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## "HIT MAN" RULING IMPLICATIONS Why Publishers Should be Worried

by Hoag Levins

If allowed to stand, Monday's 4th U.S. Circuit Court of Appeals ruling on the controversial "Hit Man" liability lawsuit could have a chilling effect on newspapers and other periodicals that publish articles containing graphic and specific details of criminal activities, according to a New York expert in media law.

In a ruling that has serious First Amendment implications for all publishers, the court ruled that a book publisher could be held liable for complicity in a murder committed by a hit man who learned how to plan a contract killing by reading one of the publisher's books.

In an assessment of the ruling issued this morning, attorney Lawrence Savell of Chadbourne & Parke LLP, said that such a precedent, if upheld in further appeals, could even affect newspapers that publish advertisements for potentially illegal activities such as "escort services." Savell represents a number of national magazines and other publishing companies.

The ruling by a three-judge panel in Richmond, Va., reversed the earlier one of a lower court that held that the book publisher could not be sued by the family of a contract killer's victim. But, in Monday's action, the U.S. Circuit Court judges said that the book publisher – Paladin Press of Boulder, Colo. -- could be sued and that "the Supreme Court has never protected as abstract advocacy speech so explicit in its palpable entreaties to violent crime."

### Three Murder Victims

The case revolves around a 1993 contract murder that took place in Montgomery County, Md. James Perry of Detroit, Mich., was convicted of killing Mildred Horn, her 8-year-old, quadriplegic, respirator-bound son, and the boy's nurse. Perry shot both women in the head and suffocated the child. He was reported to have been hired by Mrs. Horn's husband, Lawrence, to commit the murders. The reported motive of the "hit" was to enable Mr. Horn to take control of a \$1.7 million legal settlement his quadriplegic son received as a result of a medical malpractice lawsuit.

After they learned that Perry had used the 130-page Paladin book, "Hit Man: A Technical Manual for Independent Contractors," to plan the murders, family members of the victims filed a law suit against Paladin in

1996. But a federal judge threw out the suit on First Amendment grounds. The plaintiffs filed an appeal that led to Monday's Circuit Court reversal.

### **"Chilling Effect"**

Today, Savell warned that the ruling may have "a chilling effect on publishers whose works depict criminal activities," and that "countless works ... could fall within the broad scope of publications that contain descriptions -- often graphic and specific -- of illegal acts."

"It raises the issue whether a publication can be held responsible for the actions of others who read its content and choose to act upon it. Such an issue is obviously of concern to many publishers, including those whose publications describe dangerous or hazardous activities or products. Note that one of the amici filing a brief was the Horror Writers Association. It may also be of concern to publishers who run advertisements in their periodicals for potentially illegal activities, such as 'escort services'."

### **First Amendment "Complete Defense"**

Savell noted that for the purposes of the summary judgement proceeding, Paladin had "stipulated that it was liable for the murders unless the First Amendment was a complete defense to the action. This included a stipulation that the killer had followed the book's instructions, that Paladin had 'intended to attract and assist criminals and would-be criminals who desire information and instructions on how to commit crimes,' that it intended and had knowledge that the book would be used by criminals 'upon receipt' to plan and execute the crime of murder for hire, and that it assisted the particular killer in perpetrating these particular murders."

Savell went on to explain that "such a stipulation (which the court described as 'astonishing' and made in 'taunting defiance'), which basically takes the plaintiffs' most biased allegations as true, created a very extreme and one-sided set of facts for purposes of deciding whether to dismiss the case, which made the court's decision far easier."

"Basically, Paladin's position is and was: 'information doesn't kill; people do.' The court ruled that 'the First Amendment does not pose a bar to a finding that Paladin is civilly liable as an aider and abetter of [the] triple contract murder,' and that the plaintiffs stated a claim against the publisher sufficient to withstand its motion for summary judgment."

Paladin will be seeking the full Fourth Circuit to reconsider the opinion of the unanimous three-judge panel that decided the case.

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