

Justices taken in by illusion of film

BY JESSICA SILBEY

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The Supreme Court recently rendered a decision based on watching a video - and in so doing fell for a trick that has been seducing moviegoers for more than a century.

The court's decision in *Scott v. Harris* holds that a Georgia police officer did not violate a fleeing suspect's Fourth Amendment rights when he caused the suspect's car to crash, rendering the suspect a quadriplegic. The court's decision relies almost entirely on the filmed version of the high-speed police chase.

This is not the first time the Supreme Court has acted as film critic in determining the scope of constitutional protection (the justices once routinely viewed obscene films to determine whether they conflicted with "community standards of decency"). It may be the first time, however, that the Supreme Court has disregarded all other evidence and anointed the film version of the disputed events as the truth.

In *Scott v. Harris*, the court fell into a dangerous and common trap of believing - to the point of enshrining in our law - that film captures reality. As Justice Stephen G. Breyer noted: "I see with my eyes ... what happened, what I am I supposed to do?"

However, since cinema's beginning, film has depended on its ability to fool an audience into believing what it sees on screen. The first film shown to an audience was Louis and Auguste Lumiere's *The Arrival of a Train at the Station* in 1895, which depicted a train growing bigger on screen as it approached. The Victorian-era film viewers reportedly screamed and ran out of the theater, afraid the train was going to run them down.

But the 1895 audience grew wise quickly and soon became accustomed to cinema's playful portrayal of an illusion as reality. Georges Melies' *The Magic Lantern* in 1903 draws attention to its own illusion of reality, suggesting that film is no more or less faithful to its subject than painting, novels or theater. This trend of self-reflexivity continued throughout the 20th century. Think of Alfred Hitchcock's *Rear Window* or Spike Jonze and Charlie Kaufman's *Adaptation*.

Today, even documentary viewers are highly skeptical of the "truth" such films portray. Consider the reactions to Errol Morris' *Fog of War* or Michael Moore's *Fahrenheit 9/11* that labeled these films "infotainment" or "agitprop." If contemporary audiences are critical of what they see on screen, why not judges?

One answer lies with the nationwide policing trend that requires filming custodial interrogations and encourages the use of camera-mounted police cruisers. This trend is based on the belief that film will reveal the whole truth.

Another answer lies with the generalized trend of our surveillance society: cameras at ATMs, retail stores, toll booths, public parks, etc.

What kinds of films do these cameras produce? They are police films - made by the state or private citizens in the name of peace, safety and justice. And this seems to make all the difference.

But why should it? Where is the skepticism toward these films that today pervades attention to mainstream documentaries and reality television?

In the Scott case, eight justices failed to exercise the kind of scrutiny and independence one expects of professionals tasked with evaluating complex evidence and law. They viewed the police film as uncontroversial evidence of reasonable force against a fleeing suspect. "Anyone who has watched that tape has got to come to that conclusion," Justice Ruth Bader Ginsburg said.

Failing to recognize how all film manifests a distinct point of view (and not others) and how it is inevitably framed (by the size of the camera and the length of the film) to exclude what other witnesses to the event would have seen is a grave error on the part of a fact-finder - or a film critic. Films never speak for themselves; they require interpretation. They need close scrutiny and analysis, like all other evidence.

Assuming a film means only one thing (or at least one dominant thing) is what sank the prosecutor in the first trial of the police officers accused of beating Rodney King. No film, not even live footage, is singular in its meaning or significance.

Justice John Paul Stevens, the lone dissenter in Scott, takes the majority to task for disregarding the lower court's factual findings as based on all the evidence before it (evidence that included much more than the film). He also does what many astute film critics do: He asks how the film's portrayal of the event is but one version among others. Justice Stevens thus manifests a healthy skepticism toward and scrutiny of film that claims to depict the whole truth.

He does not disregard the film as worthy of consideration. He simply asks that all the evidence be considered so that the court can come to a reasoned and balanced conclusion.

Justice Stevens points to the fact that the film obscures the part of the car chase that was on a four-lane highway, not a two-lane highway, which goes to the dangerousness element of the legal inquiry. He also explains how the film's distance from traffic lights makes it difficult to discern the color of the signals, also relevant to dangerousness. He complains that the court minimizes the significance of the police sirens because the sound recording on the film was low, possibly because of soundproofing in the officer's vehicle.

The law desperately desires the truth. But we should not rely on film as truth serum. Conflating the filmed event with the event itself puts our lives in the hands of filmmakers. Closely scrutinizing film might not always change our opinion of "what happened," but it would lend integrity to a justice system charged with adjudicating results at the expense of someone's life, liberty or property.

The Supreme Court failed at this exercise of scrutiny in *Scott v. Harris*. It succumbed to the illusion of film's total world-making.

In effect, the justices screamed and ran from the theater.

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