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The Potential Impact of Television on Jurors

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Introduction

Because television is society's most pervasive medium, we all have experience with and opinions about it. Our experiences, however, are not the same as expertise in the production of the medium, and our opinions cannot substitute for empirical facts about its effects. Particularly when forecasting the impact of television on juror pre-conceptions, biases, and decision-making, adjusting trial strategies accordingly, and/or making evidentiary decisions in response, justice requires that we privilege the facts about television above the perceptions and myths about it.

To help separate fact from fiction and to guide practitioners, the following materials synopses the main research findings regarding the influences of televisual depictions of law. First, to provide a foundation for understanding television's effects and how they may operate in individual cases, the materials outline the primary theories of television impact. Next, the materials summarize the research on contemporary law television programs (in particular judge shows, crime procedurals, and lawyer dramas), and analyze the impacts these shows may or may not have.

The Importance of Television to the Law

Television's power is undeniable: It is one of society's primary conduits of information and agents of socialization (Shrum 1998). Indeed, much of what people know comes from television. Sometimes it supplements information from other sources, such as family, school, and work; other times it substitutes for direct experience, taking us into worlds with which we would otherwise have no contact (Signorielli 279-80; Podlas 2008, 11-14). Nonetheless, the stories that television tells and the way it tells them communicate norms and ideologies, focus us on issues, influence how we think through them, and cultivates expectations and beliefs.

This is particularly true with regard to the law: research reveals that most of what the public knows – or thinks it knows – about law and the legal system comes from

television (Podlas 2002, 557; Podlas 2006, 443-44; McNeeley 1). For example, though few people have any personal experience with courts, trials, or lawyers, millions have seen them on TV. Indeed, law-oriented programs have long been a staple of television programming, and, even as their formats have changed, remain popular.

Law on television comes in a variety of programmatic formats, such as reality courtroom programs, legal dramas featuring lawyers and trials, police procedurals, and even news reports. Independently and cumulatively these tell the public about litigation, nurture assumptions about legal procedures, and promote opinions about the justice system (Lin 758-59; Podlas, 2005, 121; Sherwin, 1521).

Theoretical Approaches to Studying Television's Impact

Experimental research from a variety of disciplines, such as communication studies, media theory, and psychology, provides insight into the ways that television mediates understandings. While these theories conceptualize television's influence in different ways, they are all premised on the belief that, under certain circumstances, television can impact audiences.

Despite pop cultural perceptions otherwise, television generally does *not* affect viewers in a direct, immediate way (Eggermont 248). In fact, research on television's effects began by considering whether television caused viewers to replicate what they saw televised, such as whether seeing robberies on television caused viewers to commit robberies. (This is often referred to as the "silver bullet" or "hypodermic needle" theory of television impact.) By and large, studies failed to support such an effect.

Research, however, demonstrates that television *can* impact audiences in a number of long-term, subtle, and attitudinal ways (Morgan & Shanahan 339; Ball-Rokeach 163-66). The following section provides an overview of the primary theories explaining those impacts, to wit: cultivation theory, heuristic processing, framing, social learning, and agenda-setting. It attempts to provide a foundation for understanding how, and the circumstances under which, television law programs may exert some measurable impact.

Cultivation Theory

Most theories explaining the relationship between television programming and viewer beliefs rest on cultivation theory (Morgan & Shanahan 337-39; Eggermont 248; Gerbner, 1994, 23-25; Gerbner, 1999, 43-476). According to cultivation theory, the heavy, long-term exposure to television's imagery cultivates in viewers attitudes and perceptions

of social reality that are consistent with that imagery. Cultivation is a subtle, cumulative influence, not a direct, immediate one (Goidel 124; Morgan & Shanahan 339; Cohen & Weimann 99; Woo & Dominick 109-10). In other words, cultivation does not hypothesize that a viewer who sees a program celebrating vigilante justice will mimic that behavior by running out and shooting criminals. Rather, it supposes that a viewer who constantly sees a representation on television will presume that that representation is common in the real world. For example, if a heavy viewer of television sees a great deal of violence on television, she will presume that society is violent; If she regularly sees television judges yell at litigants, she will assume that judges yell at litigants.

The first cultivation studies considered the connection between heavy television viewing and beliefs about violence and crime. Numerous content analyses of network television had demonstrated (and continue to demonstrate) that the number of violent acts and crimes on TV greatly exceeded that in the real world (Segrin & Nabi 249). Hence, cultivation theory posited that heavy viewers would have exaggerated beliefs about the amount of violence in society. Consistent with this hypothesis, research found that heavy television viewers both overestimated the incidence of serious crime in society and harbored numerous inaccurate beliefs about crime and law enforcement (Morgan & Shanahan 339-43). Ultimately, these perceptions can mature into attitudes about legal policies. For instance, a viewer who is fearful or believes society is unsafe may more willing to favor punitive sanctions for criminals (Signorielli) capital punishment, and handgun ownership (Holbert 343-46).

