

Judge orders L.A. Times to alter story about Glendale cop, sparking protest from newspaper

LA Times . Cindy Chang . Jul 16, 2018

<http://www.latimes.com/local/lanow/la-me-ln-legal-dispute-20180714-story.html>

A federal judge on Saturday ordered the Los Angeles Times to remove information from an article that described a plea agreement between prosecutors and a Glendale police detective accused of working with the Mexican Mafia, a move the newspaper decried as highly unusual and unconstitutional.

The agreement was supposed to have been filed under seal, but it was mistakenly made available on PACER, a public online database for federal court documents.

In response to the order from U.S. District Judge John F. Walter, The Times revised the article to eliminate information about the sealed document. The Times filed an emergency motion Sunday night to stay the judge's order.

"We believe that once material is in the public record, it is proper and appropriate to publish it if it is newsworthy," said Norman Pearlstine, executive editor of the Los Angeles Times.

In a statement Monday, Pearlstine added: "The judge's order clearly violates the 1st Amendment.... We expect that the judge's order will be vacated on appeal, and we will publish the information."

Kelli Sager, an attorney representing The Times, said the 1st Amendment includes a strong presumption against government actions that prevent someone from speaking or publishing information.

The article, by reporter Alene Tchekmedyian, was posted Saturday morning, before the judge made his ruling.

"Typically, courts take into account if information was already published. Where it is no longer secret, the point of the restraining order is mooted," Sager said. "To order a publication to claw it back doesn't even serve the interest that may be intended."

Judge Walter did not explain in his order the legal justification for demanding that The Times withdraw the article.

The detective, John Saro Balian, pleaded guilty on July 12 to three counts: lying to federal investigators about his links to organized crime, accepting a bribe and obstructing justice by tipping off a top criminal target about an upcoming federal raid.

After the article was published, Balian's attorney sought a temporary restraining order, which Walter granted Saturday afternoon.

"To the extent any article is published prior to issuance of this order, it shall be deleted and removed forthwith," Walter wrote.

Walter said Balian had a good chance of prevailing on the issue and "the balance of equities tips in his favor." However, the judge ordered that Balian's motion not be given to The Times.

Balian's attorney, Craig Missakian, declined to comment.

Peter Scheer, former executive director of the First Amendment Coalition, said the plea agreement was "fair game," because it had been placed in the public domain.

"A news organization that wishes to write about the content has the right to do so under the 1st Amendment," Scheer said. "Whether or not a journalist should is a matter of editorial discretion or journalistic ethics. It's a separate matter. It's not a legal matter."

Scheer said that judges sometimes order material to be taken down from social media and other places after the fact, as with a domestic dispute where a spouse has posted derogatory material. He has seen it happen with media outlets too — "It's rare, but it does happen."

The judge may lack jurisdiction to order the L.A. Times to do anything, because the newspaper is not a party to the case and did not appear in his courtroom, Scheer said.

Scheer called the restraining order against The Times "a regrettable situation."

“There are good reasons to have strict limitations on judicial power to order things to be taken down and to order people to do things who aren’t actually involved in the case,” Scheer said. “Those limits are essential parts of our freedom and liberties under the Constitution.”

According to prosecutors, Balian, 45, led a double life. As a detective, he investigated cases, interviewing witnesses and conducting background checks on suspects. He also served for a time as the Glendale Police Department’s spokesman.

He was identified as a person of interest by the FBI’s Eurasian Organized Crime Task Force, which was probing ties between the Mexican Mafia and Armenian organized crime.

During the investigation, three confidential informants told authorities about troubling interactions with the detective, which were detailed in a 47-page affidavit by Homeland Security Investigations Special Agent Michael Hyland.

In one case, an informant alleged that Balian tipped off a Frogtown gang member to a law enforcement sweep.

“Tell your boy Bouncer that he’s the No. 1 on the list for tomorrow,” Balian allegedly warned, according to the affidavit. It took agents another month to arrest the target.

The informant also alleged that Balian gave him locations of marijuana grow and drug stash houses — information he was privy to as an officer — and told him to “hit them” before law enforcement could execute their search warrants, according to the affidavit.

The informant said he and Balian communicated using “burners” — cellphones they used only with each other for no more than a month at a time. On one of the informant’s phones, according to the filing, Balian’s number was saved as “Bro.”

When confronted by federal agents in four interviews over the last year, Balian lied about his ties to the Mexican Mafia and Armenian organized crime, authorities said.

Balian remains on unpaid leave. Last Friday, Magistrate Judge Alicia G. Rosenberg denied his request to be released on bond.

8:10 a.m., July 16: This article was updated with The Times filing a motion and further comment from the paper.

This post was originally posted at 8:55 p.m. July 14