

MEDIA AND CRIMINAL JUSTICE

THE CSI EFFECT

Dennis J. Stevens, PhD
University of North Carolina–Charlotte
and
Belmont Abbey College



JONES AND BARTLETT PUBLISHERS

Sudbury, Massachusetts

BOSTON TORONTO LONDON SINGAPORE

World Headquarters

Jones and Bartlett Publishers
40 Tall Pine Drive
Sudbury, MA 01776
978-443-5000
info@jbpub.com
www.jbpub.com

Jones and Bartlett Publishers
Canada
6339 Ormindale Way
Mississauga, Ontario L5V 1J2
Canada

Jones and Bartlett Publishers
International
Barb House, Barb Mews
London W6 7PA
United Kingdom

Jones and Bartlett's books and products are available through most bookstores and online booksellers. To contact Jones and Bartlett Publishers directly, call 800-832-0034, fax 978-443-8000, or visit our website, www.jbpub.com.

Substantial discounts on bulk quantities of Jones and Bartlett's publications are available to corporations, professional associations, and other qualified organizations. For details and specific discount information, contact the special sales department at Jones and Bartlett via the above contact information or send an email to specialsales@jbpub.com.

Copyright © 2011 by Jones and Bartlett Publishers, LLC

All rights reserved. No part of the material protected by this copyright may be reproduced or utilized in any form, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without written permission from the copyright owner.

Production Credits

Publisher, Higher Education: Cathleen Sether
Acquisitions Editor: Sean Connelly
Associate Editor: Megan R. Turner
Production Manager: Julie Champagne Bolduc
Production Assistant: Jessica Steele Newfell
Associate Marketing Manager: Jessica Cormier
Manufacturing Buyer: Amy Bacus
Composition: Glyph International
Cover Design: Kristin E. Parker
Cover Image: © Simon Wild/Alamy Images
Printing and Binding: Malloy, Inc.
Cover Printing: Malloy, Inc.

Library of Congress Cataloging-in-Publication Data

Stevens, Dennis J.

Media and criminal justice : the CSI effect / Dennis J. Stevens.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-7637-5531-7 (alk. paper)

1. Mass media and criminal justice—United States. 2. Mass media and criminal justice. 3. Criminal justice, Administration of—United States. 4. Mass media—Influence. I. Title.

P96.C742U67 2010

345.73'05—dc22

2009036519

6048

Printed in the United States of America

13 12 11 10 09 10 9 8 7 6 5 4 3 2 1

This book is dedicated to Primo Levi, writer, chemist, and Auschwitz survivor; a person whom this author has never met, yet his presence through his words inspired the conclusion of this book: “Monsters exist, but they are too few in number to be truly dangerous. More dangerous are the common man, the functionaries ready to believe and to act without asking questions.”

Brief Contents



1	The Media and the <i>CSI Effect</i>	1
2	Motion Pictures, Popular Television Dramas, and News Reports	29
3	Wars on Crime and Junkies	51
4	Wars on Sex Offenders and Poverty	89
5	Terrorism and the War on Immigrants	121
6	Crime Scene Investigations, Forensics, and Junk Science	157
7	Prosecutors	197
8	Wrongful Convictions	227
9	The Death Penalty	271
10	Methods and Findings	311
11	Recommendations to Reduce Wrongful Convictions and Eliminate Capital Punishment	331
	Appendix: Questionnaire	365
	Index	369

Contents



Foreword xiii

Preface xv

Acknowledgments xvii

About the Author xix

1	The Media and the <i>CSI Effect</i>	1
	Chapter Objectives	1
	Introduction	1
	Prosecutor Work Ethic	2
	Public Safety Versus Liberty	2
	Learning Objectives of This Work	3
	Practices That Led to the Development of This Book	3
	Three Assumptions	4
	Public Behavior and Researchers	5
	Who Controls the Popular Media?	6
	History of Crime	7
	Punishment: Confinement and Executions	8
	The Media's Relationship with Criminal Justice	12
	What Viewers See and Hear	13
	The Media Shapes Social Perspectives	13
	Media and Politics	14
	Media and Terrorism	14
	Media and the Fear of Crime	15
	Media Distortion and Advertisers	16
	Media, Integrity, and What Criminal Justice Is Supposed to Be	16
	The <i>CSI Effect</i>	17
	Summary	20
	References	21