Genre-Specific Viewing

Three decades of research supports the cultivation effect (i.e., that television makes a small but consistent contribution to viewer beliefs and perspectives), but the way it defines television's content has narrowed somewhat. Cultivation originally looked at overall television viewing, assuming a uniform message across all television genres and a non-selective viewing pattern in the audience (Morgan & Shanahan 339-40, 350). This was reasonable, since television's 5 or 6 channels offered a relatively limited menu of viewing options. Accordingly, any frequent viewer of television was bound to be exposed to the same types of depictions. Today's television environment, however, is different; Cable, satellite, and the consequent proliferation of channels give viewers an infinite buffet of program options. Thus, a frequent viewer can watch 40-50 hours of television per week, but limit their diet of programs and genre. As a result, one heavy television viewer does not necessarily see the same content as another heavy viewer,

and these different genres may convey different messages (Morgan & Shanahan 3340, 350-51). Consequently, contemporary cultivation theory now considers exposure to specific types of programs, rather than total viewing time, to better predict viewer beliefs (Segrin & Nabi 259-61; Potter & Chang 313; Potter 564).

Heuristic Processing

Related to (and sometimes thought to explain) cultivation is heuristic processing (Shrum & Darmanin Bischak; Shrum 1998, 262-63; Shrum, 2001, 97). Heuristics are examples or informational vignettes that serve as mental rules of thumb (Wineburg 77; Shrum, 2002, 78-79), e.g., experts can be trusted, children do not lie about sexual abuse, only guilty people run from the police. They help people process information quickly and draw inferences about events or behaviors (Sherwin 897). The more one comes into contact with an example, the easier that example is to recall.

The heuristic processing model proposes that heavy television viewing impacts cognitive processing, by broadcasting programs and plots that include many vivid examples of behavior and causation (Shrum, 1998, 257). Thus, the more these examples are broadcast, and the more one watches television, the more one will come into contact with these examples and rely on them to make heuristic judgments (Shrum, 2002, 78-79; Shrum, 2004, 511-13).

Television's stories of law and the biases in these serve as heuristics about the legal system. They help us understand how trial evidence will unfold and become the standard against which testimony and behaviors (of witnesses, litigants, attorneys, and judges) are compared (Podlas, 2002, 557; Sherwin, 1996, 654; Sherwin, 2003, 149-50). Some research shows that where trial stories conflict with each other or are ambiguous, jurors tend to resolve them by favoring the trial story that most closely resembles the story they already know, i.e., the one they walked into the courtroom knowing (Neal 148-50). Television's narratives are among those stories.

Framing

Another way that television can impact viewers is through framing. Empirical research shows that the way that television consistently presents a story or frames an issue can impact the way that people understand it (Stanchi 82; Sotirovic 132). For instance, when television repeatedly portrays lawsuits in terms of greedy plaintiffs advancing frivolous claims, or depicts rape as a crime that can be explained by a female victim's behavior, the public tends to adopt that framework in thinking through

the issue (Haltom & McCann 20-25; Podlas 500-01; Shen 123). Although the frame does not tell viewers what conclusion to draw, it provides the lens through which to examine the issue (Kim & Vishak 338-42; Baumgartner 341-43). By guiding the analytical process in this way, the frame impacts the opinions formed about the issues.

Of course, the frame can obscure issues, privilege certain interests, or be wholly incorrect. Because framing activates some ideas and attitudes more than others, and television facilitates fairly stable stereotypical or ideology-based judgments, it encourages us to look at the world in a certain way. This, in turn, facilitates certain interpretive constructions over others and encourages particular trains of thought that lead to particular conclusions (Kim & Vishak 357). Frames can be enhanced through editing, lighting, color, camera angles, and positioning in the visual frame. These visuals and juxtapositions can imply relationships between elements and evoke emotional responses.

Inasmuch as television's frame becomes a template for assessing actions and understanding issues, framing converges with the old litigation adage "The best story wins." Indeed, the purpose of an opening statement at trial is to provide the decision-maker with a framework to understand evidence. Frames can also impact the public's acceptance of legal principles and legislation (Kovera 62-65).

Socialization and Normative Formation

The behaviors portrayed on television and the character responses to or consequence of them can play a role in socialization and the formation of norms. Socialization is the process by which people learn the values, behaviors, and expectations of our society or group. According to social learning theory, most human behavior is learned by observing others and modeling it (Bandura 22). The images on TV, whether accurate or distorted, are one of the ways that people see behaviors and glean society's values. In this way, television helps socialize audiences (Bandura 64-68).

