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Opening Pandora's Box: Asking Judges and Attorneys To React to the Videotape Trial

Comment

During the past several years, a number of judges, lawyers, scholars, and researchers have taken the lead in exploring the legal and procedural ramifications of what is potentially the most sweeping alteration of the American legal system in this century—the use of videotape in the courtroom. Hundreds of thousands of dollars have been spent in the past and more will undoubtedly be spent in the future to answer questions about the judicial applications of videotape. But whose questions are being answered? Those propounded by a handful of social scientists and videotape proponents?¹ Or those questions deemed crucial by the legal community? The fate of the videotape trial, in the final analysis, rests with the members of the legal profession. A failure to learn and respond to their opinions on such a significant change could hinder, if not prevent altogether, the utilization of what may be a powerful new tool in judicial administration. Accordingly, this comment provides a broad and comprehensive base of information about the attitudes of judges and attorneys concerning the use of videotape in the trial process. In particular, the comment reports the results of a survey designed to answer the following questions:

1. What are the attitudes of the legal community toward recent findings which suggest differences between live and videotape presentations of testimony?²
2. What issues, in the view of the judiciary and the bar, must be addressed and resolved before the videotape trial can be generally accepted in the justice system?
3. To what extent is videotape presently being used in the court-

¹One respondent to the survey remarked:

I might say that many trial lawyers feel that procedures such as the use of videotape tend to be experiments advanced by clinicians and technical people, and are encouraged by harried judges and court administrators as an attempt to resolve the problem of court congestion.

Letter from confidential respondent to Rex E. Lee, Dean of the Brigham Young University Law School, April 2, 1975 (all respondents to the survey were promised anonymity).

²See, e.g., Bermant, Chappell, Crockett, Jacobovitch & McGuire, *Juror Responses to Prerecorded Videotape Trial Presentations in California and Ohio*, 26 HASTINGS L.J. 975, 993 (1975) [hereinafter cited as Bermant Juror Studies]; Miller et al., *The Effects of Videotape Testimony in Jury Trials: Studies on Juror Decision Making, Information Retention, and Emotional Arousal*, supra this issue; Short et al., *An Assessment of Videotape in the Criminal Courts*, supra this issue; Williams et al., *Juror Perceptions of Trial Testimony as a Function of the Method of Presentation: A Comparison of Live, Color Video, Black-and-White Video, Audio, and Transcript Presentations*, supra this issue.

room? For what purposes is it being used? And what is the degree of satisfaction with this use?

With this information in hand, both researchers and interested judges and attorneys will be able to concentrate their investigative efforts in those areas of greatest importance to the legal profession.

I. METHODOLOGY

A. Populations Studied

Both because of their different perspectives and because of their power to impede or expedite the implementation of videotape, it was considered essential to survey judges *and* attorneys. Therefore, the following groups within the legal community were surveyed: the federal judiciary (trial and appellate levels),³ the members of the Association of Trial Lawyers of America (ATLA),⁴ and the members of the Defense Research Institute, Inc. (DRI).⁵

Four considerations led to the selection of the ATLA and the DRI. First, the members of both associations are heavily involved in litigation.⁶ Thus, they are well situated to evaluate the probable impact of the videotape trial. Second, extensive use of videotape will certainly occur first in the civil arena where there are fewer constitutional problems raised by such use.⁷ Attorneys in the ATLA and the DRI have predominantly civil, as opposed to criminal, practices.⁸

³State trial court judges were not surveyed because the National Conference of State Trial Judges was unwilling to release its membership mailing list for the limited purposes of this study. Nevertheless, responses from the federal judiciary provide substantial data concerning the views and perspective of a highly respected and prominent group of jurists.

⁴The ATLA was founded in 1946 as the National Association of Claimants' Compensation Attorneys. By 1971 it had over 25,000 members. For a detailed history of the ATLA see TRIAL, July-Aug. 1971.

⁵The DRI was founded in 1960. Its current membership numbers approximately 5,500. For information concerning the DRI, write to The Defense Research Institute, Inc., 1100 West Wells Street, Milwaukee, Wis. 53233.

⁶This fact was amply illustrated by responses to the demographic portion of the survey questionnaire. This demographic data is presented in text accompanying note 48 *infra*.

⁷For discussion of possible constitutional objections to the use of videotape in criminal proceedings see Barber & Bates, *Videotape in Criminal Proceedings*, 25 HASTINGS L.J. 1017, 1030-39 (1974) [hereinafter cited as Barber & Bates] (discussing the rights of confrontation and public trial); Doret, *Trial by Videotape—Can Justice Be Seen to Be Done?*, 47 TEMP. L.Q. 228, 258-66 (1974) [hereinafter cited as Doret] (discussing the accused's rights of fair trial, public trial, jury trial, confrontation, and presence at trial); Comment, *Videotape Trials: Legal and Practical Implications*, 9 COLUM. J.L. & Soc. PROB. 363, 376-86 (1973) [hereinafter cited as *Videotape Trials: Implications*] (discussing the accused's rights of presence at trial, presence of judge at trial, confrontation, and public trial); Comment, *Judicial Administration—Technological Advances—Use of Videotape in the Courtroom and Stationhouse*, 20 DEPAUL L. REV. 924, 947-54 (1971) (discussing the right to counsel, right of privacy, and privilege against self-incrimination); Comment, *Video-Tape Trials: A Practical Evaluation and a Legal Analysis*, 26 STAN. L. REV. 619, 639-44 (1974) [hereinafter cited as *Video-Tape Trials: A Practical Evaluation*] (discussing the rights of due process, confrontation, public trial, and jury trial).

⁸Evidence of this fact is presented in the text accompanying note 49 *infra*.

It is possible that attorneys with heavy involvement in criminal litigation may view

Third, personal injury cases are the primary cause of congested court dockets.⁹ For videotape to have an ameliorative effect on this serious problem, its use must be accepted by the members of the ATLA and the DRI who try a substantial number of such cases. Fourth, it would be useful to ascertain whether plaintiffs' attorneys differ from defendants' attorneys in their attitudes toward aspects of the trial process that would be altered by videotape. Because the ATLA and the DRI represent predominantly plaintiffs and defendants respectively, these two groups were ideal populations to answer this question.

B. *The Samples*

Surveys were mailed to the 630 district and circuit court judges of the federal judiciary.¹⁰ In addition, from the mailing lists of the ATLA and the DRI, 800 members of each association were randomly selected to receive the questionnaire.¹¹

C. *Questionnaire*

The questionnaire, attached as Appendix, consisted of three parts. In Part One, the respondents were asked to rate on a 1 to 5 scale the importance or desirability of a number of related changes that the use of videotape may make in the current trial process.

The first of the five subparts of Part One was concerned with the economic ramifications of videotaping all testimony portions of trials.¹² Proponents of PRVTT (prerecorded videotape testimony) claim that seven time and cost savings are possible with videotape:¹³

videotape's changes in the live trial differently than civil litigators. Realizing the limitations that the populations selected for study in this survey would impose on any comparison between attitudes of attorneys in the civil and criminal arenas, those respondents whose trial practice was composed of more than 50 percent criminal work were singled out. Their responses to the survey were contrasted with the responses given by the remainder of the attorneys. The comparison demonstrated that, on the whole, the responses of the two groups were not significantly different. It is suggested, however, that further investigation of this issue be conducted with larger samples which are more representative of criminal attorneys.

⁹See Phillips, *Insurance Companies Are Not Responsible for Court Congestion*, in COURT CONGESTION AND DELAY 65 (G. Winters ed. 1971).

¹⁰The list of federal judges was compiled by updating the FEDERAL JUDICIAL CENTER, UNITED STATES COURT DIRECTORY (1974) with the list of federal judiciary set forth in 499 F.2d VII-XXII (1975).

¹¹The authors wish to thank the ATLA and the DRI for graciously providing mailing lists of their memberships and for other helpful assistance.

¹²The general format of a PRVTT (prerecorded videotape testimony) trial, as suggested by Judge James L. McCrystal (McCrystal, *Video Tape Trials*, 44 OHIO B.J. 639, 640 (1971) [hereinafter cited as *Video Tape Trials*]) and as utilized in several cases (see, e.g., *Liggon v. Haniski*, No. 637-707 (Super. Ct., San Francisco, Cal., Sept. 19, 1973); *McCall v. Clemens*, Civil No. 39,301 (C.P., Erie County, Ohio, Nov. 18, 1971)), was described in the introduction of the questionnaire which is attached as Appendix.

¹³One commentator presented the reasoning behind projections of time and cost savings:

The essence of the videotape system is that it allows the trial to be subdivided into three units: testimony, involving lawyers and witnesses; ruling, involving trial

cost savings to parties¹⁴ and to the state;¹⁵ and time savings to parties,¹⁶ judges,¹⁷ jurors,¹⁸ witnesses,¹⁹ and attorneys.²⁰

The second subpart examined alterations of the current method of examining witnesses that may be caused by videotape. From among the possible changes, seven were chosen for study. Respondents rated the desirability of changes in four judicial functions: (1) supervising attorneys,²¹ (2) making immediate rulings on the admissibility of evidence,²² (3) questioning witnesses,²³ and (4) setting the tone of the proceedings.²⁴ The final three changes presented for evaluation in this subpart were: (5) testimony may be taken outside the courtroom,²⁵ (6) testimony may be taken at a time convenient to witnesses and attorneys,²⁶ and (7) attorneys know the entire content of

judge and lawyers; and presentation, involving essentially only the jury. These units proceed chronologically but relatively independently, each impinging only slightly on the schedules of the other units, of their respective participants, and of other trials pending or in progress. Only through such assembly line division of labor may convenience and trial efficiency be maximized; and only through some form of technology, which must invariably influence the nature of trial itself, may the integral relationships be maintained between units.

Videotape Trials: Implications, *supra* note 7, at 391-92 (footnotes omitted).

¹⁴Discussed in, e.g., Morrill, *Enter—The Video Tape Trial*, 3 JOHN MARSHALL J. PRAC. & PROC. 237, 243 (1970) [hereinafter cited as Morrill]; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 645; Bermant, Chappell & McGuire, *Liggons v. Haniski: Juror Reactions to Videotaped Trial Testimony in California 17* (1973) (unpublished manuscript, Battelle Memorial Institute, Seattle, Wash.) [hereinafter cited as Bermant Unpublished Manuscript].

¹⁵Suggested in, e.g., McCrystal & Young, *Pre-Recorded Videotape Trials—An Ohio Innovation*, 39 BROOKLYN L. REV. 560, 563-64 (1973) [hereinafter cited as *Ohio Innovation*] (see advantages 3, 8, 18, and 19 listed by Judge McCrystal).

¹⁶Suggested in, e.g., Bermant Unpublished Manuscript, *supra* note 14, at 7.

¹⁷Discussed in, e.g., McCrystal, *The Videotape Trial Comes of Age*, 57 JUDICATURE 446, 448 (1974); *Ohio Innovation*, *supra* note 15, at 564; *Video Tape Trials*, *supra* note 12, at 640; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 633, 636; *Videotape Trials: Implications*, *supra* note 7, at 369.

¹⁸Discussed in, e.g., *Ohio Innovation*, *supra* note 15, at 563-64; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 625-26, 633-34; *Videotape Trials: Implications*, *supra* note 7, at 369.

