

SCIENTIFIC EVIDENCE, MEETING JURY EXPECTATIONS

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CHAPTER 10 - THE REAL LIFE EFFECT OF CSI

In this chapter we will look at using DNA evidence in court. Juries now tend to expect DNA evidence, whether or not there is DNA. Thanks to shows like CSI, jurors expect that crime scene analysts go out and "light up" crime scenes in order to find evidence of wrongdoing.

In my view, every case should include testimony about DNA, even if there are no DNA findings in the case. Because jurors expect to hear about it, the district attorney owes it to the jury to explain why (or why not) there is DNA, explain why (or why not) there should be DNA, and show that a DNA test was at least part of the investigatory process.

Avery was home alone, sitting on her couch and watching television when suddenly she was attacked from behind. A man's necktie was shoved into her mouth and the attacker—a man she'd never seen before—tugged at her blouse, trying to lift it up. Avery fought back, managed to get the tie loose, and bit the man's hand. With that he ran out of the house. Avery jumped to her feet, called 911, and the defendant was apprehended just down the street.

Avery was lucky, in my opinion. It turned out the man was the prime suspect in four other adult rapes, as well as the rape of a sixteen-year-old girl. The police found items in his backpack that linked him to each of these attacks, and he'd used exactly the same MO in each. (MO is *modus operandi*, which means the way the person committed the crime.) At trial, Avery described the attack and identified the defendant as her attacker. The arresting officer testified to apprehending the defendant just down the street from Avery's house. The police detective testified to the items found in the defendant's backpack and how they linked the defendant to the other rapes, all committed the same way.

On cross examination, the defendant's lawyer spent most his time asking the detective at length why there was no fingerprint evidence and why the cops hadn't even bothered to dust for fingerprints at Avery's house. As I sat in court listening to the defense attorney go on and on, I couldn't help wondering, "Dusting for fingerprints? We've got an eyewitness, an arrest just yards from the scene of the crime, items in his backpack linking him to other sexual assaults, and all of them done with exactly the same MO as here. Who needs fingerprints?"

The defense attorney was trying to take advantage of what is known as the CSI effect. It's a consequence of highly popular TV shows such as *Law & Order*, *CSI*, and all their offshoots. These shows have shaped jurors' expectations of what happens in real-life crime and real-life investigations, resulting in the expectation that scientific evidence be included in every case—evidence like fingerprints, DNA, fiber analysis, and so on. When there isn't such evidence, they question the thoroughness of the police investigation, and defense attorneys like the one in Avery's case try to turn that question into a reasonable doubt as to the defendant's guilt. I'm not making this up. The CSI effect is a known fact of life in my world. It was actually studied from a sociological perspective by the Honorable Judge Donald E. Shelton, Young S. Kim, and Gregg Barak in 2006, resulting in a paper titled, "A Study of Juror Expectations and Demands concerning Scientific Evidence: Does the 'CSI Effect' Exist?" The study surveyed people who had been summoned for jury duty and gathered information about their demographics, television viewing habits, expectations that the prosecutor would produce scientific evidence, and whether they felt scientific evidence was necessary before they could find a defendant's guilt had been proven beyond a reasonable doubt.

While some of the study's results were a bit mixed, it did confirm my experience with the CSI effect in cases involving serious violent crimes: 46 percent of the summoned jurors expected DNA or other scientific evidence in murder or attempted murder cases, and 73 percent of those surveyed expected it in rape cases. Even more telling is what the surveyed potential jurors said about how the CSI effect would influence their decision to convict or acquit. The Shelton et al. study found that "in 'any criminal case' where the prosecution relied on circumstantial evidence without scientific evidence, 41.7 percent of respondents said they would probably acquit." Even if the alleged victim of a rape or other sexual offense testified to the assault and identified the defendant, like Avery had, still "a significant number of respondents (26.5 percent) stated that they would find the defendant not guilty if there is no scientific evidence."