Similarly, television plays a role in the formation and transmission of norms. Norms are societal expectations of how to behave. They tell us what society deems normal or wrong. These, too, play a part in behavior (Kahan; Shuman). Television contributes to normative formation and inculcation by broadcasting an apparent consensus attitude or behavior. The more an audience sees a behavior on television, the more it will believe it is normal or imbued with the values depicted. Conversely, the less an audience sees a behavior, or the more it sees a behavior criticized, the more the audience will believe that the behavior is abnormal or socially disfavored (Tyler & Darley).

In some instances, television's legal depictions can contribute to the formation and transmission of legal norms. By signaling what constitutes the type of injury or wrong that justifies legal intervention, or whether litigation is stigmatized, legal norms influence our attitudes and behaviors toward litigation (Daniels & Martin 482-85; Tyler & Darley 719). For example, if society stigmatizes litigation, legitimately aggrieved people may choose not to pursue legal claims. Conversely, when society deems it "normal," people may opt for it.

Agenda-Setting

Television can also influence the public more indirectly through "agenda-setting." (DeFleur & Ball-Rokeach 1-5, 264). Agenda-setting does not effect what the public thinks, but, rather, what it thinks about. When television devotes a great deal of attention to an issue, viewers will adjudge that issue salient. Essentially, by talking about that issue (as opposed to any other issue), television designates it as important or at least shifts public conversation to it, thereby setting the public agenda (Iyengar & Kinder; Kovera 45-46).

Indeed, statistical analyses have found that the amount of airtime devoted to an issue is the key factor in whether the public believes the issue is important (Bryant & Zillman 4-9; Lowry & Chang 61). For example, though violent crime declined throughout the 1990s (Romer), television news coverage of it increased. This implied that crime was a significant concern (Lowry 61). Echoing the television coverage, but not reality, the public's concern about crime increased (Lowry 61).

Once an issue finds its way onto the public agenda, it may become part of the legislative agenda and make the public receptive to legal intervention. For instance, though there was little statistical evidence of a litigation explosion (as measured by the number of lawsuits filed, plaintiff's verdicts, or damage awards), in the 1990s, news and entertainment television began broadcasting stories about frivolous lawsuits and undeserving plaintiffs playing the "litigation lottery." (Saks 1281-85; Galanter 154-55). Reality notwithstanding, the issue rose atop of the public agenda, and served as the foundation for the American tort "reform" movement. This included legislation setting damage caps and liability limits to protect "victimized" businesses. (Decision-makers in civil cases may even consciously attempt to "self-correct" their damage awards, artificially lowering them, to avoid contributing to the litigation explosion (Robbennolt 11; Hans 56-58). The agenda can also shape criminal justice policy. Accumulating social science evidence suggests that the news's disproportionate coverage of violent crime

fosters public opinion favoring punitive penal policies, such as lengthier sentences, mandatory minimums, and waiver-up for juvenile offenders (Sun Beale 400-04, 420-21, 442-43; Hamilton 134-38, 157-58, 197-99; Signorielli 1990, 102).

The Impacts of Television's Depictions of Law

These theories should not be mistaken as proof that every legal television program will produce an effect, but simply identify a potential. Even when programs *do* appear to be associated with some impact, impacts differ according to each program's specific story, content, and programmatic structure. In other words, that one television law show influences audiences does not mean that every television law show will, let alone do so in the same way. Accordingly, it is important to understand which depictions have been shown to produce which types of effects and at what levels.

The following section synthesizes experimental research regarding the impacts of contemporary law programs on the public's (and juror's) attitudes, biases, and decision-making. It highlights reality courtrooms or "judge" shows, crime procedurals (such as *CSI*), and *Law & Order* and similar lawyer programs.

I. Perceptions of Judge Behavior

Of the law television programs broadcast, daytime reality courtrooms or judge shows are associated with one of the more concrete, possible impacts. Specifically, results from several studies suggest that they cultivate in viewers expectations about judicial behavior.

These half-hour programs are modeled on small claims or civil courts, and involve "real people" and "real cases," albeit ones that are packaged into easily digestible narratives with clear winners and losers. Their focus, however, is on their titular judges, e.g., Judy, Christina, Brown, and Hatchett. Indeed, these shows intercut litigant narratives with reaction shots of the judge, such as a medium close-up of the judge rolling her eyes or otherwise indicating disgust. (Research has found that these editing techniques elicit an "orienting response" that increases viewer attention and memory. Lang 94-96, 104.)

A set of studies surveyed approximately 600 respondents (including jury eligible adults and prospective jurors) regarding their viewing habits and attitudes about judges and litigation. This included two main components: (1) a content analysis that identified and catalogued reality courtroom content, in order to identify its predominant messages; and (2) two survey instruments that probed whether heavy viewers of reality

courtrooms were more, less, or equally inclined to hold views of judges and litigation consistent with television's depictions (Podlas 2005, 487-93; Podlas 2006, 49-54).