¹⁹Discussed in, e.g., *Ohio Innovation*, *supra* note 15, at 564; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 631, 636; *Videotape Trials: Implications*, *supra* note 7, at 364.

²⁰Discussed in, e.g., *Ohio Innovation*, *supra* note 15, at 564; Comment, *Nebraska Faces Videotape: The New Video Technology in Perspective*, 6 CREIGHTON L. REV. 214, 228 (1972); Bermant Unpublished Manuscript, *supra* note 14, at 4.

²¹Suggested in, e.g., Doret, *supra* note 7, at 13; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 626.

²²See note 21 *supra*.

²³Discussed in, e.g., *Videotape Trials: Implications*, *supra* note 7, at 387.

²⁴Discussed in, e.g., Bermant Juror Studies, *supra* note 2, at 987; Doret, *supra* note 7, at 244, 251, 263; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 630; Bermant Unpublished Manuscript, *supra* note 14, at 13.

²⁵Suggested in, e.g., McCrystal, *Ohio's First Video Tape Trial*, 45 OHIO B.J. 1, 3 (1972) [hereinafter cited as *Ohio's First Video Tape Trial*]; *Ohio Innovation*, *supra* note 15, at 564.

²⁶Discussed in, e.g., Morrill, *supra* note 14, at 239-40; *Ohio Innovation*, *supra* note 15, at 564; Watts, *Comments on a Video Tape Trial*, 45 OHIO B.J. 51, 52 (1972) [hereinafter cited as *Comments on a Video Tape Trial*]; *Video-Tape Trials: A Practical*

trial testimony before the trial begins.²⁷

The third subpart treated five changes that the videotape format may make in the current method of presenting evidence to the jury. They were: (1) the judge²⁸ and (2) the attorneys and parties²⁹ are not present in the courtroom while testimony is viewed by the jury, (3) the trial is uninterrupted by objections, bench conferences, client conferences, and conferences in chambers,³⁰ (4) the jury does not see off-the-stand demeanor and interplay between attorneys and clients or the reactions of the judge during the showing of testimony,³¹ and (5) the jurors do not hear inadmissible evidence or objectionable questions.³²

The fourth subpart was concerned with ways in which the intervention of videotape between the witnesses and the jury may affect the jurors' perceptions.³³ Recent research reported in the symposium has concentrated on five possible distortions in juror perceptions, each of which was included in the survey for evaluation by the respondents. In a videotape trial, as opposed to a live trial, jurors may: (1) retain more information,³⁴ (2) be more emotionally involved,³⁵ (3) enjoy the experience less,³⁶ (4) grant a larger cash award in an action for damages,³⁷ or (5) perceive differently such

Evaluation, *supra* note 7, at 645.

²⁷Discussed in, e.g., *Ohio Innovation*, *supra* note 15, at 564; *Video Tape Trials*, *supra* note 12, at 640; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 635.

²⁸Discussed in, e.g., *Bermant Juror Studies*, *supra* note 2, at 986; *Ohio Innovation*, *supra* note 15, at 564.

²⁹Suggested in, e.g., *Bermant Juror Studies*, *supra* note 2, at 986; Kornblum, *Videotape in Civil Cases*, 24 *HASTINGS L.J.* 9, 14 (1972); *Ohio Innovation*, *supra* note 15, at 564.

³⁰Suggested in, e.g., *Ohio Innovation*, *supra* note 15, at 563.

³¹Discussed in, e.g., *Bermant & Jacobovitch, Fish Out of Water: A Brief Overview of Social and Psychological Concerns About Videotaped Trials*, 26 *HASTINGS L.J.* 999, 1008 (1975) [hereinafter cited as *Fish Out of Water*]; Doret, *supra* note 7, at 244 n.70; *Ohio Innovation*, *supra* note 15, at 564; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 634.

³²Discussed in, e.g., *Comments on a Video Tape Trial*, *supra* note 26, at 51-52; *Fish Out of Water*, *supra* note 31, at 1008; Morrill, *supra* note 14, at 240-41; *Videotape Trials: Implications*, *supra* note 7, at 370.

³³As declared by Bermant:

The second level of potential nonsubstitutability resides in the inevitable editorial process involved in translating from one medium to another, particularly when a change of scope is unavoidable. The producers of PRVTT are faced with difficulty in this regard. Because the camera becomes the juror's eye on the participants, it locks the juror's perspective in important ways: the jurors are no longer free to look around the setting of the trial and determine their own priorities for assessing what is relevant and what is not.

Fish Out of Water, *supra* note 31, at 1001.

³⁴Discussed in, e.g., *Bermant Juror Studies*, *supra* note 2, at 991; Doret, *supra* note 7, at 248; *Video-Tape Trials: A Practical Evaluation*, *supra* note 7, at 635; *Videotape Trials: Implications*, *supra* note 7, at 388.

³⁵Discussed in, e.g., *Bermant Juror Studies*, *supra* note 2, at 991; Doret, *supra* note 7, at 248.

³⁶Suggested in, e.g., *Ohio's First Video Tape Trial*, *supra* note 25, at 3.

³⁷For discussions of whether using videotape to present testimony may be "outcome determinative" in some cases see *Bermant Juror Studies*, *supra* note 2, at 994; *Videotape*

character traits as honesty, friendliness, nervousness, objectivity, and appearance.³⁸

The final subpart of Part One recognized that "[t]here is a distinction between the immediate response of a participant to a process and the long-term implications of that participation for later behavior."³⁹ It has been suggested that videotaping trials may: (1) inhibit the use of the trial as a forum for ideological debate,⁴⁰ (2) inhibit commercial media coverage of trials,⁴¹ (3) reduce the community's sense of involvement in trials of public interest or in the judicial process as a whole,⁴² or (4) reduce the public's sense that the jury trial is a legitimate means of conflict resolution.⁴³ Each of these possible effects was included in this subpart.

Part Two of the questionnaire asked the respondents to choose the three most desirable and three least desirable of the 28 possible changes previously rated within the five subparts of Part One.

Part Three presented general demographic questions to the respondents such as age, years of practice, and years on the bench, and questions concerning the respondents' experience and degree of satisfaction with the various uses of videotape in trials.

D. Data Collection and Reduction

On March 21, 1975, the questionnaires were mailed to the 2230 members of the three samples. One week later, postcards were sent to thank those who had already responded and to encourage others to do so. April 17 was the final cutoff for responses,⁴⁴ after which the returned questionnaires were coded and key punched. Computer analysis of the data was provided by the Statistical Package for Social Sciences (SPSS), a computer language specifically designed for studies such as this.⁴⁵

Trials: Implications, *supra* note 7, at 390; Bermant Unpublished Manuscript, *supra* note 14, at 15.

³⁸Discussed in, e.g., Barber & Bates, *supra* note 7, at 1041; Doret, *supra* note 7, at 241-44; *Fish Out of Water*, *supra* note 31, at 1001-04; Murray, *Comments on a Video Tape Trial*, 45 OHIO B.J. 25, 26 (1972); *Videotape Trials: Implications*, *supra* note 7, at 381.

³⁹*Fish Out of Water*, *supra* note 31, at 1009.

⁴⁰Discussed in, e.g., Doret, *supra* note 7, at 257; Morrill, *supra* note 14, at 245; *Videotape Trials: Implications*, *supra* note 7, at 374.

⁴¹Suggested by discussion in *Videotape Trials: Implications*, *supra* note 7, at 384-85.

⁴²Discussed in, e.g., Doret, *supra* note 7, at 257-58; *Videotape Trials: Implications*, *supra* note 7, at 384-85.

⁴³Discussed in, e.g., Bermant *Juror Studies*, *supra* note 2, at 992-93; Doret, *supra* note 7, at 255-56; *Fish Out of Water*, *supra* note 31, at 1004-05.

⁴⁴One hundred and six federal judges, 191 members of the DRI, and 201 members of the ATLA responded to the questionnaire.

⁴⁵The authors wish to thank the Brigham Young University Survey Research Center and Bruce T. Reese for their assistance and inexhaustible patience with the authors.

E. Follow-up of Nonrespondents

Whenever a mail survey is conducted, a question exists whether those who responded are representative of the total survey population. In order to answer this question, a follow-up survey was conducted by telephoning nonrespondents and asking selected questions for comparative purposes. A comparison of the responses of those who returned the questionnaire with the responses of attorneys and judges who were sampled by telephone indicated no statistically significant differences. This similarity suggests that the responses received by mail were representative of the total population.

II. RESULTS

A. General Information Concerning the Populations Surveyed

Data received from the demographic section of the survey confirmed intuitive notions as to the characteristics of the three populations sampled. As expected, the federal judges are considerably older than the attorneys.⁴⁶ In addition, members of the DRI are on the average 8 years older and have been practicing 8 years longer than members of the ATLA.⁴⁷ Members of the DRI spend a larger portion of their time in trial work than attorneys in the ATLA, but the memberships of both associations spend the majority of their time in such work.⁴⁸ Both attorney groups are engaged primarily in civil litigation.⁴⁹ The federal judges have, on the average, 10 years of experience on the bench, and almost half (45 percent) of their cases are tried to a jury.

Thus, this survey elicited the attitudes of representative members of the bench and bar who are heavily experienced in the trial of civil

⁴⁶The average age of the judges was 59; the average age of the attorneys was 45.

⁴⁷

	DRI	ATLA
Average age	49	41
Average years practice	22	14

The extent of these differences is more apparent from the fact that only 1 of every 50 judges and only 1 of 5 members of the DRI was less than 41 years of age, while more than half of the ATLA fit in that age group. A frequency distribution of ages for the three subgroups is set out below.

Age	Survey subgroups		
	Judges	DRI	ATLA
25-30	0%	3%	21%
31-40	2	17	31
41-50	14	39	26
51-60	47	29	14
61 and over	37	12	8
	100%	100%	100%

⁴⁸The DRI attorneys who responded to this survey spent an average of 69 percent of their time in trial work. The ATLA attorneys spent 55 percent of their work time in trial work.

cases before juries—an excellent group to evaluate the strengths and weaknesses of the videotape trial.

B. The Legal Community's Ratings of Possible Changes in the Trial Process

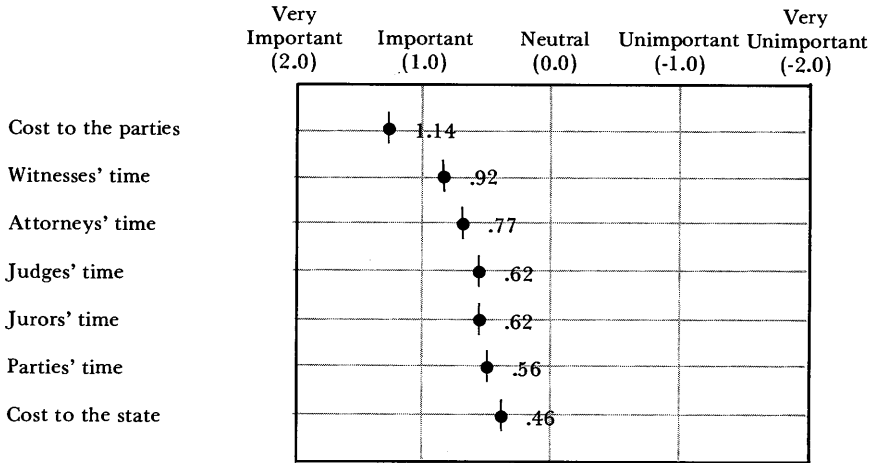
1. Rating possible savings in the time and cost of litigation

Survey participants were asked to respond to the following question:

Proponents of videotape trials feel that they may result in significant savings in time and cost over live trials. Assuming such savings are possible, it is likely that some time/cost savings are more important than others. Please indicate . . . the degree of importance you attach to each possible time/cost saving listed

a. Composite group results. (The composite group includes both judge and attorney respondents.) Figure 1 shows the mean importance ratings of economic variables by the composite group.

