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David Rudenstine. *The Day the Presses Stopped: A History of the Pentagon Papers Case.* Berkeley: University of California Press, 1996. x + 416 pp. $34.95 (cloth), ISBN 978-0-520-08672-2.

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The Day the Presses Stopped

As the late historian and columnist Francis Loewenheim would have said, *The Day the Presses Stopped* is "a *real book*." Encyclopedic in narrative detail, carefully documented, balanced and forthright in legal analysis, David Rudenstine's book adds substantively to our understanding of an important piece of recent American history. It should be required reading of all serious students of the Vietnam era, the history of the print media, and the First Amendment.

Rudenstine, a dean and professor at the Benjamin N. Cardozo School of Law, devotes the majority of his attention to the legal cases that arose from the federal government's efforts to enjoin the *New York Times*' and the *Washington Post*'s publication of the so-called Pentagon Papers (hereafter PPs). In all, 308 pages (of 356 pages of text) detail the eighteen-day saga from publication (June 13, 1971) to the Supreme Court's decision (June 30, 1971) to deny the Executive's attempt at prior restraint.

According to the book's dust jacket, Rudenstine "reaches important conclusions that will stun many readers." Well, what are his conclusions, and should we be stunned? Up front, Rudenstine admits that he began his investigation with a bias against the Nixon administration and its case against the *Times*. Like most liberals who came to oppose the Vietnam War (most later in the war than they will ever admit) and always despised Richard Nixon, Rudenstine regarded the "legal dispute as an effort by the Nixon administration merely to withhold deeply embarrassing information about U.S. involvement in Vietnam, and as connected to Nixon's general campaign to intimidate the press (pp.8,11)." His research convinced him that these views were misguided. Indeed, one new finding is that Nixon, initially, reacted quite ambivalently to the *Times*' publication of the PPs. Related and more appropriately labeled *stunning*, Rudenstine found that once Nixon and the Justice Department mobilized to stop the *Times* (and, later, the *Post*) from further publication, they did so out of genuine concern that the PPs contained material which, if published, might threaten important national security interests and undermine the government's ability to govern (pp.8,9,66-71,81-86,120,354-55).

By contrast, Rudenstine's research did not alter his opinion of the Supreme Court's decision. By a 6-3 vote, the Court denied the government's request for an injunction against continued publication.[1] Rudenstine still views this decision as *courageous*. In his view the Court "decided to risk the dangers inherent in a freer press because the alternative resolution–enhancing government power to censor the press–was even more threatening to a stable and vital democracy ... Distilled, the decision represents the judgment that democracy must tolerate risks–even potentially serious risks–inherent in freedom because freedom also strengthens a democracy's fundamental security"(pp. 355-365).

Rudenstine's judgement of the Supreme Court's decision rings true, but it's hardly surprising. However, Rudenstine also concludes–and this certainly will surprise many readers–that "it must be recognized that the Court's decision put the nation's security at risk, at least to some degree," because the PPs "did contain some information that could have inflicted some injury ..."(pp. 9, 354). For example, some PPs documents contained information that might have compromised intelligence sources and methods or which might have influenced ongoing secret negotiations with Hanoi. Had the government marshaled such evidence more effectively, Rudenstine contends, the key PP's case might easily have gone the other way. But before he takes us into the Supreme Court to hear oral arguments and into chambers to assess each Justice's opinion, Rudenstine adeptly guides the reader through every step of both the PPs' felonious journey from the vaults of Defense Department into the hands of Daniel Ellsberg and the *New York Times*, and the legal cases' frantic climb up the federal court system. The PPs' journeys reached an initial climax on June 13,

1971, when the *Times* published the first of a series of articles based on the secret history of U.S. involvement in Southeast Asia. Prepared on the order of Secretary of Defense Robert S. McNamara between June 1967 and January 1969, the forty-seven volume *History of U.S. Decision Making Process on Vietnam Policy* totaled 7,000 pages, 4,000 of which were documents. Only fifteen copies of the secret study were printed, all of which were kept under lock and key.[6]