The studies found that, consistent with the reality courtroom portrayal of judges as vocal, active interrogators who make moral pronouncements, heavy viewers of the genre expected real judges to be vocal, active, and opinionated. Non-heavy viewers, however, did not share this opinion (Podlas 2005, 483-87). Moreover, it appeared that viewers so much expected this behavior that they tended to interpret a judge's silence as implying a negative assessment, rather than as neutrality. (Although an inquisitorial style is the norm in some countries, it is not in the United States where the study was done).

In light of the fact that several versions of these shows are broadcast daily, throughout the day, and across channels, they constitute a significant portion of television's information about legal process. Hence, these findings seem reasonable. Viewers have very little personal experience with judges, let alone with a variety of them, so have no pre-existing knowledge or a model of judicial temperament. Yet, reality courtrooms provide relatively uniformly depictions across programs and judges. Consequently, when viewers conjure an example of a judge, television judges most easily come to mind. The frequency of these behaviors in television judges then cultivates beliefs about the behaviors of real judges.

Similarly, though there have been no experimental studies confirming it, these programs might impact audience assessments of judge demeanor in terms of their gender, as well as estimates of the gender and ethnicity of the bench. As Lovell Banks notes, the television reality court bench is not simply diverse, it is largely female and black or Latina (38-39). Despite this television integration, many daytime viewers might be surprised to learn that women judges, especially women of color, are the exception in real courts. Additionally, the visibility of these women judges may reinforce or diminish traditional negative stereotypes about women, especially women of color (40-41).

II. Perceptions of Whether Attorneys Are Ethical or Moral

Though the public has limited opportunities to encounter attorneys in their practice, it has many opportunities to see them on television. Television is even an important source of information for beginning law students: A study investigating the source of law students' perceptions of attorneys surveyed first-year law students in six different countries. In several instances, students perceived television to be more helpful in constructing their image of attorneys than friends and family in the legal profession

(Asimow 421-26). Such survey data cannot tell us how and to what extent television contributes to people's images of attorneys, but it underscores its potential.

Indeed, studies have found that the way in which television portrays attorneys may influence positive opinions about the behavior and ethics of real attorneys. One of the first studies compared *LA Law*'s fictional lawyers – who were generally portrayed as attractive, powerful people of good moral character – with viewer perceptions of real lawyers. Mirroring *LA Law*'s depiction, heavy viewers of *LA Law* described lawyers to be powerful people, exhibiting good moral character. Individuals who did not watch a significant amount of *LA Law* did not share these beliefs (Pfau 307).

Additionally, Menkel-Meadow reported that law-students' attitudes regarding professional ethics take a cue from television lawyers. While not necessarily representative of reality, these programs depict the ethical dilemmas that lawyers actually face. But unlike law school's abstract discussions of legal reasoning and ethics, television gives life to and provides context for these issues. This enables law students to draw on them, which, in turn, can contribute to their beliefs about what behaviors are ethically appropriate or normal. In fact, student assessments of attorney behavior generally coincide with how television lawyers behaved, and whether television portrayed that behavior as acceptable or unethical (Menkel-Meadow 1999, 1-2; 2000, 815; 2001, 1305).

Similarly, the moral characteristics with which television imbues attorneys might translate into general public perceptions of whether, and which, attorneys are ethical or moral. Since the 1990s, the morally-driven Assistant District Attorneys of the 20-year-old *Law & Order* franchise have dominated television. Various content and narrative analyses have concluded that *Law & Order* promotes a crime-control ideology and situates prosecutors atop of the moral high ground of legal practice. Week after week, ADAs work through difficult ethical situations, and sometimes must bend "technical" legal rules in order to achieve justice and punish the morally guilty (Rapping 6-8; Podlas 2008, 17-20; Epstein 7-8; Quinn 130-32). By contrast, criminal defense attorneys are portrayed as morally repugnant and helping the guilty escape punishment (Spitz, 737; Rapping, at 1-4, 8-10). It seems that often defense attorneys and "legal technicalities" are the legal system's primary impediments to justice (Epstein 7-8; Podlas 2008, 18).¹

¹ Television had not always portrayed defense attorneys in this ways; In television's early years, they were celebrated as social watchdogs and critical to the justice system (Spitz, 737; Podlas 2008, 18-19; Rapping, at 2-10).