FIGURE 1.—Mean ratings by the composite group of possible time and cost savings⁵⁰



49

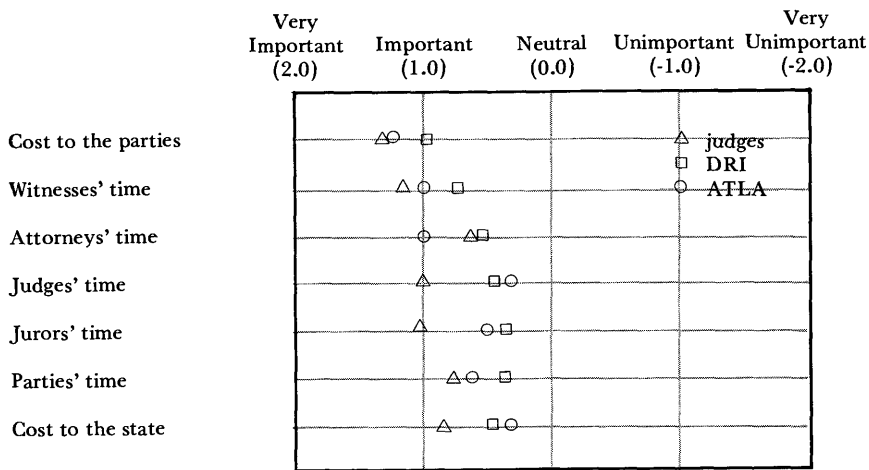
Percent of trial work that is civil litigation	Percent of subgroup	
	DRI	ATLA
0-25%	7%	22%
26-50%	3	18
51-75%	5	10
76-100%	85	50
	100%	100%

An even stronger indication of the heavy involvement of these attorney groups in civil litigation is found in the minimal amount of criminal work they do. For example, 92 percent of the DRI spend less than 11 percent of their trial practice in criminal litigation. The ATLA is only marginally more involved in the criminal arena.

While all possible time and cost savings received a positive rating, the possibility of cost savings to the parties was rated most important. Savings of witness and attorney time, components of cost to the parties, followed closely in importance. The possibility of cost savings to the state was found to be the least important of all potential time/cost savings. This may be due to a belief among the legal community that too little of society's resources are allocated for the administration of justice.⁵¹ Possible savings of judge and juror time import not only cost savings to the state but also relief for congested court dockets. This may explain why these two economic factors were rated slightly more important than cost savings to the state.

b. Subgroup results. Figure 2 shows the mean importance ratings of the economic variables by the federal judiciary, the DRI, and the ATLA.

FIGURE 2.—Mean ratings by the three subgroups of possible time and cost savings⁵²



⁵⁰Adjusted frequencies (percent) for the composite group:

	Very Important	Important	Neutral	Unimportant	Very Unimportant	Total Percentage	Mean	Standard Error	Number of Responses
Cost to the parties	43	39	10	4	3	100*	1.142	.046	472
Witnesses' time	30	45	15	6	3	100	.915	.046	470
Attorneys' time	28	40	19	10	4	100	.773	.049	472
Judges' time	21	39	25	12	3	100	.624	.049	465
Jurors' time	22	40	23	12	5	100	.620	.050	466
Parties' time	20	40	22	14	5	100	.564	.050	466
Cost to the state	14	44	25	9	8	100	.464	.050	468

*Save for rounding procedures followed, all row percentages would add to 100.

⁵¹E.g., one respondent declared:

Much time and money is usually spent in efforts to streamline court procedures in the name of time and cost savings. If we would invest the time involved in

With respect to the relative importance of possible time and cost savings, the three subgroups demonstrated greater divergence in attitude than they demonstrated in rating any of the other sets of characteristics. However, the differences between the judges and the attorneys and between the DRI and the ATLA were only a matter of degree and not direction; all groups responded favorably to all time and cost savings.

Both attorney groups rated cost savings to the parties as the most important of all possible economic benefits. However, there was a slight but significant decline in concern over cost savings to the parties, as well as savings of witness and attorney time, on the part of the DRI when compared with the ATLA. This may result from the fact that DRI attorneys generally represent institutional clients with substantial legal budgets.

The judges also rated cost savings to the parties as the most important economic saving, rating it as high as the ATLA. This may be due to a belief among the judiciary that the cost of legal services is too high. Further, the judges rated savings of attorney time as the least important economic variable. As a result of the rapid influx of new law graduates into the legal profession, judges may consider attorney time the system's most abundant resource and thus less in need of conservation. As was to be expected, the judges rated cost savings to the state and its components (judge time and juror time) as more important than did the attorneys.

c. Conclusions. Notwithstanding the judicial efficiencies that may result from the use of the videotape trial (such as savings in cost to the state, judge time, and juror time), the legal community will not support its use if such use results in higher cost to the parties.

2. Rating changes in the current procedure for examining witnesses

The second question asked of those participating in the survey was as follows:

experimental procedures and spend the money to secure additional judges to take care of the increased legal demands of an increased population, we would far better serve the individual citizen. That seems to be the last approach to the problem, however, and experimentation continues, too often to the disadvantage of our citizens.

⁵²Comparison between subgroups' mean ratings of possible time and cost savings:

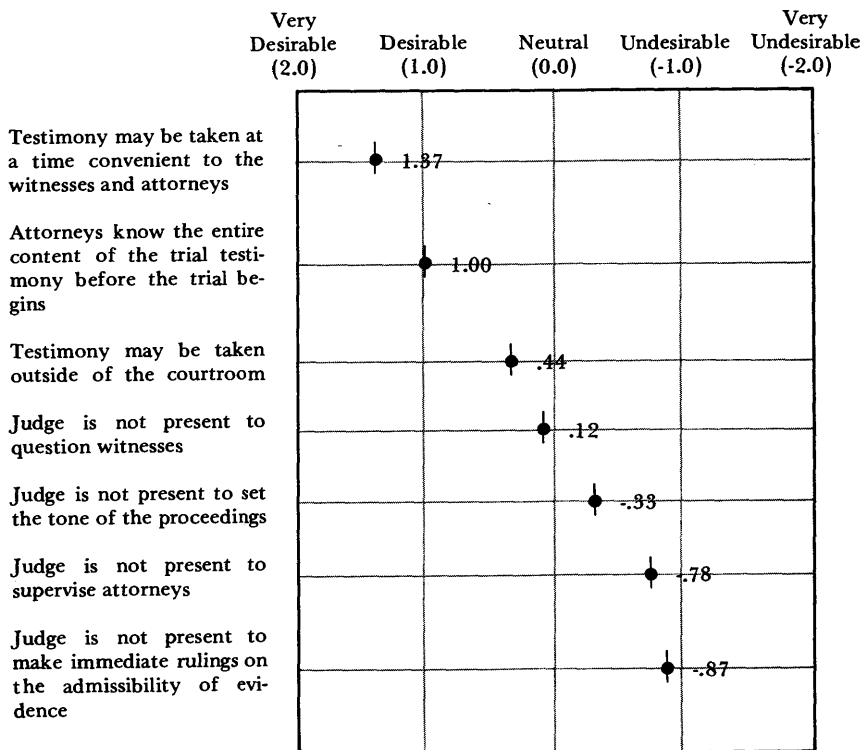
Subgroup Means					
Judges		Attorneys		DRI	ATLA
1.22		1.12	Cost to the parties	1.00	* 1.24
1.11	*	.87	Witnesses' time	.74	* .99
.63		.81	Attorneys' time	.61	* .99
1.02	*	.52	Judges' time	.41	.27
1.01	*	.52	Jurors' time	.47	.57
.75	*	.52	Parties' time	.37	* .66
.83	*	.37	Cost to the state	.43	.32

*Difference between means is significant at the .05 level.

The taking of testimony to be presented in a videotape trial differs substantially from the presentation of testimony in a live trial. Below are listed seven characteristics of the witness-examination process utilized in videotape trials. Please indicate your judgment of the extent to which each characteristic is desirable or undesirable.

a. *Composite group results.* Figure 3 shows the mean desirability ratings by the composite group of changes in the present method of examining witnesses.

FIGURE 3.—Mean ratings by the composite group of changes in the current procedure for examining witnesses⁵³



Those surveyed demonstrated a strong divergence in reaction to the changes presented for evaluation. Considered as the most desirable change from the live trial procedure was that testimony may be taken at a time convenient to the witnesses and attorneys. The fact that a PRVTT trial permits the attorney to know the entire content of testimony before the trial begins also received a relatively high rating of desirability. In spite of the high marks accorded these factors, two alterations in the functions of the judge when testimony is taken were rated as undesirable: (1) the absence of the judge which precludes prompt rulings on the admissibility of evidence, and

(2) the absence of judicial supervision of attorneys. The composite group had no strong reaction concerning the other three changes in the witness-examination process.

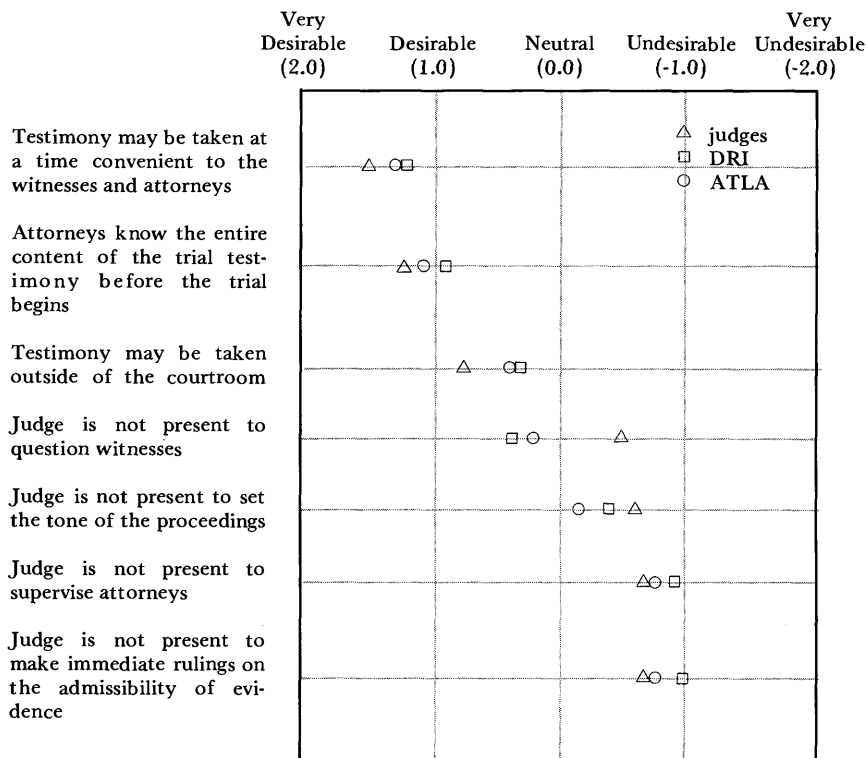
b. Subgroup results. Shown in Figure 4 are the mean desirability ratings by the judges, the DRI, and the ATLA of videotape's modifications in the live trial method of taking testimony.

