

Forensics in the media:  
Have attorneys reacted to the growing popularity of forensic crime dramas?

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**TABLE OF CONTENTS**

I.	<a href="#">Abstract</a> .....	3
II.	<a href="#">Introduction</a> .....	4
III.	<a href="#">Literature Review</a> .....	13
	A. <a href="#">The Varieties of Forensic Science</a> .....	14
	B. <a href="#">Representations of Forensics within the Media</a> .....	17
	C. <a href="#">Media Studies</a> .....	32
	D. <a href="#">Jury Studies</a> .....	46
IV.	<a href="#">Methodology</a> .....	54
V.	<a href="#">Findings</a> .....	59
VI.	<a href="#">Discussions/Conclusions</a> .....	74
	A. <a href="#">Discussion</a> .....	75
	B. <a href="#">Implications/Suggested Policy Changes</a> .....	77
	C. <a href="#">Limitations of Present Study</a> .....	80
	D. <a href="#">Suggestions for Future Research</a> .....	81
	E. <a href="#">Conclusions</a> .....	83
VII.	<a href="#">References</a> .....	86
VIII.	<a href="#">Appendix: Survey</a> .....	92

### Abstract

This study will explore the possibility that trial attorneys have noticed and are responding to increased expectations in regard to forensic evidence by those summoned for jury duty. As there has been a dramatic increase in media interest, and television crime dramas depicting forensic science in particular, this study investigates whether jurors now expect the presentation of such evidence routinely. The study was based upon 53 surveys of both prosecutors and defense attorneys, who practice in a medium population Florida county courthouse, to determine if lawyers have altered their trial preparation methods and trial presentation techniques since the widespread popularity of forensic television depictions, such as *CSI*. Depictions of forensic science by the media are discussed, including an informed evaluation of the accuracy of the portrayals by Hollywood films, television news programs, docudramas and prime time crime shows. Both general literature on media impact theories and specific studies that have focused on how media accounts can alter jury expectations are covered. Based upon the results of the study and comparisons to previous research, several policy recommendations are made.

This study will investigate the recent surge of interest in forensics methods of crime investigation within popular media. The study will attempt to assess the possible impact that these depictions might be having on jury expectations and trial activities by attorneys. Recently, lawyers have published concerns that the increased emphasis on forensics by the media may create misperceptions by the public ([Cather, 2004](#)). However, the expressed concerns have gone unstudied thus far and remain hearsay.

Investigative news shows, documentaries, docudramas, Hollywood films and crime dramas, such as the highest rated prime time show, *CSI*, portray forensic science as a key to solving horrific crimes. Since the widespread popularity of forensic crime portrayals, have prosecutors and defense lawyers sensed a change in jury expectations? Given the media's current emphasis on the importance of forensic science to resolve criminal investigations, a logical question to ask is if prospective jurors now have a higher expectation on the presentation of physical evidence by forensic experts. When criminal cases rely on testimonial and circumstantial evidence, do juror members feel as if something is missing? Is there a possibility that jurists might acquit when forensic evidence is not presented during a trial, but substantial circumstantial and testimonial evidence exist? If these changes are being perceived by attorneys as genuine, have lawyers reacted to changes in jurors by adjusting trial preparation and the presentation of evidence at trial? Additionally, are attorneys questioning jurors' viewing habits during *voir dire* to either strike or attempt to retain avid viewers of forensic crime dramas?

Of what value is prior research on media influence concerning juror expectations in attempting to assess the potential impact of the media's current emphasis on forensics? Most scholars acknowledge that the media has the potential to skew the public's

perception, such as viewers having an exaggerated impression of the violent crime rate ([Surette, 1984, p. 3](#)). However, researchers have yet to publish any studies that analyze the recent trend of television shows that focus primarily on the use of forensic science to combat crime.

### *Forensics in the Media*

The public is primarily educated about forensic science by Hollywood films and television shows ([Barak, 1995, p. 3](#)). Within the past five years, the emphasis on forensics as a primary tool to solve crimes has increased significantly on broadcast television with shows like *CSI*. In comparison, Hollywood films have rarely featured a forensic scientist working in a lab or out in the field as a main character. Typically, the police make a stop at the crime lab to drop off or pick up potential evidence, thus moving the film's investigative plot forward.

Nevertheless, as depicted by the media, forensic science is a broad field practiced by both genuine forensic scientists and law enforcement investigators. In the real world, the duties of forensic specialists are normally limited to forensic science techniques; however, police investigators use forensic methods on occasion. Below are examples of each.

Forensic scientists are strictly limited to the preservation or analysis of forensic evidence. Crime scene investigators, criminalists and latent print examiners are two examples. In addition, there are numerous cases in which outside experts can have the phrase "forensic" attached to their titles, typically after specialized training. Examples include psychiatrists, anthropologists, hand writing analysts and even gunsmiths.

The media frequently focuses on law enforcement personnel who use “forensic” techniques to solve crimes. In effect, this is an update to the Sherlock Holmes crime investigation novels, as he used logic and scientific technique to single out the real suspect, often from a plethora of viable candidates. Probably the most popular recent movie series to focus on the use of forensic techniques are those based on the character of criminal Hannibal Lector. Each of the three movies (*Silence of the Lambs*, *Red Dragon* and *Hannibal*) featured an FBI forensic profiler as one of its main characters. These films are based upon author Thomas Harris’ interviews with agents who worked for the FBI’s elite Behavioral Science Unit. The unit developed forensic investigative techniques for tracking serial killers and repeat rapists by examining crime scene evidence patterns.

Audiences have learned about forensics from television as well as film. Television has emphasized both traditional forensic science and the use of forensic science by law enforcement through news shows, documentaries, docudramas and crime dramas. These have been given much greater exposure to the public in various television formats than Hollywood films ever did. Probably first to focus on forensic scientists were investigative news shows, such as *60 Minutes*, *48 Hours*, and *MSNBC Investigates*. These often featured repugnant criminal acts that were solved through the use of forensic science evidence. During the mid 1990s, docudramas that focus on forensic scientists began to emerge. *New Detectives* (1996), *FBI Files* (1998) and *Forensic Files* (2000) feature actors to recreate actual cases to depict how forensic science evidence assisted in the successful capture of offenders. In addition to the actors, forensic scientists are often used as narrators and may also play their respective roles documentary style during the

reenactments. Shortly after these docudramas were introduced on television, forensic documentaries were developed for premium cable channels. *Autopsy*, which was developed by HBO, depicts the work of a forensic pathologist. In each episode, Dr. Michael Baden describes the work of a medical examiner while filming an autopsy, often exposing that the person died as a result of foul play.

Following upon the popularity of these early forensic crime shows, *CSI*, which is based on the duties of criminalists working at the Las Vegas Crime Laboratory, became a weekly crime drama in 2000. By December 2001, *CSI* was the most watched primetime television show and still remains the highest ranked television show ([Carr, 2004; Nielsen Media Research, 2004](#)). Following the widespread interest in *CSI*, CBS created two spin offs, titled *CSI: Miami* and *CSI: New York*; however, they have yet to achieve the same level of interest as the original show. Although these television shows are the only ones that focus primarily on forensic investigators, other shows have incorporated forensic science into their plots. *Cold Case*, *Navy NCIS*, *Law and Order* and *Without a Trace* sometimes present forensic science as a useful tool during criminal investigations, but rarely show forensic scientists at work. For instance, *Law and Order*, relies more on traditional investigative techniques such as good leads and effective questioning of witnesses and potential suspects to identify an offender. Similar to *CSI*, *Law and Order* has also received enough popularity to have a spin offs, such as *Law and Order: Special Victims Unit*. While the characters of *CSI* sometimes conduct interrogations, they normally begin the interview knowing the facts of the case through the use of forensic science. Although *Law and Order* depicts the use of forensic science methods, the screen writers do not overemphasize the use of forensic techniques like *CSI*.

*CSI*, like other action and police dramas developed for prime time, relies heavily on enhanced media production techniques to maintain the audience's attention. For instance, *CSI* producers employ special effects that heighten the interest in forensic science as a form of crime detection, such as rapid-paced cuts and dissolves, three dimensional graphics, special lighting, unique camera angles and mood-setting music to appeal to the viewer.

To root the show in reality, *CSI* screenwriters based some episodes on factual crimes. Furthermore, most episodes depict evidence collection procedures and equipment that are commonly used by criminalists. However, the show also depicts fictitious scientific methods, which will be discussed in depth later. Unlike the majority of real life crime scene investigators, characters on *CSI* normally perform the duties of a criminalist, a detective and a laboratory examiner all at once. For example, most crime scene technicians never participate in interviews of witness and suspects, but the forensic investigators on *CSI* frequently conduct interviews to build upon the plot. Interlacing reality and fiction to make the forensic examiner appear as a master sleuth enhances the emotional appeal the show has for viewers ([Chiricos, Padgett, & Gertz, 2000, p. 761](#)). If Sherlock Holmes were still practicing today, he would certainly bolster his intuitive scientific logic with the use of these new forensic tools to prove he was right. *CSI* is an update of the Holmes tradition, as the forensic examiners weed out the most unlikely choices systematically before performing their forensic tests.



*Potential Impact on Jurors*

With the recent emphasis on forensics by the media, one would want to ask whether the public perceives the media image of this component of the criminal justice system as factual. Criminological research has demonstrated that pretrial perceptions of what should happen in court primarily derive from images of the court system projected by the media, since the majority of the population does not have any personal experience with the criminal justice system ([Barak, 1995, p. 3](#); [Bortner, 1984, p. 16](#); [Chermak, 1995, p. 95](#); [Surette & Otto, 2002, p. 450](#)).

However, is it possible jurors' media-based expectations change during a trial? Jury members may begin a trial with certain expectations, learned from television, only to discover the reality of the court room differs from the image portrayed by the media. One change that might be observed by jurors is that the presentation of evidence in trial is not as appealing as the media's presentation of forensic evidence on forensic crime dramas. When jurors observe a forensic expert testify, do viewers of forensic crime dramas feel disappointed since the testimony is not as appealing as the media's version? It is possible viewers of forensic crime dramas lose interest during the presentation of evidence at trial since attorneys may not use the same rapid-fire media techniques to maintain the jurors' attention? Considering personal experiences have been acknowledged to affect viewers' perceptions, can jurors reject the media's portrayal of forensic science once they experience the court system ([Chiricos et al., 2000, p. 775](#))? A possibility exist that jurors become educated through the court experience and accept forensic crime dramas as an inaccurate depiction of the criminal justice system.

Do persons selected for jury duty have unrealistic expectations about the availability of forensic evidence as the result of viewing inaccurate portrayals by forensic crime dramas? Can jurors differentiate between accepted scientific methods and fictional methods portrayed on television? An avid viewer of forensic crime dramas could expect a crime scene investigator to testify in court about the use forensic methods portrayed on television. In addition to jurors possibly being unable to distinguish science from fiction, the public may expect the presentation of scientific evidence in every criminal trial, since these shows depict forensic evidence as a key to crime solution.

Following the infamous trial of O.J. Simpson, court personnel around the country blamed the media for creating high expectations regarding forensic evidence presentation in every case ([Pittman, 2004](#)). During the Simpson trial, the presentation and dispute of forensic evidence was critical to creating reasonable doubt. Judges and lawyers later became frustrated that jurors entered the court room with unrealistic expectations that stemmed from the televised trial. While no trial has received the same popularity since the Simpson case, is it possible that forensic crime dramas have had a similar impact by continuing the tradition of instilling misperceptions regarding forensic science?

#### *Reaction by Criminal Trial Lawyers*

With the recent popularity of forensic crime dramas, have lawyers sensed a change in the public's impression of the criminal justice system? If attorneys have detected a change, do prosecutors and defense lawyers prepare for trial differently in response to these unrealistic expectations? For example, one might expect lawyers to inquire if juror candidates frequently view forensic crime shows during *voir dire* if

misperceptions created by the media is suspected by attorneys. Secondly, lawyers might have adapted to a potential change in the expectation of jurors by presenting evidence differently following the heightened interest of forensic science by the media. In the event unrealistic expectations may affect the outcome of a trial, have lawyers witnessed acquittals in cases where they felt guilt was proven but forensic evidence was not available?

As lawyers sense changes in the public's expectations, one might expect prosecutors and defense attorneys to screen juror members to identify individuals who are heavy viewers of forensic crime dramas. During *voir dire*, do lawyers who feel forensic crime dramas have an adverse impact on jurors' expectation question candidates' viewing habits? Do trial lawyers eliminate jurors who report they are fans of specific television shows or attempt to keep them?

In addition to changing *voir dire* techniques, another potential change worthy of investigation is whether lawyers adjust the manner they present evidence in court. Attorneys, who perceive jurors are affected by the media, might react to significant changes in the media, such as the current popularity of forensic crime dramas. If prosecutors feel jurors have unrealistic expectations of forensic evidence, trial counsels might have expert witnesses testify to educate the jurors on the limitations of forensic science. In contrast, defense lawyers might overemphasize the lack of forensic evidence presented by the prosecution, rather than addressing the evidence actually presented in court. As a counter-reaction to overzealous defense attorneys, is it possible prosecutors respond by requesting forensic testing on items previously thought by law enforcement to be irrelevant to the case?

Forensic testing is normally conducted on items seized as evidence, which are determined to be pertinent to the case. Police officers and criminalists often collect numerous items prior to knowing the facts of a case. In most instances, law enforcement investigators only submit a select few of the items collected during a criminal investigation, which are deemed significant, to a laboratory for forensic testing. Selective testing of evidence permits law enforcement agencies and laboratories to normally operate within budgetary constraints and prevent backlogs. To prevent defense attorneys from drawing unneeded attention to items that were not tested, prosecutors may request to have some or all of the remaining items forensically examined. During the discovery phase of a criminal proceeding, the defense learns the result of any forensic tests conducted and also obtains a list of all items seized during an investigation. If the defense identifies testing that was not conducted but deems it relevant to the case, they have the ability to retain an independent expert to conduct forensic tests of evidence collected by police. However, the defense may elect not to test items and overemphasize untested items to raise reasonable doubt that the prosecution's case is complete.

If jurors do have unrealistic expectations, is there a possibility those with unrealistic expectations can sway other juror's vote? Jurors may fail to understand the lack of forensic evidence, which could discredit the prosecution unduly. Since the release of *CSI*, have attorneys experienced acquittals where they felt sufficient evidence was presented to the jury but no or insufficient forensic evidence was available?

Several of the general questions raised in this introduction have been addressed by researchers. While some of the topics have been studied, there is no scholarly research on the impact forensic crime dramas might be currently having on the criminal justice

system. The following section will evaluate available literature in an attempt to answer a number of the questions poised in the introduction.

### Literature Review

This review will cover several topics related to the key issues of this paper, focusing on the media's depiction of forensic science and academic studies investigating the potential impact these and other crime portrayals have on the public. Images of forensics that appear in Hollywood films of the last two decades will be compared with both actual descriptions of forensic science activities and depictions of forensics in television news, documentaries, docudramas and prime time crime dramas that have recently become popular (e.g., *CSI*). A critical question this study will attempt to answer is whether these portrayals, and specifically programs such as *CSI*, have an impact on the public, particularly when they are called upon to serve as jurors. In order to answer this question, the literature review will cover major media impact theories and studies. We begin with broad studies that assess overall impacts, such as fear of crime, and then specifically address studies that evaluate the possibility the media affects the public's perception of the crime rate. If the media does adversely skew an individual's fear of crime, do individual components of the criminal justice system respond to heightened fears of crime? Investigations of jurors will be presented to assess the media's potential to alter verdicts of criminal trials by changing jurors' expectation of evidence. Finally, literature that discusses jurors' common perceptions of expert witnesses will be analyzed.

