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Book Review: *Fighting for the Press: The Inside Story of the Pentagon Papers and Other Battles*, by James C. Goodale

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

James C. Goodale. New York: CUNY Journalism Press, 2013. 260 pp. \$20 pbk.

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The day before James C. Goodale began his book tour with a luncheon at the Committee to Protect Journalists in New York City, news broke that the Department of Justice had secretly subpoenaed telephone records of the Associated Press. This news was the first in a summer of breaking news of secret government surveillance programs and governmental efforts targeting leakers and directly and indirectly the media.

The onslaught of government prosecutions of leakers, the continued controversy of Wikileaks, and the explosion of the National Security Agency (NSA) surveillance scandal and the Edward Snowden saga propelled Goodale's memoir, *Fighting for the Press*, to not only instantly relevant but also prescient.

While the bulk of the book examines Goodale's role as an in-house lawyer at *The New York Times* during the "Pentagon Papers" litigation, he devotes two complete chapters to the Obama administration's "hardline" approach to dealing with leaks and leakers of the nation's security secrets. He also criticized the Bush administration's "War Against the Press."

Goodale recites how as a candidate Obama was critical of Bush's dealings with the press and he advocated for the federal shield law. However, as president, Goodale believes Obama is "worse than Bush" in using criminal laws to plug leaks and asking reporters to disclose confidential sources. He concludes that the Obama administration may be even more malevolent toward press rights than the Nixon administration.

Thus, the book comes full circle from Goodale's early days as a young general counsel at *The New York Times* to the birth of what is commonly known as the "First Amendment bar." In legal circles, Goodale is widely considered the dean of the First Amendment bar and one of its primary founders.

Overall, *Fighting for the Press* is Goodale's contribution to the library of books on the Pentagon Papers, and the historic fight over censorship, national security, and the First Amendment. There is no shortage of books and memoirs on the topic—David Rudenstine's *The Day the Presses Stopped*, Floyd Abrams's *Speaking Freely*, and, of course, the Pentagon Papers author and leaker Daniel Ellsberg's two books on the topic, *Secrets* and *Papers on the War*.

Goodale adds to the Pentagon Papers library by telling the story behind *The New York Times*' decision to take on the Nixon administration, standing firmly behind the First Amendment. The case, the *United States v. New York Times*, marked its fortieth anniversary in 2011, and is an important element of practically any First Amendment law course.

How it got there is Goodale's story. Supported by his own encyclopedic legal knowledge and law that he helped develop, Goodale paints a picture using case law, transcripts of hearings, memos, and decades of files that only an insider could employ.

Replete with anecdotes and factoids that are not part of the legal record, Goodale reconstructs dramatic exchanges in newsrooms, boardrooms, and courtrooms—even a secret federal courtroom and an off-chance meeting with a Supreme Court justice at a party.

The Pentagon Papers case was perhaps the culmination of President Nixon's hostility toward the press, or more aptly put as the title to Chapter two, "Nixon's War Against the Press." The president through the Department of Justice went to the federal courts with a temporary restraining order to prevent *The Times* from publishing its report, which was based on "top secret" government documents. In addition to the implications of the government's suing the press to censor it, the book also delves into another landmark case of the era, *Branzburg v. Hayes*, which deals with the reporter's privilege and confidentiality.

In both cases, *The Times* and other media entities, primarily *The Washington Post*, which had also obtained a copy of the documents and faced a similar fight in federal court, battled the government, risking its credibility and even financial viability. Complying with the government's order to cease publication of the classified documents would have meant succumbing to the Nixon administration's bullying of the press, impairing the First Amendment. Fighting the government's order on First Amendment grounds severed ties between *The Times* and its longtime outside law firm, which refused to represent the paper in this dispute and put the newspaper at risk of potential federal criminal sanctions.

The paper chose to fight, and litigated the case through the federal courts all the way to the U.S. Supreme Court, all at breakneck speed. From the government's first request and subpoena through to the Supreme Court's three paragraph per curium opinion and nine individual opinions by each justice, the case was resolved in less than a month—seventeen days.

In recent years, leak investigations, Wikileaks, and the imprisonment of *The New York Times* reporter Judith Miller resurrected the cases, snapping them back into the public spotlight.

A thread woven throughout the book, and reiterated in conclusion:

When the government brings these cases, the only thing to do is to fight like a tiger and risk going to jail if necessary. Anything less diminishes the freedom of the press. The Pentagon Papers case has become an international symbol of the resistance of the press to the government. (p. 221)

The lessons learned from the Pentagon Papers reverberate today. This was the only time the federal government ever sued the media to prevent it from publishing content. It stands for First Amendment values that continue more than forty years after the case. And, Goodale reminds us of that.