⁵³Adjusted frequencies (percent) for the composite group:

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable	Total Percentage	Mean	Standard Error	Number of Responses
Testimony may be taken at a time convenient to the witnesses and attorneys	50	38	10	1	1	100*	1.368	.035	470
Attorneys know the entire content of the trial testimony before the trial begins	37	37	18	6	3	100	.996	.047	471
Testimony may be taken outside of the courtroom	22	28	29	15	6	100	.440	.054	466
Judge is not present to question witnesses	12	20	43	19	7	100	.124	.049	468
Judge is not present to set the tone of the proceedings	7	11	36	33	13	100	-.334	.050	461
Judge is not present to supervise attorneys	3	7	23	41	26	100	-.781	.047	474
Judge is not present to make immediate rulings on the admissibility of evidence	4	7	18	41	31	100	-.867	.049	473

*Save for rounding procedures, all row percentages would add to 100.

FIGURE 4.—Mean ratings by the three subgroups of changes in the current procedure for examining witnesses⁵⁴



The attorney groups exhibited no significant difference in attitude toward the changes presented in this subpart except in their evaluation of the undesirability of the judge not being present to set the tone of the proceedings. The ATLA's response approached neutrality on this issue, while the DRI was significantly more negative.

Four of the changes in the witness-examination process investigated in this subpart relate directly to the absence of the judge at the videotaping. The federal judiciary rated all four of these changes undesirable, and on two of the changes they were significantly more negative than the attorneys. First, with respect to the judge not being present to question witnesses, the attorneys found this change to be slightly desirable, while the judges' reaction was strongly to the contrary. Second, with respect to the judge not being present to set the tone of the proceedings, the judges found their absence to be significantly more undesirable than did the attorneys.⁵⁵

c. Conclusions. Videotape has been heralded by its proponents as a panacea for court congestion. This boon of less congested courts is to be secured in large part by minimizing the judge's involvement in various stages of the litigation process, notably when testimony is being videotaped, thus permitting the judge to handle a larger case load. However, both judges and attorneys indicated concern about

the effects of the judge's absence, particularly with respect to the judge functions of supervising attorneys and ruling on evidentiary questions. Clearly these effects, viewed as derogatory by the legal community, require greater study and adequate answers before the PRVTT trial will be widely accepted.

3. Rating changes in the current method of presenting evidence to the jury

Those returning the survey responded to the following:

Certain characteristics of videotape trial procedure differ substantially from those of a live trial. Listed below are five characteristics of the procedure in a videotape trial which may affect the jurors' decision. Please indicate your judgment of the extent to which each is desirable or undesirable.

a. *Composite group results.* The mean desirability ratings by the composite group regarding changes in the current method of presenting evidence to the jury is set forth in Figure 5 below.

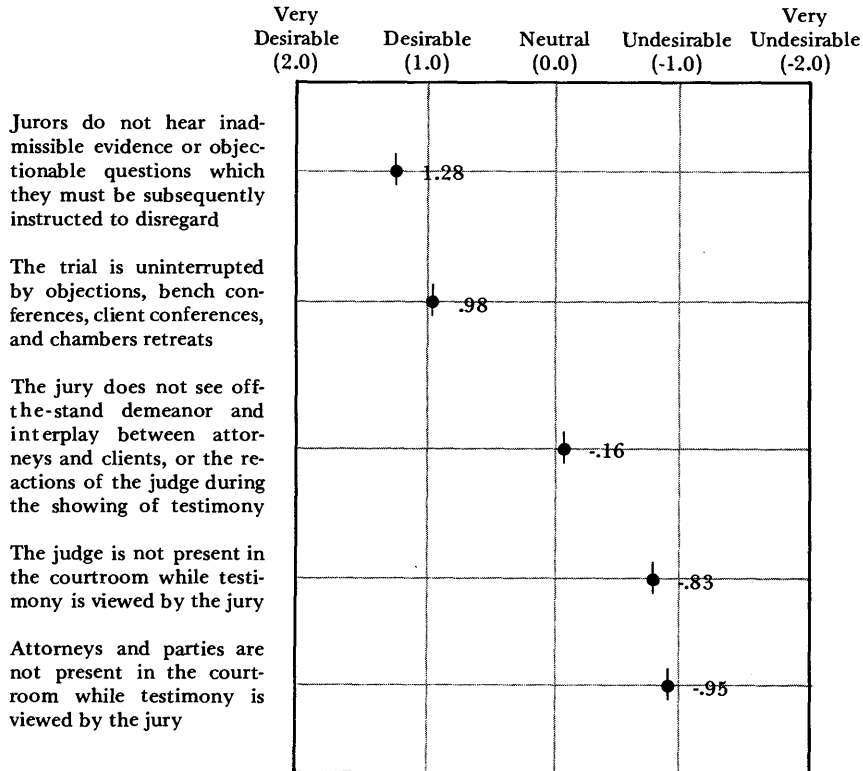
⁵⁴Comparison between subgroups' mean ratings of changes in the current procedure for examining witnesses:

		Subgroup Means		
Judges		Attorneys		
			DRI	ATLA
1.49	*	1.34		
			1.28	1.38
1.21	*	.94		
			.84	1.04
.59		.40		
			.38	.42
-.46	*	.27		
			.33	.21
-.54	*	-.28		
			-.40	* -.17
-.68		-.80		
			-.86	-.75
-.75		-.90		
			-.99	-.81

*Difference between means is significant at the .05 level.

⁵⁵As to the other two judge-related changes (the judge is not present to rule on admissibility of evidence, or to supervise the attorneys) the bar tended to be more concerned than the judiciary, although not significantly so.

FIGURE 5.—Mean ratings by the composite group of changes in the current method of presenting evidence to the jury⁵⁶



Regarding the five differences presented in this subpart, the legal community responded most favorably to the fact that in a PRVTT trial the jurors do not hear inadmissible evidence or objectionable questions which they must subsequently be instructed to disregard. Also, rated as a desirable change by the composite group was the fact that a PRVTT trial is uninterrupted by objections, bench conferences, client conferences, and conferences in chambers. However, the composite group rated as undesirable the fact that the judge, as well as the attorneys and parties, need not be present in the courtroom while the videotape is being viewed by the jury.

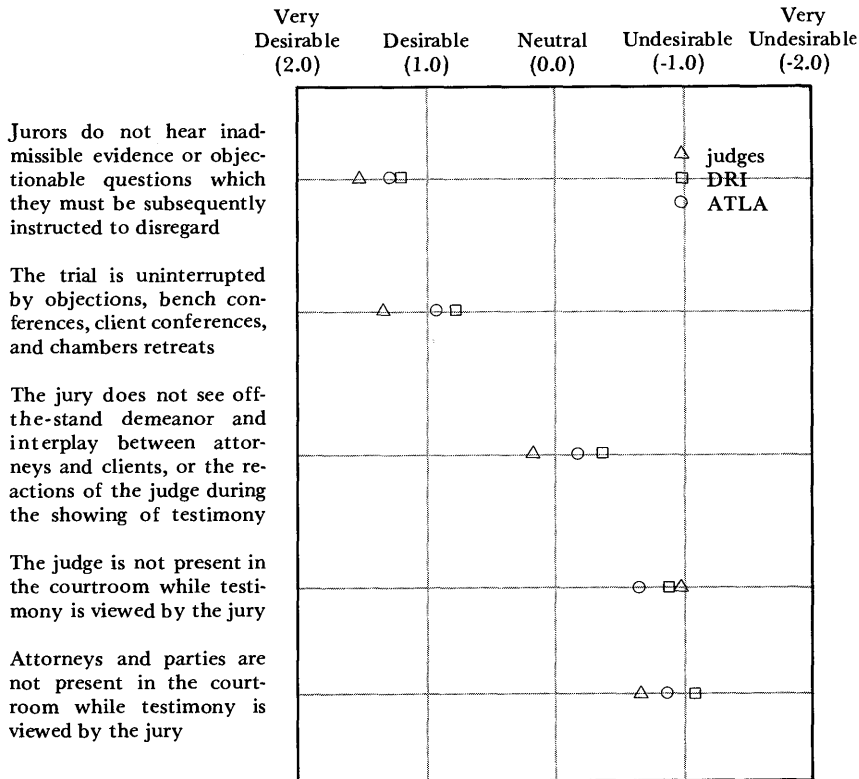
b. Subgroup results. Figure 6 presents the mean desirability ratings by the federal judiciary, the DRI, and the ATLA of videotape's changes in the current method of presenting evidence.

⁵⁶Adjusted frequencies (percent) for the composite group:

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable	Total Percentage	Mean	Standard Error	Number of Responses
Jurors do not hear inadmissible evidence or objectionable questions which they must be subsequently instructed to disregard	45	44	8	2	1	100*	1.281	.037	473
The trial is uninterrupted by objections, bench conferences, client conferences, and chambers retreats	30	47	15	5	2	100	.975	.043	472
The jury does not see off-the-stand demeanor and interplay between attorneys and clients, or the reactions of the judge during the showing of testimony	10	25	20	29	16	100	-.163	.057	473
The judge is not present in the courtroom while testimony is viewed by the jury	2	4	28	39	26	100	-.830	.043	471
Attorneys and parties are not present in the courtroom while testimony is viewed by the jury	2	5	17	45	30	100	-.953	.044	470

*Save for rounding procedures, all row percentages would add to 100.

FIGURE 6.—Mean ratings by the three subgroups of changes in the current method of presenting evidence to the jury⁵⁷



Two results suggest that judges are more concerned than attorneys with the type of information the jury receives. First, the judges rated as more desirable the fact that the jury in a PRVTT trial is not exposed to inadmissible evidence or objectionable questions. Second, the judges found the fact that jurors do not see off-the-stand demeanor and interplay between attorneys and clients or the reactions of the judge during the showing of testimony to be somewhat desirable, whereas the attorneys rated this factor as being slightly undesirable. The judges also found more appealing the concept of an uninterrupted trial.

The two attorney groups differed in their responses to these variables in only one instance. The ATLA seemed less concerned than the DRI that the judge would not be present during the playing of testimony for the jury.

c. *Conclusions.* Five characteristics of the PRVTT trial, all proclaimed by videotape proponents to be advantages, were presented to the legal community for consideration in this subpart. Judges and attorneys found only two of these characteristics desirable. The negative evaluations of the remaining three indicate the problem facing videotape proponents—either the arguments as to why these charac-

teristics are advantages have not been made to the legal community, or those arguments are not persuasive.

4. *Rating the possible impact of videotape on juror perceptions*

Those receiving the survey were asked the following:

What a juror perceives in a videotape presentation of testimony may differ from what he would perceive if the testimony had been presented live. These potential differences may subsequently affect the juror's decision in the case. Please indicate your judgment of the extent to which these potential differences are desirable or undesirable.