*The Varieties of Forensic Science*

Forensic science is a broad field that incorporates knowledge from scientific disciplines to assist in the scientific testing of physical evidence. Any specific field of science can be deemed “forensic” if the knowledge of the field is used by criminal justice personnel to aid during criminal investigations ([De Forest, Gaensslen, & Lee, 1983, p. 4](#)). While there are general forensic practitioners, such as crime scene technicians, the majority of forensic scientists have specialized training and only practice a specific forensic science (e.g., a forensic chemist who is only trained in chemistry).

Individuals whose primary duties are to document crime scenes, collect evidence and submit evidence to laboratories are normally referred to as crime scene technicians. However, their titles vary depending upon place of employment. Crime scene analyst, crime scene investigator and identification technician are the most common titles used by law enforcement agencies. In most agencies, crime scene technicians do not practice a specific forensic science, such as serology, but have a general understanding of forensic science since they are responsible for identifying, collecting and preserving forensic evidence for later laboratory analysis ([De Forest et al., 1983, p. 17](#)). While they understand the capabilities of various scientific fields, such as testing the chemical composition of a substance to determine if it is combustible, they are normally not trained to conduct the forensic testing themselves.

Unlike police officers or detectives, crime scene investigators may not be sworn officers, meaning they do not have arrest powers and other capabilities. Whether a crime scene technician will be sworn or not usually depends on the policy of the agency employing the individual. Within a law enforcement organization, sworn members differ

significantly from non-sworn employees, often referred to as civilians. Civilian crime scene investigators are not permitted to carry a firearm or badge and are afforded only the same arrest authority as ordinary citizens. Furthermore, the majority of laboratory analysts, to be discussed next, are not sworn.

Physical scientists can take specialized training to use their respective fields to aid in the testing of physical evidence. Most forensic laboratory analysts are physical scientists who conduct testing that may be presented as evidence in court. Laboratory analysts normally do not visit a crime scene and rely on the detective or crime scene investigator to collect, preserve and submit the proper evidence for testing. Although forensic scientists normally do not respond to a crime scene, several specific forensic scientists, such as physical anthropologists and entomologists, may need to visit a crime scene to render a decision. For example, when human bones are discovered buried and suspected to not be part of a recognized burial plot, the responding crime scene technician may request the assistance of an anthropologist. Physical anthropologists and archaeologists have specialized training in recovering artifacts from the earth and determining the age of bones, while crime scene investigators normally only have a limited knowledge of burial scenes. The occasions a forensic scientist is needed to respond to a crime scene are rare, probably the result of a crime scene investigator's ability to preserve most physical evidence for testing in a laboratory environment and to take photographs of the crime scene so evidence can be seen in context.

Behavioral scientists that use their skills to benefit the criminal justice system can also be deemed forensic experts. Psychologists sometimes assist during criminal investigations by using their specialized training to interview individuals involved with a

criminal investigation. Forensic profiling, which relies on principles drawn from psychology, sociology and criminology, was developed by the Federal Bureau of Investigation to develop leads during serial murder or rape investigations ([Bennett & Hess, 2001, p. 173](#)). By interviewing hundreds of convicted killers, FBI agents developed a technique for analyzing crime scenes to determine physical, social and psychological characteristics of an offender. The information learned from serial killers permits profilers to analyze criminal actions, particularly crime scene evidence patterns, with the hope to determine the approximate age, race and sex of the offender. In addition, psychological patterns and personality flaws are detailed, such as the inability to associate with others, compulsive tendencies, etc., which assist detectives in eliminating unlikely suspects while focusing on better targets.

The education level of crime scene investigators and forensic scientists vary depending upon the field and sometimes by the employing agency. All forensic pathologists must be medical doctors. Many of the specific fields of forensic science rely on professional training. The majority of laboratory analysts are normally required to take a specific number of courses in chemistry or biology. As generalists, crime scene technicians may not be required to have any college training, but will normally attend professional training once hired. For example, the Pensacola Police Department requires persons who apply to be a crime scene analyst to have two years of general college education that can be waived if the applicant has an equivalent amount of practical experience in the same field.



*Representations of Forensics within the Media*

This section will analyze depictions of forensic science in Hollywood films and television shows since 1990, ultimately comparing them with the factual roles of forensic assignments within the criminal justice system. First, the depiction of forensic profilers in the Hollywood films based on Thomas Harris' Hannibal Lecter novels will be analyzed. Next, the evolution of forensic science television shows will be discussed, starting with news coverage and crime re-enactment programs. Forensic docudramas based on actual events emerged next and were followed by prime time forensic crime dramas. Unlike docudramas, current forensic crime dramas may depict factual or fictional crimes and may employ real, exaggerated or impossible forensic science methods.

*Portrayals by the Film Industry*

Probably the most popular movies to depict forensic profilers are the films based on Thomas Harris' novels. *Silence of the Lambs* ([1991](#)), *Hannibal* ([2001](#)) and *Red Dragon* ([2002](#)) each feature an FBI forensic profiler as the main character. The characterization of the profilers is based upon real FBI special agents, who are always sworn officers, assigned to the Investigative Support Unit of the Federal Bureau of Investigation ([Simpson, 2000, p. 71](#)). While preparing to develop the novels, Harris interviewed FBI agents assigned to the Investigative Support Unit. To understand the methods of profiling, Harris questioned agents and reviewed murder cases that the agents profiled ([Douglas, 1997, p.25; Simpson, 2000, p. 71](#)). Buffalo Bill, the killer in *Silence of the Lambs*, is partially based on the serial killings committed by Ted Bundy, Ed Gein

and Gary Heidnick ([Douglas, 1997, p. 25](#)). Clarice Starling, the profiler in *Silence of the Lambs* and *Hannibal*, and William Graham, the profiler in *Red Dragon*, both review the investigative files and consult with a convicted killer, Hannibal Lecter, to develop a profile of the suspect. As this is how FBI profilers first acquired the data from which they developed their technique, Harris included Lecter as a composite character to document this process. For added dramatic impact, Lecter is depicted as a brilliant mastermind criminal in his own right, who aids the FBI in the first two plots while tormenting them psychologically, but becomes their nemesis in the final chapter of the trilogy.

The two profilers, Starling and Graham, in the novels are portrayed as the sole individuals capable of capturing serial killers, albeit they need some assistance from Dr. Lecter in *Silence of the Lambs* and *Red Dragon* ([Simpson, 2000, p. 72](#)). In a sense, the profiler role as depicted in these films is a combination of two earlier Hollywood film traditions, the brilliant private detective (e.g., Sherlock Holmes, Charlie Chan, Miss Marple, etc.) and the gadget equipped international criminal spy chaser (e.g., James Bond). In both of these film traditions, one heroic person is responsible for solving criminal investigations, unraveling mysteries or saving the world from evil agents often bent on blowing it up. In the *Hannibal* series, the profilers do not rely heavily on traditional police investigative work, such as questioning witnesses, to uncover and capture offenders. Instead, the profilers solicit the help of specialist scientists (i.e. entomologists, cryptographers, questioned document examiners, etc.) during the course of their investigations. Although Starling and Graham are not outfitted with

extraordinary gadgets as James Bond, their reliance on forensic experts and methods shows the use of technology to aid in the capture of suspects.

A law enforcement officer relying on forensic techniques to solve violent crimes is a more common theme in recent motion pictures since 1990. Before that, filmmakers in crime films normally used private detectives to investigate complicated crimes. A famous fictional detective that emerged during the 19th century was Arthur Conan Doyle's character, Sherlock Holmes. Just as Harris used factual information for certain characteristics found in Buffalo Bill, many of Doyle's plots derived from stories he read in the newspapers ([Truzzi, 1983, p. 57](#)). Although Holmes was developed prior to the widespread use of forensic science, Holmes' meticulous crime scene examination and reliance on physical evidence, such as foot prints and cigar ashes, to deduce the actions of the suspect resembles the actions of current day forensic investigators ([Rauber, 1976, p. 89](#); [Truzzi, 1983, p. 57](#)).

During the 20<sup>th</sup> century, yet another famous private detective was introduced in novels, also later developed into Hollywood films as the Sherlock Holmes character was. Philip Marlowe, the character created by Raymond Chandler, was depicted as a highly intelligent but world-weary agent who was the sole person able to get to the truth in a world filled with deception and corruption. Although Marlowe did not rely heavily on physical evidence to prove the guilt of a criminal, Marlowe's untiring efforts lead to the successful uncovering of criminal behavior in a way that could not be matched by police ([Brucoli & Layman, 2002, p. 22](#)). Holmes and Marlowe are examples of detectives from two previous eras whose dogged pursuit techniques are still evident in current

depictions of law enforcement investigators in the movies and on television shows like *CSI*.

As forensic science had not developed to its modern usage when Holmes and Marlowe were created by their respective writers, other crime authors also focused primarily on the detective's direct involvement in criminal investigations. However, with the increased sophistication of forensic science, crime fiction authors such as Harris have introduced the public to forensic investigators as main characters. Recent developments in the forensic science field have given screenwriters new techniques for use by glamorized law enforcement agents to capture offenders. Many of the current images of forensics are closer to reality than previous "gadgets" used to help investigators capture criminals. For instance, James Bond's x-ray glasses are technologically impossible ([British Broadcasting Corp, 2002](#)), but common forensic techniques, such as DNA testing and the analysis of trace evidence depicted in current crime dramas, appear technologically advanced when in fact they are now used routinely.

Each of the films based on Hannibal Lecter overemphasized the duties of a forensic profiler to locate the suspect while downplaying the importance of traditional detective work. In fact, when traditional investigative work was depicted in these movies, the forensic profiler usually conducted the investigative work. Ordinary detectives normally do not have specialized forensic training and rely on a variety of investigative techniques while investigating criminal acts. However, forensic profilers have very specific training, normally derived from interviewing serial killers, and normally do not rely on general investigative methods, such as conducting interviews and developing leads. In real life, FBI profilers normally do not set out to locate suspects. In

fact, profilers generally only review the case file and crime scene photographs.

Afterwards, the profiler provides a report featuring general characteristics of a potential suspect, and is rarely involved in further investigative work ([Douglas, 1997](#)).

Although the movies based on Hannibal are probably the most familiar films that incorporated forensic science into plots, numerous recent movies depict the use of forensic evidence. *Seven* (1995), *Double Exposure* (1997), *The Bone Collector* (1999), *Along Came a Spider* (2001), *Murder by Numbers* (2002) and *Insomnia* (2002) are popular films that portray forensic scientists and detectives using forensic techniques. For the most part, these films depict the use of forensic science as a tool to capture the criminal in conjunction with traditional detective work. *The Bone Collector* is the only movie listed above that features a forensic scientist as a main character. *The Bone Collector's* depiction is of an immobilized forensic investigator, Lincoln Rhyme, who is needed to analyze the crime scene. The remaining six movies listed above rely significantly less on forensic evidence or methods to identify the assailant. For instance, *Seven* depicted forensic techniques such as a crime scene technician processing an area of a wall for latent prints after a picture was left turned upside down by the offender. The use of forensic techniques alone did not resolve the investigation of the serial murders, as traditional detective work played an important role in locating the suspect.

#### *Portrayals on Television*

The depiction of forensics on television has evolved from being the topic of some investigative news episodes to prime time dramas that focus exclusively on forensic investigators. While the popularity of forensic crime shows has increased, how accurate

are their portrayals of forensic science? Current forensic crime dramas, such as *CSI*, blend factual and fictional scientific methods. Before discussing the latest trend of popular forensic crime dramas, other television formats that depicted forensic science will first be analyzed.

The first to focus on the use of forensic science as a tool to solve criminal investigations were investigative news shows, such as *48 Hours*, *Investigative Reports*, *MSNBC Investigates*, and *60 Minutes*. These shows are not limited to crime stories, and the criminal acts they report do not always hinge on the use of forensic evidence to prove the guilt of a suspect. However, the episodes dedicated to forensic science, the account is generally accurate as journalists rely on using experts to help them develop their stories. Most episodes of investigative news shows do not feature reenactments, but rely on the host's interviews of key investigators, witnesses and in some instances the victim or offender. In cases where forensic evidence was pivotal in arresting the suspect, a forensic scientist is often interviewed to describe the testing they conducted on evidence seized during the course of the investigation. In addition, in stories in which the forensic techniques are critical to determining guilt or innocence, journalists typically interview both supporters and critics of the accuracy of specific techniques such as fingerprinting, DNA or hand writing analysis.

The only caveat in these accounts is that they are typically incomplete, as all aspects on an investigation can not be included. As the host of the show details the facts of a criminal investigation, they generally point out only the important investigative methods, such as essential interviews or testing of forensic evidence, that were imperative in the successful closure of a criminal investigation. Probably as the result of the story's

time limit and to maintain the viewer's attention, forensic evidence that was collected but did not play an integral role in identifying the culprit, is not revealed to the audience. Also, the complete steps in discovering, collecting, preserving, testing, analyzing and presenting evidence in court are glossed, so that the audience never gets a complete picture of the role of forensics in police work and courtroom trial.

Next, in the recent history of forensic science on television was the development of documentaries, such as *Autopsy*, (1994) which first appeared in 1994. However, only a few other forensic documentaries have been released, such as *On the Inside: Army Detectives* (1999) and *Dr. G: Medical Examiner* (2004). *Autopsy*, which is based on the postmortem examination of the human body, features Forensic Pathologist Michael Baden as a narrator. During the uncensored examination of a corpse, Dr. Baden explains his actions and what he looks for to determine the cause of death.

In almost every unattended death investigation, a thorough autopsy is a crucial step to determine the manner and cause of death. Yet, *Autopsy* only depicts one phase of the collection of forensic related information as part of the overall criminal investigation. In every homicide, a crime scene examination is conducted prior to an autopsy. In some death investigations, the medical examiner will visit the scene to familiarize themselves with the scene and how the body was discovered. If the pathologists do not visit the scene, they rely on law enforcement officers to brief them on the known circumstances surrounding the death. The pathologist's becoming familiar with this information is often a crucial step when deciding the attributed manner of death. For example, certain gunshot wounds can be self-inflicted or caused by a second party, which dictates if the death will be ruled suicide or potential homicide. Additionally, the cause of death is not

always readily apparent during the standard autopsy itself. In some instances, such as dying from a lethal dose of narcotics, the cause of death is unknown until after forensic toxicology tests are completed. Thus, the forensic investigation begins prior to and continues on past the formal autopsy itself.

As a result of the popularity of the show, HBO, the cable channel which broadcasts *Autopsy*, has set up a website that viewers can explore to obtain information on the show ([Home Box Office, 2004](#)). Additionally, there is an interactive casebook that has images from an actual crime scene and requires the user to identify evidence to proceed through the guide. The viewer acts as a crime scene investigator by documenting and identifying evidence. Additional video clips are narrated by forensic scientists and prosecutors, who discuss the details of the crimes. The criminal case depicted on *Autopsy*'s website is a factual case that expound on the autopsies featured on the documentary. The first and currently only case depicted is of the serial killer Steven Pennell, commonly referred to as the Corridor Killer. The Website thus provides a way for viewers to learn genuine scientific knowledge about the role of forensics.

