

Fact or fiction?

The jury is still out on the CSI effect

A TV-inspired interest in forensics has left the courtroom vulnerable to junk science

June 05, 2005 | By Flynn McRoberts, Steve Mills and Maurice Possley, Tribune staff reporters who write about the criminal justice system

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The runaway popularity of TV shows that make heroes out of forensic scientists has produced a spinoff of its own. Authorities have dubbed it the "CSI effect."

The script for this phenomenon, written by prosecutors across the country and dutifully repeated by newspapers in recent months, is simple and compelling: Having watched hour after hour of "CSI: Crime Scene Investigation" and other legal dramas, jurors nationwide are demanding forensic evidence and acquitting defendants en masse when prosecutors don't deliver.

The truth, it turns out, is more complicated than this TV-inspired fiction .

While CSI and its brethren may well be stoking jurors' interest in forensic evidence, the shows also have left some of them more gullible and inclined to accept dubious forensic testimony as the real thing.

A few anecdotes and the complaints of prosecutors aside, there is no definitive evidence to prove that jurors' TV-watching habits are uniformly hurting the prosecution rather than the defense.

The raft of crime-lab scandals across the country--revealing the shoddy and sometimes fraudulent work of forensic analysts--suggests broader problems in American courts: how easily some prosecutors have brought unproven forensic theories or unchallenged forensic experts into the courtroom and how some jurors are willing to believe them.

Judges note the keen interest jurors have in forensic evidence, but some reject the notion that jurors punish prosecutors whose cases aren't ready for prime time.

"These are myths," said James Lombardi, a judge in Prince George's County, Md. "I don't think the juries react to it as much as the prosecutors. What wins these cases is good police investigative work."

There seems little doubt that many of today's jurors enter the courtroom with a familiarity about forensics gleaned while sitting on their sofa. (Two shows in the "CSI" franchise consistently rank in television's Top 10.) Attorneys are asking potential jurors what TV programs they watch. And some jurors may indeed take the memory of those shows into their deliberations.

But concluding from these facts that Hollywood's influence is contributing to the guilty walking free makes TV a convenient scapegoat for a criminal justice system that too often imprisons the innocent .

Given the crime-lab scandals and the exoneration of scores of wrongly convicted inmates in recent years, perhaps these jurors simply are bringing healthy skepticism to cases that don't meet the burden of proof.

Prosecutors are complaining that jurors are insisting on forensic evidence. But isn't the justice system all about providing proof? The same prosecutors almost always demand DNA before releasing a wrongly convicted inmate, even when the rest of their case has fallen apart.

What's more, the "CSI effect" argument assumes that most jurors can't distinguish fantasy from reality. By the same logic, jurors who have watched reruns of "Perry Mason" would be ready to acquit anytime the defendant doesn't break down and confess under the withering cross-examination of the prosecutor.

Bernie Murray, chief of the criminal prosecutions bureau at the Cook County state's attorney's office, agreed that prosecutors and defense attorneys have been dealing with the intrusion of pop culture for decades.

Think "Law & Order" or "L.A. Law," "where cross-examinations are three questions and hearsay rules are violated," Murray said.

But he argues that the current forensic hits are another matter.

"What's different is that this is science," he said. "The stock-in-trade of the show is to say, 'We're catching bad guys through science.' And though much of the science may exist, they distort the manner in which it is handled," promising DNA tests that come back after the commercial break.

He's right that scientific evidence is different. That's a big part of the problem in real courtrooms. Experts cloaked in the white lab coat of science have extraordinary sway with jurors. It is this special influence that makes the misuse of forensic testimony and evidence particularly troubling.

A Kane County jury convicted a man in 1997 largely based on a lip print taken from a piece of duct tape found at the murder scene. Though the theory that lip prints can uniquely identify individuals is unproved, jurors cited it in convicting Lavelle Davis.

"I keep thinking about it when I see [crime shows] on TV--especially about the duct tape and lip prints," said juror Jodie Hurckes.

Michael Toomin, a longtime Cook County Criminal Court judge, faces equally inquisitive jurors in his courtroom, although their curiosity turns to the less exotic forensic disciplines.

"In most of the instances, they're asking where's the DNA, where's the fingerprints?" Toomin said. "The TV dramatizations have had an eye-opening effect. Some [jurors] have come to anticipate and expect that kind of evidence."

The "CSI effect," he said, is "definitely out there."

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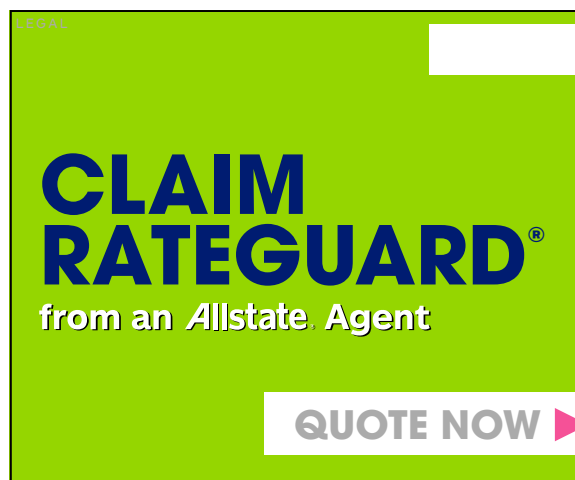
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