The *Times* attained the study illegally, from Daniel Ellsberg. A distinguished graduate of Harvard and a former Marine Corps officer and Defense Department analyst who had, by 1967, turned against the war in Vietnam, Ellsberg gained access to the PPs in 1969 while working at the RAND Corporation. Ellsberg had worked briefly on the PPs project in 1967 at the request of Morton Halperin who, along with Leslie Gelb, supervised the PPs project (p. 39). Halperin approved Ellsberg's request for access to the final study; but, rather than using the study as part of his research at RAND, Ellsberg made himself a copy of the massive history and sought to have it published, believing its contents would contribute to growing public disillusionment about the war and, thereby, to bringing U.S. involvement to a swift end. After his efforts were rejected by several members of Congress, Ellsberg, in February 1971, turned to Neil Sheehan of *The Times* (pp.40,42-47,54-56,64). The rest, as they say, is history.

In the second, headline-grabbing journey of the PPs, that of the legal cases, every brief, every debate at the Justice Department and among the newspapers' legal teams, and every ruling by Judges Gesell, Gurfein, Kaufman, and the Second Circuit Court, come under Rudenstine's discerning eye. Stylistically, the result is somewhat Byzantine, and many of the book's principal themes occasionally disappear into the overwhelming mire of information presented. But Rudenstine's thoroughness pays dividends as well, leaving the reader with an informed appreciation of the issues at stake and the personalities involved. The strategies and performances of the opposing counsel–in particular, the keystone-cops quality of the government's representatives–will fascinate lawyers and legal scholars.

Two other conclusions receive special attention from the author and his publisher: first, that neither the Court's decision nor the Constitution's protection of free speech precludes prior restraint (p. 354); second, that the PPs publication led directly to the machinations and crimes that grew into Watergate and, thus, to the downfall of the Nixon administration (pp. 4-6). For those at all familiar with the history of the Watergate scandal, this second conclusion comes as no surprise (indeed, this writer has been teaching this "stunning" conclusion to undergraduates at Rice since 1991). On two other significant points the author's apparent lack of knowledge of Watergate and Vietnam detracts from what is a very fine historical narrative. First, Rudenstine all but dismisses what was (and continues to be) Henry Kissinger's principal concern regarding the PP's publication: namely, their potential effect on American credibility and the secret negotiations with Communist China. According to Rudenstine, not only was any concern for the PPs' impact on superpower negotiations misguided at the time, but Kissinger has ever since exaggerated this concern in order to disguise the self-interest that motivated his encouragement of Nixon to "go after" the *Times* (pp. 72-74,90-92,121-122,253-254).

Rudenstine's assessment of the White House's determination not to appear weak, and his account of Kissinger's outbursts, particularly against his former student Daniel Ellsberg, relies on sources of questionable merit: H.R. Haldeman and Seymour Hersh. Indeed, a careful reading of Rudenstine's choice of words in this section reveals some shaky history: the text here is littered with weak words– "must have assumed," "would almost certainly," "what seems more plausible," "it is possible."[3]

But the more serious misstep here is one of context and interpretation, not sources. What the author fails to appreciate–and what tellingly suggests an anemic knowledge of the historical context of 1969-1973–is that the national security advisor's concern with "weakness" derived directly from his concern with his diplomatic agenda, an agenda which in mid-1971 was approaching a potentially momentous but also extremely fragile turning point. Mr. Kissinger was then engaged in the final stage of a two-year-long effort to establish relations with Peking; the stunning (now here is an appropriate use of the word) announcement that President Nixon would visit China was only one month away. Upon the successful establishment of a Sino-American relationship, Nixon and Kissinger reasonably believed, rested the hopes of nearly all of the administration's major foreign policy objectives: negotiating an acceptable end to the war in Vietnam; maneuvering Moscow into a less tense and more productive relationship, including conclusion of SALT I; and, above all, redressing the global balance of power.[4] Mr. Rudenstine apparently either does not know this or fails to appreciate the subtle and complex interrelationship among the various components of the Nixon-Kissinger strategic design; thus, he fails to recognize that the White House's obsession with not signal-

ing weakness meant protecting credibility and secrecy at this enormously important and unpredictable moment in American diplomatic history.