In the mid 1990's, forensic docudramas began to emerge, primarily on cable television. Docudramas represent a hybrid of the format of investigative news shows combined with the more dramatic presentation style of crime investigation dramas. In particular, docudramas reenact the criminal event or portions of the criminal investigation. Similar to investigative news shows, docudramas often feature interviews of key personnel and video segments of the trial or interviews conducted by detectives that may be available. The reenactments are based on factual information learned during the investigation. During the reenactments, actors often play the role of the suspect and



victim. However, a forensic scientist may play himself or herself during the recreation of a crime scene examination or a scene depicting the forensic testing of evidence.

Corresponding with investigative news shows, docudramas are normally limited to depicting the crucial forensic evidence that impacted the outcome of the investigation.

However, as these shows must time compact reality they are subject to the same caveat as news presentations. The actual process of identifying, preserving and analyzing forensic evidence is only partially presented to the viewer.

*The New Detectives* ([1996](#)), *FBI Files* ([1998](#)) and *Forensic Files* ([2000](#)) are several docudramas that televise stories of violent criminal acts that were solved. The producers of *The New Detectives* and *FBI Files* only feature cases that forensic science played a significant role in proving the guilt beyond a reasonable doubt of a suspect ([Discovery Communications, 2004](#)). Although the shows do not depict fictitious forensic techniques or crimes, docudramas do not portray the full duties of forensic scientists. In most episodes, only the duties of the forensic investigator that had a significant impact on the case are revealed to the viewer. During most crime scene examinations, crime scene investigators collect numerous items that may help in establishing the facts of a criminal act. The crime scene examination is normally conducted during the preliminary phase of a criminal investigation, which is when the circumstances of the incident are normally not fully known by the detective. Therefore, it is common for evidence to be seized that later proves not valuable. Other parts of the examiner's role, such as documentation of a crime scene with photographs and completing reports, are usually not portrayed in docudramas.

Next in the chronology of forensic science on television, and following the widespread interest in forensic docudramas, forensic crime dramas such as *The X-Files* (1993) and *Profiler* (1996) appeared. These also were brought on by the level of success achieved by the Hannibal-type movies, and loosely based on Harris' novels and other similar portrayals (Simpson, 2000, p. 70). Unlike previously discussed television forensic crime shows, these dramas were based on fictional plots rather than actual crimes, but did sometimes employ factual forensic methods.

*The X-Files* not only relied heavily on fictional crimes, but included plot scenarios that often took the show far from reality. As the main characters of the show, FBI agents are called upon to investigate supranormal (and frequently paranormal) deaths that baffled local police agencies. During the investigations, the agents sometimes uncovered that the deaths were the result of alien or monstrous creatures, both sub- and non-human. In completing their investigations, the FBI agents would develop forensic profiles that would allow them to explain homicides that could not be attributed to ordinary human behavior. Thus, the methodology of criminal profiling was employed to catch real monsters, while the FBI in reality uses the technique to catch real humans who are labeled as monsters (Picart & Greek, 2003).

As the title suggests, *Profiler* was based on a forensic psychologist, Dr. Samantha Waters, who is a forensic profiler for the FBI. Waters evaluated death scenes in an attempt to identify the killers. Similar to actual FBI forensic profilers, Water relies on physical evidence left at the scene by the suspect to develop leads during a homicide investigation. Just as Graham in *Hannibal*, Waters was called out of retirement as she was the only resource available to capture a serial killer. However, in addition to

collecting and analyzing forensic patterns, Waters had a superhuman telepathic ability that allowed her to visualize the criminal acts through the eyes of the killer and deceased. Water's extrasensory perception downplayed traditional detective work even in cases where forensic profilers are used to develop leads. Generally, forensic profilers can only provide vague characteristics of an offender (e.g., an age within ten years), but Water's ability to see the offender using ESP allowed her to develop an extremely accurate profile, which is never the case in real life. While viewers of these shows instantly could recognize that they were fictional, the next television drama to feature forensics attempted to play it straight.

*CSI* ([2000](#)), which first appeared in 2000, would become the most watched show on television. The writers for *CSI* consult with a forensic expert, who is a member of the show's staff. Some episodes are based on actual crimes the expert, Elizabeth Devin, investigated as a crime scene analyst with the Las Vegas Metropolitan Police Department. However, the screenwriters for *CSI* often develop fictionalized plots as well.

The intertwining of reality with fiction in *CSI* proved to be a success. In December 2001, just more than a year after premiering, *CSI* was ranked as the number one prime time show ([Carr, 2004](#)). The popularity continued, as the show was still ranked number one in May 2004. Currently, the audience is estimated to exceed 20 million viewers per episode in the United States ([Nielsen Media Research, 2004](#)). Every two years following the premiere of *CSI*, CBS producers have released spin-offs based on the original show. *CSI: Miami* and *CSI: New York* were released in 2002 and 2004 respectively. Each show is identical to the original *CSI*, with the exception of locale.

In May 2004, the only other crime drama to rank in the top ten was *Law and Order* (1990). Forensic crime dramas currently are more appealing to viewers than other crime dramas formats available on prime time television. The difference between *CSI* and non-forensic crime dramas, such as *Law and Order*, is primarily the focus of the plot upon the differing techniques used to solve otherwise puzzling crimes. The characters in *CSI* normally use forensic science to solve crimes, while the characters of *Law and Order* usually rely on traditional investigative methods, such as good leads and interviews of witnesses and suspects. Criminal acts on *CSI* always require the collection and testing of forensic evidence to capture the suspect, while detective shows from the 1970s' *Starsky and Hutch* to *Law and Order* to 2004's *The Shield* document that police solve crimes primarily through the use of talk, even if it means threatening witnesses and suspects in some cases (Greek, 2004).

*CSI* does feature actual forensic methods that are used in the field and in the lab. The analysis of blood for a DNA profile, using the chemical Luminol to indicate the presence of blood not readily visible at a scene, processing items for latent fingerprints and comparing bullets with a gun are factual forensic tests that have been depicted on *CSI*. Additionally, the actors' careful crime scene search protocols corresponds to the meticulous searches real crime scene investigators use to ensure no evidence is overlooked at the scene of a crime.

Although the majority of forensic evidence and testing portrayed on *CSI* is employed by investigators in the field, some of the forensic methods depicted on the show are not technologically possible. While the actors on the show state when interviewed that they never inaccurately portray forensic techniques (Gumbel, 2002), the

forensic consultant for *CSI* readily admits she is unable to prevent the show's creative decision makers from producing false or exaggerated depictions of scientific methods ([Strachan, 2003](#)). *CSI* has portrayed both forensic techniques and tests which are scientifically impossible, and used these to solve criminal investigations and convict suspects. In one episode, a crime scene investigator poured casting material into a stab wound at an autopsy. A casting was made of the wound, to be compared with the weapon suspected to have created the injury. However, the anatomy of the human body does not permit the casting of wounds. In fact, casting materials are only used in the field to create a permanent fixture of shoe impressions or tool marks. In another episode, an investigator used a machine that collected air at a crime scene. The air was later forensically tested to determine the brand of perfume worn by the assailant. While tests could be conducted on a liquid to determine the chemical composition and compared with the chemicals of a perfume, it is impossible to test the air to determine this. Based on this author's observation, overall, about 85% of the forensic techniques depicted on *CSI* are used in the real world.

The crime scene investigator roles as depicted on *CSI* differ significantly from what real crime scene investigators do. Most crime scene technicians are support personnel in a police department, who do not make arrests or conduct interviews. Crime scene technicians are generally involved only in the collecting of evidence and the documentation of a crime scene. However, the characters on *CSI* perform duties of at least three different positions normally separated within law enforcement: collecting evidence, analyzing it and using it for further detective investigation. By conducting interviews and interrogations, the characters assume the role of a detective. Usually after

they collect evidence, they conduct their own forensic testing, which are duties of a laboratory analyst. As the main characters of the shows, they are depicted as the focal point of every criminal investigation. In many episodes, the crime scene investigators collect evidence at the scene of a crime and then rush it to the laboratory for forensic testing. After the crime scene investigators test the evidence, they often interview key witness just prior to arresting the suspect. After the suspect is arrested, the crime scene investigators will normally confront the offender with the forensic evidence that points to their guilt to solicit a confession of the crime. As the center of attention, the crime scene investigator is portrayed as the only person available to capture the offender, which closely resembles depictions from the whole history of hero crime detectors: Sherlock Holmes, Philip Marlowe, Perry Mason, James Bond and Clarice Starling.

*CSI* has a website that fans can explore to learn about forensic science and the characters of the show. Probably the most elaborate of all forensic crime shows' websites, the *CSI* website has various criminal cases viewers can explore ([CBS Broadcasting, 2004](#)). Each case has a synopsis of a crime similar to the ones portrayed on *CSI* with photographs of the crime scene and injuries to a body. Just as the plots of *CSI* are primarily fictional, the crimes featured on the website are probably based on fictional accounts as well. The synopsis of the cases provides a general description of the crimes and the steps the *CSI* characters took to identify the perpetrator. Also, there is a "forensic handbook" that provides definitions for forensic science terminology and equipment crime scene investigators and laboratory analysts commonly use. All of the definitions provided are factual, but an image of Mikrosil, a casting compound, is of the compound being used for a stab wound, which was previously pointed out as

scientifically impossible. Generally, the *CSI* website allows fans of the show to obtain a better understanding of some of the forensic equipment and techniques that are used in real life.

*CSI* relies heavily on the use of visual and audio effects to enhance the storyboards of each scene. The use of special effects enhances the emotional effect of specific scenes and ensures the attentiveness of the audience ([Gitlin, 2001, p. 61](#)). For example, often times *CSI* producers rely on three dimensional models to depict evidence that substantiates the theory the crime scene investigator develops to assess the circumstances of the criminal act. In an episode where the victim received a gunshot to the head, the storyboard included a scene of a three dimensional model of a human head. In the scene, the visual effect of a bullet, traveling slower than real life was depicted to animate the trajectory of the bullet, which is often a crucial step in differentiating if a death was a homicide or a suicide. Sound effects and unique camera angles are also utilized, which alters the mood of viewers ([Shoos, George, & Comprone, 1993; Tulloch, 2000, p. 39](#)). In many episodes, as the crime scene is portrayed, the director uses a camera's ability to zoom in and out to highlight the importance of specific evidence, while the relevance of the item may not be currently known to the viewer but is later revealed in the plot. For instance, while the characters are performing an examination of the crime scene, the camera often zooms in on evidence that will later lead to the arrest of the assailant. Additionally, fast paced scenes commonly found in television dramas can create an expectation of speed, thus compacting time and making it seem criminal investigations occur quickly and routinely ([Gitlin, 2001, p. 74](#)). In the television show *CSI*, the plots often include "flashbacks" of criminal acts as the investigators determine

what happened through the use of forensic testing. Instead of the character merely describing the results of a forensic test, the creators of *CSI* commonly use a rapid cut to another scene that visualizes the sequence of past events. Additionally, as forensic testing is completed, an additional scene is often used in the plot to depict various ways the criminal act could have occurred, based upon the testing results.

The depiction of forensic science, both fact and fiction, has become a focal point in Hollywood crime films and television dramas, though depictions are not consistent. Early images of forensic science on television news and docudramas were primarily based on factual scientific methods, but have now been replaced by Hollywood stories that intertwine factual and fictional scientific methods. As both news and prime time crime shows may seem realistic to viewers unfamiliar with forensic science, the media's account of the field of forensic science could possibly give viewers the false impression that forensic evidence is necessary to prove the guilt of an offender in every criminal case.

As millions of viewers tune in to *CSI* every week, researchers have begun to wonder what impacts these shows might be having on the public. Next, this paper moves to an overview of research on media effects in general, ending by investigating the possibility that the media's portrayals of forensic science may skew the perceptions of the role of forensics at trial in the minds of potential jurors.

### *Media Studies*

As studies have shown that so much of what ordinary citizens know about the criminal justice system comes from media accounts, both journalistic and fictional,



criminologists have attempted to study what impacts this might be having. This section will begin with an overview of major studies of media effects. From there, the discussion will move to whether viewers associate media images with reality. If viewers perceive these images as truth, does this impact on criminal justice system practices and policies? Next, studies that investigate the relationship between media images and courtroom expectations of potential jurors will be examined, as that is one of the specific foci of this project. Finally, the question will be raised as to whether and how attorneys have altered the way they carry out their roles, if they perceive that the public is media saturated.

### *Core Media Effect Theories*

Not long after the introduction of modern mass communication in American society, communications, sociological and criminological researchers began exploring the possibility that various media portrayals affect both the behavior of individuals and their perception of reality. Among the models developed for determining the extent of these effects were the hypodermic needle, the cultivation model, the spiral of silence theory and the limited effects model. With the exception of the limited effects model, each has proven to be flawed, as the respective theorists who developed the models failed to account for critical variables, such as individuals' personal real world experiences, which interact with media images in unique ways. The models will be presented in order from those that give greater weight to the media-based effects to models that contend the media may only impact the public under certain circumstances.

The hypodermic needle model suggests that the media directly shapes an individual's perception of reality and ultimately has an impact on behavior. Under this

model, which recognizes that the majority of the public rely on the media as the primary source of information for certain aspects of social life such as crime news, the public readily accepts media depictions as reality. Even further, viewers might want to repeat the behaviors they see on television or in movies. Since the model contends that television may affect the behavior of viewers, this model is commonly used for arguing for stricter censorship by the government. Most theorists reject the fundamental claims of the hypodermic needle model, because later studies concluded individuals reject media accounts they determine are unreal by comparison to real life experiences. Still, models such as the cultivation model and the spiral of silence theory depend upon similar, but more limited versions, of the hypodermic needle's determinism ([Underwood, 2004](#)).

Gerbner et al. ([1977](#)) developed the cultivation theory, which targets television viewing habits as a critical variable in deciding if individuals can be affected by the media. Gerbner proposed that television can affect the perceptions of heavy viewers, those who spend many hours a week in front of their television sets watching crime news and crime dramas, who may overestimate the frequency of violent and criminal acts that occur in their communities. Gerbner rejects the hypodermic needle contention that the media can influence the public to want to participate in these acts, but they may over-react by demanding that police and legislators "do something" about the crime problem. Gerbner similarly rejected previous theories which suggested that the media may affect the actions of the public, such as generating copycat crimes, which are criminal acts carried out that resemble previously media-highlighted illegal acts ([Greek, 1997](#)).

Through surveys, Gerbner established that heavy television viewers were more likely to perceive images of the "television world" as reality than light or moderate viewers. Since

viewing television is the third most time consuming activity by Americans ([Surette, 1998, p. 34](#)), Gerbner's theory could be generalized to the majority of the United States' population. Gerbner failed to account for several crucial variables (i.e. the demographics and experiences of viewers) that later empirical studies demonstrated limited the influential power of the media ([Chandler, 1995](#)). The cultivation theory was also criticized for failing to evaluate whether television programming was coded as realistic or fictional ([Slater & Elliot, 1982, p. 71](#)).

In contrast with the previous theories discussed, Noelle-Neumann ([1974](#)) argued the public accepts media depictions as reality, but for a specific reason; they do so out of concern that as individuals they might have a different attitude or opinion than the majority of society. Hence, the media can alter an individual's perception of reality if the person believes the media's portrayal is the predominant opinion of the public. Previous theories relied on faith in the media's ability to influence the public directly, but the spiral of silence model's influence is indirect. Therefore, the potential the media has to influence viewers is limited to persons who are afraid of straying from the perceived dominant opinion. Commentators such as Rush Limbaugh employ this model everyday when they claim that the "media" is liberal and trying to practice mind control through convincing the public it hears the "truth" on the nightly news. On the other hand, "dittoheads" know better; that only they have the truth because Rush told them what it is.

