Gerald R. Miller and Norman E. Fontes



VIDEOTAPE ON TRIAL

A View from the Jury Box



VIDEOTAPE ON TRIAL

PEOPLE AND COMMUNICATION —

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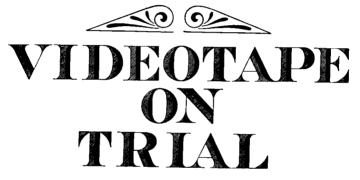
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A View from the Jury Box



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FOREWORD

The legal system in the United States is overtaxed. As the complexity of our society continues to increase, so do the number of laws intended to maintain social order. A growing number of infractions of these laws, due in part to a difficult economic situation, has increased the number of cases litigated in our court systems. The courts have been unable to process this expanding caseload, and serious backlogs have developed. In some jurisdictions, these backlogs have dramatically increased the time involved in litigation, rendering the promise of justice just that—a promise.

Information-processing problems are not limited to the legal system. We are experiencing a tremendous information explosion in most segments of society. The vast amount of information that must be handled by business enterprises, educational institutions, and government agencies has stimulated a growing interest in audiovisual media, including video technology, as tools for information management. Members of the legal community have contributed to this growing interest by seeking more efficient and more effective ways of processing information.

The possible uses of video technology in the legal system are varied; indeed, with the continuing acceleration of technology, the scope of human imagination defines the outer limits of speculation. As former Attorney General Ramsey Clark observed at a meeting organized by the authors several years ago in New Orleans, "Mass media technology; including Telstar satellites, videotape casettes, and cable television; enables us to bring any knowledge, to any place, in any language, at any time." Because of this wide-ranging potential; jurists, lawyers, and other members of the legal system have scrutinized video technology closely. Their careful scrutiny has stimulated considerable controversy. Proponents of wider use of such media as videotape argue that it will reduce the amount of time involved in litigation, increase the fairness of trials by editing out inadmissable testimony, and allow more efficient use of jurors' time. Opponents of videotape

variously view it as a gimmick, a devious way to replace court reporters, and an ominous portent of an electronic legal circus.

It was in this climate that we initiated our program of research designed to assess the effects of videotape trial presentations upon juror information processing and decision-making. Our interest in this area sprang from a desire to investigate systematically a significant communication problem which limits the case-processing effectiveness of courts. We have never believed that employing video technology will solve this problem. Nevertheless, we assumed that the severity of information management problems confronting the courts could be reduced if videotape presentations could be used to augment live presentations. Adoption of this innovation required a clear demonstration that videotape trial presentations do not produce jury decisions significantly different from those rendered during totally live trials. The research presented in this volume addressed this issue.

Our overall findings reveal no reason that would preclude the use of videotape in the courtroom, although specific findings do indicate a need for policy governing the type of video-recording medium used (monochromatic or color), the type of editing techniques employed to delete testimony and evidence ruled inadmissible, and the type of camera shots used to record testimony provided by different kinds of witnesses. Even though differences in juror information processing stemming from these dimensions of video technology were observed, the verdicts and final awards of jurors during videotape trial presentations did not differ significantly from those of jurors viewing live presentations.

We have attempted to discuss our research in a manner comprehensible to individuals who have little familiarity with social science research techniques. The book will be of interest to those concerned with pursuing additional research in this area as well as members of the legal community such as judges, attorneys, court reporters, and court administrators.

We owe a debt of gratitude to members of the legal community who demonstrated a continuing interest in our research. This cooperative spirit is indicative of the changing times in which we live. A decade ago, behavioral research of this kind would not have received a fair hearing let alone constructive support. As one of the authors recently observed in a chapter published in a volume titled *Psychology and the Legal Process*:

Legal professionals and social scientists have only recently begun a persistent, if somewhat hesitant, intellectual courtship. To be sure, history has witnessed occasional attempts by one suitor to woo the affections of the other, but these infrequent advances have resembled shotgun weddings more closely than mutually compatible professional marriages. Events of the last few decades, however, have strengthened the vows of both parties, and future annulment or divorce grows increasingly unlikely.

This book was prepared keeping this cooperative spirit in mind. The verdict is not in on videotape, but it is time to deliberate. We have shut down our cameras, turned off the lights, and submitted our evidence for the reader's judgment.

-G.R.M.

EXAMINING THE SOCIAL AND LEGAL CONTEXT

One zealous advocate of wider use of prerecorded videotaped trials, Judge James McCrystal of the Erie County Court of Common Pleas, Sandusky, Ohio, is fond of remarking that most members of the legal profession are 100% in favor of progress and 1000% opposed to change. Though Judge McCrystal utters it with critical intent, this assertion can be taken nonpejoratively as exemplifying the basic conservatism of our legal institutions. With its roots firmly planted in a venerable tradition of English common law, the legal system of our country is not given to capricious tinkering with basic assumptions and procedures that have withstood the test of time. Chief Justice Warren Burger has observed that "Since lawyers and judges are accustomed to certain habits of procedure, and the very nature of the common-law system depends upon precedent to a large extent, we tend to be wedded to precedent and there is bound to be resistance to change" (1977: 22). Moreover, we suspect that most thoughtful citizens would agree with the system's conservative bent: though social and political institutions are almost certain to atrophy if viewed as entirely sacrosanct, a casual "change for change's sake" attitude is likely to breed the

cynicism and disrespect for basic social processes which so concerned that giant of British conservative thought, Edmund Burke.

