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Fighting for the Press: The Inside Story of the Pentagon Papers and Other Battles

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Fighting for the Press: The Inside Story of the Pentagon Papers and Other Battles

By James C. Goodale

New York: CUNY Journalism Press, 2013, 260 pp.

Reviewed by Mark Feldstein
University of Maryland

As an Army intelligence analyst, James Goodale was dismayed to see “paranoid” military bureaucrats “indiscriminately” classifying routine documents, including a Marine dinner menu (pp. 37, 35).

In 1971, the thirty-seven-year-old general counsel of the *New York Times* struck back, engineering the legal strategy that led the press to its landmark victory in the Pentagon Papers case.

Now, Goodale recounts the tale in a memoir, serving up new historical nuggets with his insider’s view of one of the most important First Amendment victories in American jurisprudence.

The classified 7,000 pages leaked by whistleblower Daniel Ellsberg exposed the government’s repeated and deliberate lies to escalate the Vietnam War. Only when the Nixon White House tried to censor the *Times*—an unprecedented act of prior restraint—did the multipart series draw widespread attention.

Goodale had recommended that the newspaper unload its documents all at once to make the information impossible to suppress. But he realized the audience for such mind-numbing excess would be minimal: “If no one read it, no one would realize the war was built on a tissue of

lies—the whole purpose of the publication in the first place” (p. 57).

But Goodale still had to persuade *Times* publisher Arthur Sulzberger, whose support “was lukewarm at best,” in part because of “an intellectual inferiority complex” that Goodale says was exploited by the newspaper’s corporate law firm, which claimed that it would be a crime to publish or even to look at the classified material (pp. 60–61, 75).

Then the Nixon administration pressured the firm to withdraw from the case completely—the night before a crucial legal hearing. And the firm’s most prominent lawyer, a longtime Nixon friend and former attorney general, suddenly threatened to testify publicly against the newspaper client he had just unceremoniously dumped.

Goodale worked feverishly to contain the damage; after midnight, just hours before he was due in court, attorneys Floyd Abrams and Alexander Bickel signed on, working through the night to get up to speed on the case. The lawyers dubbed themselves the Three Musketeers.

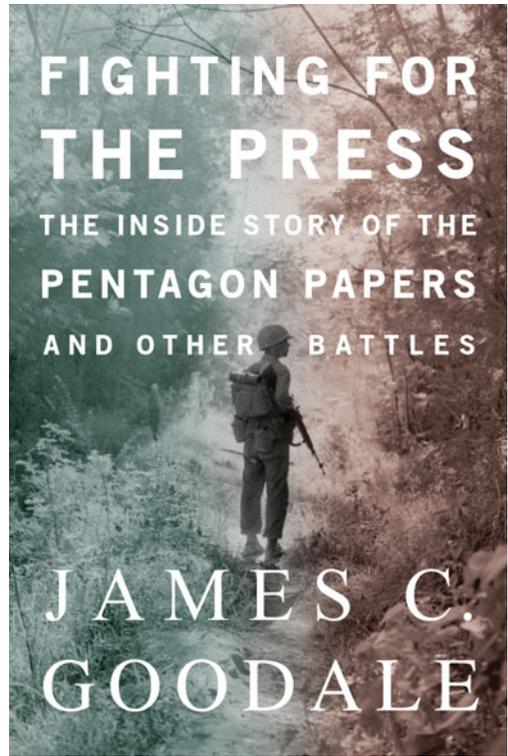
According to Goodale, prosecutors proved surprisingly ignorant of the law, inconsistent and incompetent, clumsy and heavy-handed. To exaggerate the

danger, the government falsely claimed that the *Times*' articles would jeopardize secret US spy codes. And in a secret Washington hearing, prosecutors dramatically pulled out a double-locked briefcase containing a large manila package, which held another taped envelope, which protected yet another envelope "sealed with a great big red seal with dangling red ribbons" (p. 145). But this attempt to "scare the court" fell apart when the super-secret evidence turned out to contain only information previously released by a Senate committee (pp. 101, 145).

Through it all, Goodale writes, Sulzberger was "scared to death," so much so that the young lawyer brazenly ordered his boss to return from a European vacation to deal with the crisis that threatened the existence of his own newspaper (p. 89). Only when *Times* journalists threatened to resign en masse did Sulzberger agree to publish.

Goodale is particularly good at deconstructing complicated legal strategy, offering concise political and historical context to guide a younger generation of readers unfamiliar with this background. The book is a welcome addition to memoirs by Ellsberg and Abrams, historical accounts by journalists Sanford Ungar and David Halberstam, and the most detailed legal analysis of the case by David Rudenstine, who Goodale takes to task for swallowing the Nixon administration's "unsupported" and "baseless" claims that portions of the Pentagon Papers actually did expose legitimate national security secrets (pp. 137–138).

Goodale is the hero of his own story; he does not suffer fools easily, and he finds many to skewer in his account. But his unvarnished if immodest depiction of backbiting and double-dealing makes fascinating reading, and it will appeal to journalists, scholars, and media



lawyers and serve as an excellent supplement to a graduate-level media law textbook.

Goodale managed to outwit external and internal foes alike, thanks to shrewd maneuvering and unwavering pugnaciousness. In the end, of course, the press won and the Nixon White House self-destructed; but it could easily have turned out otherwise. "Suppose we had stopped," *Times* editor Abe Rosenthal told Goodale. "Can you imagine the headlines the next day? It would have been the end of American journalism as we know it" (p. 75).

That a free press prevailed is due, in no small part, to Goodale's tireless activism. He went on to organize other media lawyers, who had historically focused primarily on commercial interests, into a

group of free-press advocates now known as the First Amendment bar.

Goodale also helped *Times* reporter Earl Caldwell defy a government subpoena, then crafted the legal strategy to undercut the Supreme Court's anti-press *Branzburg* decision that resulted by using lower courts and state shield laws to protect journalistic rights.

Goodale's book ends in a timely fashion by denouncing the past two administrations for abusing government secrecy and the Espionage Act. President

Obama's claim that "anyone who leaks classified information is committing espionage" makes Goodale wonder "whether Obama learned anything from the Pentagon Papers case" (p. 207).

Apparently not—Obama's administration has prosecuted more whistleblowers than all other administrations combined—which is why Goodale needs to remind contemporaries about it. If eternal vigilance is the price of liberty, James Goodale will go down in journalistic history as one of its foremost legal warriors.