Consistent with *Law & Order's* narrative and ideology, surveys show that the American public tends to believe that prosecutors are moral whereas defense attorneys are dishonest (Spitz 733, 737; Podlas 2009, 497-500).² In one study, 48 participants assessed the "morality" of prosecutors, on a scale of "very immoral - immoral - neutral (neither moral nor immoral) - moral - very moral." Participants who self-identified as Pro-prosecution/ anti-defense or Pro-defense/anti-prosecution assessed prosecutor morality consistent with those expressed dispositions; Hence, Pro-prosecution/ anti-defense individuals assessed prosecutors as "moral" or "very moral," whereas Pro-defense/ anti-prosecution individuals assessed prosecutors more negatively (and had a much higher proportion of "immoral" or "very immoral" assessments) (Podlas 2009, 498-99). Once these extremes or biases were eliminated, however, the overwhelming majority of the remaining respondents awarded prosecutors relatively high Morality Assessments (believed that prosecutors are very moral, not simply moral), in line with the Pro-prosecution/ anti-defense group. (Interestingly, within this group, heavier viewers of *Law & Order* awarded substantially higher Morality Assessments (Podlas 2009, 499-500).

Although *Law & Order* almost certainly reinforced or contributed to these beliefs, it cannot be said that *Law & Order* caused them. Rather, the results likely exemplify pop culture's symbiotic nature wherein television portrayals reflect the public's beliefs as well as shape those beliefs. In fact, the emergence of these attorneys coincided with the United States' ideological shift to its socio-political law and order era (Rapping 3-10; Quinn 132). Thus, the social climate was favorable for this type of program and attorney portrayals, and this program reinforced these ideologies.

III. The "CSI Effect"

Perhaps the most talked-about impact of a television law programs is the "CSI Effect." In the last 5-6 years, the media and legal community have speculated that the criminal procedural *CSI: Crime Scene Investigation* causes a "CSI Effect." As most commonly articulated, the "CSI Effect" refers to a change in juror expectations wherein jurors now expect that every case will include forensic evidence proving guilt, and, unless such evidence is presented, they will not convict (Tyler; Podlas 2006, 433-36). Prosecutors complain that this increases their burden and is causing an epidemic of wrongful

² Data from the international student study noted above reflects relatively low opinions of attorney's honesty, but the study did not separate out views about prosecutors or attorneys working on behalf of the government (Asimow 421-27).

acquittals. (Podlas 2006, 433-34). Despite its prominence in the media, however, the "CSI Effect" appear to be more myth than reality.

This is not the first time that a television program has been accused of perverting the decision-making of juries, and it will not be the last. Every decade seems to be associated with some program-specific effect, depending on what programs are in vogue. For decades, attorneys complained that the way television's Perry Mason always exposed the real culprit or used cross-examination to force the prosecution's star witness to confess created in jurors a "Perry Mason Syndrome." Specifically, defense attorneys claimed that jurors no longer came to court requiring the prosecution to prove guilt beyond a reasonable doubt, but expected the defense to prove the accused's innocence (Graham 628). In the late 1980's, many people claimed that *LA Law* glamorized the legal profession, and, thereby caused law school applications to increase. In the mid-1990s, daytime talk-shows such as *Oprah* and *Phil Donahue* were blamed for leading to an "Oprahization" of jurors. It was asserted that those program's acknowledgements of the "cycle of abuse" and sympathetic portrayals of abused wrongdoers caused viewers (when jurors) to absolve previously-victimized defendants of their criminal acts (Sherwin 2000, 30).

The basic premise that a popular, long-running television show like *CSI* could somehow impact jurors is plausible. After all, caselaw and legislation regarding pre-trial publicity rests on the notion that television can bias jurors. If, however, *CSI* has an effect, it does not appear to be one that harms the prosecution: Notwithstanding the press devoted to the "CSI effect," no empirical evidence has found any anti-prosecution "CSI Effect" on guilty verdicts (Tyler; Podlas 2006; Podlas 2007; Podlas 2006/2007, 119-21; Cole & Dioso 2009, 1335-37). Rather, research employing psychological, sociological, and media studies approaches have all concluded that, in rendering "not guilty" verdicts, frequent viewers of *CSI* are no more influenced by *CSI* factors than are non-frequent viewers. Anyone interested in greater detail about the different versions of the "CSI Effect" (i.e., a pro-defense effect, a pro-prosecution effect, a "tech" effect, a juror interest effect, and a vocational interest effect) as well as the variety of research on and history of findings about it should look at the articles by Simon Cole (cited below).

