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Miller and Fontes: Videotape on Trial: A View from the Jury Box

This is a precise, discriminating book which at times reminds one that its author read English at Cambridge in the age of F. R. Leavis. It is the book of a man with a fastidious distaste for coarse-textured generalizations. Indeed, the distaste for the general is perhaps a little too strong. The book has a tendency to fragment into chapters and even sections, extremely revealing in their juxtapositions of images and ideas which are not normally considered together, but together providing something less than a picture of a whole culture. But then "culture" is a term Baxandall treats with suspicion and tends to eschew. In so doing he avoids a number of crude formulations of the type offered by (say) Arnold Hauser in his *Social History of Art*, but he does pay a price. He succeeds, it is true, in giving us a context which makes the sculpture of Renaissance Germany more legible than it was, and this achievement is a considerable one. But he could, if he wanted, have given us a brilliant general picture of the culture and society of the period, a study in the manner of great classics like Burckhardt, Huizinga, or—given his fascination with alien categories and sensibilities—Evans-Pritchard. Baxandall is so much more than a historian of limewood sculpture, but he rejects the blandishments of cultural history. He seems to think its ambitions immodest, even shameless. It is with some sense of opportunities lost, as well as advances achieved, that one puts down this remarkable book.

Gerald R. Miller and Norman E. Fontes. Videotape on Trial: A View from the Jury Box. Beverly Hills: Sage, 1979.

Reviewed by Phoebe C. Ellsworth
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In most jurisdictions, a major complaint of citizens called for jury duty is that they spend a great deal of time sitting around doing nothing and very little time actually hearing cases. Even when they are called to hear a case and are accepted by both attorneys during the voir dire, they may not hear the whole case, or they may not have an opportunity to deliberate and reach a decision because the parties come to an agreement and the trial was aborted. Various reforms in the recruitment of jurors are currently being attempted, such as letting members of the jury panel know each morning whether or not they should bother to come to the courthouse that day. Miller and Fontes begin with the assumption that the use of videotaped trials will also promote more efficient use of jurors' time and will hasten the halting pace of justice more generally by eliminating delays caused by "objections, bench conferences, delays for witnesses, counsel's pauses, client conferences, and chamber retreats" (p. 21) and sparing the jurors the necessity of listening to trials that are never completed.

This efficiency is achieved by having the attorneys prepare taped depositions of the direct and cross-examination of all the witnesses, raising objections to each other's tactics as they would in a live trial, and then handing the whole package to the judge, who rules on the objections and orders that inadmissible material be edited out. The resulting tape is much shorter than a live trial would be, cases that are settled midway through the proceedings need never be presented to a jury, and the same judge can preside over more than one trial at the same time, since all the legal rulings have been made in advance. Miller and Fontes present impressive anecdotal evidence of the time saved by these procedures in one or two jurisdictions where they have been tried.

The question is, of course, do we pay a price for this increased efficiency? Do jurors behave less skillfully, or less fairly, or somehow differently when they see a taped trial than when they see a live one? Miller and Fontes have translated these vague and abstract concerns into specific questions, and have tried to answer them with a series of experiments. Their work is basically practical and applied and is presented with a minimum of theory. Their most general conclusion is that "within the procedural confines of our research, there is no evidence to suggest that the use of videotape exerts any deleterious effects on the juror responses studied; in fact, as far as

retention of trial related information is concerned, it appears that videotaped testimony sometimes results in higher retention levels" (p. 207).