2	Motion Pictures, Popular Television Dramas, and News Reports	29
	Chapter Objectives	29
	Introduction	29
	Motion Pictures	30
	Television	34
	News Reports	39
	Comic Books	41
	Power of the Media	41
	Advantages of the Popular Media	42
	Some Tentative Thoughts About the Popular Media	45
	Summary	46
	References	47
3	Wars on Crime and Junkies	51
	Chapter Objectives	51
	Introduction	51
	Separation of Powers Doctrine	52
	War on Crime	54
	War on Junkies	68
	Summary	77
	References	78
4	Wars on Sex Offenders and Poverty	89
	Chapter Objectives	89
	Introduction	89
	War on Sex Offenders	90
	War on Poverty	105
	Summary	110
	References	111
5	Terrorism and the War on Immigrants	121
	Chapter Objectives	121
	Introduction	121
	War on Immigrants	122
	New Arrivals	125
	Aliens	127
	Enforcement, Incarceration, and Crime	130
	Costs of Immigration	134
	Immigration Control Advocates	135
	Plenary Power Doctrine	137
	Proactive Practices and Violations of Human Rights	138
	Statistics of Deportation and Criminalization of Immigrants	141

An Optimistic Perspective	143
Inclusion	144
Immigrants and Crime	146
Summary	148
References	149

6 Crime Scene Investigations, Forensics, and Junk Science 157

Chapter Objectives	157
Introduction	157
Crime Scene Investigative Units	158
The Players	159
About Profilers	164
The National Center for the Analysis of Violent Crime	166
Most Street Crimes	167
Forensic Units	168
Forensic Goals	170
History of Forensic Science	170
Secure the Crime Scene	171
Criminal Investigation Process	172
Rationale of Forensic Science Results	172
Burden of Proof	173
Objectives of Crime Scene Processing	173
Primary Components of Evidence	174
Chain of Custody	174
Chain of Custody and the Courtroom	175
Priority of Gathering Evidence	175
Protocols Beyond the Crime Scene and Crime Lab	175
Police Reluctance to Use Crime Labs	176
Police Reluctance Is Consistent with Evidence-Based Literature	178
Forensics and Burden of Truth	181
The Media's Bit	182
Junk Science	184
Experts Make Mistakes, Misjudgments	186
Another Way to Describe Forensics	187
Summary	187
References	188

7 Prosecutors 197

Chapter Objectives	197
Introduction	197
Most Prosecutors Behave Ethically	198
British and Colonial Origins of Public Prosecutors	199
What Is an American Prosecutor?	200

The Job of a Prosecutor	201
Role of Prosecutors	202
Prosecutor Models	203
Prosecutor Statistics	205
Federal Prosecutors	206
Traditional Responsibility of a Prosecutor	207
Meeting Goals	209
Attitudes of an Effective Prosecutor	209
Why Some Lawyers Became Prosecutors	210
Similarity in Prosecutor Responsibilities	212
A Broad Perspective of Prosecutors' Work and Failures	213
Ethics of Prosecutors	217
Prosecutors Are Immune from Civil Lawsuits	219
Summary	220
References	221
8 Wrongful Convictions	227
Chapter Objectives	227
Introduction	227
Error Rate and Wrongful Convictions	228
Wrongful Convictions and Exoneration	231
History of Wrongful Convictions	232
Wrongful Convictions 1989 to 2003	233
Public Defenders	234
Causes of Wrongful Convictions	235
Eyewitness Testimony	236
Imagination Inflation	236
Scientific Fraud and Incompetence at Crime Labs	240
The Interviewer Effect	242
False Confessions	242
Snitches	247
Police Misconduct	250
Prosecutor Misconduct	251
How Popular Television Dramas Treat Exonerations	257
What Prosecutors Think About Exoneration	258
Summary	259
References	260
9 The Death Penalty	271
Chapter Objectives	271
Introduction	271
The Rule of Law Versus <i>Lex Talionis</i>	272

Fear Can Promote Capital Punishment	273
Criminal Justice Corruption	278
Death Penalty	278
Death Penalty Advocates	282
Pro-Death Penalty Web Site	285
American Death Penalty History	285
At the Core of the Capital Punishment Debate	286
Opposition to Capital Punishment	287
Prosecutors and Capital Punishment Indictments	293
Mental Retardation and Capital Punishment	295
State Death Penalty Convictions Overturned	298
Actual Innocence Is Not a Constitutional Claim	298
Federal Prosecutors and the Death Penalty	299
Estimated Costs of Federal Capital Punishment Cases	299
Be Careful What You Ask For: Tentative Death Penalty Conclusions	300
Summary	300
References	301