As the least deterministic model presented in this review, the limited effects model introduced by Klapper ([1960](#)), acknowledges media-based effects, but interpretation of media imagery always is tempered by the existing knowledge base of the viewer. Individuals react to the media images based upon their pre-existing beliefs and

real world experiences primarily. If the portrayals on television do not coincide with an individual's already taken-for-granted reality, the viewer will likely reject the media's depiction ([McQuail, 1969](#)). Gans ([1962](#)) observed this possibility when he watched television with Boston Italian-Americans. When the viewers observed something that contradicted the person's perception of reality, Gans noted they often would verbally express their disbelief of the television imagery. This theory holds out the possibility that media images might have an influence, particularly in the absence of personal experience or knowledge learned second hand. Among groups with significant personal experience with crime and criminal justice (e.g., the poor and minorities), media images may be rejected. However middle and upper class viewers may have little personal experience and might thus be more likely to accept media imagery as reliable. Thus cultivation theory and the limited effects model may overlap on this point. The current reality in our society is that the wealthier you are, the more likely you are to live in a gated home or community with security devices or protection, and also to hold more punitive attitudes toward crime. Of course, such folk are the least likely to be crime victims, unless they purchased Enron stock.

#### *Extent of Media Saturation of the Public*

As we have just seen, scholars disagree substantially about the extent of the impact media imagery in general has on viewers. This section will assess the extent of media saturation of the public and some examples of the images media consumers receive. Criminology has long recognized that the majority of citizens have little personal experience with the criminal justice system ([Escholz, Blackwell, Gertz, &](#)

[Chiricos, 2002, p. 328; Surette & Otto, 2002, p. 450](#)). As to experience with crime itself, most have never been the victim of a violent crime, while the percentage of Americans who are victim to property crime, however petty, in any given year is 16% ([Bureau of Justice Statistics, 2002](#)). Most of these property crimes go unsolved as the clearance rate of property crimes is less than 20% ([Federal Bureau of Investigation, 2002](#)), so even if reported to the police, crime rarely brings citizens to court, even as witnesses ([Lichter, 1991, p. 191](#)). Therefore, most people experience of the legal aspects of the criminal justice system prior to being called for jury duty the first time is through the media's depiction of it.

With most citizens lacking personal experience with the criminal justice system, the media serves as a primary source of information about how the criminal justice system functions and the specific role that forensic science plays in crime detection ([Bortner, 1984, p. 16; Durham, Elrod, & Kinkade, 1995, p. 145; Escholz et al., 2002, p. 328; Surette, 2002, p. 450](#)). Surette ([1998, p. 197](#)), for example, argued the media is the main source of information to 95% of the public. However, as Klapper ([1960](#)) suggested in his limited effects model, media depictions are not solely responsible for a person's perception of reality. Predispositions viewers may have prior to being exposed to media portrayals normally derive from personal experiences and experiences shared second hand; together these form the integral role in shaping one's view of reality ([Escholz et al., 2002, p. 329](#)). When there is a void in personal experiences on a subject, knowledge learned from friends and family members who have an experience with the criminal justice system have a greater likelihood to influence someone than the media's depiction ([Surette, 1998, p. 7](#)). Therefore, inaccurate portrayals by the media can only become a

potential source of misperceptions of the criminal justice system and forensic science in particular when persons have no direct or indirect experiences with either. What overall impact this may have is difficult to determine. Although inaccuracies in the media may create misperceptions if believed, false or exaggerated depictions can also lessen the believability of television shows if they are recognized as such by savvy viewers.

So, what images of crime and justice do media consumers receive? The media's depiction of the criminal justice system often differs markedly from reality on just about any issue of possible discussion; largely attributed to the media's desire to attract a large audience. Coined as the "law of opposites," Surette ([1998, p. 47](#)) declared the media's consistent portrayal of crime and all major components of the criminal justice system is faulty. Surette suggests the media never provides an accurate depiction.

For example, when post-arrest activity is depicted by the media, the accused likely will face a trial before a judge or jury ([Surette, 1998, p. 44](#)). For instance, *Law and Order*, which focuses on the trial phase of a criminal investigation, almost always show the defendant tried before a jury. However, most television shows rarely depict the plea bargaining process and other preliminary procedures, such as an arraignment hearing. Plea bargain are a frequent method of disposal for criminal cases as they account for approximately 95% of actual criminal convictions ([Bikel, 2004](#)). Therefore, the majority of convicted felons never had the opportunity to have the prosecutions' case evidence analyzed by a judge or jury, and ultimately limited their appeal rights by accepting responsibility for their criminal acts. A recent documentary, *Frontline: The Plea* ([2004](#)), highlighted several cases where defendants felt compelled to plead guilty to avoid the possibility of receiving a heavier prison sentence and not because of the amount of

incriminating evidence. By failing to account for plea bargains as a tool courts use to quickly dispose of criminal cases, the media's consistent depiction of trial by jury sharply opposes the reality of America's court process.

With the broad reach of broadcast television, newspapers and Internet news media sites, the saturation of the public by the media is extensive. The media's false or inaccurate depictions have spawned a growing concern that news consumers may accept these depictions as reality. For example, by increasing news reports of certain crimes, the media can generate a false perception of major fluctuations in crime rates. This was first recognized by Fishman ([1984](#)). During 1976, New York City TV news shows and the city's newspapers emphasized the victimization of elders, creating an example of what Fishman ([1984](#)) called a "crime wave." Fishman's ([1984, p. 161](#)) review of police statistics revealed crimes against the elderly did not increase during the time period the news media expressed heightened interest in the victimization of senior citizens. Homicides of elderly citizens had actually decreased.

A second example comes from the early 1990's, as various news stations and international newspapers overemphasized tourist crimes in Florida ([Greek, 1993](#)). Even though official crime statistics, which do not account for tourists as victims, could not be used to identify the frequency of tourist related crimes, the media increased coverage of victimized tourists compared with other crimes occurring during the same time period. News reporters did not have to seek out crimes against tourists per se, as once law enforcement agencies recognized that "teen attacks on tourists" was a news theme, police themselves notified reporters every time there was another attack, which in turn led to increased coverage of crimes involving tourist victims. Thus, media-driven crime waves

have the potential to persuade the public certain criminal acts are occurring more often than before, when in reality the specific crimes may be occurring at a steady rate.

Factual news stories have not been the only focus of research in this area. Other studies have investigated whether crime dramas are accorded the same truth value as news. In the 1970s, Barrile ([1984](#)) interviewed 147 Connecticut residents to assess television drama viewers' perceptions of violent crime. Assuming that the public might perceive television dramas as reality, Barrile discovered there was a strong correlation between the amount of viewing time of crime dramas by interviewees and misperception of the violent crime rate. In addition, he reported a strong correlation between avid viewing of television dramas and support for stricter punishment of real world criminals (a topic we will take up below). Furthermore, those who reported extensive viewing of dramas were more likely to accept other stereotypes, such as a belief that victims are passive and not sometimes partially responsible. In contrast, previous studies of homicides have shown victims often play an active role in their death and usually are the first to escalate the encounter to the deadly force level ([Wolfgang, 1957](#)). Avid fans of crime dramas also assumed most victims of crime were physically attacked, even though property crimes greatly outnumber violent criminal acts ([Federal Bureau of Investigation, 2002](#)).

Thus, the major way in which the media, both news and crime dramas, depicts the opposite of reality is by increasing the public's attention to specific crimes through depictions that overemphasize them. Normally, news shows and dramas depict only violent crimes or unusual crimes that will captivate the audience.



In the next section, we look specifically at what the negative impacts of media-generated crime waves might be, including whether criminal justice system programs and policies are affected or altered in response. Since Fishman's (1984) and Gerbner's (1977) early work, heightened fear of crime that can not be justified by rising crime rates, has been the major subject of media impact studies (Barrile, 1984; Chiricos et al., 2000). Of any effect the media may have on the public, the potential that the media creates a heightened fear of becoming a victim is the most common effect linked to media accounts of crime (Surette, 1998, p. 212).

#### *The Impacts of Exaggerated Fear of Crime*

The media's indirect potential impact on the criminal justice system has been the subject of numerous studies. The best known example is whether heavy viewers of television crime news and dramas have an over-exaggerated fear of crime (Chiricos et al., 2000) which then may result in support for punitive policies (Barrile, 1984).

Surette (1998, p.207) offers the most comprehensive matrix for investigating why fear over-reactions might be happening, drawn primarily from the limited effects model discussed previously. He compared five hypotheses developed to assess this phenomenon. The first, the **substitution hypothesis** relies on a lack of personal knowledge (i.e. through direct experiences or knowledge deriving from third parties) by the viewer on a specific topic. In essence, the substitution hypothesis states the media can only skew a person's sense of reality the viewer has a void in wisdom of a certain topic. The **resonance model** contends the media can only amplify pre-existing beliefs. Similar to the resonance model, the **vulnerability model** proposes the media may

heighten the fear of citizens who are less likely to prevent their own victimization, such as elders and persons residing in crime ridden areas. Next, the **affinity hypothesis** suggests persons who relate to media victims, such as viewers who have the same demographic profile as media victims, will have a greater sense of fear of crime than those who are dissimilar to media victims. Finally, a **ceiling effects model** excludes persons who have pre-existing high levels of fear from being influenced by media depictions. The ceiling effects model accounts for individuals who have an extremely high level of fear, possibly obtained through a direct experience (e.g., a victim of a robbery), by suggesting they are beyond influence from the media. Each of these five hypotheses offers competing suggestions that attempt to explain how the media can affect the public. As the models outlined by Surette require the analysis of independent variables, scholars have chosen to base studies on the varying hypotheses while sometimes merging the ideas of two or more models.

Based partially on the vulnerability and affinity models, Chiricos et al. ([2000](#)) analyzed 2,250 surveys of Florida residents to determine if news shows effected viewers' perceptions of the crime rate, based on their viewing habits and demographic characteristics. Local news reports, versus national news shows, were found to have a greater impact on viewers' misperception of the crime rate. Chiricos et al. argued that the crimes commonly reported on local news shows seem closer to the reality of the viewers since the majority of crimes reported on local news shows occur in close proximity of the viewing audience.

While many studies that documented individuals sometimes have unrealistic fears of crime, which may be directly related to viewing television news or reading reports of

crime in the newspapers, etc., scholars evaluated the possibility that more punitive attitudes toward offenders was supported by these same news consumers. A couple of the studies previously mentioned ([Barrile, 1984](#); [Chiricos et al., 2000](#); [Fishman, 1984](#)), including the crime wave studies, also suggest the media can indirectly create support for stricter punishment of offenders. With the overall shift toward increased punishment of offenders and tripling of the prison population since the 1980s, the media's potential to produce support for harsher sentences is worthy of investigation.

For example, when Fishman ([1984](#)) observed the media-driven crime wave during the mid-1970s, he also investigated its impacts. The citizens, especially elders, grew concerned over the reported epidemic of elderly victimizations. After citizens started to have rallies, the NYPD responded in several ways. One was by providing educational lectures to citizens to inform them of ways elders could avoid victimization. Second, police administrators reassigned officers to increase the manpower of the Senior Citizens Robbery Unit. Plainclothes officers were placed on the streets to deter criminals from robbing and attacking senior citizens. Politicians responded as well. With the majority of crimes against elder being committed by delinquents, the Mayor publicly faulted the juvenile justice system. New York State legislators reacted by passing new laws geared toward heavier punishment of juvenile offenders, although the bill was later vetoed by the Governor. Both the criminal justice system and legislators reacted to media depictions without first assessing the accuracy of the media-driven crime wave. Although police may reject the idea of media generated crime waves, knowing they are socially constructed, cops may divert resources to target crime heavily reported by the media to maintain a positive public image ([Fishman, 1984, p. 176](#)). In responding by treating the

increased crime threat as real, legislators and police officials then were portrayed by the media as acting responsibly to thwart the crime wave and decrease the growing fear of citizens. Most law enforcement agencies are concerned with the public's opinion of their efforts to control crime, knowing that a lack of response may lower the public's perception of the respective police department. Elected law enforcement officials, such as sheriffs in Florida, like other politicians, are particularly tuned in to public concerns.

As illustrated in the NYC case, executive branch (police and legislative) functionaries may react to the over-reporting of crimes by the news media. For example, following the shooting at Columbine School and various other murders and criminal acts occurring on school grounds that attracted national news media coverage, the public's concern for safety on school campuses increased dramatically. As a result, American law enforcement agencies and school officials responded by implementing stricter security procedures ([Stretesky & Hogan, 2001](#)). Millions of dollars in federal grant money were given to schools and their campus police programs in hopes of lowering the carnage ([U.S. Department of Justice, 2003](#)).

The media's increased reporting of tourists being targeted by juvenile delinquents in Florida resulted in a growing public concern that criminal acts against visiting citizens were occurring more frequently ([Greek, 1993](#)). The media generated crime wave led to the development of legislation geared to slow the reported crime wave. By enacting policies that limited the access of guns by juveniles and supported the increased use of boot camps, law makers hoped to curtail the crimes. Ultimately, a new separate department of juvenile justice was created by severing juvenile justice from the broader

welfare department in which it was previously embedded. The new Department of Juvenile Justice ([2004](#)) had a much greater emphasis on the punishment of teen offenders.

Retributive attitudes, whether developed from reading/watching the news or crime dramas, lead to increased support for policies that enhance punishments for violent offenders in particular, and sometimes for all offenders. Thus, as the depiction of the criminal justice system changes in the media, the criminal justice system's punishment policies shift as well. As the majority of media reports are of violent crimes, policies such as "three strikes," minimum mandatory sentences and abolishing parole have been the outcomes. While the media does report on injustices, such as those who have been falsely accused or minor crimes used as third strikes, these stories do not seem to lead to more humanitarian responses to crime or treatment of inmates. In general, the studies of media impacts have established a strong correlation between media themes and the support of punitive policies and their implementation by viewers ([Surette, 1998, p. 196](#)).

As shown above, law enforcement agencies alter policing priorities in response to media crime reports. Law enforcement is not the only component of the criminal justice system that responds to inflamed reports of specific crimes. In 1999, Surette performed a study to evaluate the effects specific pre-trial publicity and overall crime reporting patterns had on prosecutors. Surette compared how criminal cases that involved sexual battery on a child were being handled after highly publicized incidents of daycare workers sexually abusing minors, with handling of property crimes in general, which though much more numerous are rarely reported in the news. In cases that received inordinate attention by the media, prosecutors were more punitive, by not plea bargaining or diverting such cases outside of the court room. Additionally, after the media reported

on a specific crime, defendants charged with the same type of crime normally were charged with more criminal counts, than before the media publicity. During the same time frame, defendants of non-publicized case were charged with fewer counts. Thus, the system downplayed the importance of property crimes. In changing their priorities, lawyers, like police, may be reacting to media generated crime waves to provide assurance to the public that the criminal justice system will protect them ([Surette, 1999](#)). This study will focus on another example of reactions by lawyers, whether both prosecutors and defense attorneys may be responding to increased media fascination with forensic science by altering the ways they rely on crime scene evidence.

### *Jury Studies*

While the top concerns of media impact studies on criminal justice policies and practices has been citizen punitiveness and whether criminal justice agencies might be changing their policies and practices in response to media coverage trends, the specific focus of this paper is on whether jurors come to court with expectations drawn from their familiarity with crime news and crime dramas.