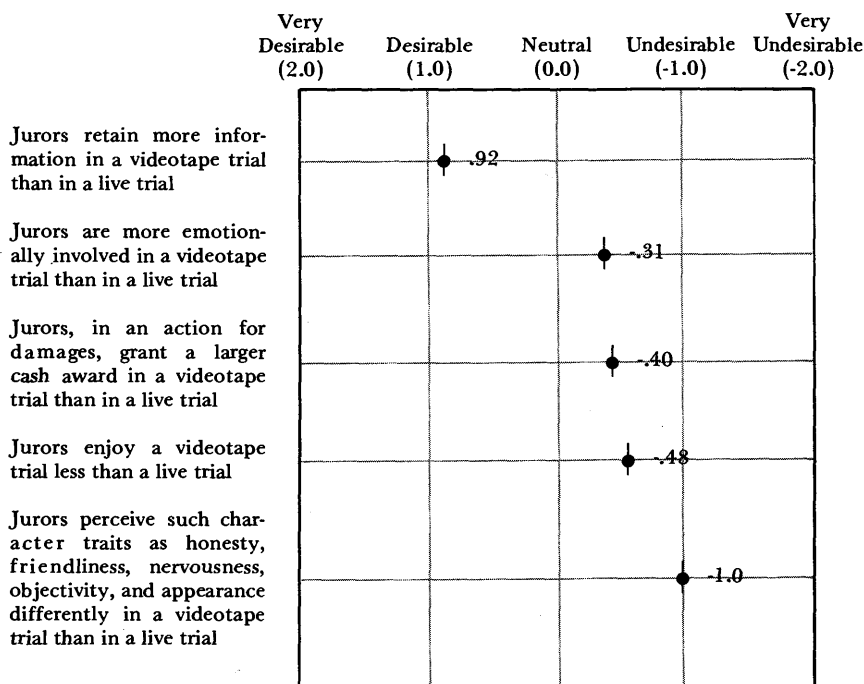
a. *Composite group results.* Mean desirability ratings by the composite group of the perception variables are set out in Figure 7 below.

⁵⁷Comparison between subgroups' mean ratings of changes in the current method of presenting evidence to the jury:

		Subgroup Means			
Judges	Attorneys		DRI	ATLA	
1.47	*	1.23	Jurors do not hear inadmissible evidence or objectionable questions which they must be subsequently instructed to disregard	1.20	1.27
1.36	*	.88	The trial is uninterrupted by objections, bench conferences, client conferences, and chambers retreats	.81	.94
.08	*	-.22	The jury does not see off-the-stand demeanor and interplay between attorneys and clients, or the reactions of the judge during the showing of testimony	-.29	-.16
-.98		-.79	The judge is not present in the courtroom while testimony is viewed by the jury	-.95	* -.65
-.80		-.99	Attorneys and parties are not present in the courtroom while testimony is viewed by the jury	-1.05	-.93

*Differences between means is significant at the .05 level.

FIGURE 7.—Mean ratings by the composite group of changes in juror perceptions⁵⁸



Of the potential differences in juror perceptions presented in this portion of the survey, only one—that jurors may retain more information in a videotape trial than in a live trial—was seen as desirable by judges and attorneys. While each of the remaining four differences was rated as undesirable, the magnitude of undesirability was much greater for the possible distortion of jurors' perceptions of character traits. A possible explanation of the directional difference between the rating of increased information retention and the ratings of the remaining factors in this subpart develops as follows. The survey respondents may believe that greater information retention by the jurors increases the jury's capacity to arbitrate questions of fact. At the same time, attorneys and judges may view other effects of the videotape trial on the jurors—greater emotional involvement, lesser enjoyment of the trial experience, and different perceptions as to character traits of the trial participants—as diminishing the jury's capacity to perform its fact-finding function. These effects may lead to distorted outcomes. The final factor presented for consideration in this subpart, that jurors may grant larger cash awards in videotape trials, is an example of such an outcome. The reaction of the composite group to this factor demonstrates a basic dislike for such distortion when it is viewed independent of a particular cause.

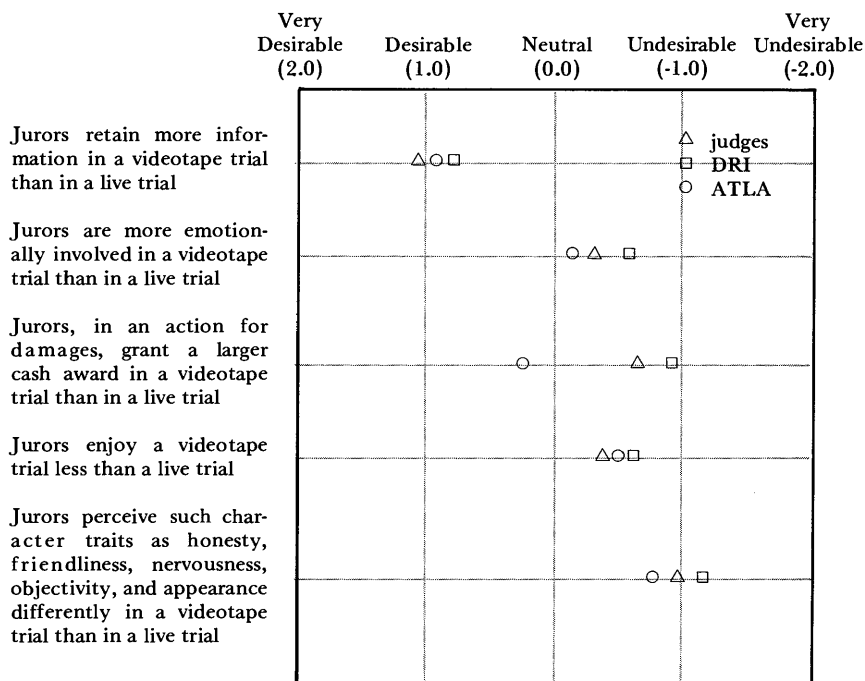
b. Subgroup results. Figure 8 shows the mean desirability ratings by the federal judiciary, the DRI, and the ATLA of videotape's effect on juror perceptions.

⁵⁸Adjusted frequencies (percent) for the composite group:

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable	Total Percentage	Mean	Standard Error	Number of Responses
Jurors retain more information in a videotape trial than in a live trial	28	46	20	4	3	100*	.924	.044	448
Jurors are more emotionally involved in a videotape trial than in a live trial	4	15	37	32	11	100	-.312	.048	439
Jurors, in an action for damages, grant a larger cash award in a videotape trial than in a live trial	8	8	40	27	18	100	-.400	.052	442
Jurors enjoy a videotape trial less than a live trial	2	7	40	39	11	100	-.495	.041	455
Jurors perceive such character traits as honesty, friendliness, nervousness, objectivity, and appearance differently in a videotape trial than in a live trial	5	5	13	41	36	100	-.996	.049	458

*Save for rounding procedures, all row percentages would add to 100.

FIGURE 8.—Mean ratings by the three subgroups of changes in juror perceptions⁵⁹



Judge versus attorney responses did not vary significantly for four of the five potential differences presented. There was, however, a

⁵⁹Comparison between subgroups' mean ratings of changes in juror perceptions:

		Subgroup Means		
Judges	Attorneys		DRI	ATLA
1.03	.90	Jurors retain more information in a videotape trial than in a live trial	.86	.93
-.26	-.32	Jurors are more emotionally involved in a videotape trial than in a live trial	-.54	* -.12
-.70	* -.33	Jurors, in an action for damages, grant a larger cash award in a videotape trial than in a live trial	-.94	* .25
-.42	-.51	Jurors enjoy a videotape trial less than a live trial	-.55	-.48
-.97	-1.00	Jurors perceive such character traits as honesty, friendliness, nervousness, objectivity, and appearance differently in a videotape trial than in a live trial	-1.20	* -.81

*Difference between means is significant at the .05 level.

significant divergence in attorney attitudes toward larger cash awards. The ATLA rated this possible characteristic of videotape as slightly desirable, while the DRI and judges rated it as undesirable. Clearly, litigative point of view was determinative of this divergence of opinion. This same explanation probably underlies the difference in attorney ratings of the characteristic of higher emotional involvement.

c. Conclusions. The studies included in this symposium either explicitly or inferentially identify the five effects presented for evaluation in this subpart. Many respondents strongly disagreed, in letters accompanying the completed questionnaire, that videotape produced such effects on juror perceptions. Typical of such responses were the remarks of one anonymous respondent:

It seems to me that presentation of testimony by videotape in a trial of any substantial length might well result in a shorter jury attention span. The lack of change in the method of presentation of testimony, the two-dimensional form of videotape playback, and the lack of spontaneity may well bore the jury. They would therefore retain less information, not more, and would tend to react less emotionally than to live testimony.

The frequency and intensity of these comments contain an important lesson for videotape proponents. Any conclusions as to the non-deleterious effects of videotape on juror perceptions will have to be thoroughly supported if converts are to be won, for those conclusions will be received in many quarters skeptically and subjected to rigorous debate. Furthermore, if the possible differences in juror perceptions set out in this subpart are finally proved to be the actual effects of videotape, the results of the survey suggest that the videotape trial is at present unpalatable to the legal community.

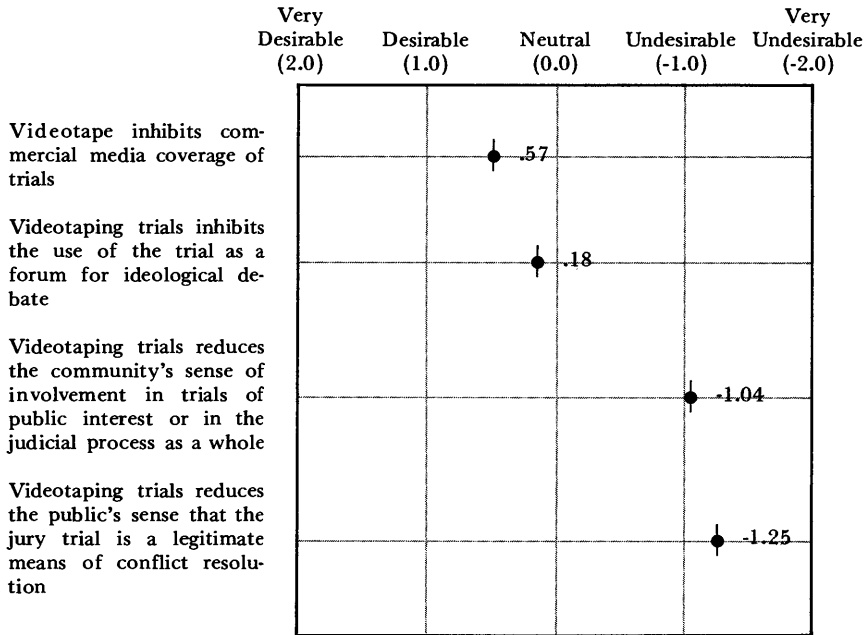
5. Rating possible effects on the community

The following is the fifth and final rating requested of those receiving the survey:

A change to the use of videotape in the trial process may affect not only the actual participants in that process but also the attitude of the community as a whole. Please indicate your judgment of the extent to which each potential influence listed below is desirable or undesirable.

a. Composite group results. Figure 9 shows the mean desirability ratings by the composite group of possible effects of videotape on the community.