10 Methods and Findings 311

Chapter Objectives	311
Introduction	311
Methodology: The Survey	312
The Hypothesis: A Work in Progress	313
Selection Process	313
The Participants in This Study	314
Findings	316
Gang Rapist Released Because Witness Was Uncredible	321
Forensic Analysis Unnecessary	321
Data Analysis	323
Implications of the Findings	325
Summary	326
References	327

11 Recommendations to Reduce Wrongful Convictions and Eliminate Capital Punishment 331

Chapter Objectives	331
Introduction	331
Problem: Wars on Crime, Junkies, Sex Offenders, Poverty, and Immigrants	334
Problem: Forensic and Junk Science	338
Problem: Admissible Evidence	340
Problem: Inappropriate Prosecutor Discretion	342
Problem: Judicial Blindness	342

Problem: Wrongful Capital Punishment Convictions	344
Other Solutions	346
The Future of Prosecutors: Community Prosecution	346
Historic Account of Community Prosecution	347
Empowering Communities Toward Community Prosecution	347
Key Dimensions of Community Prosecution	348
Street-Level Advocates	349
Does Community Prosecution Work?	351
Advice to Prosecutors from a Prosecutor	351
The Other Side of Prosecutor Misconduct	352
Prevention	353
Law Schools	353
The Future of the <i>CSI Effect</i>	355
Summary	357
References	358
Appendix: Questionnaire	365
Confidentiality Statement	365
Index	369

Foreword



In *Media and Criminal Justice: The CSI Effect*, accomplished author Dennis J. Stevens once again works his magic as a writer and a researcher, and gives us a book that stimulates thought about the justice system. Stevens is the author of almost one hundred scholarly articles and a number of books that are “must reads” for those who truly want to understand the American criminal justice system. In this book, he confronts the gross injustice of wrongful convictions and capital punishment, and squarely identifies overzealous prosecutors as the crux of the recent spate of exonerations on which the American media has fed.

Many excellent prosecutors are relentless in their pursuit of convictions, and justice is often served through their actions. Sometimes, however, charges may be improperly brought and convictions pursued even after those who represent the public in criminal prosecutions learn of significant exculpatory evidence. In 2007, for example, North Carolina prosecutor Michael Nifong was disbarred following an ethics review by the Disciplinary Hearing Commission of the North Carolina State Bar Association. The Commission established that Nifong persisted in a well-publicized rape prosecution of three Duke University lacrosse team members, even after the veracity of the supposed “victim” had been destroyed by elaborate media exposés. Nifong’s reluctance to drop charges against the men—even once their innocence was established—wreaked havoc with their lives and cost each of them a great deal of personal anguish. Their families were forced to bear the huge financial burden of hiring defense teams to refute the prosecutor’s apparently malicious allegations. In reaching the decision to revoke Nifong’s license to practice law, the disciplinary commission cited prosecutorial misconduct and called Nifong’s actions “a politically motivated act that he inexplicably allowed to fester for months after it was clear the defendants were innocent.”

Texas prosecutor Craig Watkins stands in stark contrast to Nifong. In 2008, the *Wall Street Journal* called Watkins “the only prosecutor in America who is making his name getting people out of prison.” Watkins is the district attorney in Dallas County, Texas. He became the first African-American district attorney in Texas history following his election in 2006, and has since been using DNA evidence to examine more than 400 guilty verdicts obtained by his predecessors. Watkins created a Conviction Integrity Unit in his

office in 2007, and within a year the unit was able to win exonerations for six men who had been wrongfully convicted of crimes ranging from rape and murder to robbery.

Not everyone agrees that Watkins is doing a good job. “I think he’s doing a grave disservice in trying to create this image that the criminal justice system is fatally flawed, and that only people like Craig Watkins can save it,” said Joshua Marquis, a member of the board of the National District Attorneys Association.

What makes his story all the more interesting is that Watkins follows a long line of “get tough on crime” prosecutors who occupied the district attorney’s office in Dallas County since the early 1950s. One of them, the legendary Henry Wade, served as district attorney from 1951 to 1986 and successfully prosecuted Jack Ruby for the murder of Lee Harvey Oswald. Wade gained national notoriety for never losing a case that he personally prosecuted and for winning capital convictions almost every time he asked juries to return them.

Prosecutors like Henry Wade are, of course, *supposed* to seek convictions. The adversarial system through which justice is achieved in this country depends on vigorous representation by both sides in a criminal case. But we must never forget that the ultimate goal of any criminal proceeding is *justice*—for the accused as well as for victims and the aggrieved.