One media-driven expectation may be that the courts should focus on punitive measures and give them higher priority than due process considerations. Other expectations may focus on what types of evidence will be presented to determine guilt or innocence. However, studies of the media's potential impact on jurors are rare, primarily because real jurors are difficult to research ([Howitt, 1982, p. 137](#)). Gaining access to jurors for research purposes has been so problematic because judges are primarily interested in protecting the unbiased role of jurors and normally do not permit

observation of actual jury deliberation. To counteract this problem, researchers have conducted experiments with mock juries, as well as relying on interviewing jurors voluntarily after their duties in the court process are completed.

Studies of media impact on the jury decision process have been primarily limited to the effects of pretrial publicity. One of the things that research on jurors has revealed is that jurors sometime make decisions relevant to the type of media exposure, such as stories that depict brutal crimes or those that reveal miscarriages of justice. Greene and Wade ([1988](#)) conducted two separate experiments with mock juries to evaluate this and other effects of pre-trial publicity by news sources. In the first experiment, Greene and Wade set up three separate groups: those introduced to news article about eyewitness error, persons exposed to stories of heinous crimes and a control group not provided with any news articles. Following the subjects' exposure, they were asked to read a transcript of a mock criminal trial and render a verdict in the case. First, they observed that jurors tended to be more lenient when exposed to flaws within the court process, such as eye witnesses making inaccurate identifications. Subjects exposed to miscarriages of justice became acutely aware of the possibility of an innocent person being convicted and the weaknesses of eyewitness identification. The heightened awareness caused directly before rendering a verdict in a separate trial resulted in hesitation of guilty verdicts to prevent further possible miscarriages of justice. However, no punitive effect was noted in jurors exposed to pro-prosecution themes. The authors suggested the reason for a softening effect but no hardening effect may have been that subjects gave greater weight to a news story about eyewitness error than the pro-prosecution stories that detailed stories of heinous crimes. Greene and Wade concluded the first experiment by

suggesting news shows could affect the outcome of a criminal trial by causing jurors who are exposed to miscarriages of justice to doubt evidence presented in court, especially when the facts of the media case resemble the actual court case. Considering the media reports on unusual cases where a defendant was wrongfully convicted, these news reports have the potential of causing jurors to demand more evidence than normal when the media case is similar to the trial.

In a second experiment of mock jurors, Greene and Wade ([1988](#)) set out to assess if the content of the news stories, whether similar or dissimilar to a case in which the subject had to render a verdict, resulted in varying decisions by jurors. The subjects were provided with news stories that either contained stories of proper identification and conviction or verdicts that were later overturned because the person was innocent. Greene and Wade discovered that jurors exposed to a media case involving similar facts where a wrongful conviction occurred were less likely to convict a defendant. Mock jurors who read about wrongful convictions, but the facts of the case were dissimilar to theirs, were also less likely to convict, but not as frequent as when the case facts resembled the news story.

Following Greene and Wade's experiments, Kovera ([2002](#)) conducted a related study of mock jurors, who were selectively exposed to different news shows. In the first experiment, Kovera edited a news story to create a pro-defense, pro-prosecution and a balanced story of the same crime facts. After viewing one of the three versions of the news show, the individuals simulated the duties of a juror on a rape trial. They were queried to determine how much and what type of evidence they would require to convict someone. Subjects who viewed the pro-defense version of the news story required more



evidence than persons exposed to the other two versions. Additionally, individuals in the pro-defense category were unconcerned with testimonial evidence about the victim and relied more on witnesses and physical evidence.

Greene, Wade's and Kovera's experiments exemplify how the media can affect the expectation of evidence by jurors. Both studies found that the demand for certain types of evidence or the amount of evidence varied depending on the type of media story persons viewed or read. These three experiments provide insight into how the media may effect the expectations of jurors. As the scope of each study was limited to specific media themes, such as miscarriages of justice and news reports that favored the defendant, they can not be generalized to other media formats. These two studies raise the possibility that other media depictions, such as forensic crime dramas, may alter one's expectation of what should occur during an actual criminal trial, such as the presentation of a plethora of forensic evidence. Previous studies were unable to assess the possibility that jurors' expectation of evidence could be overcome during an actual trial, as the participants only read and responded to transcripts rather than sat through an entire criminal proceeding. However important these studies are, their findings are tangential at best to this study as they were limited to the effects of pre-trial publicity and not the impacts of potential misperceptions learned from movies or television dramas ([Howitt, 1982](#)).

One of the few studies on actual jurors rather than mock juries consisted of interviews conducted by Ivković and Hans ([2003](#)). This study is also important for this paper because the impact of expert witnesses was investigated. Fifty-five jurors who sat on seven different civil trials were interviewed to evaluate how jurors reacted to experts

and their respective testimony. Only civil trials that involved expert testimony were included in the study. In most instances, several experts testified during the same trial and offered conflicting information. Most of the witnesses were not forensic experts, but the experts did provide technical information that was presented in court intended to persuade the jury's verdict. Almost every expert was a physician as the cases involved primarily medical malpractice or workplace injury claims. During their interviews, Ivković and Hans uncovered several common opinions among the jurors. Jurors did not openly accept expert testimony as factual. As an undermining technique to cause jurors to question the credibility of expert witness, prosecutors questioned the fees paid to expert witnesses for the defense. Apparently the questioning was effective as most of the jurors were skeptical of expert witnesses as they felt the witnesses were testifying for monetary gain or as a favor for the defense counsel. Therefore, jurors relied on their perception of the expert when evaluating the accuracy of the testimony provided in court. The interviewees reported the style of the expert's testimony, such as use of visual aids or ability to maintain the attention of jurors, often was a crucial factor in determining the credibility of the testimony. Ivković and Hans concluded no specific factor, whether it be the credibility or testimonial style, emerged as more important in evaluating the believability of testimony than the other factors identified by the jurors as important aspects. Therefore, most jurors did not rely on specific attributes of an expert witness, but considered the background, educational level, appearance and understandability of the witness, when deciding the value of an expert's testimony.

Additionally, when experts were unable to clearly provide understandable details, jurors who thought themselves knowledgeable on a specific topic attempted to influence

the decisions of others during deliberations. This raises an important issue, but one inevitably a part of the current jury system. As a layperson body, juries potentially are susceptible to influence by dominant group members who may or may not adequately understand the expert testimony they heard during trial. Those who were at least somewhat knowledgeable on a topic discussed by the expert witness often provided further explanation to other jury members who did not fully comprehend the testimony of some of the expert witnesses. Therefore, in some instances, jury members were left to render a verdict by relying upon another juror's advice and not solely on the testimony provided in the court room.

Bridgeman and Marlowe (1979) interviewed 65 jurors who decided the fate of defendants in ten separate felony criminal trials. Their study focused on the deliberation process and the jurors' opinions of witnesses. Their results contradicted those of Ivković and Hans' (2003). Rather than finding that jurors influence other jurors who lack knowledge of topics introduced in court, Bridgeman and Marlowe found the interaction with other jurors during the deliberation phase was not pertinent in forming an individual juror's decision of guilt or innocence. Of the jurors interviewed, 95% reported they did not alter their initial decision of guilt following deliberations. Interestingly, about a third of the jury members stated they decided the defendant was guilty by the middle of the trial, which obviously would be before the defense would have an opportunity to present rebuttals to the prosecution's evidence. Jurors also ranked the significance of various factors (e.g., police testimony, expert testimony, judge, appearance of the defendant, attorneys, etc.) in deciding the verdict for the trial. Testimony from police officers emerged as the most influential factor when deciding the guilt of a defendant.

Unexpectedly, expert testimony, such as from forensic scientists, ranked seventh of nine factors with defense lawyer and the defendant's appearance only being viewed as less important. While this finding is imperative to the current study, one must consider the advancements in the field of forensic science since 1979 when evaluating Bridgeman and Marlowe's discovery that expert witnesses were viewed as unimportant to the majority of jurors.

To assess jurors' perception of expert witnesses, Sundby ([1997](#)) analyzed data collected during the Capital Jury Project. He surveyed 152 California jurors who had served on capital cases in which convictions resulted. Sundby limited the scope of his study to questions regarding the penalty phase of trial, which involved the prosecution and defense calling witnesses to influence the jury's decisions on appropriate sentencing. Sundby was able to compare jurors' perceptions of testimony by experts, laypersons and family members. Since this study was limited to the penalty phase of a trial, the majority of the expert witnesses were forensic psychiatrists who testified about the character of the defendants. Sundby found jurors consistently rated testimonies from laypersons, such as crime witnesses giving victim impact statements, more imperative than the testimonies by professional experts. Family members, who commonly make emotional pleas to the jury, also were discovered to be more influential than forensic experts. Expert witnesses for the defense in particular were viewed negatively as jurors deemed them as witnesses who may present inaccurate testimony solely for monetary gain. Although less effective in influencing jurors' sentencing decisions than others, expert witnesses for the prosecution were not classified as having a negative impact on the prosecution's argument. However, some jurors reported frustration as they felt belittled by experts, particularly when they

claimed that non-experts may misperceive the defendant or the facts of the case. When jurors were exposed to experts that provided conflicting testimony, jurors questioned the validity of every expert witness in the same trial.

### *Literature Review Summary*

To summarize this section, the media's impact upon both citizens and the criminal justice system is complex ([Surette, 1998, p. 2](#)). As an important source of information to the public, the media's capacity for influencing the public is extensive. Previous studies have documented changes by criminal justice agencies as the result of changing crime reports, which are rarely reflective of actual crime rates. Researchers also have explored the media's influence on court proceedings. Some have shown that pro-defense media themes can increase jurors' expectation of evidence. Yet, these studies of actual jurors are scarce and can only provide a limited source of knowledge for the current project. Jurors' perceptions of expert testimony have been under-researched, as is the actions of jurors during deliberations.

While previous studies can provide a better understanding of how the media can affect the criminal justice system, past research has not addressed the current overemphasis on the importance of forensic evidence in every case in forensic crime dramas like *CSI* or the media saturation on forensic techniques in film and news stories. Therefore, a survey was constructed to fill a void in literature by questioning lawyers' experience of jury behavior during jury trials. Do contemporary jurors expect a greater focus on forensic evidence than in the past? Additionally, this study will evaluate current

practices of lawyers to analyze the possibility that attorneys have reacted to the recent popularity of forensics in the media.

### Methodology

A feasible approach to evaluate the potential impact forensic crime dramas may be having on the criminal justice system would be to evaluate changes in trial preparation by attorneys' since the recent popularity of television shows, such as *CSI*, and to inquire about lawyers' perceptions of current juries' expectations of forensic evidence. To investigate the possibility forensic crime dramas have called for a reaction by trial lawyers, a survey was prepared to distribute to criminal attorneys. The experience of prosecutors, public defenders and private defense lawyers were surveyed to build upon the previously discussed studies of media-impacts on the criminal justice system. Once returned, the data were tabulated to evaluate the responses.

The decision to study this topic derived from changes in the public's interest in forensic science that this author perceived over a five-year tenure of conducting crime scene examinations. Prior to constructing the survey instrument to be given to attorney, the supervisor of a crime scene unit was interviewed ([Richbourg, 2004](#)). When asked whether he noticed changing attitudes among the public regarding forensic science, Richbourg explained that crime scene investigators have experienced a dramatic increase of citizen encounters in which crime victims have tried to assist in the identification of forensic evidence, indicating the public perceives themselves as knowledgeable in forensic evidence collection. Along with the growing interest of the public, Richbourg has noticed an increased focus on forensic evidence, or lack thereof, by defense attorneys.

As a result, crime scene analysts are being required to testify more in depth, possibly to educate the jury on the capabilities of forensic science, than they did five years ago. However, Richbourg has not observed attorneys requesting forensic tests more than the past even though a growing interest in forensic evidence has been noted. Finally, Richbourg reported he has witnessed several acquittals in cases he felt sufficient non-forensic evidence existed, but no forensic evidence was available to prove the guilt of the defendant.

### *Survey*

To investigate this trend further, a survey ([see Appendix](#)) comprised of questions regarding the respondent's pretrial preparation, trial practices and experiences with jurors was constructed and submitted to attorneys of one north Florida county. The survey included the following general topics:

1. Demographics of the respondent
2. Impressions of misunderstandings of forensic science by jurors
3. Changes in trial preparations by defense and prosecutors
4. Changes in defense attorneys' interest in forensic evidence
5. Knowledge of acquittals when forensic evidence was not available but other evidence was presented that routinely led to convictions in the past

### *Participants*

Surveys were distributed to government employed and private attorneys who actively practice criminal law in a north Florida county. With only one city within the

county, which had an estimated population of 55,000 residents in 2003, the majority of the county's residents live in unincorporated areas of the county. Overall, the county has about 296,000 residents ([U.S. Census Bureau, 2000](#)).

To gain access to government attorneys, the respective supervisors of the assistant state attorneys and assistant public defenders were requested to distribute the surveys. After the surveys were provided to each lawyer, the supervisors collected the completed surveys for return.

### *Prosecutors*

Assistant state attorneys of one State Attorney's Office, who are responsible for the prosecution of criminal cases for the State, were surveyed. Prosecutors not assigned to the felony division were excluded from the sample since the focus of this study is jury trials. Misdemeanor attorneys were eliminated from the sample since they rarely try a case before a jury or have forensic evidence available for prosecution. There were 23 felony assistant state prosecutors assigned to the surveyed office. Every prosecutor and the supervisor of the division completed a survey. Almost half (44%) of the prosecutors had five years experience or less. Of the prosecutors, 44% reported they had experience as a criminal defense attorney. Sixty-seven percent of the assistant state attorneys reported they normally prosecute one or two cases a month before a jury, with the remaining practicing fewer than six jury trials a month.



*Public Defenders*

Assistant public defenders who provide legal counsel for indigent defendants of felony crimes were requested to complete the survey. There were 16 lawyers assigned to the felony section with one supervisory attorney. Each attorney and the supervisor completed a survey. Of the public defense attorneys, 29% also had had experience as a prosecutor. Public defense lawyers had more overall years experience than prosecutors. Only 30% had less than six years of experience, while 41% had practiced criminal law for 21 or more years. Just as prosecutors, the majority (77%) of assistant public defenders average two or less jury trials per month. With the exception of one who reported averaging more than ten jury trials per month, the remaining defense counsels normally defend between three and six jury cases a month.

*Private Defenders*

Sometimes appointed by the courts and hired by defendants who can afford private counsel, private defense lawyers are an integral part of the court system. As key players in some jury trials, private attorneys were also included in the study. To locate and select private attorneys, a systematic sampling technique was used. The sample was based on criminal defense attorneys listed in the phone book as having offices in the same county as the surveyed prosecutors and public defenders. Since private lawyers normally rely on advertising to obtain clients, the phonebook should closely resemble the private attorneys within the same geographical area of the prosecutors and public defenders. Every second law office that listed only one attorney was included in the sample. Law offices that employed more than one lawyer were sampled by including

every third phone book listing. Twelve out of 24 (50%) of private attorneys responded to the survey, allowing for an overall response rate of 82%.

Those who did not respond after a month were contacted by telephone and requested to participate in this study. To obtain maximum participation, attorneys who did not reply after six weeks were requested to reply to the survey over the telephone. Of the 24 surveys distributed, 12 were returned. One attorney stopped answering questions on the survey and reported he had never tried a case before a jury and only before a judge. Although partially completed, the survey was included in the study.

