

FROM THE PROSECUTOR

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DNA

It is a typical Monday night. At almost 10:00 p.m. Eastern Standard Time, Lt. Horatio Caine is squinting through his ever present sunglasses into the sun. Behind him lies the body of yet another victim, all alone with no witnesses to be found.

Within the next sixty minutes, minus a few commercial breaks, the crime is solved. There was never a need for a witness. Science tells all. The criminal is found. The criminal gives a full confession to the crime scene investigator. Finally, before the hour's end, the criminal steps on a bus to be transported to their new home behind bars to serve out their sentence.

Very nice. Very quick. Absolute science confirms all.

When I first became a prosecutor in the 1980's, we didn't have computers or cell phones. All the electric typewriters that police officers used with plenty of white out to correct mistakes are still a vivid image. In the courtroom we didn't have to ask potential jurors about the TV shows they watched to make sure they didn't have unrealistic expectations about the evidence. Times, and technologies have changed, although the burden of proof has not.

We have come from television icons like Perry Mason bolstering to the jury about a smoking gun, to high-tech courtrooms where the report that analyzed the gun is shown larger than life on a three foot by four foot SMART board. With the internet, cell phones, handheld computers, text messaging, video, and other technology, jurors now expect to see "high-tech" evidence as part of the State's case. They expect to see Horatio Caine in their local courtroom rather than you and me.

Recently, we had a jury return a Not Guilty verdict on an attempted rape case. When the courtroom prosecutor asked the jurors the reason for the verdict, the jurors said they wanted DNA to prove the attempted rape. DNA is a basic science on all of the current "CSI-NCIS-Law and Order" programs and their testing and results only take minutes. The actual time such tests would take is not permitted to slow down what is needed to entertain each week's audience.

However, in the real world we deal with, DNA is not often left in an attempted rape. Fortunately there is usually other solid evidence. In our case, the victim and

neighbors positively identified the defendant. Their testimony, the same testimony used for over two hundred years in our country, is no longer what our television enhanced jurors have been trained to expect. Fortunately, our criminal was convicted of other charges committed that same day and had two parole violations, resulting in a long sentence of thirteen years in prison.

Today, instead of proof beyond a reasonable doubt, jurors tend to want proof beyond all doubt. Studies support how these crime shows can have an impact on what jurors expect, called the CSI and Tech effect.

The CSI effect refers to the phenomenon of popular television shows such as CSI and Law & Order. These shows raise crime victims' and jury members' real-world expectations of forensic science capabilities. Prosecutors and all law enforcement are now expected to deliver more forensic evidence in court than ever before.

A recent study resulted in the new phrase "Tech effect." This effect suggests that demands for scientific evidence are the result of broader changes in popular culture related to advancements in both technology and information distribution. Those broad and pervasive changes lead jurors to expect that the prosecution will obtain and present the scientific evidence that technology has made possible.

As prosecutors, we now discuss this "Tech effect" with potential jurors in our "voir dire" or jury selection phase. Continuing Legal Education courses for prosecutors teach ways to neutralize the "CSI" or "Tech effect." We continue to work on the best way to deal with, explain or reduce the expectations for television science in our real trials.

At the same time, investigators can no longer stop at what used to be considered a solid case. Rather, pressing on for additional evidence, and whenever possible forensic evidence, is what makes a solid case today. We need to be aware of what our juror's expectations will be and be prepared to explain why we do or do not have the evidence or the ability to present such evidence. Most importantly, through our thorough investigation and preparation, we need to demonstrate proof beyond a reasonable doubt without the need for scientific proof that is truly beyond the realm of reality.