The line that separates prosecutors like Watkins and Nifong is not due to a lack of vigor, education, or preparation, but to a difference in fundamental vision about the nature of justice itself. The goal of justice is furthered by many institutionalized practices, including discovery (by which important items of evidence are shared by the prosecution and defense), *habeas corpus* (the fundamental right to appeal unfair convictions), and by common and statutory laws, which allow for defenses to criminal liability based on justifications and necessity. But it is brought down to the personal level and made relevant by the individual actions of justice system representatives.

Media and Criminal Justice: The CSI Effect will help all of us to think more clearly about the nature of justice, the costs it exacts, and our personal roles in achieving it. To paraphrase Martin Luther King, “The arc of the moral universe is long, but it tends to swing toward justice.” I believe that *Media and Criminal Justice: The CSI Effect* will enhance the moral universe in which we live and move us closer to the ever elusive goal of justice.

Frank Schmallegger, PhD
Distinguished Professor Emeritus
The University of North Carolina at Pembroke

Preface



Is America caught up in events that are as ambiguous as they are deadly? Americans in 15 states were so outraged by their chances of becoming victims of violent crime that they prompted legislators to sanction the use of deadly force when confronted by a gangster or a neighbor. Advocates call these “stand your ground laws” and opponents call them “shoot first laws.” In Clearwater, Florida, a man was gunned down by his neighbor after a shouting match over the trash, and a Port Richey, Florida prostitute fired a weapon point-blank at her 72-year-old client who wouldn’t return her favors.

The law forbids arrest, detention, prosecution, and civil suit of persons covered by the law. The greatest injustice a democratic legal system can perpetrate against its population is to punish an individual for a crime he or she has never committed. The *ne plus ultra* (highest point) of injustice in a democratic nation is the wrongful conviction and execution of its constituents.

Media and Criminal Justice: The CSI Effect examines the relationship between the popular media—motion pictures, popular television dramas, and news reports—and the weakening of fundamental rights, leading to high points of injustice. The popular media has made incredible contributions to the criminal justice community, the American people, and democracy, but it also provides its own version of the world of crime, which heightens the fear of victimization. This phenomenon will be referred to as the *CSI Effect*, which changes real-world expectations of crime and crime control by affecting the decisions of witnesses, victims, jurors, and justice professionals. One central idea is that criminal justice practices among its ranks of professionals (police, corrections officers, prosecutors, and judges) have changed to keep pace with the social images defined, glorified, and justified by the popular media through the *CSI Effect*.

The *CSI Effect* is a product of the popular media’s ability to encourage aggressive “reactive” justice initiatives, glorify vigilantism, and provide fictitious accounts of crime and control of crime. It will be argued that the *CSI Effect* sets the criminal justice apparatus toward unlawful intrusion into the private lives of the American population in the name of justice. For example, the popular media depicts a “good” police strategy as an aggressive response, as opposed to preventive initiatives and quality-of-life arrests, regardless of the guilt of the person or seriousness of the violation. Finally, it alters

accounts of crime and crime control, which include the fictitious notion that every crime is reported, every violator is detected, apprehended, and arrested, and every suspect is judiciously convicted and imprisoned. The implication arising from this perspective is that the American judicial process is flawless. The popular media's portrait of a criminally violent offender and the criminal justice practices associated with detection, apprehension, and conviction share few similarities with official statistics, policy, and experiences among justice practitioners. As a result, official misconduct is tolerated, wrongful convictions continue, and capital punishment allegedly serves a higher purpose.

Media and Criminal Justice: The CSI Effect helps identify the primary strategies and players within the justice system. It argues that at the core of the wrongful conviction phenomenon and the death penalty are prosecutors, because they alone possess the authority to initially charge (or indict) a suspect or to release a suspect regardless of guilt. *Media and Criminal Justice: The CSI Effect* goes beyond the standard paradigm of transferring knowledge, as it depicts the realities of the media, wrongful convictions, and the death penalty. It links justice practices and scholarly research to real-world experiences, issues, careers, systems, and procedures, helping readers become informed about these issues.

To better understand the attitudes of prosecutors, 444 prosecutors from across the country were surveyed about their jobs and their ideas about justice. Some will disagree with the recommendations provided, which include community prosecution and prevention, changes in law school admission policies and curriculum, limiting prosecutor discretion, and ending capital punishment as a sanction.