Private attorneys were the most experienced of the three groups sampled (i.e. 50% have practiced criminal law for 21 or more years). Seventy-five percent of private lawyers reported having experience as a prosecutor. Of the surveyed private defenders, 92% normally defend between zero to two cases before a jury a month.

### *Procedure*

Once the surveys were returned, the responses were converted to numerical data for entry into a spreadsheet. Afterwards, the percentages of respondents supporting each respective answer were calculated based upon the response rate. For questions left unanswered, the response was treated as a null response. To allow review of significant difference between the separate classification of lawyers, results were computed for each category. The data were then combined to provide an overall percentage for each response. For the two open ended questions, brief remarks were inputted into the spreadsheet to ease tallying and comparing responses from the lawyers.

## Findings

The survey administered to 53 criminal trial lawyers, both prosecutors and defense attorneys, explored whether they have noted changes in jurors' expectations based upon the current popularity of forensic crime dramas and made changes in their own pretrial and trial practices. The survey questions focused on lawyers' perceptions of forensic crime dramas and their potential impact, pretrial preparations, *voir dire* questioning, trial presentation of evidence and cross examination, summation and efforts to offer directions to the jury. During *voir dire* and following the conclusion of a trial, attorneys are sometimes able to interact with jurors, which could permit attorneys to identify jurors who had misperceptions of the criminal justice system's use of forensics.

First, attorneys' beliefs were examined to assess if attorneys feel forensic crime dramas create unrealistic expectations of the criminal justice system by the public. After attorneys' opinions of forensic crime dramas are presented, lawyers' trial preparation methods will be discussed to determine if trial attorneys have reacted to the perceived juror popularity of forensic crime dramas. Have lawyers increased their requests for forensic testing since the widespread popularity of forensic crime dramas? Do attorneys sense that fans of forensic crime dramas have unrealistic expectations of evidence? If so, do attorneys call upon forensic experts to explain a lack of forensic evidence?

Attorneys' *voir dire* habits were investigated next to observe changes in jury selection techniques. Did they not only question jurors' viewing habits, but move to strike jurors from the jury pool or hope to retain them, if they uncovered jurors who frequently viewed forensic crime dramas? If attorneys are striking fans of forensic crime

dramas from the jury pool, is the move to strike juror candidates done solely by prosecutors?

Another method used to gauge reactions by trial attorneys to media depictions was to assess changes in defense attorneys' interests in forensic evidence. If defense attorneys have sensed a change in the expectation of forensic science by the public, defense lawyers may have increased their focus on forensic evidence, particularly in cases in which forensic evidence was not available or not featured, to weaken the prosecution's case. If a notable change exists, do prosecutors and defense attorneys concur on a possible increase in defense attorneys' interest in forensic evidence?

Finally, the survey addressed the issue that jurors may have unrealistic expectations of evidence by querying lawyers regarding case verdicts. Did the lawyers believe that "not guilty" verdicts have been reached even when attorneys perceived sufficient evidence existed, but no forensic evidence was available or presented to prove the guilt of the assailants?

#### *Opinion of Forensic Crime Dramas*

Attorneys' opinion of forensic crime dramas were questioned to determine if attorneys believed these shows could create unrealistic expectations of the criminal justice system by the public. Three questions were included on the survey related to this issue. Lawyers were questioned if, in their opinion, forensic crime dramas adversely affect the public. Next, the legal respondents' viewing habits were compared to their opinions of forensic crime dramas to determine if heavy viewers' opinions differ from those who rarely view the portrayals of forensic crime dramas. Since real life experience

may effect one's beliefs, lawyers were also asked if they had direct knowledge of jurors who had skewed impressions of the criminal justice system that they believed originated from the inaccurate depiction of forensic science by forensic crime dramas.

The first question asked of attorneys was whether they had noted changes in juror expectations in the recent past. A question specifically asked if juror viewing of forensic crime dramas had an educating effect, no effect or created unrealistic expectations (see Table 1). Every assistant state attorney and the majority of defense lawyers (79%) felt forensic crime dramas create unrealistic expectations of the court by the public. Six (21%) of the defense attorneys reported forensic crime dramas may be of an educational value while three (10%) stated these had no effect on the criminal justice system. There was no significant difference among public defenders and private defense attorneys. A little more than half of the public defenders (59%) and private attorneys (67%) felt forensic crime dramas create unrealistic expectations. Of the remaining public defense attorneys and private lawyers, more felt forensic crime dramas were of an educational value than not having an effect on the public. Twenty-four percent of public defenders felt forensic crime dramas educated the public of the criminal justice system compared to only 12% who felt such television have no effect on potential jurors. Lastly, 17% of the private defense lawyers suspect shows such as *CSI* were educating to the public, while only 8% reported forensic crime dramas probably do not affect audience members.

Table 1. Attorneys' Opinion of Forensic Crime Dramas

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Overall
Educating	0 - 0%	6 - 21%	4 - 24%	2 - 17%	6 - 11%
No Effect	0 - 0%	3 - 10%	2 - 12%	1 - 8%	3 - 6%
Unrealistic expectations	24 - 100%	18 - 62%	10 - 59%	8 - 67%	42 - 79%
N Value	24 - 100%	27 - 93%	16 - 94%	11 - 92%	51 - 96%

*Respondents' Familiarity of Forensic Crime Dramas*

Attorneys' opinion of forensic crime dramas may have originated from their own knowledge of the depictions of forensic science by the media. Attorneys were questioned as to how familiar they were with the forensic crime dramas available on broadcast television. Slightly more than half (51%) of the respondents have only viewed a few episodes of forensic crime dramas (see Table 2). The viewing habits of prosecutors and defense attorneys were relatively similar. Less than 10% of prosecutors and defense attorneys watched one or more forensic crime dramas regularly. However, two prosecutors (8%) reported being fans of most of the forensic crime dramas while only one defense attorney (3%) responded as an avid viewer of most of the shows. The same number (nine) of prosecutors and defense attorneys reported never watching an episode of forensic crime drama. There were two notable differences between private attorneys and public defenders. Sixty-seven percent of private defense attorneys have seen a few episodes of shows, such as *CSI* and *Without a Trace*, while 47% of public defenders have only viewed a few episodes. The second difference among defense lawyers was that private defenders (17%) were less likely to have never seen an episode of a forensic crime drama compared to 41% of the public defense attorneys. An overwhelming majority of all attorneys (85%) have seen only a few episodes or never watched a forensic crime drama.

Table 2. Respondents' Viewing Habits of Forensic Crime Dramas

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Overall
Watch Most Shows Regularly	2 - 8%	1 - 3%	1 - 6%	0 - 0%	3 - 6%
Watch Some Shows Regularly	2 - 8%	2 - 7%	1 - 6%	1 - 8%	4 - 8%
Seen a Few Episodes	11 - 46%	16 - 55%	8 - 47%	8 - 67%	27 - 51%
Never Watched an Episode	9 - 38%	9 - 31%	7 - 41%	2 - 17%	18 - 34%
N Value	24 - 100%	28 - 97%	17 - 100%	11 - 92%	52 - 98%

To determine if the viewing habits of forensic crime dramas affected attorneys' opinions of forensic crime dramas, the attorneys' rating of such shows were cross-tabulated to their viewing habits (see Table 3). Since defense attorneys were the only category to report forensic crime dramas had no effect on the public or were of educational value, responses from the three different types of lawyers were combined. None of the attorneys who have never seen an episode of a forensic crime drama felt they educated the public about the criminal justice system. Of the six attorneys who reported forensic crime dramas as educational, five attorneys had viewed a few episodes of a forensic crime drama.

Table 3. Cross Tabulation of Respondents' Viewing Habits Compared to Perception of Forensic Crime Dramas

	Frequent Viewers of At Least One Show	Seen a Few Episodes	Never Watched
Educating	1 - 14%	5 - 19%	0 - 0%
No Effect	0 - 0%	1 - 4%	2 - 12%
Unrealistic	6 - 86%	21 - 78%	15 - 88%

#### *Experiences of Jurors who Misperceived the Criminal Justice System*

During *voir dire*, attorneys directly interact with jury candidates, often soliciting the jurors' beliefs and perceptions of various topics, including their TV viewing habits. Following the conclusion of the trial, attorneys sometimes, although rarely, might be able to meet with jurors to determine their reasoning for rendering a specific verdict. At these opportunities, lawyers might ask jurors if their media perceptions of the role of forensics at trial differed from what they experienced in court.

Attorneys were questioned of their experiences with jurors to determine if any had direct knowledge of jurors who had a skewed impression of the criminal justice system that resulted from the depictions of forensic crime dramas. More than two-thirds (77%)

of the sample reported that they did not have any experience, or even knowledge, of jurors who had a skewed impression from viewing forensic crime dramas (see Table 4). Twenty-five percent of the prosecutors reported experiencing at least one juror with a skewed impression while only 10% of defense lawyers reported an experience. Compared with private attorneys (67%), public defenders (94%) were more likely to claim not having an experience with a juror who had unrealistic expectations of how the criminal justice system works than prosecutors and private defense attorneys.

Table 4. Attorneys' Who Had Personal Experience of Jurors with Skewed Impression of Criminal Justice System Based on Depictions of Forensic Crime Dramas

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Total
Yes	6 - 25%	3 - 10%	1 - 6%	2 - 17%	9 - 17%
No	17 - 71%	24 - 83%	16 - 94%	8 - 67%	41 - 77%
N Value	23 - 96%	27 - 93%	17 - 100%	10 - 83%	50 - 94%

Those nine attorneys who responded yes to the above question were asked an open-ended question to explain the circumstances of what they perceived to be juror misperception. Five of the attorneys who claimed knowledge of a juror with a skewed impression provided details of the juror. Prosecutors focused on problems in understanding forensic evidence or expert witnesses while responses from defense attorneys was limited solely to legal misunderstandings by jurors. Two of the defense attorneys reported they had experienced jurors who misunderstood the legal rights of the defendants, which the attorneys believed originated from the false depictions of due process procedures which sometimes appear on forensic crime dramas. Two prosecutors reported knowledge of jurors who expected a specific type of evidence (one specified latent print evidence), although it was deemed irrelevant to the facts of the case by the attorney. Lastly, one prosecutor reported a juror expressed disappointment in the



testimony of an expert witness as they assumed they would be “dazzled” by the expert. Four of the attorneys who responded “yes” failed to provide an explanation explaining their response. The question directed attorneys only to report skewed impressions that derived from the jurors’ viewing habits regarding forensic crime dramas.

### *Changes in Trial Preparations*

If attorneys suspect that the expectation of forensic evidence by jurors has increased, one might expect attorneys in response to alter their trial preparation methods by requesting additional forensic testing and evidence preparation. To determine if attorneys have increased such requests, a question on the survey asked if the attorneys have requested forensic testing they normally would not have in the past. Are prosecutors, defense attorneys or both increasing the number of requests for forensic testing? The question was limited to the last five years, a time period shortly before the release of the widely popular television show *CSI*. To prevent recent developments in the field of forensic science from skewing the results, those surveyed were directed to exclude requests for forensic evidence preparation based on methods that are currently available but not five years ago.

A slight majority of the attorneys reported they have requested more forensic testing. Eight percent of the attorneys reported frequently requesting more forensic tests and 43% reported sometimes requesting forensic tests they would not have five years ago (see Table 5). Seventeen percent of the prosecutors reported frequently requesting forensic testing they would not have five years ago while no defense attorney reported frequently requesting additional forensic testing. There was no significant difference

between prosecutors and defense attorneys who reported they sometimes requested more forensic testing than before the premiere of *CSI*. Public defense attorneys were less likely to have increased their requests for forensic testing than private attorneys. While 65% of public defense lawyers reported no change, only 42% of private lawyers claimed they never request forensic tests they would not have five years ago. This may indicate that public defenders have less time to prepare their cases, based upon their typical heavy caseloads.

Table 5. Changes in requests for forensic testing in the past five years

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Overall
Frequently	4 - 17%	0 - 0%	0 - 0%	0 - 0%	4 - 8%
Sometimes	11 - 46%	12 - 41%	6 - 35%	6 - 50%	23 - 43%
Never	9 - 38%	16 - 55%	11 - 65%	5 - 42%	25 - 47%
N Value	24 - 100%	28 - 97%	17 - 100%	11 - 92%	52 - 98%

Increased requests for forensic testing may not be the only reaction attorneys have made to forensic crime dramas. To solicit any possible changes regarding the use of forensic experts or evidence, an open-ended question was included on the survey. Eight prosecutors (33%) and five defense attorneys (17%) reported that they have more forensic tests conducted today than five years ago. Therefore, defense lawyers were slightly more likely to not alter their use of forensic experts or evidence than prosecutors. Of the defense attorneys who reported increased requests for forensic testing, one was a public defender and the remaining four were private attorneys. Changes in testing forensic evidence were the only change defense attorneys reported. Six defense lawyers reported no change, while only three prosecutors responded similarly.

Three prosecutors did offer two other changes that were not reported by defense lawyers. Two prosecutors reported consulting with a forensic expert to explain a lack of

a specific type of forensic evidence to jurors. One prosecutor reported they had used *voir dire* to explain that the actual court experience will differ dramatically from the depictions of crime dramas. Similar to the findings outlined in table five, only one public defense attorney reported requesting more forensic testing compared with four private lawyers who reported this change. Unfortunately, 23 attorneys left the question unanswered. Possibly, the attorneys who failed to respond either did not comprehend the question or have not made any changes and simply failed to document a negative response.

#### *Questioning Jurors' Viewing Habits During Voir Dire*

If attorneys believe that current forensic crime dramas may be having an impact of juror expectations, would attorneys respond by questioning potential jurors viewing habits during jury selection to indeed find out? Lawyers were asked if they questioned potential jurors' viewed forensic crime dramas during *voir dire*. The question was limited to forensic crime dramas and excluded Hollywood films and the variety of other crime shows available on television. A little more than half (55%) of the attorneys reported asking juror candidates if they watched forensic crime dramas (see Table 6). There was no substantial difference between prosecutors (54%) and defense attorneys (55%) on this issue. Private attorneys were slightly more likely to ask jurors if they were fans of shows such as *CSI* than public defenders. Fifty-nine percent of private lawyers had asked jurors if they watched forensic crime dramas while 53% of public defense attorneys claimed to have questioned jurors about their interest in shows such as *CSI*.

Lawyers who reported they did ask jurors if they watched forensic crime dramas were questioned if they used the citizens' responses to consider striking them from the jury pool. Overall, only 19% of the attorneys consider striking jurors based on their viewing habits of forensic crime dramas. Thirty-six percent of the attorneys do question jurors viewing habits, but do not consider eliminating a potential juror based solely on their viewing habit. Defense attorneys are almost as likely (17%) to strike fans of forensic crime dramas from the jury pool as prosecutors (21%). There was no significant difference between public defenders and private defense attorneys. Compared with prosecutors, private defense lawyers were more likely to question potential jurors' viewing habits, but not to consider striking the juror. However, this difference was limited to private defense attorneys as there was no significant difference between prosecutors and public defense attorneys who questioned if jurors' were fans of forensic crime dramas.

