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Decisions and Images: The Supreme Court the the Press by Richard Davis.

Kylie Nielson Turley

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No doubt Americans have been debating the role of the United States Supreme Court since the Federalist Papers. Some believe the Court should be active, some believe the Court should be more reticent, some believe the Court should strictly interpret the Constitution, some believe a more "loose" interpretation is required. In the midst of these debates, Richard Davis has suggested another perspective to consider: the Court's interaction with the media and the effect this interaction has on the general public.

In Decisions and Images, Davis has two main contentions. First, Davis argues that the Court (contrary to traditional belief) is a political institution and, as a political institution, must pursue specific relations with the press in order to maintain public support. Second, Davis believes that each individual justice has opinions, aims, and objectives separate from the objectives of the Court, and the justices try to achieve their aims through separate interactions with the press.

To argue his position, Davis first presents the theoretical background, including which images the Court must sustain images of unanimity, of independence, of distance, and of immunity in order to achieve its institutional objectives of deference and compliance. As Davis discusses how justices interact with the press and what the motivations of each are in their interaction, he consistently returns to the images and the objectives that the Court must preserve. He suggests, for example, that the Court's images were threatened in the 1930s. The Court seemed unwilling to

...sanction the constitutionality of the New Deal. Severe criticism of the Court's decisions arose from some prominent newspapers. Harlan Stone commented in a letter to his sister at the end of the 1935 term:

'We finished the term of Court yesterday. I think in many ways one of the most disastrous in its history. (31)

Without public support, it was possible for Franklin Delano Roosevelt to question the number of justices on the Court and to suggest changes. Pointing to this example and others, Davis argues that the Court must care about how the public perceives it and actively work to perpetuate positive images.

Richard Davis' thesis is quite interesting. It is a tricky argument however. Davis argues that the Court wants to perpetuate an "image" of aloofness, an image of simply focusing on duty, of independence from public pressure. Preserving these particular images is rather difficult. Davis recognizes the paradox when he notes, "[t]his is the crux of the paradox in imagemaking--to engage in imagemaking while denying its existence to maintain the image" (9). Despite the fact that he recognizes the difficulty, it seems that Davis finds it difficult at times to discuss how it is that the Court is actively perpetuating its image of doing its job--rather than simply doing its job. For example, it is no doubt true that the "[n]ews of the U.S. Supreme Court is the product of the interaction between the justices and the reporters who cover them" (144). Moreover, it is quite obvious that by picking certain cases and denying others, the Court is "successful at setting the agenda for press coverage" (144). Simply by virtue of doing its job, the Court decides what will become newsworthy. However, there seems to be a missing link between the Court doing its job (and choosing whether or not to hear cases), and the Court choosing cases in order to purposely "[o]ffer the news it wants the press to cover," or, in other words, the Court choosing cases to purposely perpetuate an image (144). The distinction is difficult to define because it is in part a distinction between what is and what appears to be--and with an organization that is (or, at least, appears to be) as aloof and private as the U.S. Supreme Court, the distinction is not always obvious.

Davis presents his arguments and supports them by discussing the everyday role of the press at the Court as well as everyday role of the Court. He argues that the justices and the reporters engaged to cover the Court are involved in an intricate "dance," a dance that the justices are "leading." "By limiting press access with one hand and simultaneously feeding the press with the other, the Court is acting much like other political institutions, especially the presidency, in
attempts to use its power to control the information flow to its own advantage” (130). Once again the paradox of the text is evident: Davis argues that “[t]he justices seek to convey the impression that they are disinterested in news coverage about them and that they would be satisfied if the press would just go away” (131). He suggests that this practice (of consciously “active” disinterest) forces the reporters to turn to the news that the justices want them to turn to, namely, the written decisions. This certainly could be true. Or, it could also be true that the justices simply “enjoy their relative obscurity as individuals,” which Davis suggests a few pages later (152). As reporter Tony Mauro explains, “They [the justices] much covet their privacy and their anonymity...They’re very loath to lose that” (152). Whether the justices are purposely perpetuating an image of disinterestedness or whether they simply are disinterested is difficult to determine.

Despite the difficulty in overcoming this paradox once and for all, Davis’ book is well worth reading. His efficient research and his extensive sources are thorough and persuasive. The text is clear and supported by interesting examples. Moreover, reading is further facilitated by appropriate headings and excellent summaries in each chapter. Overall, Decisions and Images: The Supreme Court and the Press is timely and insightful. Richard Davis certainly raises issues which should be discussed and debated along with other Supreme Court debates.

Kylie Nielsen Turley
Graduate Student, American Studies