The preceding paragraph seeks to establish a broad frame of reference for this book, which reports the findings of a series of studies dealing with juror responses to videotaped trial materials. Obviously, the use of taped depositions and trials represents a radical departure from accepted courtroom procedure — as for that matter, does the presentation of expert witnesses' testimony by video telephone in Maricopa County, Arizona (Eliot et al., 1976) and the conduct of welfare hearings by telephone in the state of New Mexico (Corsi, 1978). Nor are such departures, made possible by the burgeoning array of available communication technology, limited to courtroom trials. The potential exists for the new technology to invade every nook and cranny of the legal system. Maricopa County has experimented with numerous applications of the video telephone including in-custody arraignments, public defender conferences with jailed clients, calendar calls, presentencing interviews of convicted inmates, and remote access to police information bureaus (Eliot et al., 1976). The trusty court reporter trumpets the possible benefits of computer-assisted transcription. Indeed, experimental facilities such as McGeorge School of Law's "Courtroom of the Future" are designed with an eye toward maximizing the effectiveness of available communication technology; for instance, a table for displaying exhibits to jurors is positioned under a television camera in the ceiling. thereby permitting a closeup of the exhibit.

To what extent should the legal system hasten to embrace these communication innovations? The answer to this question depends on a number of complex social, economic, and political considerations. We do not attempt an answer in this book, nor do we argue for a particular resolution of the issue. As we have already suggested, changes in our legal institutions must be approached cautiously, lest policy-makers be guilty of throwing out the judicial baby with the bath water. Still, the courts are

presently faced with numerous perplexing problems, several of which will be discussed later in this chapter. If judicious use of communication technology can aid in solving these problems. while at the same time avoiding creation of more thorny difficulties, changes in traditional courtroom procedures may be justified. The modest goal of the research reported here was to investigate one potential pitfall of using videotaped court materials: the possibility that juror information-processing and decision-making behaviors might be negatively influenced by watching taped trials and depositions. If such negative influences were to occur, they would pose a strong argument against extensive use of videotape in trial settings; conversely, if no negative effects were observed, the case for courtroom use of videotape would be strengthened. By itself, however, neither set of findings would constitute a sovereign indictment or endorsement of taped testimony and trials; rather, the evidence gained would have to be assimilated into a more comprehensive position regarding the social, economic, and political assets or liabilities of such changes in trial procedures.

TWO CHARACTERISTICS OF TRIALS AS COMMUNICATION EVENTS

Among the many ways it can be described and conceptualized, a view of the trial as a communication event is central to our research interest. When viewed in this way, at least two characteristics are particularly important: first, trials typically occur in face-to-face settings with no mechanical, mediated communication linkages; second, both the structure and content of exchanged courtroom messages are highly rule-governed so as to conform to numerous assumptions regarding the fairest, most just procedures for conducting hearings. Though some of these assumptions have been supported by the research of behavioral scientists, their origins rest in the commonsense, intuitive experiences of jurists and other legal experts. This fact itself poses an intriguing dilemma when expert belief and em-

pirical outcomes differ, a situation which has occurred on more than one occasion.

That trials have traditionally been presented "live" rather than on film or tape is not surprising, since both media are relative Johnny-come-latelys on the communication scene. Moreover, by carefully designing the architectural, sartorial, and other nonverbal trappings of this face-to-face confrontation, considerable credibility was conferred on the judicial system itself; the symbolism which culminates in the "majesty of the courtroom' and in the status and esteem accorded "his honor, the judge" did not develop haphazardly, but was carefully planned and cultivated so as to confer legitimacy on the courts as an instrument for the peaceful resolution of disputes. "Legal and political procedures, such as trials and elections," says Kenneth Boulding, "are essentially social rituals designed to minimize the cost of conflict" (1975: 423). His remark captures one of the objectives that many persons ascribe to a trial, and its realization requires that most members of the society perceive the courts positively.

Aside from the ritualistic impact of the live setting, conventional wisdom also holds that truth is more likely to out — or at worst, credibility and demeanor are likely to receive their sternest tests — when legal adversaries are eyeball-to-eyeball in the courtroom. To interpose a medium such as videotape is to erect a barrier before the jurors' eyes and to provide a psychic haven for the unscrupulous attorney, litigant, or witness. Of course, this judgment is not shared by all members of the legal system, but it is unquestionably the majority viewpoint. Whether there is strong empirical evidence to support this conventional wisdom is a matter commented on in subsequent chapters.

Finally, the presumption lies strongly with the live trial simply becuase it provides the existing standard for comparison. As we remarked several years ago at a conference on the legal and ethical implications of taped trials held at Kent State University (Moore and Landis, 1975), if trials had been conducted on