Table 6. Questioning Jurors' Viewing Habits and Considering Striking Fans of Forensic Crime Dramas From Jury

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Overall
Yes, Strike	5 – 21%	5 – 17%	3 – 18%	2 – 17%	10 – 19%
Yes, No Strike	8 – 33%	11 – 38%	6 – 35%	5 – 42%	19 – 36%
No	11 – 46%	13 – 45%	8 – 47%	5 – 42%	24 – 45%
N Value	24 – 100%	29 – 100%	17 – 100%	12 – 100%	53 – 100%

With 79% of the attorneys believing forensic crime dramas create unrealistic expectations of the criminal justice system (see Table 1), one might expect approximately the same percentage of attorneys to question if citizens watched forensic crime dramas when called for jury duty. However, only 55% of the respondents reported asking jury candidates if they watched forensic crime dramas. A significant difference between prosecutors and defense attorneys was expected as unrealistic expectations of forensic

evidence or forensic experts would more often be detrimental to the prosecution's case as prosecutors are the primary presenter of forensic evidence during a trial.

### *Changes in Defense Interest in Forensic Evidence*

If defense attorneys have sensed a change in the attitude of the public as the result of viewing forensic crime dramas, one might ask whether they would adjust their courtroom trial techniques to overemphasize or underemphasize forensic evidence, depending respectively upon whether it was lacking or abundant in the prosecutor's presentation of the case. By increasing an interest in forensic evidence where such evidence might be perceivable as lacking, defense attorneys may exaggerate the importance of forensic evidence or testing to benefit their clients' case. To get at these issues, attorneys were specifically asked the following four questions:

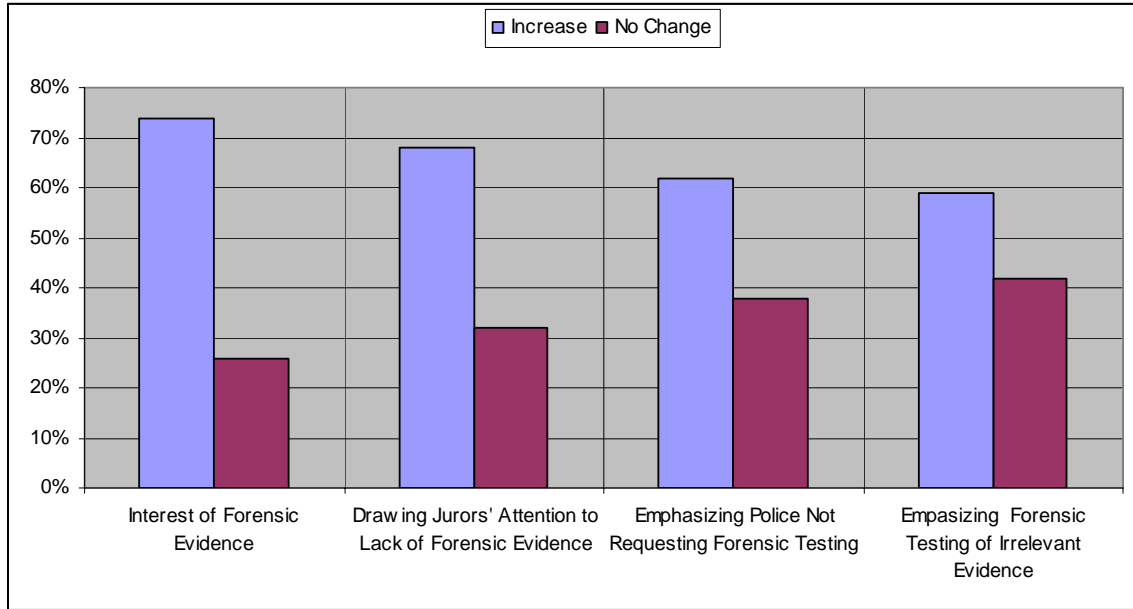
1. If defense attorneys have increased their general interest in forensic evidence.
2. If defense lawyers seem to draw attention to a lack of forensic evidence, no matter the amount of evidence presented, to jurors.
3. If defense attorneys draw attention to law enforcement agencies not submitting items for forensic testing, no matter the item's relevance to the case.
4. If defense lawyers have increased jurors' attention to a lack of forensic testing on items that would not likely prove the innocence or guilt of the accused.

Once again, each of the four questions was limited to changes observed by the attorneys in the past five years.

For each of the questions, at least 59% of the attorneys reported an increase in attention by defense lawyers (see Table 7). Prosecutors and defense attorneys

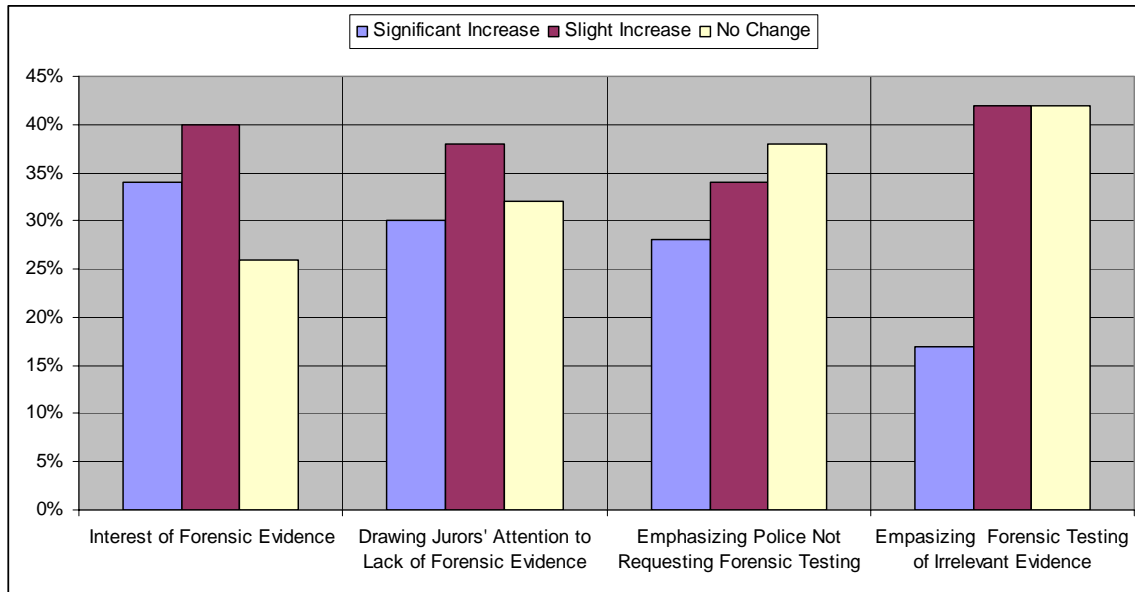
unanimously agreed that there has not been a decrease in defense attorneys’ interest in forensic evidence. Although the majority did report an increase, 26%, 32%, 38% and 42% of the surveyed attorneys reported no change to questions one through four respectively.

Table 7. Changes in Defense’s Interest/Trial Techniques, Significant and Slight Increase Combined



For each of the four questions, more attorneys sensed a slight increase in defense lawyers’ interest than a significant increase (see Table 8). Only 17% of the attorneys reported a significant increase in defense attorneys pointing out to jurors the lack of forensic testing of items that likely would not prove the guilt of a defendant. In contrast, at least 28% reported a significant increase for defense attorneys general interest in forensic evidence, defense attorneys drawing attention to a lack of forensic evidence, defense lawyers emphasizing police not submitting items for forensic testing and defense attorneys pointing out a lack of forensic testing of an item that likely would not benefit their case if tested.

Table 8. Changes in Defense's Interest/Trial Techniques, Significant and Slight Increase Presented Separately



Several notable differences emerged among responses of prosecutors and defense attorneys. First, 33% of the prosecutors report no change in defense attorneys' general interest in forensic evidence, while 21% of the defense lawyers reported no change (see Table 9). No significant difference is apparent between prosecutors and defense attorneys regarding the focusing of jurors' attention to a lack of forensic evidence in the prosecution's case. For questions three and four prosecutors were more likely to report a significant increase while defense attorneys were more likely to report no change. Regarding defense attorneys emphasizing to jurors that police did not submit items for forensic testing, prosecutors were significantly more likely to report a significant increase than defense lawyers. Forty-six percent of prosecutors, but only 14% of defense attorneys, reported a significant increase in defense attorneys' interest in law enforcement not submitted items for forensic testing. Most of the defense attorneys who disagreed with prosecutors reported no change, as defense attorneys (48%) were more likely to report no change in attention to police submitting items for forensic testing than

prosecutors (25%). For the last question, there was one notable difference between prosecutors and defense attorneys. Although 29% of prosecutors felt there had been a significant increase in defense attorneys highlighting forensic testing of evidence not likely to prove the guilt of their client than defense attorneys, only 7% of defenders suspected a significant increase. Once again, the majority of defense attorneys who digressed from prosecutors reported no change in defense's interest in forensic testing of items that would probably not exonerate the accused. Fifty-five percent of defense lawyers reported no change, compared to the 25% of prosecutors who had felt there had been no change in defense attorneys drawing jurors' attention to evidence that had not been forensically tested, even though a test probably would not benefit the accused.

Table 9. Individual category of lawyers' responses to questions regarding changes in defense courtroom techniques.

	Interest of Forensic Evidence	Drawing Jurors' Attention to Lack of Forensic Evidence	Emphasizing Police Not Requesting Forensic Testing	Emphasizing Forensic Testing of Irrelevant Evidence
<b>Significant Increase</b>				
Prosecutors	7 – 29%	8 – 33%	11 – 46%	7 – 29%
All Defenders	11 – 38%	8 – 28%	4 – 14%	2 – 7%
Public Defenders	5 – 29%	2 – 12%	2 – 12%	2 – 12%
Private Defenders	6 – 50%	6 – 50%	2 – 17%	0 – 0%
<b>Slight Increase</b>				
Prosecutor	9 – 38%	9 – 38%	7 – 29%	11 – 46%
All Defenders	12 – 41%	11 – 38%	11 – 38%	11 – 38%
Public Defenders	6 – 35%	8 – 47%	6 – 35%	6 – 35%
Private Defenders	6 – 50%	3 – 25%	5 – 42%	5 – 42%
<b>No Change</b>				
Prosecutors	8 – 33%	7 – 29%	6 – 25%	6 – 25%
All Defenders	6 – 21%	10 – 34%	14 – 48%	16 – 55%
Public Defenders	6 – 35%	7 – 41%	9 – 53%	9 – 53%
Private Defenders	0 – 0%	3 – 25%	5 – 42%	7 – 58%

Prosecutor  $N=24(100\%)$ ; Public Defenders  $N=17(100\%)$ ; Private Defenders  $N=12(100\%)$

For two questions, there was a noteworthy difference between public defenders and private attorneys. No private attorney reported a change in defense attorneys'



general interest in forensic evidence, while 35% of public defense lawyers felt there had been no change. Regarding defense attorneys drawing jurors' attention to a lack of forensic evidence, half of the private attorneys suspected a significant increase and only 12% of the public defenders reported a significant increase. No significant difference emerged between defense attorneys responses to questions three and four.

### *Improper Acquittals Based Upon a Lack of Forensic Evidence*

Do media-saturated jurists who come to court expecting specific forms of forensic evidence sometimes produce acquittal verdicts perceived by court personnel as improper? Just as jurors must decide the guilt or innocence of defendants, prosecutors and defense attorneys often form their own opinion while the jury is deliberating a verdict. Courts have long relied on confessions and eye witnesses as adequate to convict, even without the presentation of substantial forensic evidence. Based on such evidence presented in court, lawyers may expect an opposite verdict than the one returned by the jury.

When questioned about if they had observed an acquittal where the attorney suspected felt sufficient evidence existed but no forensic evidence was presented during the course of a trial, almost half (49%) of the respondents reported observing between one and five acquittals in the past five years where sufficient evidence existed in their opinion, but forensic evidence was not presented during the trial (see Table 10). Compared with defense attorneys, prosecutors were more suspicious of jury verdicts when forensic evidence was not presented. One-third of the prosecutors felt more than five faulty "not guilty" verdicts had been reached in the past five years compared to 18% of the defense attorneys. The only notable difference among attorneys was that 18% of

the public defenders reported knowledge of more than five improper acquittals and 8% of private attorneys concurred. Only 26% of the attorneys did not suspect a lack of forensic evidence was responsible for an improper acquittal verdict. Approximately half of the defense attorneys and prosecutors felt at least one, but less than five, innocent verdicts were reached by a jury when forensic evidence was not presented during the course of the trial but sufficient non-forensic evidence was available.

Table 10. Perception of Acquittals Based on the Lack of Forensic Evidence

	Prosecutors	All Defenders	Public Defenders	Private Defenders	Overall
More than 5	8 – 33%	4 – 14%	3 – 18%	1 – 8%	12 - 23%
Less than 5	13 – 54%	13 – 45%	7 – 41%	6 – 50%	26 - 49%
None	3 – 13%	11 – 38%	7 – 41%	4 – 33%	14 - 26%
N Value	24 – 100%	28 – 97%	17 – 100%	11 – 92%	52 - 98%

### Discussion/Conclusions

This section will conclude the paper. First, the survey findings will be compared to the prior research discussed in the literature review. Do the findings of this study support the findings of other scholars as discussed here? Were there any findings that offer different outcomes than previous studies? Following that, suggested policy changes will be presented that could help mitigate the impact that television dramas, such as *CSI*, are having on juror expectations. Finally, the limitations of this study and suggested future research will be considered. Several research methods will be proposed, which should allow for a better understanding of how forensic crime dramas may be affecting the criminal justice system.

*Discussion*

Attorneys' responses provided insight into how trial lawyers have reacted to forensic crime dramas. The majority of surveyed attorneys' contention that forensic crime dramas may create unrealistic expectations by the public is supported by prior research ([Kovera, 2002](#)), but only nine attorneys could document an experience with a juror who had a skewed impression of the workings of the court process directly traceable to television viewing of forensic crime dramas. Therefore, the majority of the attorneys reporting that forensic crime dramas heighten the public's expectations of the presentation of forensic evidence was based on their perceptions and discussions with other attorneys rather than actual experience with jurors.

Possibly, the lack of experience with jurors who have unrealistic expectations explains why only 19% of the attorneys consider striking heavy viewers of forensic crime dramas. In contrast, attorneys may feel unrealistic expectations of evidence can be diminished over the course of the trial, which was suggested previously by Howitt ([1982](#)). As prior research demonstrated through interviews of jurors that their opinions are not easily swayed by the attitudes of a minority of jury members ([Bridgeman & Marlowe, 1979](#)), attorneys may also feel that if the jury is comprised of only a few avid viewers of forensic crime dramas, then the fans of such shows will not be able to affect the verdict.

No significant difference emerged between prosecutors and defense lawyers (both public defenders and private counsel) in considering eliminating viewers of forensic crime dramas from the jury box. Apparently, defense attorneys who strike fans of forensic crime dramas from the jury pool suspect the shows' portrayals can be

detrimental to their case, just as some prosecutors do, but for different reasons depending upon the case and the amount of forensic evidence available. The lack of a significant difference among prosecutors and defense attorneys may be related to these varying facts of criminal cases, which ultimately become a wash as greater numbers of cases are considered. For instance, prosecutors may be striking jurors when their case lacks forensic evidence (while defense attorneys hope to keep them) while defense attorneys may be eliminating jury members when the prosecution's case has sufficient forensic evidence but lacks other forms of evidence such as witnesses or confessions (while the prosecution would hope to keep them). In the latter situation, defense lawyers may perceive non-viewers of forensic crime dramas will expect traditional forms of evidence (e.g., the defendant to have confessed to the crime, eye-witness testimony, etc.) and will feel the government's case is weak if only scientific evidence is presented by the prosecutor. In contrast, in the former situation, potential jurors who are interested in television forensic science programs may be perceived by defense attorneys as satisfied only if a critical threshold of forensic evidence can link the suspect to the criminal act.