A less egregious but no less revealing error is the author's ingenuous interpretation of the handling of the PPs' diplomatic volumes. Rudenstine accepts, without question, the claim by Ellsberg and the *Times* that the decision not to publish material from these volumes was motivated by patriotism–i.e., by a determination not to interfere with the ongoing negotiations between Washington and Hanoi. In fact, Ellsberg and the *Times* chose to withhold the diplomatic volumes because those volumes vividly documented the Johnson Administration's tireless efforts (1964-1969) to bring the war to a negotiated solution. Embarrassingly contrary to the charges leveled at the time by Hanoi and the American news media, the diplomatic volumes showed that Hanoi, not Washington, had at every turn obstructed an early and peaceful end to the war; Hanoi, not Lyndon Johnson or Robert McNamara or Dean Rusk, had failed to demonstrate any flexibility or seriousness in efforts at negotiation; and Hanoi, not Washington, was determined on a total, military victory in Southeast Asia. But these facts, of course, were anathema to Ellsberg and Sheehan, who hoped that the PPs would reveal the U.S. as the aggressor and obstacle to peace in Vietnam.[5]

Despite these shortcoming, the vast majority of Mr. Rudenstine's conclusions ring true. Particularly compelling is his overarching interpretation of the Pentagon Papers case as a *crucible for testing the strength and resilience of many elements that are critical to the democratic order*, and as illustrative of "one of the most important challenges facing any modern-day democracy–the balance between the legitimate need of government to keep some information secret and of the people to be informed about their government and matters of vital importance (pp. 6, 355-356)." And as the publisher claims, the book does offer a number of stunning revelations. However, this historian found a set of surprising revelations that the publisher may not have intended. For instance, for historians of recent America perhaps the most valuable and revealing sections of the book are those detailing the behind-the-scenes activities and debates at the *Times* and *Post*. Thanks to interviews with most of the individuals involved, Rudenstine has turned up a fascinating and disturbing story and a gold mine of information for scholars interested in the relationship between the press and the government. For instance, Rudenstine reveals that the *Times* and *Post* journalists were driven to publish the PPs principally by personal, political, and competitive reasons. Both staffs, for example, were obsessed with not being "scooped"–when he learned of the *Times*' first PPs story, *Post* editor Ben Bradlee became "desperate" and ordered his staff to do whatever it took to get the *Post* a copy of the classified study. Bradlee was equally obsessed with proving his own toughness (not unlike Mr. Nixon) by refusing to back down before the government; and both he and *Post* publisher Katharine Graham viewed publication as imperative to the *Post*'s reputation and competitive advantage.[6]

Equally clear is that the newspapers sought both to obtain and to publish the PPs because they despised Richard Nixon's administration and opposed his handling of Vietnam. With this, Rudenstine brings his own evidence and interpretation full circle: quite convincingly, he confirms the long-standing image of Nixon's obsession with the press and conviction that the liberal media was out to destroy him, and that this sentiment fueled his decision to sue to halt publication of the PPs. But with equal certainty, Rudenstine shows that Nixon was right: many of the leading journalists of the nation's two most important daily newspapers (not to mention a member of the Supreme Court–Justice Hugo Black) relished the opportunity to deal blows to him and his policies (pp. 46,53,55,131,134-135,298,303-304). Whether or not one agrees with the outcome of the legal battle over the PPs, there is much here to ponder.

The history of the Vietnam War era is full of mixed messages about the role of a free press in wartime and the relationship between the news media and the federal government. On the one hand, the dustbin of history is littered with the corpses of atrocious journalism in and about Vietnam–from Cam Ne to Ben Suc, and from the Tet Offensive to Harrison Salisbury's bogus reports from North Vietnam, to name a few. No less numerous and atrocious, however, were the wartime examples of attempts by the Executive to mislead and deceive both press and public. At one point in his rich history of the PPs case, David Rudenstine notes Judge Gurfein's estimation that the case boiled down to which side one trusted–the government and its claim to defining the national security versus the newspapers and their claim to an unfettered First Amendment.