■ The Flow of This Book

Chapter 1 explains the *CSI Effect* and describes the popular media and its contributions to American society. Chapter 2 characterizes the motion picture industry, popular television dramas, news reports, and comic books. Chapters 3, 4, and 5 focus on the wars fueled through the *CSI Effect* which include: the wars on crime, junkies, sex offenders, poverty, terrorists, and immigrants. Chapter 6 describes crime scene investigations, forensic science, and junk science. Chapter 7 explains prosecutorial activities at the federal, state, and local levels. Chapter 8 examines wrongful convictions and its primary causes. Chapter 9 addresses the death penalty, and Chapter 10 explains the research design used to test the perimeters of the theory of this work, outlines the characteristics of the 444 prosecutors tested, and provides the results from participants in this study. Finally, Chapter 11 offers recommendations that will reduce wrongful convictions and end capital punishment as a sanction. Should readers have any questions, comments, or contributions to share, feel free to contact the author at dennisj.stevens@hotmail.com.

Acknowledgments



As with most publications, numerous contributors supported this project, although the opinions offered belong to the author. This author wishes to acknowledge the efforts of the graduate assistants who made his job easier through their research and survey contributions: Kimberly E. Cox (PhD candidate, University of Vienna); Lacey Cochran Stewart (Makenzy's mom); Linda Moss; Jennifer Taylor and Bessey Hutchinson (both PhD candidates, University of Southern Mississippi); Sergeant Luke Thompson (Gulfport Police Department, Mississippi); and Sergeant Dan Steel (Biloxi Police Department, Mississippi, on leave at law school). Also, assistant researchers at Sacred Heart University, Fairfield, Connecticut, should be acknowledged, including Sara Dastoli, Sarah M. Olschan, and Theresa M. Raytar.

Frank Schmallegger, my colleague, mentor, and friend, wrote an amazing foreword, in addition to his other contributions, including the inspiration to continue this work. Also, appreciation goes to my colleagues, readers of early chapters, and attendees of presentations on the early theoretical concepts at Sacred Heart University: Professor Matt Semel (a former New York City public defender); Dr. Patrick Morris (a former police sergeant in Norwalk, Connecticut); and Dr. Jim McCabe (a former New York City police detective and commander). I also thank Mark A. Stevens, my son, who provided some theoretical perspectives in several chapters because of his extraordinary analytical capacity and experiences in the criminal justice community. My loving daughter Alyssa P. Stevens unselfishly lent an ear and provided encouragement and inspiration to complete this work.

Additionally, there are 444 prosecutors across the United States to thank for their contributions and many letters that accompanied their completed surveys, which were included where appropriate throughout this work.

Others who aided in the development of this work include the very hard-working and bright personnel at Jones and Bartlett, including Cathleen Sether, Jeremy Spiegel, Julie Bolduc, Megan Turner, and Jessica Cormier. Thanks also go to Vastavikta Sharma at Glyph International and Jeanne Hansen.

Finally, acknowledgment goes to the reviewers of this work:

Michael L. Arter

Penn State Altoona

Michael Costelloe

Northern Arizona University

Paul C. Leccese

Old Dominion University

Charles A. Loftus

Arizona State University

Kirk Miller

Northern Illinois University

Nicole Romeiser

University of Maryland

About the Author



Dennis J. Stevens received a PhD from Loyola University of Chicago in 1991. Currently, he teaches as an adjunct professor in the Department of Sociology at the University of North Carolina, Charlotte, and Belmont Abbey College. He worked for the University of Southern Mississippi as director of its criminal justice PhD program, and also taught at the University of Massachusetts, Boston, and Salem State College. As a criminal justice–sociology department director in North Carolina, he created and implemented a criminal justice lock-step curriculum, enrolling hundreds of students at five locations. In addition to teaching traditional students, he has taught and counseled law enforcement and correctional personnel at law academies such as the North Carolina Justice Academy, and felons at maximum-security penitentiaries.

Dr. Stevens has published several books and almost 100 scholarly and popular literature articles on policing, corrections, and criminally violent sexual predators. He has also been retained by private agencies to develop use of force protocols; by state legislators to examine recidivism rates and the flow of drugs into prisons; by federal agencies to study corruption among narcotics officers; and by the US military and foreign governments to aid in related research.

As a volunteer, Dr. Stevens has guided many sexually abused children and their families through church-affiliated programs in New York, North Carolina, and South Carolina, and has led group crisis sessions among various police and correctional agencies, such as for officers of the New Orleans Police Department after Hurricane Katrina.