Of the findings of this study, the fact that a high number of attorneys have seen cases in which persons were found innocent, based largely on the lack of forensic evidence when sufficient circumstantial or testimonial evidence existed, is the most significant. The results suggest that at least some defendants have been acquitted when the prosecution did not have forensic evidence to present during the course of a trial. This finding contradicts Barrile's [\(1984\)](#) discovery that avid viewers of crime dramas support stricter punishment of offenders. Barrile's finding was based on interviews of citizens and not jurors. If the survey discovery is accurate, members of the public may

become less prone to support stricter punishment when faced with the responsibilities of being a juror, thinking that standards of proof have not been met.

The findings of this study supports Greene and Wade's (1988) finding that varying news themes created a lenient effect, but not a punitive effect; as acquitting a defendant can be considered as a very lenient outcome. Greene and Wade's experiments revealed mock jurors would sometimes require more evidence after exposure to news stories that involved erroneous eye-witness identification. However, those that read of horrific crimes just prior to rendering a verdict of a mock trial did not lessen their expectations of evidence before finding a defendant guilty. The high rate of acquittals reported by the current study further suggests the media has the potential to create a lenient effect, while punitive effects are much more unlikely. Responses from the surveyed attorneys thus contradict Surette's (1999) argument that there are systematic punitive effects, coined as an echo effect, as the result of publicity of certain high profile crimes. Surette found a punitive effect among prosecutors for similar criminal cases following media trials. The findings of the present study suggest that even though there may be an echo effect by prosecuting attorneys, jurors may counteract such punitive measures when cases result in jury trials.

#### *Implications/Suggested Policy Changes*

While previous studies demonstrated that jurors can be influenced by the media before a trial, judges and lawyers are expected to eliminate such predispositions through the questioning of potential jurors (Howitt, 1982, p. 138). Effective questioning of juror candidates during *voir dire* could identify citizens who may be biased. Lawyers may be

able to identify citizens who probably would expect forensic evidence to be presented at every criminal trial and strike jurors with unrealistic expectations accordingly. Currently, 55% of the surveyed attorneys question jurors' concerning their interests in forensic crime dramas, and only 19% reported they used the citizens' responses when considering striking jurors from the jury pool.

For every jury trial, attorneys, both prosecutors and defense attorneys, should assess the viewing habits of potential jurors. Two studies mentioned earlier suggest that the depictions of the criminal justice system by the media can affect jurors' verdicts ([Greene & Wade, 1988](#); [Kovera, 2002](#)). The current study also suggested that attorneys have sensed unrealistic expectations regarding forensic evidence by viewers of forensic crime dramas. Depending upon the forensic evidence, or lack thereof, to be presented during the trial, fans of forensic crime dramas could affect the outcome of the trial. After extensive questioning of the jury candidates' viewing habits, prosecutors and defense attorneys should evaluate the responses to make a determination if potential jurors could render a verdict that is not tainted by the depictions of forensic science on television. If the jury pool is comprised primarily by heavy viewers of forensic crime dramas, attorneys should be concerned whether an impartial jury can be formed. Failure to inquire about jurors' viewing habits will prevent attorneys from effectively selecting a jury that can render a verdict that is not affected by unrealistic expectations of forensic evidence.

At least a quarter of the attorneys surveyed reported there has been no change in defense interest in matters involving forensic evidence. An explanation for this finding may be drawn from previous research, which found that jurors are often skeptical of

experts ([Bridgeman & Marlowe, 1979](#); [Ivković & Hans, 2003](#); [Sundby, 1997](#)). Post-trial interviews of jurors also found that jurors were especially skeptical of experts for the defense, primarily because of fees defense experts are normally paid ([Sundby, 1997](#)). Experts commonly called by prosecutors are government employees who are paid a salary, but jurors are asked to take note only of the contractual fees earned by defense experts. As most defense experts are paid an hourly rate above \$100, prosecutors often highlight this point to lessen the credibility of the expert by suggesting they are testifying for monetary gain and not for the discovery of truth.

Since forensic experts called by prosecutors seem to be more persuasive to jurors than forensic scientists called by defense attorneys, public defenders and private attorneys can level the playing field by vigorously questioning forensic experts called by the government. The defense attorneys for O.J. Simpson exemplified how effective questioning of criminalists and forensic scientists can cause jurors to doubt “scientific” witnesses for the prosecution. During preparation for a jury trial, defense lawyers should thoroughly investigate the expert’s actions to identify possible flaws, such as allowing for cross-contamination of evidence. Defense attorneys also should always investigate any tests that were performed to ensure they are accepted by the general scientific community. Some, such as the American Bar Association, have suggested publicly funded forensic labs be made available for defense preparation as needed, to create parity ([American Bar Association, 2000](#)).

*Limitations of Present Study*

The study as conducted had several limitations. These will be discussed along with ways to overcome them in future research on this topic. The majority of survey questions relied on attorneys' ability to recall experiences (e.g., requesting forensic testing, defense interest in forensic evidence, etc.) over a five year period. Respondents' inability to recall experiences over such a long time period could lessen the validity of the study.

Data collected during the course of this investigation also relied heavily on attorneys' perceptions of defense attorneys, jurors' expectations and jury verdicts. Possibly, attorneys may have expected a change following the widespread popularity and have been more acutely aware of defense attorneys' interest in forensic evidence or other matters involving forensic science. For instance, defense attorneys may not have heightened their interest in matters involving forensic science, but attorneys possibly take note of their interest in forensic science because of an expected change after the prominence of *CSI* and other media depictions. Results for questions that relied on attorneys' perceptions may be overcounts based on this possibility.

Another limitation of the current study is that some changes investigated (i.e. interest of forensic evidence) was limited to defense attorneys. The survey did not include similar questions that evaluated the possibility that prosecutors have changed their interest in forensic evidence. Possibly, prosecutors also have heightened their interest in forensic evidence during jury trials, which would likely have caused an accompanying reaction by defense attorneys geared to rebutting the government's case.



For the current study, data was not collected to evaluate the possibility that defense attorneys reacted to changes in prosecutors' trial presentation techniques.

The site for this study was one Florida county. Attorneys in this region may have different perceptions or experiences than attorneys in other geographic locations. Additionally, the ongoing relationships many of the attorneys have within the courtroom work group might have permitted a common perception to be disseminated among the surveyed attorneys. If so, common perceptions may differ from common understandings developed by courtroom workgroups in other geographic areas. A recent newspaper article highlighted how attorneys in specific areas can develop a common perception based upon experiences specific to that area ([Klein, 2004](#)). Several prosecutors in Baltimore reported experiencing jurors who acquitted defendants of two criminal cases because of unrealistic expectations of forensic evidence. When questioned after the trial, jurors reported they were disappointed that only testimonial evidence was presented and the government's case lacked physical evidence, such as fingerprint evidence. Both of these cases additionally were publicized by the media, permitting attorneys in the local area to obtain direct knowledge of how forensic crime dramas may affect the outcome of jury trials. Just as one can not presume attorneys in other cities have experienced the same experience as Baltimore attorneys, the results of this investigation should not be generalized to locations outside the region of the study site.

### *Suggestions for Future Research*

As the only known survey of lawyers concerning the possibility that forensic crime dramas instill unrealistic expectations of evidence, further research that expounds

upon the current study is needed before scholars can make documented assertions of media-impacts drawn from forensic crime dramas. Similar to past studies that interviewed jurors following the conclusion of a trial ([Bridgeman & Marlowe, 1979](#); [Ivković & Hans, 2003](#); [Sundby, 1997](#)), qualitative studies of jury decision-making processes, conducted via post-trial interviews and focus groups, would prove beneficial related to determining expectations of forensic evidence. The studies should be designed to identify viewers, particularly heavy viewers, of forensic crime dramas and compare verdict decision making patterns. For example, what was the most influential evidence presented (or missing) that played an integral role in their verdict determination? Also, jurors should be questioned regarding their perception of forensic experts and the possibility they expected a specific form of evidence that was not admitted as an exhibit during the course of the trial. Responses from heavy viewers of forensic crime dramas should be compared with jurors who rarely or never view shows, such as *CSI*, to identify any statistically significant differences among the two categories.

Previous experiments of mock jury trials have also provided scholars with a better understanding of how the media might be impacting the criminal justice system process ([Green & Wade, 1988](#); [Kovera, 2002](#)). As discussed in the literature review, mock jury trials permit researchers to create an environment to test whether exposure to certain media themes impacts jury deliberation and verdict outcomes. An experiment similar to Green and Wade's (1988) or Kovera's (2002) could be designed to evaluate if viewers of forensic crime dramas would need a certain threshold of forensic evidence presentation before deeming a defendant guilty of a criminal act. Researchers could evaluate verdicts rendered by persons familiar with forensic crime dramas to citizens who are not

interested in such television shows to determine if the expectation of forensic evidence differs among the two groups.

Further studies that either survey or ask in-depth questions of attorneys and judges would permit a better understanding of how forensic crime dramas may effect jurors' expectations of forensic evidence. The limitations of this survey as previously discussed can be overcome by the following changes. The research questions should focus on attorneys' reasons for asking jury candidates about their interest in forensic crime dramas. Second, for attorneys that consider striking fans of forensic crime dramas, future studies should expound upon the current study by investigating the attorneys' reasons for not wanting such citizens responsible for rendering a verdict in a criminal trial. Future surveys should also include other changes in prosecutors' interest in forensic evidence during the course of a trial. To expound upon Surette's [\(1999\)](#) discovery of an echo effect by prosecutors, trial attorneys could be asked if their selection of cases for trial rather than plea bargain has changed since the widespread popularity of forensic crime dramas.

### *Conclusions*

A substantial minority of America's population has had no direct experience with the criminal justice system [\(Escholz et al., 2002, p. 328; Surette & Otto, 2002, p. 450\)](#). As such, those who are called for jury duty know very little of the capabilities and limitations of the use of forensic science to resolve criminal investigations. With the media serving as a primary source of information to 95% of the public [\(Surette, 1998, p.](#)

[197](#)), the reality of forensic science in the average citizen's mind could be based solely on the media's depictions of forensic experts.

The media's ability to reach a broad audience seems to have caused a reaction by trial lawyers. For the last several years, the forensic crime drama *CSI* has continuously surpassed the popularity of any other television show ([Nielson Media Research, 2004](#)). Nearly 80% of the surveyed lawyers suspected fans of forensic crime dramas have unrealistic expectations of evidence. The common belief among trial lawyers that forensic crime dramas create such unrealistic expectations seems to have resulted in several changes while preparing for trials and during criminal proceedings. First, a slight majority of the lawyers reported they ask jury candidates if they specifically view forensic crime dramas during *voir dire*. Attorneys also may be compensating for the possibility that jurors have unrealistic expectations of forensic evidence by submitting additional evidence for forensic testing. Fifty-one percent of the lawyers reported requesting some forensic tests more than they did five years ago. In contrast, prosecuting attorneys may be requesting further forensic testing because of an increased interest in matters involving forensic science by defense attorneys. For every topic of defense interest investigated by the current study, at least 59% of the lawyers reported an increase.

The responses to surveys by criminal trial lawyers suggest the majority of attorneys have reacted to the current popularity of forensic crime dramas. Before these findings can be accepted as a general nationwide trend, further research in multiple regions of the country is needed. Qualitative and quantitative studies should be designed to test the findings of this study and expound upon this possibility. A miseducated

citizenry, weaned on media images, may serve to undermine the court process when called upon to serve as jurors. Better preparation by judges and attorneys to counter such a trend is warranted.

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## Appendix: Survey

I am a graduate student under the direction of Professor Cecil Greek in the School of Criminology and Criminal Justice at Florida State University. I am conducting a research study to assess the impact of forensic crime dramas on the criminal justice system.

I am requesting your participation, which will involve the following survey. The survey will take approximately 15 minutes to complete. Your participation in this study is voluntary. If you choose not to participate or to withdraw from the study at any time, there will be no penalty. The questionnaire is anonymous. The results of the study may be published but your name will not be known.

If you have any questions concerning the research study, please call me at 850-637-7505 or email me at [mike@coolings.net](mailto:mike@coolings.net). Professor Greek can be reached at 850-644-4746 or [cgreeks@mailers.fsu.edu](mailto:cgreeks@mailers.fsu.edu). The FSU Human Subjects Committee, Office of Research, may be reached at 850-644-9694

Return of the questionnaire will be considered your consent to participate. Thank you.

Sincerely,

Michael Watkins

What is your current position?

- Assistant State Attorney
- Public Defense Attorney
- Private Criminal Defense Attorney

Do you have criminal law experience other than your current position (ie. A current defense attorney that previously held a position as a prosecutor or vice versa)?

- Yes
- No

How long have you practiced criminal law?

- 0-5 years
- 6-10 years
- 11-20 years
- 21+ years

On average, how many cases do you prosecute or defend before a jury in a month?

- 0-2 cases
- 3-6 cases
- 7-10 cases
- 11+ cases

Have you ever witnessed a member of the jury ask a question regarding the lack of forensic evidence or forensic testing of an item admitted as evidence?

- Yes
- No

In the past five years, do you feel there has been an increase of defense interest in a lack of forensic evidence?

- There has been a significant increase
- There has been a slight increase
- There has been no change
- There has been a slight decrease
- There has been a significant decrease

In the past five years, do you feel there has been an increase of defense attorneys drawing jurors' attention to a lack of forensic evidence, no matter the amount of evidence already presented?

- There has been a significant increase
- There has been a slight increase
- There has been no change
- There has been a slight decrease
- There has been a significant decrease

In the past five years, do you feel there has been an increase of defense attorneys emphasizing a lack of evidence because law enforcement agencies do not submit items seized for forensic testing, no matter the item's relevance to the case?

- There has been a significant increase
- There has been a slight increase
- There has been no change
- There has been a slight decrease
- There has been a significant decrease

In the past five years, do you feel there has been an increase of defense attorneys point out the lack of forensic testing on an item where the test results would likely not prove the innocence of the defendant?

- There has been a significant increase
- There has been a slight increase
- There has been no change
- There has been a slight increase
- There has been a significant increase

During jury selection, have you ever questioned if jurors watched forensic crime dramas?

- No
- Yes, but I do not consider striking the juror because of it
- Yes and I consider striking the juror because of it

In the past five years, have you requested that an item be forensically tested that you wouldn't have in the past? Exclude requests based on new developments in forensic science that were not available five years ago.

- Frequently
- Occasionally
- Never

In the past five years, have you ever observed an acquittal where you felt sufficient circumstantial and/or testimonial evidence existed but no scientific evidence was available?

- More than five
- Less than five
- None

How often do you watch television dramas that focus on forensic science (ie. CSI, CSI Miami, Without a Trace)?

- Never
- I have seen a few episodes, but I do not watch regularly
- I watch some of the shows regularly
- I watch most of the shows regularly

Do you feel these crime dramas affect the public's (potential jurors) perception?

- I feel crime dramas create unrealistic expectations of the criminal justice system.
- I feel crime dramas provide the public with a better understanding of the criminal justice system.
- I do not feel crime dramas affect the public in any way.

Are you aware of any specific circumstances where a juror's perception of the criminal justice system was skewed due to crime dramas? If yes, please discuss.

- No
- Yes

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Concerning forensic science, please list changes you have made within the past five years while preparing cases for presentation to a jury. (For instance, having items submitted for testing that you wouldn't have in the past; having an expert conduct experiments for presentation to a jury; etc.)

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