FIGURE 9.—Mean ratings by the composite group of possible effects of videotape on the community⁶⁰



The legal community demonstrated considerable divergence concerning the variables presented for evaluation in this subpart. On the

⁶⁰Adjusted frequencies (percent) for the composite group:

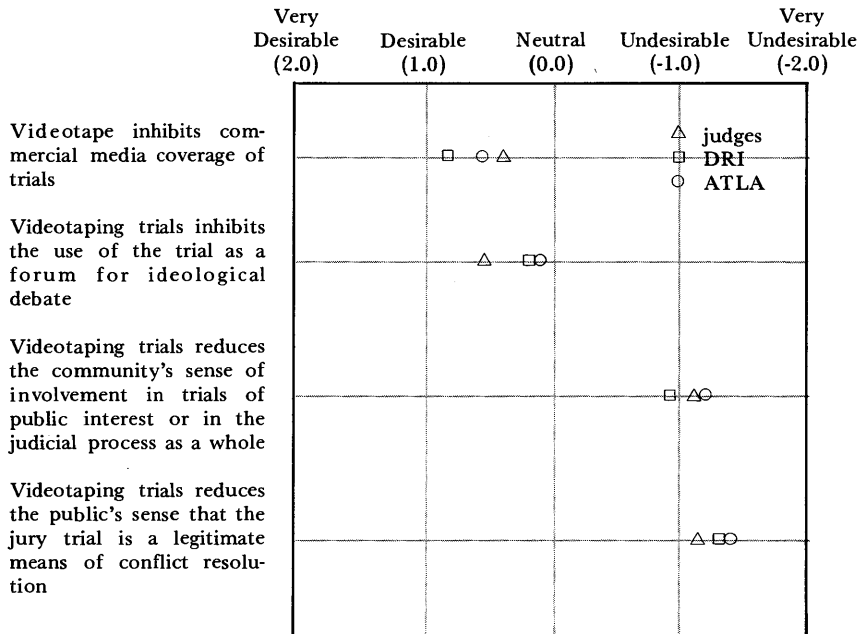
	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable	Total Percentage	Mean	Standard Error	Number of Responses
Videotape inhibits commercial media coverage of trials	24	30	32	11	3	100*	.591	.049	469
Videotaping trials inhibits the use of the trial as a forum for ideological debate	18	26	25	22	9	100	.203	.057	467
Videotaping trials reduces the community's sense of involvement in trials of public interest or in the judicial process as a whole	1	3	20	45	32	100	-1.043	.039	465
Videotaping trials reduces the public's sense that the jury trial is a legitimate means of conflict resolution	1	1	12	43	43	100	-1.253	.037	462

*Save for rounding procedures, all row percentages would add to 100.

positive side, judges and attorneys felt that inhibiting commercial coverage of trials would be moderately desirable. Inhibiting the use of trials as forums for ideological debate evoked only a neutral rating from the legal community. The most marked results of this subpart were the strong undesirable ratings given by the composite group to possible reductions in (1) the community's sense of involvement in trials of public interest or in the judicial process as a whole, and (2) the public's sense that the jury trial is a legitimate means of conflict resolution.

b. Subgroup results. Shown in Figure 10 are the mean desirability ratings by the judges, the DRI, and the ATLA of possible effects of videotape on the community.

FIGURE 10.—Mean ratings by the three subgroups of possible effects of videotape on the community⁶¹



There was striking agreement between judges and attorneys and between attorney groups with respect to the desirability of these possible effects of videotape. The only significant difference, perhaps due to the judges' day-to-day struggle to focus the jurors' attention on the merits, was that the judges viewed a limitation of ideological debate in the courtroom as more desirable than did the attorneys.

c. Conclusions. A ready inference from these results is that the legal community strongly believes that the public's sense of involvement in the judicial process must not be diminished. Further, and more importantly, judges and attorneys think it vital that the public not lose faith in the jury trial as a valid means of conflict resolution. It may well be that these two issues are the most important of all considerations to be weighed in the balance when deciding whether

videotape should be adopted. Yet, to date, the possible long-term effects of the videotape trial on the community have received no attention beyond several short articles that advance plausible explanations why videotape may have the effects postulated in the questionnaire. Hence, the long-term effects of videotape on the community remain unexplored. All that can be said at present is that the cursory treatment accorded these issues in the past will require considerable augmentation by both legal and social science researchers before the videotape trial will become anything more than an experiment.

C. The Legal Community's Ranking of Possible Changes in the Trial Process

The ranking question was designed to cut across the divisional lines of the five rating subparts of Part One and to measure the relative desirability of all 28 postulated characteristics of a PRVTT trial. To accomplish this end, those receiving the survey were asked to respond to the following question:

Below are listed all the potential characteristics of a videotape trial presented in the five subparts of Part I. Please indicate by circling the corresponding number, which three characteristics of a videotape trial are the most advantageous. Please indicate, by drawing a line through the corresponding number, which three are the most disadvantageous characteristics of a videotape trial.

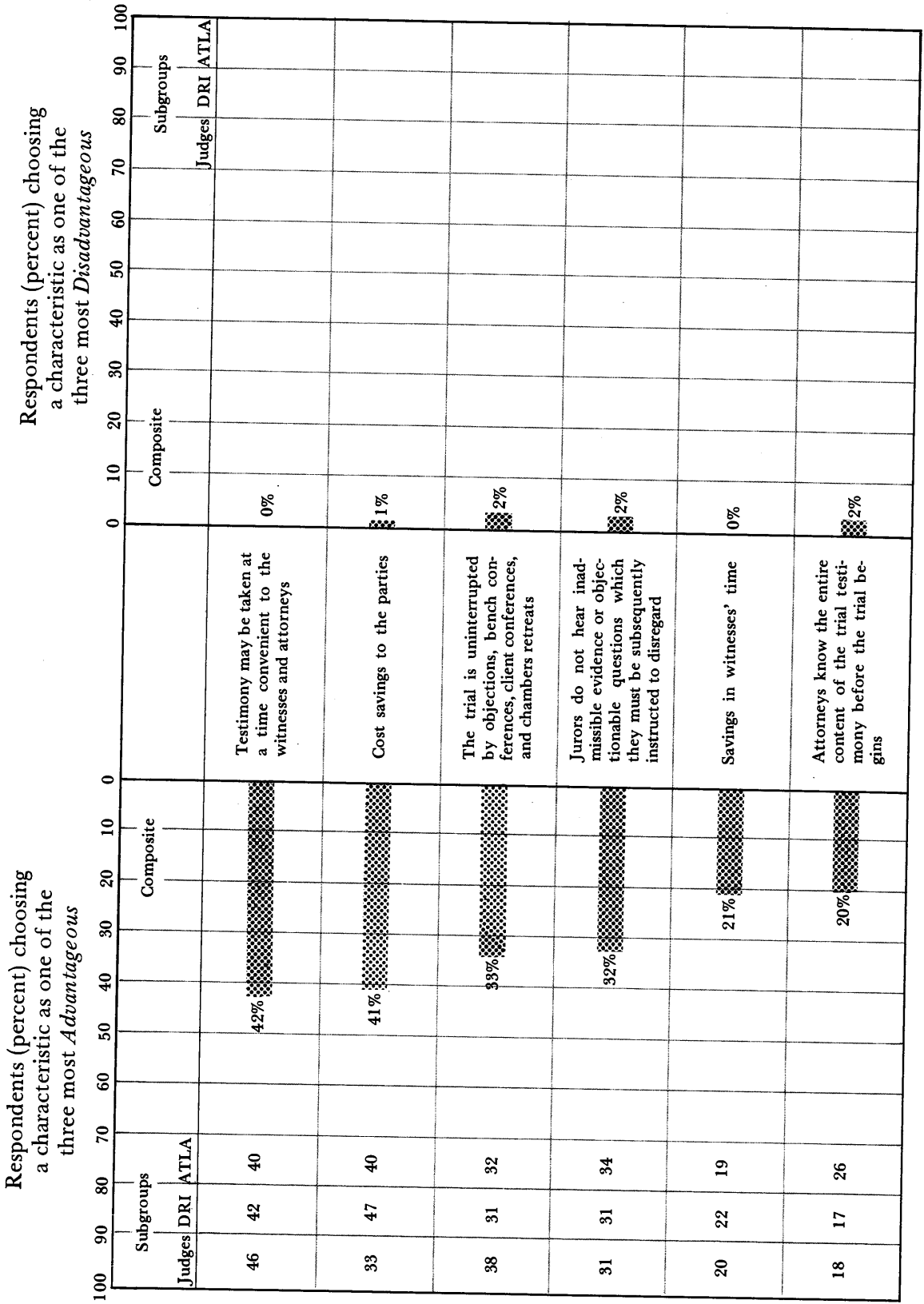
Figure 11 presents the ranking of the 28 characteristics by the legal community.

⁶¹Comparison between subgroups' mean ratings of possible effects of videotape on the community:

		Subgroup Means		
Judges	Attorneys		DRI	ATLA
.45	.63	Videotape inhibits commercial media coverage of trials	.72	.54
.55	* .12	Videotaping trials inhibits the use of the trial as a forum for ideological debate	.15	.09
-1.07	-1.04	Videotaping trials reduces the community's sense of involvement in trials of public interest or in the judicial process as a whole	-.98	-1.09
-1.16	-1.28	Videotaping trials reduces the public's sense that the jury trial is a legitimate means of conflict resolution	-1.26	-1.29

*Difference between means is significant at the 0.5 level.

FIGURE 11.—Ranking of 28 possible characteristics of a videotape trial



Respondents (percent) choosing a characteristic as one of the three most *Advantageous*














Respondents (percent) choosing a characteristic as one of the three most *Disadvantageous*

FIGURE 11.—Continued

Respondents (percent) choosing a characteristic as one of the three most *Advantageous*

Respondents (percent) choosing a characteristic as one of the three most *Disadvantageous*

Subgroups			Composite							Composite							Subgroups										
Judges	DRI	ATLA	100	90	80	70	60	50	40	30	20	10	0	0	10	20	30	40	50	60	70	80	90	100	Judges	DRI	ATLA
													2%	Videotaping trials inhibits the use of the trial as a forum for ideological debate	5%										1	2	8
													0%	Jurors enjoy a videotape trial less than a live trial	6%										3	5	8
													2%	Judge is not present to question witnesses	7%										15	3	7
													1%	Jurors are more emotionally involved in a videotape trial than in a live trial	10%										7	12	9
													1%	The judge is not present in the courtroom while testimony is viewed by the jury	12%										18	12	9
													2%	Jurors, in an action for damages, grant a larger cash award in a videotape trial than in a live trial	13%										14	24	2

									5%		The jury does not see off-the-stand demeanor and interplay between attorneys and clients, or the reactions of the judge during the showing of testimony		20%								11	23	21			
									4%		Judge is not present to set the tone of the proceedings		20%									30	22	13		
									0%		Judge is not present to supervise attorneys		21%									21	25	18		
									1%		Attorneys and parties are not present in the courtroom while testimony is viewed by the jury		24%									13	25	30		
									0%		Videotaping trials reduces the community's sense of involvement in trials of public interest or in the judicial process as a whole		29%									35	21	32		
									1%		Judge is not present to make immediate rulings on the admissibility of evidence		34%										28	35	35	
									0%		Videotaping trials reduces the public's sense that the jury trial is a legitimate means of conflict resolution		36%										40	27	43	
									1%		Jurors perceive such character traits as honesty, friendliness, nervousness, objectivity, and appearance differently in a videotape trial than in a live trial		50%											49	53	48

1. *Composite group results*

Two characteristics of PRVTT were chosen as one of the three most advantageous by over 40 percent of the respondents: (1) testimony may be taken at a time convenient to the witnesses and attorneys, and (2) PRVTT may result in cost savings to the parties. Following closely were two further characteristics: (1) the PRVTT trial is uninterrupted by objections, bench and client conferences, and conferences in chambers, and (2) jurors do not hear inadmissible evidence or objectionable questions.

