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

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

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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.


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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 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 deposition 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 not 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 response studied; in fact, as far as
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 extrane-
ous influences, it would be necessary to run several
groups (or several individual sessions) in each experi-
mental 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
means 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 video-
tape as if it has been waged in the past, with no data at all.
Opinions of videotape have taken extreme positions
ranging from the prediction that juries exposed to video-
taped 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
320 pp., ill./$14.95.

Reviewed by Harvey Molotch
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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-dos of successful photo-
journalism. The pictures, drawn primarily from British
and U.S. media, are a good collection of the classics,
the same 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,
incriment 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 news-
maker. 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