The authors' basic method is to reenact a civil trial before a group of jurors, while at the same time videotaping the proceedings for later presentation to a second group of jurors. Many of the studies were conducted in a courthouse, using as subjects citizens who had actually been called for jury duty and who believed that they were participating in a real trial and that their verdict would be binding. In this respect the research attained a level of realism that has rarely been matched in any experimental study of the jury. Typically, the videotaped version of the trial used a split-screen technique, with a close-up of the witness and a medium-range shot of the questioning attorney occupying the top half of the screen, and a full shot of the courtroom in the lower half. In most of the studies the results consist of the responses of the individual jurors; that is, the study is terminated without an examination of the processes or outcomes of jury deliberations. Thus, when the authors use the term "verdict," they refer to the immediate responses of individual jurors after hearing the trial. Since there is a considerable amount of research indicating that the voting distribution of individual jurors on the first ballot is an excellent predictor of the jury's final verdict, this time-saving tactic probably did not have major consequences for the results of the studies.

Miller and Fontes's most general question, of course, is "Does the use of videotape make a difference in the verdict?" and their conclusion is that it does not, at least in the relatively short civil trials they studied. They go on to ask a number of more specific questions: Do jurors remember more or less material from a videotaped than a live trial? Are witnesses perceived as more or less credible on videotape? Does the deletion of inadmissible material affect the jurors' decisions, memory for facts, or perception of the witnesses, and if so, does the type of editing technique make a difference? Is people's ability to detect mendacious testimony better in some communication modes than in others? Finally, there are a number of comparisons of different production techniques—black-and-white versus color, full screen versus split screen, and close-up versus medium versus long shots.

The findings are suggestive, and sometimes surprising. For example, memory for testimony was better when the jurors saw the trial on TV than when they saw it live, and of the TV presentations, black-and-white resulted in slightly better memory than color. The pattern of data indicates that the three modes resulted in equally good memory for events occurring at the beginning of the trial, but that the jurors who saw the live trial remembered less of the later testimony. The authors, with characteristic reticence, offer no explanation. It may be that the greater impact of the live testimony caused the jurors to make up their minds earlier in the proceedings, and thus to pay less attention to later testimony. A potentially serious problem with the memory studies is that the jurors heard

only one witness (and thus testimony on only one side of the case). The literature on attitude change generally indicates that people respond differently to two-sided communications than they do to one-sided persuasion attempts, and so we cannot be at all sure that the superiority of a taped presentation would persist in a normal, two-sided trial.

The data on the credibility of witnesses and attorneys are complex, but can be summarized quite easily: some witnesses are seen as more credible on tape, some as less credible; variations in production techniques, such as split screen, the use of color, close-ups, and the type of editing used to delete inadmissible material, benefit some witnesses and attorneys but not others. The findings are generally weak and inconsistent, and no general conclusions are possible about the qualities of witnesses or attorneys that may enable them to fare relatively well or badly in different modes. Of course, many people believe that some people are "TV types" while others, like Richard Nixon, are not, but the definition of these types is so far a matter of superstition.

One of the most common rationales for the use of videotape in the courtroom is that inadmissible material can *really* be kept from influencing the jurors by the simple expedient of editing it out before they see the trial. The current system, in which the judge instructs the jury to ignore objectionable material that they have already heard, is almost certainly ineffective, and may even serve to highlight the material. Miller and Fontes find that although jurors discuss the inadmissible evidence when they hear it, there is no difference in verdicts between the jurors who heard it and those who did not, although the authors feel that the results might be different if the inadmissible evidence were more spectacular or incriminating than the items they used.

Finally, the authors study jurors' ability to perceive whether or not witnesses were lying. On the whole, jurors' accuracy was low, rarely exceeding chance. It is interesting that, although live testimony resulted in the greatest accuracy, among the mediated versions the simple transcript generally resulted in higher accuracy than the more vivid audio, visual, or audiovisual presentations. The results are in line with those of other researchers, who have found that the visual channel may help the liar more than it helps the sleuth. The replication of this finding in a wholly different setting suggests that it is a robust one; three researchers, one of whom knew about the others' work and none of whom expected their research to turn out as it did, have found that access to the visual channel tends to impair people's ability to detect deception. Nonetheless, generalizing to the courtroom situation may still be risky, as none of the researchers exposed their liars to anything approaching the sort of cross-examination that occurs in court.