Podlas attempted to detect a "CSI Effect" by using a criminal trial scenario where forensic evidence was neither provided nor necessary. She surveyed 306 college students and asked them to reach a verdict of guilty or not guilty, where the expected or "legally correct" verdict for the case was not guilty. The results showed no

significant differences in the decision-making processes or "not guilty" verdicts of respondents who regularly watched forensic television programs versus those who did not. Furthermore, they did not indicate any increased expectation of forensic evidence by *CSI* viewers compared to non-*CSI* viewers. A second study sought to replicate these findings and focus on the factors used in decision-making. In this study, 538 mock jurors deliberated in small groups about two crime scenarios where forensic evidence was neither necessary, nor referenced. Again, there was no indication that *CSI* viewers relied on forensic evidence to a greater degree than their non-*CSI* viewing counterparts *CSI* viewing jurors or that they acquitted in cases that warranted convictions (Podlas 2006, 453-61; Podlas 2006/2007, 106-12, 116-19; Cole & Dioso 1354).

To test the impact of *CSI* on juror expectations, Shelton surveyed 1027 prospective jurors, and presented them with various criminal case scenarios. Respondents were asked what types of evidence they expected to be presented at trial and what verdict they would render based on whether certain types of evidence was presented by the prosecution and defense. The results indicated only a marginal difference in responses of *CSI* and non-*CSI* viewers. But, more importantly, *those differences ran counter to an anti-prosecution effect*. Although all subjects expressed high expectations for forensic evidence, these across-the-board expectations did not translate into a requirement for a guilty verdict. The authors suggest that these increased expectations were due not to a "CSI Effect," but to a universal tech effect that reflects society's increased awareness of technological advances (Shelton).

Not only is there no direct evidence of a "CSI Effect," there is no secondary evidence of it. If a "CSI Effect" existed, it would manifest itself through an increase in acquittals. Thus, Cole and Dioso-Villa conducted linear regression modeling comparing federal acquittal rates before and after *CSI*'s 2000 premier. They did not find any discernable increase in acquittal rates, but found a decrease (2009, 1360-63). Consistent with this, Loeffler found no increase in acquittals in New York, Texas, Illinois, and California (Loeffler).

The Pro-Prosecution Effect

Although *CSI* does not seem to cause an anti-prosecution effect, some legal scholars suggest it might produce something of a pro-prosecution effect, lowering the prosecution's burden and *increasing* the jury's tendency to convict (Podlas 461-62; Tyler 1065-71; Cole; and Dioso 2009, 1372-73; Ghoshray 560-61).

The general message of *CSI* is that police forensics are legitimate (Tyler 1070; Podlas 2006/2007, 120-21). It portrays forensics as the ultimate crime-fighting weapon and fosters an aura of forensic infallibility (Tyler 1072-73; Cole and Dioso 2009, 1370-72). The experts are never wrong and the science is always absolute (Podlas 2006, 46-64). This might encourage jurors to overvalue anything labeled "forensic" and ignore problems in the data presented (Tyler 1055, 1065, 1071; Podlas 2006, 463). Moreover, *CSI* celebrates police-work and the validity of their arrests. Cole and Dioso-Villa believe that these positive portrayals of police "benefit those professions by making the public's perception of them more favorable" (Cole & Dioso-Villa 1348). Even researchers who believe that watching crime procedurals alters makes jurors more careful in analyzing evidence, believe this simply improves the reliability of verdicts or aids the prosecution: "[C]rime scene investigation shows have predominated prosecutorial bias, such as ... never failing to catch the criminals," making juries more prone to convict if objective evidence is available (Ghoshray 560-61). This is furthered by the narrative of *CSI*. As Podlas argues:

[V]iewers are *not* taught that the prosecutor must present forensic evidence for the verdict to be guilty (or that when the prosecutor does not do so, the only correct verdict is not guilty). Instead, they are taught that all of the scientific investigation took place long before trial and led to the defendant's arrest. . . . [A] juror [may] interpret *CSI*'s dominant narrative (i.e., of perfect forensics identifying the guilty and being the precursor to arrest) to mean that: (1) arrests are based on forensics; (2) forensics proves guilt; and (3) therefore, anyone arrested and on trial has already been proven guilty (2006/2007, 105-06).

Indeed, it seems likely that the combination of: shows like *CSI* and *The Closer* (that feature technology as a crime-fighting tool), the tremendous technological advances that society has witnessed in the past 20 years, cutting-edge medical procedures, and the continued respect for science as a means to "truth" (or, perhaps the belief that science doesn't lie) have led to the type of "tech" effect that Judge Donald Shelton has suggested. Hence, today's jurors may be more interested in (or primed to listen to) forensic testimony and evidence. Additionally, as jurors experience the increasing proliferation of science and technology in all areas of their lives, they may presume that these technological advances extend (or should extend) to the justice system. Hence, any increased interest or expectation about science and technology is not from TV, but is part of society advancing. (Nonetheless, the research that exists shows that even with such increased expectations, jurors do not seem to wrongly demand irrelevant forensic evidence where it would not or does not exist.)

