

LIVE from the Supreme Court
By Peter Hutchinson

This past summer, Americans across the nation were glued to their televisions once again. FX's presentation of "[The People vs. O.J. Simpson](#)" was an in depth dramatization of two murders and the subsequent trial to convict the American icon of O.J. Simpson that took place in 1995. Millions, for the first time, turned to watch the trial unfold, live on television. Justice Lance Ito had [allowed cameras](#) in his county court for some time and the fame associated with the defendant would not be an exception. His understanding was that the American people, at the time divided over racial tensions linked to the case, deserved and had a responsibility to view the events unfolding inside his courtroom.

The cameras captured all the controversy as if it were an actual television show, but also created even more debate over their use and impact. The Supreme Court has yet to allow cameras film the final stage of the judicial process because of these issues and allows only audio recordings. The benefits of putting cameras into the highest court in the land however, greatly outweigh the issues that arise from their presence.

Today, the nation appears to be just as divided as it was around the time of the OJ trial. The Supreme Court has heard several very controversial cases including [Bush v Gore](#) which brought the call for cameras in the Supreme Court to a whole new level. Why? The impact of the decision was thought to be of such a high importance that the American people deserved to see them unfold, not just listen to them.

At the time [the networks aggressively petitioned](#) the Court to allow cameras inside, believing that since they had covered the whole of the election for more than a year that they would be able to film the controversial conclusion. Chief Justice Rehnquist said no. Rehnquist ignored the American demand of transparency in government. Transparency in this aspect would have led to greater engagement, and, being able to watch the justices interact with the case, could have led to a more understanding populace. An engaged public is an American responsibility, and the Supreme Court should help to fulfil that obligation by allowing cameras inside.

Judicial autonomy is the key counter argument to allowing cameras in the Court. [Time and again the Court has dismissed allowing cameras](#) inside and it cites this principle nearly every time. The Court feels that allowing cameras would invite politics into their process, and distractions from ordinary things would be too great. For example, [Justice Rehnquist received considerable airtime](#) for his gold-lined robe during the Clinton impeachment trial (even though it's a standard of chief justices).

In addition, the Court believes that cameras would [invite grandstanding](#) and other behavior not becoming of the Court. It feels that that the public won't understand what is happening and that the television [networks will take comments out of context](#). A final argument, one that the Supreme Court has become famous for when it uses it, is that the current system works just fine as it is now and doesn't need to be changed.

The justices, however, cannot ignore their own precedent. As early as 1965, the state of [Texas had allowed coverage](#) of [Estes v. Texas](#), a fraud case. The Supreme Court refused to allow the same level of coverage. Justice Potter Stewart, in his dissent, lamented the fact that not allowing cameras felt "disturbingly alien" to the First Amendment. He states that the argument (part of which has been listed above) against allowing cameras was "an invitation to censorship."

In [Richmond Newspapers Inc. v. Virginia](#) (1980), a case where the newspaper sought access to a closed trial, the Court ruled that it would be "difficult to single out any aspect of

government of higher concern and importance to the people” and that they had a right to communicate about the proceedings in full. Justice John Marshal Harland, who helped prevent cameras in the Court, is noted as saying in *Estes* that day may come,” he wrote, “when television will have become so commonplace” that no American will think that “its use in the courtroom may disparage the judicial process.”

Further, the Court decided in [*Press-Enterprise v. Superior Court*](#) that openness of a trial “enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” Here the Court apparently feels that the perception of transparency is just as necessary as actual transparency. The Court ignores its own precedent when refusing the use of cameras, as they would create both actual transparency and vastly improve the perception of it.

The justices of today’s Court could change and should change this arbitrary ban. Nine unelected judges decide cases of such importance ranging from the selection of the president to free speech violations behind closed doors. The Court needs to reconcile judicial independence with the American public’s responsibility to engage with legal proceedings. The debate, at least in the modern Court, appears to be continuing. But the Court should note that its own precedent counters the very arguments it has put forth in suppressing television access. Judicial independence is an antiquated argument of a court fearing its loss of authority.

The Court has the responsibility of supporting the public’s role of engaging. Imagine a Supreme Court that allowed cameras and it once again had to decide who the next president would be: Americans would be packing bars, filling lobbies of hotels, hosting watch parties in their own homes all to catch a glimpse of the Court’s reasoning (much like what occurred during the OJ trial). They would be engaged like never before, yearning to learn more about the ways and dynamics of the Court. Perhaps even FX would recreate the decision in a dramatization to be watched by millions more. Perhaps, as Justice Harland wrote, the day has come to revolutionize the way we view (quite literally) the Supreme Court.