

High Court Enlists In The YouTube Revolution

Posting of video clip seen as grounds for litigants to introduce more technology into courtrooms

By DOUGLAS S. MALAN

U.S. Supreme Court Justice Antonin Scalia is no Roger Ebert. But his review of the video clip he had just watched was just as punchy as anything ever uttered or penned by the iconic movie critic.

"He created the scariest [car] chase I ever saw since 'The French Connection,'" Scalia said during this year's oral arguments in the case *Scott v. Harris*.

Scalia was talking about a Georgia teen's wild attempt to race away from a state trooper. The police officer, feeling that the teen was creating a danger to others, rammed the teen's car off the road, leaving him paralyzed. The family sued, saying the officer used unreasonable force. After watching the video, the justices disagreed.

But the facts of the case, and even the legal precedent, aren't as astonishing as the fact that, when the court released its decision, it offered a bonus. In an unprecedented move, justices posted the video clip on the court's web site and encouraged the public to take a look at what the decision called a "Hollywood-style chase."

"Scalia was clearly swayed by the video," said N. Kane Bennett, of Raymond & Bennett in Glastonbury. Bennett, a member of the Connecticut Bar Association's Legal Technology Committee, added: "I'm not surprised that the Supreme Court utilized the video, but I'm surprised at the extent to which they relied on it. And I'm surprised that they decided to disclose it for the public to see."

By doing so, "The Supreme Court is acknowledging how pervasive this type of technology is in the world," he said.

Bennett predicted that the Supreme Court's link will offer legitimate grounds for litigants to introduce more technology into courtrooms as part of their presentations or evidence. Already, Bennett noted, lawyers scour Internet social sites such as MySpace and YouTube for evidence in cases. When that evidence is entered, courts will have to decide how to make a record of it. "These are questions the courts will have to be more aware of in the future," Bennett offered.

Coming To Connecticut?

For nearly six months since the *Scott v. Harris* decision's release, the legal community has been abuzz over whether this use of electronic evidence is a one-time deal or a new trend. In a story on the American Bar Association's web site, a reporter wrote: "Observers see the decision to post the clip as a milestone for the court, which has been notoriously reluctant to embrace new technology, especially cameras in its courtroom."

Legal web sites have been weighing in. "It looks just like a clip from a Fox program on deadly police chases," said the site Dreadnaught. "What will the future hold for electronic evidence? Will the Supreme Court, or any other court, begin to post pictures of victims, video of the trial, or forensic results?"

The impact on Connecticut courts is yet to be determined, said Acting Chief Administrative Judge Barbara M. Quinn. "I haven't had the opportunity to review [the possibility of] including such information and evidence in the context of a judicial decision, so this office has no official position," she said.

U.S. Supreme Court spokeswoman Kathy Arberg said she had no information regarding what new technology the Supreme Court might be planning to include in future decisions. As for the *Scott* case, she told the ABA: "Because the video was referred to in the opinion, the court wanted to provide access to the video on its web site."

The ABA story quoted David Post, a professor at Temple Law School in Philadelphia, as saying the video clip in *Scott* clearly opens the door for more innovation, which he believes would be useful in "a surprising number of cases."

Post said slides, photographs and audio and video clips could all be very helpful in understanding certain legal issues, although the justices will have to start considering what constitutes their judicious use. Potentially, as part of the decision-writing process, the justices will have to ask themselves whether nonwritten material should be included and why it is or isn't a good idea to put it on its web site, Post predicted.

In the meantime, you don't have to go to the Supreme Court site to see the Georgia car chase. It can be viewed, of course, on YouTube.

"You wouldn't think the Supreme Court would know about YouTube, but apparently they do," Bennett said. •