What can we conclude from this research? Less, I fear, than the authors do. Although their procedures are more realistic than those used in most jury research, there

is a major flaw in the design of most of the studies that necessarily undermines our confidence in the generality of the results. In most studies, all the subjects in one condition (e.g., the live condition) were run at once, in a group, and all the subjects in the other condition (e.g., the videotape condition) were run in another single group, at another time. This means that any other events besides the presentation of the trial—events such as the style of the person giving the instructions or overt or covert communications among the group members—would be confounded by the experimental stimulus and might be responsible for the judgments made by the subjects in that group. The authors treat the judgments of individual jurors as independent observations, but they are not. If we examine the tables closely, we can see that when the same videotape is used in two different experiments, the pattern of juror responses is often different, indicating that something else is affecting the jurors besides the tape they see. In order to compensate for these extraneous influences, it would be necessary to run several groups (or several individual sessions) in each experimental condition. If this were done, the findings that videotape generally made no difference might well be supported, or they might not: we simply have no way of knowing.

This problem is most salient in the basic study of videotaped versus live presentation, and in the study of inadmissible evidence. The memory study was replicated across two different sets of materials, general findings of the deception studies have been replicated in several different laboratories, and the findings on production techniques and witness credibility are so weak and inconsistent that the authors make no general claims.

Thus, it would be unwise to proceed with any major policy changes on the basis of the findings presented in *Videotape on Trial*. It would also be unwise to ignore the research and continue to wage the debate about videotape as it has been waged in the past—with no data at all. Opponents of videotape have taken extreme positions ranging from the prediction that juries exposed to videotaped testimony will fall asleep to dire speculations about the ability of skilled media consultants to engineer any result they are paid to bring about. This research strongly suggests that neither of these extreme points of view is realistic. Our best bet at the present is that the use of videotape increases efficiency without impairing the juror's performance. However, without more extensive research, we should not feel confident that our best bet is a very good one.

Harold Evans. *Pictures on a Page: Photojournalism and Picture Editing.* Belmont, Cal.: Wadsworth, 1979. 320 pp., ill./\$14.95.

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Harold Evans, editor of the London *Sunday Times*, has produced a very full book—full of pictures, insights, critiques, and the how-to-do-its of successful photojournalism. The pictures, drawn primarily from British and U.S. media, are a good collection of the classics, some near-classics, and—most instructive of all—the everyday failures of print journalism. Each picture is there to serve a point: there is continuous contrast between the good result and the bad one, with a full and almost always convincing explanation of what distinguishes the former from the latter. Particularly effective are cases in which we are presented with a highly successful photo alongside other prints that were wisely abandoned in favor of the now classic version. It is an exercise we learn from. Evans is in love with effective photography, and his practical, analytic affection lends itself well to a project like this.

The distinguishing intellectual stance seems to be that the photojournalist's effort to convey a reality provides an essential opportunity for art; indeed, an absence of artful purpose usually results in the failure to convey any important meaning at all. News photography without artful manipulation is, under most circumstances, incompetent work.

Such a view puts Evans at odds with any notion that reporting with a camera is essentially an objective activity. Evans doesn't make the case quite this way, but my translation of his more practical words of wisdom is that never, not even in an "ideal" condition, should it be the professional's goal to remove himself or herself from the image-making process. The professional's role is, rather, to capture a reality by deliberately manipulating *technique*. Hence, Evans argues that a creative cropping of a photo is as critical to the communication process as the aiming of the camera in the first place. Arranging "proper" lighting is as necessary to making a story come alive as is a journalist's choosing a question to put to a newsmaker. The considered juxtaposition of photos on a news page to sustain an overall news angle is no less an objective enterprise than telling a story by arranging sentences to form a coherent paragraph.

What counts is not the artifice of production, but the vitality and validity of the outcome; a speeding car shot at 1/1000th of a second will, thanks to modern camera technology, appear as a stationary vehicle—if nothing additionally "artificial" is done. But deliberate blurring of