By far the strongest reaction to videotape, positive or negative, was manifested in the negative ranking given videotape's possible distortion of character traits. One-half of all respondents saw this characteristic as one of the three most undesirable possible effects of the videotape trial. Strong negative responses were also drawn by the following potential changes:

1. A reduction in the public's sense that the jury trial is a legitimate means of conflict resolution;
2. The absence of the judge when testimony is taken which precludes immediate rulings on the admissibility of evidence;
3. A reduction of the community's sense of involvement in trials of public interest or in the judicial process as a whole; and
4. The absence of attorneys and parties from the courtroom while testimony is viewed by the jury.

Figure 11 signals another useful result. Approximately one-third of the postulated or established differences between a videotape and a live trial evoked no reaction, positive or negative, of any consequence. This feature of the data can be used effectively to conserve research monies by directing funding away from barren areas and into the exploration of questions that are of primary concern to judges and attorneys.

2. *Subgroup results*

There were no variations between the three populations sampled as to the desirability of the four videotape differences rated most desirable. As could be expected, judges identified savings in judges' time as much more desirable than did attorneys.

Although variations were minimal in the rankings of the videotape differences which were selected as most disadvantageous, three observations are warranted. First, when compared with attorneys, the judges found it more disadvantageous that the judge is not present to set the tone of the proceedings when testimony is taken. Second, judges were not nearly as concerned as attorneys that the parties and attorneys will not be present when the videotape is shown to the jury. Third, the DRI exhibited substantial displeasure with a much broader range of differences than the judges or the ATLA.

3. Conclusions

The legal community's ranking of changes in the live trial standard presents a roadmap for legal and social science researchers to follow in their investigation of the uses of videotape in the courtroom. Those characteristics that elicit strong response—whether positive or negative—from the legal community should be examined first. The research reported in this symposium did, in fact, examine a number of the issues deemed most important by judges and attorneys, including the potential distortion of juror perceptions of character traits and potential cost savings to the parties. But, obviously, some possible effects of videotape deemed crucial by the legal profession have not yet been examined. Since videotape researchers recognize that acceptance or rejection of the PRVTT trial lies primarily with the bench and bar, they would do well to direct their research toward those effects of videotape of most concern to the legal community.

D. Present Level of Contact and Satisfaction with Videotape

1. Current extent of use and observation

The legal community's contact with videotape was found to be much more extensive than anticipated. As shown in Figure 12 below,

FIGURE 12.—*Current level of exposure to videotape*

	Composite	Sample Populations Judges	DRI	ATLA
Percent of respondents who have used videotape	32%	35%	37%	26%
Percent of respondents who have only observed the use of videotape	<u>19</u>	<u>13</u>	<u>18</u>	<u>23</u>
Percent of respondents who have been exposed to videotape by use or observation	51%	48%	55%	49%

one out of every three judges and attorneys responding to the questionnaire have used videotape for some trial-related purpose. Of those who have not yet used videotape, one out of every five have observed its use. Thus, one-half of the legal community has been exposed by use or observation to at least one trial-related application of videotape.

This total exposure level was similar for all three subgroups, varying from 48 to 55 percent. However, there was a noticeable variation in the level of use between attorney groups. Thirty-seven percent of the DRI had used videotape, as opposed to 26 percent of the ATLA. Perhaps this is due to the fact that the members of the DRI generally represent institutional clients with substantial resources available at the outset of a legal controversy.

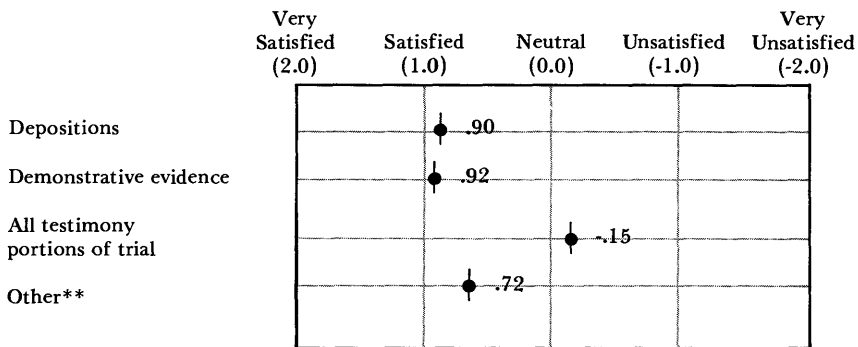
As demonstrated by the chart set forth in footnote 62, exposure to videotaped depositions exceeded exposure to videotaped demon-

strative evidence by a ratio of more than 2 to 1. Only 6 percent of the respondents had used or observed the use of videotape to present all testimony in a trial.

2. Current level of satisfaction with videotape

a. Composite group results. As shown in Figure 13, those respondents who had used or observed the use of videotape for depositions or demonstrative evidence were generally satisfied with that experience. But, those who had been exposed to a PRVTT trial were mildly unsatisfied with the experience.⁶³ However, this generalization is

FIGURE 13.—Mean satisfaction ratings by the composite group* of videotape uses⁶²



*Only those of the composite group who had been exposed to a particular use rated that use.

**Some of the other applications identified by the respondents were the videotaping of: (1) lineups; (2) entire trial to be used as the official transcript; (3) police interrogations; (4) bookings; (5) opening statements and closing arguments; and (6) inebrates to provide evidence for trial.

⁶²Adjusted frequencies (percent) for the composite group:

	Very Satisfied	Satisfied	Neutral	Unsatisfied	Very Unsatisfied	Total Percentage	Mean	Standard Error	Number of Responses
Depositions	32	45	8	10	5	100*	.897	.078	204
Demonstrative evidence	42	33	9	8	9	100	.924	.132	92
All testimony portions of trial	11	26	22	19	22	100	-.148	.260	27
Other	32	40	8	8	12	100	.720	.268	25

*Save for rounding procedures, all row percentages would add to 100.

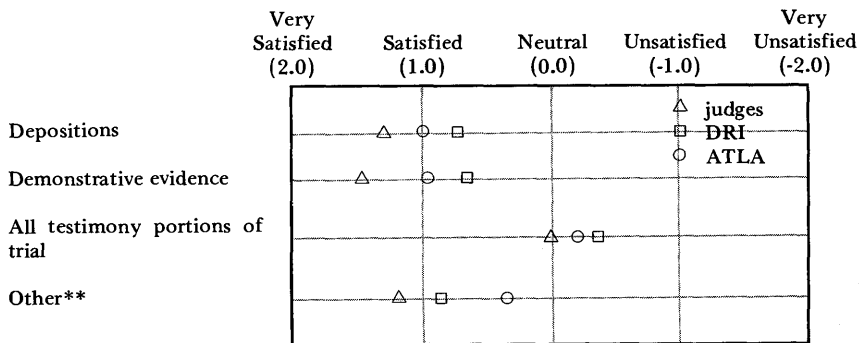
⁶³This dichotomy of satisfactions was also apparent in several letters received, of which the following is illustrative:

I might state that I am totally opposed except in rare occasions to the entire trial of a case by video deposition. I think it has a tendency to be as interesting as a "Grade B movie" and certainly many witness traits which I feel are very important

deceptive as their responses varied widely across the entire satisfaction spectrum.⁶⁴

b. Subgroup results. As can be seen in Figure 14, judges, the DRI, and the ATLA were neutral to slightly dissatisfied with attempts to present all testimony portions of a trial via videotape. This unanimity, however, did not hold for depositions or demonstrative evidence. Judges were much more satisfied with their exposure to these videotape applications. This result may be attributed to the fact that attorneys bear the burden of handling the technical and logistical problems incident to videotaping testimony.

FIGURE 14.—Mean satisfaction ratings by the three subgroups* of videotape uses⁶⁵



*Only those of each subgroup who had used or observed a particular application of videotape rated that application.

**For a list of the other applications identified by the respondents, see Figure 13 *supra*.

for a jury to observe cannot be sensed through the use of film.

On the other side of the coin, I will also state that I am very much in favor of the use of an occasional video deposition in the trial of a lawsuit when and if a witness for one reason or another cannot be present. I certainly prefer the video deposition over the reading of a written deposition but do not feel that video depositions should be used any more than written evidentiary depositions are used at the present time.

⁶⁴See the adjusted frequency for those who have been exposed to the use of videotape for presenting all testimony portions of a trial set forth in note 62 *supra*.

⁶⁵Comparison between subgroups' mean satisfaction ratings of videotape uses:

Subgroup Means				
Judges	Attorneys		DRI	ATLA
1.31	* .76	Depositions	.61	* 1.00
1.52	* .75	Demonstrative evidence	.56	.97
0.00	-.21	All testimony portions of trial	-.36	.20
1.13	.53	Other	.86	.30

*Difference between means is significant at the .05 level.

c. *Conclusions.* While a leading proponent has declared, with respect to PRVTT trials, that "the videotape process has already proven its worth and inestimable value to those who have witnessed its working firsthand,"⁶⁶ responses to the survey indicate that such exposure does not necessarily breed satisfaction. With respect to its use in depositions and demonstrative evidence, however, videotape is generally being well received, though the response is by no means unanimous.⁶⁷

E. Differences Between User and Nonuser Ratings of 28 Potential Characteristics of the PRVTT Trial

The data received from the survey permitted an examination of the following question: Do respondents who have used videotape have distinctive views concerning the relative merits of possible alterations by videotape of the live trial process? That examination revealed that the most significant variations between user and nonuser responses were in the area of possible time and cost savings. Compared to nonusers, users rated potential savings in cost to the parties and savings of judge and juror time as significantly less important.⁶⁸ This difference can be interpreted in either or both of two ways: (1) those using videotape are less concerned about economic factors; or (2) use of videotape causes a change in attitude concerning time and cost savings.

Except for the ratings of economic variables, there were very few differences between user and nonuser ratings.⁶⁹ However, one interesting finding that might have been anticipated was that users viewed the elimination of the judicial function of supervising attorneys when testimony is taken as less undesirable than did nonusers. Also, though not significant for the composite group, judge users,

⁶⁶McCrystal, *Videotape Trials: Relief for Our Congested Courts*, 49 DENVER L.J. 463, 470 (1973).

⁶⁷A few of the more acerbic responses follow:

Videotaping in the trial process is an abomination and should not be used.

Videotape is very unsatisfactory. It isn't what a few hucksters claim.

I consider the trial of cases by videotape to be absolutely ridiculous. My experience with this procedure has been limited to depositions of witnesses and, based on the results of the use of this media, I have concluded not to permit even the taking of depositions by videotape in the trial of civil cases before me. I find that it detracts from the dignity of the trial, it delays the case and is not comparable to the orthodox written deposition which we encourage. Jurors with whom I have spoken who were exposed to depositions taken by videotape agree with these conclusions.