The persistence of beliefs about some sort of “CSI Effect” may be due to media coverage and opinion converging to become “fact.” This implicates both agenda-setting and framing effects. Because the media devoted attention to this notion, it led people to believe that a “CSI Effect” actually existed (hence, agenda-setting), and that this phenomenon harmed the prosecution and caused unjustified acquittals (rather than as making jurors more interested in forensics, as causing them to incorrectly overestimate quasi-forensic evidence) (hence, framing) (Cole and Dioso 2009, 1346-47, 1371-72). Essentially, as prosecutors complained of a “CSI Effect,” the media reported, and as the media reported, prosecutors complained; Eventually the public began to believe in this effect (Cole and Dioso 1338-43).

IV. Factual Legal Knowledge

For the most part, law television has not been shown to be good at teaching audiences specific legal rules. This is not unique to law-oriented programming, but applies to television, generally. Audiences exhibit very little knowledge gain in the form of concrete facts, except from news, typically political debates and stories about catastrophic national events. Even then, however, knowledge gain is modest or insignificant (McLeod, et al. 228-30; Kim 339-41).

The factual content people learn from television tends to involve rote learning of a uniform, concrete message that is consistent and across programs, somewhat like learning the refrain of a popular song (Kim 340-41). The best example is that most Americans know the *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)), but did not learn this in school or as a result of an arrest. Presumably, they heard it repeatedly on television programs and in films, and eventually remembered it. (Nonetheless, that the audience can repeat these words does not mean that they can apply or explain the rule).

Beyond remembering phrases and simple rules, it does not appear that viewers learn much legal content from television. One study administered a quiz on the legal principles commonly stated on television, and then compared test scores based on the amount of television that test-takers watched; The study hypothesized that, if people learned legal content from legal television, they would score higher on the test. Heavy viewers, however, scored no better than did non-viewers (Podlas 2006, 50-52). The study author suggested that viewers might not discern legal content from television, because it is secondary to the plot, or that the emotional aspects of the story (which highlight attitude formation) mutes the factual content. Even if viewers recognize the rule, it might

dissipate from memory or not resonate strongly enough to exert a measurable effect (Podlas 2006, 52-53). Alternatively, viewers may not comprehend content or be able to apply it outside of the television context. (Therefore, learning is either rudimentary or difficult to discern through empirical testing). Indeed, investigations of content learning from other types of television have noted such problems in viewer comprehension and extra-episodic application of content, as well as the difficulty in measuring such effects (Fisch, 416-20; Kim 340-42). Consequently, although television can cultivate beliefs, contribute to perceptions, or provide general “scripts,” it seldom successfully “teaches” concrete legal content.

V. Norms and Modeling Behaviors

Programs featuring trials and courtrooms might not teach factual content, but they may provide viewers with models for how to behave in court or normative guides for whether litigation is socially acceptable. Although this assumption is reasonable in light of research on social learning, no law-specific research has been conducted. There is, however, some related information supporting the idea. For example, in the French legal system, judges are called Monsieur le president or Madame la presidente. A majority of law-oriented programs on French television, however, are American imports, such as *Law & Order* and *Damages* where judges are referred to as “Your Honor.” As a result, French audiences hear the term “Your Honor” rather than Madame la presidente. Consistent with this, Villez reports that French litigants are now calling judges “Your Honor” (Villez 275-77).

Some survey evidence suggests that reality courtroom programs may help acculturate audiences to low-stakes litigation or litigation “for the principle.” One study asked respondents to rate the likelihood of undertaking certain types of litigation (including contract, personal injury, and property damage cases, and ranging from under \$100 – over \$1,500) and the circumstances under which they would do so without the aid of an attorney. A meta-analysis of responses disclosed that a higher proportion of frequent viewers said that they would engage in litigation and do so pro se (Cardozo 494). Perhaps with repeated viewing, viewers come to believe that civil court is a viable option for the average person, and are therefore more likely to engage in litigation. It is not possible, however, to determine whether viewing causes these beliefs, these beliefs cause viewing, or some other relationship exists explaining the correlation between these factors (Podlas, 2004, 270-72; 280).

VI. Juror Decision-Making and Verdicts

On a broader level, the accumulation of law portrayals contained within various programs can influence the mental models and decision-making of jurors. Studies demonstrate that stories are central to juror decision-making: They help juries make sense of evidence, prompt inferences, determine causality, and assign blame (Pennington & Hastie, 1986; Pennington & Hastie, 1992). Stories have also been shown to influence the analyses and decision-making of judges (Lin 759; Wineburg 77; Riley 503, 507). Every day, television supplies countless detailed stories about crimes, motives, and legal liability. And whether called scripts, heuristics, or something else, these can influence our assessments, by creating expectations and baselines for truth.

