public defense, so I don’t have clients who can pay...If I am going to get an expert, I have to beg for one from a judge who doesn’t want to give us money anyway...[Access to an expert] is something that would be very helpful... They’re going to have to make them more accessible to people who cannot pay or we’re going to have to bring judges around to the fact that...we’re entitled to the same resources that the state has.”.

However, the state also complained of a lack of resources and funding. P1 discussed waiting three years for an autopsy report, and others complained of similar backlogs, especially during the COVID-19 pandemic. There was also some misunderstanding between the defense attorneys and the prosecution regarding how many resources the state had access to. As mentioned earlier, D2 remarked that the prosecution had resources

and could do better. Similarly, D1 commented about the advanced technology in the crime labs saying “it’s really cool; they really have the technology...They [the state] is talking about the CSI Effect, and they don’t have the budget to do all the testing and everything you would like to see...they like to talk about it because it handicaps them.” However, they admitted, “we have some of the best facilities in the nation, we just don’t pay the people to work there...We could literally do away with talking about the CSI Effect by just funding the crime lab and making sure that there are enough people there with the training to use the equipment.”

Clearly both sides of the adversarial system want additional funding to combat the CSI Effect or to do away with the idea of the CSI Effect. However, it may be difficult to acquire that funding. The money for expert witnesses and for people to process evidence must come from somewhere. There is also cost associated with the maintenance of these laboratories and the materials used such as reagents and test kits. Calling for expert witnesses takes time out of the witness’s workday, and this is time that could be spent clearing already heavy backlogs. Additionally, someone has to pay for these costs. In the case of the prosecution and indigent defendants, this money comes from the taxpayer. Raising taxes or reallocating funding for crime laboratories may be a very unpopular decision among Mississippi citizens. The reluctance to increase funding means less resources are available to indigent clients. This increases the power imbalance both between the defendant and the state, as well as the poorer defendant and the more affluent defendant. Such disparities mean that there could be innocent people going to prison simply for being too poor to defend their case properly. Finally, in the case of defendants who are not indigent, there may still be an undue burden to pay for additional testing and

expert witnesses out of pocket. Such costs may have devastating impacts on the client, even after a verdict of “not guilty.” More must be done to understand and resolve this complex issue.

Perhaps the most important theme cited by almost every lawyer was the importance of education. P1 described efforts to educate law enforcement officers; D1 cited the importance of educating the prosecution; D2 described the importance of educating the media regarding the harm they may cause; and most lawyers emphasized the importance of educating jurors and the public as potential jurors. While the information gained in this research exercise is very helpful for understanding the implications of the influence of lawyers’ perceptions of the CSI Effect, this research is cursory and preliminary. The sample size was small and the convenience sample of known lawyers could have caused unintentional bias. Further research into lawyers’ perceptions of the CSI Effect with larger sample sizes, without a convenience sample, both in Mississippi and in the United States and similar courts at large, is needed.

APPENDIX A: IRB APPROVAL LETTER

Office of Research Integrity



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NOTICE OF INSTITUTIONAL REVIEW BOARD ACTION

The project below has been reviewed by The University of Southern Mississippi Institutional Review Board in accordance with Federal Drug Administration regulations (21 CFR 26, 111), Department of Health and Human Services regulations (45 CFR Part 46), and University Policy to ensure:

- The risks to subjects are minimized and reasonable in relation to the anticipated benefits.
- The selection of subjects is equitable.
- Informed consent is adequate and appropriately documented.
- Where appropriate, the research plan makes adequate provisions for monitoring the data collected to ensure the safety of the subjects.
- Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of all data.
- Appropriate additional safeguards have been included to protect vulnerable subjects.
- Any unanticipated, serious, or continuing problems encountered involving risks to subjects must be reported immediately. Problems should be reported to ORI via the Incident submission on InfoEd IRB.
- The period of approval is twelve months. An application for renewal must be submitted for projects exceeding twelve months.

PROTOCOL NUMBER: 22-250
PROJECT TITLE: "CSI Effect: Exploring Among Mississippi Lawyers"
SCHOOL/PROGRAM Criminal Justice, Forensic, Science
RESEARCHERS: PI: Jennie Odom
Investigators: Odom, Jennie-Nored, Lisa-
IRB COMMITTEE ACTION: Approved
CATEGORY: Expedited Category
PERIOD OF APPROVAL: 30-Jun-2022 to 29-Jun-2023

Donald Sacco, Ph.D.
Institutional Review Board Chairperson

APPENDIX B: Questions Asked

Prosecutor Questions:

1. Are you aware of the CSI Effect?
2. In your experience, has the CSI Effect impacted criminal trials?
3. How has this impacted your job? Trial strategy?
4. How important do you believe forensic evidence is in securing a conviction?
5. Do you request forensic testing to combat the CSI Effect?
6. Have you asked expert witnesses to justify a lack of forensic evidence?
7. Do you include *voir dire* questions regarding the CSI Effect or expectations about forensic evidence?
8. Do you practice in a jurisdiction that allows jury instructions on the CSI Effect? If so, have these helped manage juror expectations?
9. Are there positive aspects to the CSI Effect within the legal system?
10. What recommendations do you have for managing the CSI Effect in criminal trials?

Defense Attorney Questions:

1. Are you aware of the CSI Effect?

2. In your experience, has the CSI Effect impacted criminal trials?
3. How has this impacted your job? Defense strategy?
4. How important do you believe forensic evidence is in securing a conviction?
5. Do you request forensic testing to combat the CSI Effect?
6. Have you used the CSI Effect as a defense theory? Lack of forensic evidence = failure to prove case beyond a reasonable doubt.
7. Do you include *voir dire* questions regarding the CSI Effect or expectations about forensic evidence?
8. Do you practice in a jurisdiction that allows jury instructions on the CSI Effect? If so, have these instructions helped manage juror expectations?
9. Are there positive aspects to the CSI Effect within the legal system?
10. What recommendations do you have for managing the CSI Effect in criminal trials?

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