⁶⁸Although not statistically significant, users rated the remaining economic factors to be less important.

Forty-one percent of the users were members of the DRI who, as previously discussed, rated the economic factors as less important than the other subgroups. However, this larger representation of the DRI among user respondents is not sufficient to explain away the user-nonuser variation.

⁶⁹Users in the composite group did rate as less desirable the following two characteristics: (1) the possibility that jurors retain more information in a videotape trial; and (2) the possibility that the videotape trial inhibits ideological debate.

when compared with judge nonusers, rated as less undesirable the fact that the judge is not present to question witnesses.

IV. CONCLUSION

The results of this survey permit three broad brush observations. First, the bench and bar indicated that many questions regarding the impact of videotape technology on the litigation process remain unanswered. Second, many judges and attorneys found that some preliminary results of the research presented for evaluation run counter to their experience or intuition. Third, the legal community reacted negatively to many characteristics of videotape that are heralded by videotape proponents as advantages of the new technology. These observations do not spell doom for the adoption of videotape by the justice system. Rather, the survey results merely indicate what should have been apparent to researchers all along. The videotape trial will not sneak into judicial administration by the side door unobserved. To the contrary, videotape will enter the courtroom only after surviving the searching examination of the legal community. The results of this survey should help researchers prepare for that examination.

APPENDIX

INTRODUCTION

There is presently a growing interest within the legal profession concerning the use of videotape for presenting the testimony portion of civil trials. The format of such a trial might be as follows:

1. Counsel, on their own time and by agreement, would examine and cross-examine each party or witness. This testimony would be recorded on videotape by a specially-trained court reporter.
2. These tapes would be spliced in proper order to create an official transcript of the testimony. Counsel would file objections to contested portions of the testimony, and the judge would review and edit objectionable portions.
3. At trial, usual procedures would be followed for voir dire and the opening statements. After these, the jury would view the testimony portion of the trial on videotape.
4. The closing arguments and jury instructions would then be presented live, and the jury would retire for deliberation.
5. Upon appeal, relevant portions of the videotape record could be prepared, including relevant portions of previously excluded testimony.

6. In the event of a retrial, much of the original trial tape could be reused.

This proposed format has already been utilized in a number of actual trials, and proponents declare that the videotape trial is a desirable innovation. However, several recent studies suggest that there may be some significant differences between videotape and live trials. The purpose of this survey is to draw upon the experience and judgment of judges and trial attorneys in evaluating the multiple aspects of videotape trials. The results of this survey will be published in the July issue of the Brigham Young University Law Review as part of a symposium on the use of videotape in the courtroom.

PART I

1. *Time and Cost*

Proponents of videotape trials feel that they may result in significant savings in time and cost over live trials. Assuming such savings are possible, it is likely that some time/cost savings are more important than others. Please indicate by circling the appropriate number the degree of importance you attach to each possible time/cost saving listed below.

	Very Important	Important	Neutral	Unimportant	Very Unimportant
1. Cost to the parties	(1)	(2)	(3)	(4)	(5)
2. Cost to the state	(1)	(2)	(3)	(4)	(5)
3. Parties' time	(1)	(2)	(3)	(4)	(5)
4. Judges' time	(1)	(2)	(3)	(4)	(5)
5. Jurors' time	(1)	(2)	(3)	(4)	(5)
6. Witnesses' time	(1)	(2)	(3)	(4)	(5)
7. Attorneys' time	(1)	(2)	(3)	(4)	(5)

2. *Testimony of Witnesses*

The taking of testimony to be presented in a videotape trial differs substantially from the presentation of testimony in a live trial. Below are listed seven characteristics of the witness-examination process utilized in videotape trials. Please indicate your judgment of the extent to which each characteristic is desirable or undesirable.

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable
1. Judge is not present to supervise attorneys	(1)	(2)	(3)	(4)	(5)

2. Judge is not present to make immediate rulings on the admissibility of evidence	(1)	(2)	(3)	(4)	(5)
3. Judge is not present to question witnesses	(1)	(2)	(3)	(4)	(5)
4. Judge is not present to set the tone of the proceedings	(1)	(2)	(3)	(4)	(5)
5. Testimony may be taken outside of the courtroom	(1)	(2)	(3)	(4)	(5)
6. Testimony may be taken at a time convenient to the witnesses and attorneys	(1)	(2)	(3)	(4)	(5)
7. Attorneys know the entire content of the trial testimony before the trial begins	(1)	(2)	(3)	(4)	(5)

3. Procedure—Effect on Jurors

Certain characteristics of videotape trial procedure differ substantially from those of a live trial. Listed below are five characteristics of the procedure in a videotape trial which may affect the juror's decision. Please indicate your judgment of the extent to which each is desirable or undesirable.

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable
1. The judge is not present in the courtroom while testimony is viewed by the jury	(1)	(2)	(3)	(4)	(5)
2. Attorneys and parties are not present in the courtroom while testimony is viewed by the jury	(1)	(2)	(3)	(4)	(5)
3. The trial is interrupted by objections, bench conferences, client conferences, and chambers retreats	(1)	(2)	(3)	(4)	(5)

- | | | | | | |
|--|-----|-----|-----|-----|-----|
| 4. The jury does not see off-the-stand demeanor and interplay between attorneys and clients, or the reactions of the judge during the showing of testimony | (1) | (2) | (3) | (4) | (5) |
| 5. Jurors do not hear inadmissible evidence or objectionable questions which they must be subsequently instructed to disregard | (1) | (2) | (3) | (4) | (5) |

4. *Presentation—Effect on Jurors*

What a juror perceives in a videotape presentation of testimony may differ from what he would perceive if the testimony had been presented live. These potential differences may subsequently affect the juror's decision in the case. Please indicate your judgment of the extent to which these potential differences are desirable or undesirable.

- | | Very
Desirable | Desirable | Neutral | Undesirable | Very
Undesirable |
|---|-------------------|-----------|---------|-------------|---------------------|
| 1. Jurors retain more information in a videotape trial than in a live trial | (1) | (2) | (3) | (4) | (5) |
| 2. Jurors are more emotionally involved in a videotape trial than in a live trial | (1) | (2) | (3) | (4) | (5) |
| 3. Jurors enjoy a videotape trial less than a live trial | (1) | (2) | (3) | (4) | (5) |
| 4. Jurors, in an action for damages, grant a larger cash award in a videotape trial than in a live trial | (1) | (2) | (3) | (4) | (5) |
| 5. Jurors perceive such character traits as honesty, friendliness, nervousness, objectivity, and appearance differently in a videotape trial than in a live trial | (1) | (2) | (3) | (4) | (5) |

5. *Effect on the Community*

A change to the use of videotape in the trial process may affect not only the actual participants in that process but also the attitude of the community as a whole. Please indicate your judgment of the extent to which each potential influence listed below is desirable or undesirable.

	Very Desirable	Desirable	Neutral	Undesirable	Very Undesirable
1. Videotaping trials inhibits the use of the trial as a forum for ideological debate	(1)	(2)	(3)	(4)	(5)
2. Videotaping trials inhibits the use of media coverage of trials	(1)	(2)	(3)	(4)	(5)
3. Videotaping trials reduces the community's sense of involvement in trials of public interest or in the judicial process as a whole	(1)	(2)	(3)	(4)	(5)
4. Videotaping trials reduces the public's sense that the jury trial is a legitimate means of conflict resolution	(1)	(2)	(3)	(4)	(5)

PART II

Below are listed all the potential characteristics of a videotape trial presented in the five subparts of Part I. Please indicate, by *circling* the corresponding number, which *three* characteristics of a videotape trial are the *most advantageous*. Please indicate, by *drawing a line through* the corresponding number, which *three* are the *most disadvantageous* characteristics of a videotape trial.

- | | |
|---------------------------------|---|
| (1) Cost savings to the parties | (7) Savings in attorneys' time |
| (2) Cost savings to the state | (8) Judge is not present to supervise attorneys |
| (3) Savings in parties' time | (9) Judge is not present to make immediate rulings on the admissibility of evidence |
| (4) Savings in judges' time | (10) Judge is not present to question witnesses |
| (5) Savings in jurors' time | |
| (6) Savings in witnesses' time | |

- | | |
|---|---|
| <p>(11) Judge is not present to set the tone of the proceedings</p> <p>(12) Testimony may be taken outside of the courtroom</p> <p>(13) Testimony may be taken at a time convenient to the witnesses and attorneys</p> <p>(14) Attorneys know the entire content of the trial testimony before the trial begins</p> <p>(15) The judge is not present in the courtroom while testimony is viewed by the jury</p> <p>(16) Attorneys and parties are not present in the courtroom while testimony is viewed by the jury</p> <p>(17) The trial is uninterrupted by objections, bench conferences, client conferences, and chambers retreats</p> <p>(18) The jury does not see off-the-stand demeanor and interplay between attorneys and clients, or the reactions of the judge during the showing of testimony</p> <p>(19) Jurors do not hear inadmissible evidence or objectionable questions which they must be subsequently instructed to disregard</p> | <p>(20) Jurors retain more information in a videotape trial than in a live trial</p> <p>(21) Jurors are more emotionally involved in a videotape trial than in a live trial</p> <p>(22) Jurors enjoy a videotape trial less than a live trial</p> <p>(23) Jurors, in an action for damages, grant a larger cash award in a videotape trial than in a live trial</p> <p>(24) Jurors perceive such character traits as honesty, friendliness, nervousness, objectivity, and appearance differently in a videotape trial than in a live trial</p> <p>(25) Videotaping trials inhibits the use of the trial as a forum for ideological debate</p> <p>(26) Videotaping trials inhibits commercial media coverage of trials</p> <p>(27) Videotaping trials reduces the community's sense of involvement in trials of public interest or in the judicial process as a whole</p> <p>(28) Videotaping trials reduces the public's sense that the jury trial is a legitimate means of conflict resolution</p> |
|---|---|

PART III

1. Your age _____
2. *Answer these questions only if you are presently a practicing attorney:*
 - a. Years of active practice _____

- b. Approximately what percentage of your work is trial practice? _____
- c. Of that percentage, how much is civil trial work? _____
criminal trial work? _____
3. Answer these questions only if you are or have been a judge:
- a. Years on the bench _____
- b. Approximately what percentage of the cases you hear are tried by a jury? _____
4. Approximately how many times have you used videotape in trials? _____
5. Disregarding your own use, how many times have you observed the use of videotape in trials? _____
6. Which of the following uses of videotape have you either used yourself or observed? You may check more than one.

_____ Depositions

_____ Demonstrative evidence

_____ All testimony portions of trial

_____ Other

Specify: _____

7. What was your level of satisfaction with each of those experiences? *If you have had no experience with a particular videotape use, you need not answer the question.*

	Very Satisfied	Satisfied	Neutral	Unsatisfied	Very Unsatisfied
Depositions	(1)	(2)	(3)	(4)	(5)
Demonstrative evidence	(1)	(2)	(3)	(4)	(5)
All testimony portions of trial	(1)	(2)	(3)	(4)	(5)
Other	(1)	(2)	(3)	(4)	(5)