Perhaps unintentionally, Rudenstine makes a good case that neither side merited much trust. For instance, although the Nixon administration's concern with the PPs as a breach of national security was legitimate, its transformation of this concern into assaults on the press, Daniel Ellsberg, and the Democratic National Committee (among others) lifted the lid on a Pandora's box of Executive abuses from which the nation still reels. And

although the issue of prior restraint rightfully stirred the press and its defenders into action, the fact is that the PPs cases revealed not a crusading but a politically motivated and egotistical press led by individuals who were willing to flirt with illegality for the sake of competitive advantage and to enhance the institutional power of the "Fourth Estate."

Despite his book's unsettling contribution to the history of the Vietnam era, Mr. Rudenstine concludes on an optimistic note. Unlike the government and the press, the courts, in his judgment, performed quite admirably and as the Framers intended: as an arbiter above the political realm and as the protector of civil liberties and free institutions.

NOTES

[1]. Pp. 298-320. Chief Justice Warren Burger and Justices Harry Blackmun and John M. Harlan voted in favor of the injunction. The majority was formed by Justices Hugo Black, William J. Brennan, William O. Douglas, Thurgood Marshall, Potter Stewart, and Byron White. Each Justice wrote an opinion.

[2]. P. 31. Five copies were kept at the Pentagon, nine went to the Kennedy and Johnson presidential libraries and seven Johnson Administration officials: McNamara, Clark Clifford, Paul H. Nitze, Nicholas Katzenbach, William P. Bundy, Paul Warnke, Leslie Gelb and Morton Halperin jointly (they were the principal supervisors of the project), and one went to Henry Kissinger when he became national security advisor.

[3]. Pp. 80-92. One factual mistake also stands out. On page 62, Rudenstine writes that *Times* editor A.M. Rosenthal "had the terrifying vision of President Nixon gathering former Presidents Truman, Eisenhower, and Johnson together on television to denounce the Times for jeopardizing the national security." President Eisenhower died in March 1969, more than two years before the PPs publication.

[4]. The principal sources, of course, are Henry Kissinger, *White House Years* (Boston: Little, Brown and Company, 1979), and Richard M. Nixon, *RN* (New York: Gossett & Dunlap, 1978). The same conclusion is offered by scholars not connected with the Nixon administration: Stephen Ambrose, *Nixon: The Triumph of a Politician, 1962-1972* (New York: Simon & Schuster, 1989), Seyom Brown, *The Crisis of Power* (New York: Columbia, 1979), John Lewis Gaddis, *Strategies of Containment* (New York: Oxford, 1982), Raymond Garthoff, *Detente and Confrontation* (Washington: Brookings, 1985). That the administration managed to achieve much of its diplomatic agenda after publication of the PPs continued does not necessarily undermine the legitimacy of White House fears. As Rudenstine himself points out, the Supreme Court's decision not to enjoin the *Times* and *Post* from further publication of PPs' materials turned on the majority's opinion that the government "failed to offer evidence [of how publication of certain PPs material would endanger national interests] as detailed, as specific, and as compelling as the Court required. But that did not mean that adequate evidence might not have been presented; it did not mean that subsequent publications might not reveal injurious information." Rudenstine, pp. 354-55.

[5]. Pp. 52, 54-55, 64, 85, 123. Opposition to publication of the diplomatic volumes persisted for more than a decade after the PPs were revealed. Had Ellsberg's and Sheehan's pretext for withholding them in 1971 been true, then publication would have followed quickly after 1973 and the conclusion of America's involvement in Vietnam. It was not until 1983, and after frustration of other historians' efforts, that Professor George Herring succeeded in finding a publisher for the revealing diplomatic volumes. George Herring, ed. *The Secret Diplomacy of the Vietnam War* (Austin: University of Texas Press, 1983).

[6]. Pp. 58-61, 125-131, 135-137, 143. Of interest and importance to the *Post*'s decision to publish was the fact that it had just "gone public" as a business enterprise.

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