

Controversial Grand Jury Report Strains Ties of Miami Papers

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By B. DRUMMOND AYRES Jr. JAN 10 1977

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MIAMI, Jan. 9—Relations between this city's two daily papers, the morning Herald and the afternoon News, have been severely strained in recent days by a series of developments that have raised major questions about press freedom and responsibility.

At the center of the dispute is a Federal grand jury report that has not yet been officially released. It is said to be highly critical of the News's handling of some 1975 articles about an Internal Revenue Service investigation into the sex and drinking habits of a number of prominent Floridians.

The News has attempted, since learning of the report's existence, to have it suppressed, to have it modified, to have it expunged and, finally, to have it released. The paper has accused the grand jury of tampering with press freedom.

The Herald, which shares advertising and printing facilities with The News but not reporters or editors, has called for immediate release of the grand jury's report and has termed The News's efforts a threat to the public's right to know.

Herald Helps News

At the same time, however, The Herald has joined with The News in the afternoon paper's effort to defend itself in a \$5 million libel suit resulting from the stories about the I.R.S. investigation, known as Operation Leprechaun.

The News is resisting a trial motion that it disclose the source of some of its articles. The Herald, in a "friend-of-the-court" brief, contends that to force The News to disclose its sources would violate press freedom.

The grand jury report is in the hands of Judge C. Clyde Atkins of the United States District Court in Miami. He has said he will rule on its disposition tomorrow.

The main contents of the report were disclosed Thursday in The New York Times. In criticizing The News's handling of the I.R.S. investigation, the report said the paper "knowingly" published "false information." The report concluded that tax agents did not violate the civil rights of taxpayers during the inquiry.

There are no indictments in the report.

Lawyer Challenges Jury

The News's lawyer, Daniel N. Heller, said today that a grand jury "doesn't have a right to tamper with a newspaper unless it indicts it."

"No grand jury can tell a newspaper how to run its business," he added. "That's a veiled threat to press freedom, a chilling effect."

Mr. Heller said that The News, which is owned by the Cox newspaper chain, first attempted to have the jury report suppressed and later to have it expunged because the paper felt some "symbolic objection" was needed to protect press freedom.

After The Herald and plaintiff lawyers in the libel suit demanded release of the report, The News relented and called for its publication.

Some Miami lawyers have speculated privately that The News originally wanted the report kept secret because its contents might be used to bolster the plaintiff's case in the libel suit. The plaintiff, Rogelio Novo, has charged that The News libeled him by negligently reporting that he was spying on patrons in a bar he operated.

"The libel suit had nothing to do with our position on the report," Mr. Heller

contended. "We were not trying to cover up or stonewall. We were trying to protect every newspaper in the country and its right to publish."

"When I saw that our good intention had been misunderstood, that our symbolic objection had been misconstrued, I joined in and told the judge to go ahead and release the report, print the whole affair. But I still say a grand jury has no right to tamper."

Dan Paul, an attorney for The Herald, which is owned by the Knight-Ridder newspaper chain, contended that "courts have regularly commented on the press' performance and grand jury comment seems not all that unusual, though I don't endorse it."

Public's Right to Know

"The press is certainly not immune from criticism," Mr. Paul continued. "A grand jury report on performance of public officials and matters of public interest is something the public has a right to know about. That's why we called for the report's immediate release when we learned that The News was trying to suppress it."

Mr. Paul added that he was "particularly disturbed" about The News's libel suit.

"This one is being watched around the country," he said. "It's not just the old demand that sources be named. The plaintiffs are going after The News on the basis of negligence, and I fear that sort of attack might be a coming thing now that no-fault has left so many lawyers hungry. There's a lot of seeking and inquiring in negligence law, so you can see the threat to the editorial process."

Murray Sams Jr., the plaintiff lawyer in the libel suit, countered that "the press gets more than usual legal leeway, which we recognize, but there has to be a level of responsibility, too, and that's what will be decided."

The Herald-News business relationship is a relatively rare journalistic combination in the United States, though such relationships are entirely legal and have official sanction on the various statutes designed to keep struggling newspapers alive in the interest of press freedom.

The News has neither the editorial professionalism nor the financial strength of The Herald, which is considered one of the most financially lucrative newspapers in the country. But The News continues to make a profit because it shares what the combined advertising and production departments are able to produce.

No Threat to Ties Seen

The current dispute between the two papers, while serious, is not likely to break up the business combination.

In a column published this morning, John McMullan, The Herald's executive editor, expressed the hope that events of the last week would convince skeptical Miamians, once and for all time, that the papers' editorial departments remain separate and independent, whatever relationship the business departments might have.

"Our little spat should be welcomed by the community. While the press rides itself on providing checks and balances for everybody, we need to provide some for ourselves."

"Too long in too many committees have the members of the press been reluctant to disagree publicly with each other."

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