Research has demonstrated that in some instances frames or cognitive scripts can make juries more likely to accept allegations as true or believe that certain people have committed a crime. Content analyses demonstrate that television news overrepresents African-Americans and Latinos as lawbreakers and as committing crime (Dixon & Linz 131; Gilliam 6, 10-12). Gilliam and Iyengar assert that this creates a "crime script" in which criminals are African-American or Latino. As a result, decision-makers may be more likely to believe that an African-American or Latino defendant has committed a crime (560-62). In fact, studies have documented that exposure to television crime news seems to produce such an effect in white viewers (Entman & Gross). Experimental and survey results further indicate that exposure to television's stock script of the black, male, criminal can increase white viewers's punitive attitudes toward crime, as well as their tendencies to endorse dispositional explanations for criminal behavior and racist beliefs (Entman & Gross 104-05).

Studies also show that decision-makers assess trial evidence that is consistent with known stories as more believable (Pennington & Hastie, 1986). Hence, evidence that fits with the known television narrative can be perceived as more believable. Furthermore, where script-based expectations can become so mentally persuasive that when people encounter a scenario that lacks information typically in the script, they will 'fill in' that information (Gilliam & Iyengar 561). One study showed that white viewers who saw a newscast featuring a white murder suspect, were increasingly likely over time to misidentify the suspect as black (Oliver 46). This might also lead decision-makers to presume facts not in evidence. For example, television programs such as *CSI* and *Law & Order* establish a script of how and under what circumstances an arrest takes place; And in this script, the police officers' conclusions of guilt are usually borne out to be correct

and based on valid evidence. On television, if an individual is factually innocent, they have been exculpated; but if they are on trial, it is only because a great deal of forensic investigation has occurred that definitively confirms them as the culprit. A juror who is well-acquainted with these shows may, therefore, presume that anyone on trial has been identified through this process and proven guilty with forensic evidence, regardless of whether the prosecution and police witnesses mention the process (Podlas 2006/2007, 105-06).

The evaluative slant of television news can influence evaluations of guilt (Studebaker & Penrod 428), or beliefs about how certain crimes unfold (Bull Kovera; Carlson & Russo 91). In an experiment by Margaret Bull Kovera, participants watched a television news story on rape that had been edited to present pro-defense and pro-prosecution perspectives. Participants then listed what evidence they would need to convict a defendant of rape. The results indicated that the type of evidence participants listed as indicative of guilt seemed to depend on the slant of the news story they had seen. Those who saw a pro-defense video required more inculpatory evidence to convict, but were less concerned about evidence concerning the complainant's credibility (Kovera). The bias of a frame can also impact responsiveness to witness testimony, sympathy for, and the positive or negative disposition toward the defendant, and, ultimately the verdict. In fact, individuals exposed to pre-trial publicity regarding a defendant tend to render more punitive judgments (Lin; Studebaker & Penrod; Robbenolt & Studebaker). These influences can survive the voir dire, limiting instructions, and may even intensify during deliberations (Studebaker & Penrod; Robbenolt & Studebaker).

Cautions of Empirical Study

Although these materials speak in terms of "studies" and "findings," it is not possible to say with certainty that legal television programs do or not cause any of the asserted impacts. Researchers cannot isolate all of the sources and messages about law that a person has accumulated over a lifetime, so as to conclude that television, alone, is the cause. Researchers can never know that, but for watching lawyer programs, a viewer would have a more positive view of the profession, or if only the news' slant would have been favorable, a jury's verdict would be different. In any event, causes and effects seldom operate in isolation, but rather interact with other variables. Indeed, television consumption is an active process, where viewers' existing attitudes and beliefs impact how television's imagery is interpreted, integrated, and acted upon.

Furthermore, because viewers have some choice in what to watch and how often, their motivations and gratification also play a part.

Additionally, there are limitations inherent in social science experimental designs. Experiments of this nature cannot perfectly replicate real-world situations, obtain identically representative participants, manipulate actual, ongoing cases, or statistically measure attitudes as though they are quantifiable numbers. In fact, an underlying hypothesis might be correct, but be difficult to test or adequately measure. Finally, although the above studies follow a model of scientific inquiry, they generally rest on an interpretive foundation; They commonly begin by analyzing a narrative or coding the frequency of television content. A content analysis, however, may focus on the “wrong” content or code it according to the researcher’s own biases; An investigation of framing might find whatever frame it is looking for; Narrative analysis may substitute the scholar’s interpretation of content for that of the audience. As a result, these methods are subject to the foibles of the researchers employing them, regardless of whether they employ statistics and graphs. This does not mean that the empirical study of legal television is folly, just that its limits should be recognized and it should not be over-interpreted. Indeed, the information gleaned from methodically testing our assumptions augments our study and keeps us focused on reality and relevance. This ensures that it can intelligently inform practical perspectives of legal practice, adjudication, and policy.

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