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## Court Weighing fate of 'Alpha Dog'

By Dawn Hobbs, News-Press Staff Writer

Unless an appeals court intervenes, the movie "Alpha Dog" is scheduled to hit the big screen in Santa Barbara and across the country on Jan. 12.

"Alpha Dog" -- the major motion picture based on the high-profile Jesse James Hollywood death penalty case -- premiered in Los Angeles this week. On Thursday, a federal appellate court had yet to decide whether to block the upcoming national release of the Universal Studios film. The movie, based on the prosecution's version of the kidnapping and slaying of a 15-year-old boy in the Santa Barbara hills in 2000, is scheduled to hit the big screen here and across the country on Jan. 12.

This would make "Alpha Dog" the first major motion picture in the U.S. based on a criminal case to be released before the trial in that case gets under way, according to those involved with the case. Fearful that the fictional account -- based on information supplied to filmmakers by the Santa Barbara County District Attorney's office during the three years Mr. Hollywood was at large -- will prejudice potential jurors against his client, Mr. Hollywood's defense lawyer, James Blatt, recently filed an emergency request with the 9th U.S. Circuit Court of Appeal to delay the film's national release.

"From the public policy point of view, it is horrific what has occurred here," Mr. Blatt told the News-Press on Thursday. "It damages the integrity of the justice system. That is the key issue. It's not about guilt or innocence.

"It's about Mr. Hollywood having an opportunity, like every other defendant, to have a fair trial -- and how can you have a fair trial when the prosecutor and the motion picture industry get together to produce a film from the prosecutor's point of view? This needs to be stopped -- not just for Mr. Hollywood, but for future cases as well."

The emergency request for the injunction is the latest legal wrangling in the high-stakes murder case. In mid-December, a federal judge from the U.S. District Court in Los Angeles denied the defense request, pointing out that there would surely be 12 potential jurors in Santa Barbara County who had not seen the film, and stating that prior restraint is the "most serious and least tolerable infringement on First Amendment rights."

Just last week, the state Supreme Court decided to review the prosecution and defense

challenges. In October, appellate justices removed veteran prosecutor Ron Zonen from the case, ruling that he had overstepped ethical and legal boundaries by supplying the filmmaker with criminal files while the matter was still pending, but deciding that the entire office does not need to be recused. Briefs challenging those opinions are due Jan. 19.

While Assistant District Attorney Pat McKinley has remained steadfast in declining to comment about the case, he did comment Thursday about the film: "I have no doubt that people in this office will go to see it when it opens here, including me, just because we're curious."

Universal Films lawyer Kelli Sager and the company's spokesperson have repeatedly refused to comment. The case has captured national attention not only because Mr. Hollywood -- who, at age 20, became the youngest man ever on the FBI's Most Wanted List -- was regularly featured on the TV show "America's Most Wanted" while police were searching for him, but also because of the issues surrounding the film.

The case highlights the tension that underscores the tug-of-war between the defendant's Sixth Amendment right to a fair trial and the entertainment industry's First Amendment right to publication without prior restraint.

"It's a constitutional clash," Mr. Blatt said. "Both sides have a powerful and legitimate interest in this case."

On Wednesday evening, Justin Timberlake -- who stars in the film along with Emile Hirsch, Bruce Willis and Sharon Stone -- appeared on "The Tonight Show" with Jay Leno to discuss the movie. But when Mr. Leno asked about the case on which it was based, Mr. Timberlake only provided scant details, never naming Mr. Hollywood or Santa Barbara. Summarizing, he said it was about a kidnapping in Simi Valley and the subsequent bad mistakes a group of kids made.

Even though Mr. Timberlake may not have discussed the details, and the names and places have been changed in the film, moviegoers Wednesday evening in Los Angeles were aware of the connection. "I understand that as everyone was coming out of the movie theater here, they were talking about the film and how it was about Jesse James Hollywood," Mr. Blatt said. "All of the news channels showed clips of his arrest and indicated flat out the movie is based on this case. There is no question about the connection."

Nicholas Markowitz was snatched near his West Hills home and taken to Santa Barbara, where he was held captive for three days before he was placed alive in a shallow grave next to a hiking trail off East Camino Cielo and then shot to death. Mr. Hollywood is accused of orchestrating the crime. The killing, authorities said, was part of a botched plan to get Nicholas' half brother to pay off a \$1,200 marijuana debt.

Mr. Zonen successfully prosecuted the four co-defendants in 2003, all of whom were interviewed by the actors or film director while behind bars -- even the triggerman, who is on death row.

Mr. Blatt said his client is "cautiously optimistic" about how the 9th U.S. Circuit Court of Appeal will rule. The defense lawyer himself has acknowledged that it's an uphill battle.

Legal experts also suspect the high court will uphold the entertainment industry's First Amendment rights.

"The fact that the film is out gives you a good idea of what is going to happen," said Laurie Levenson, professor at Loyola School of Law and former federal prosecutor. "Frankly, if they were concerned, they would have acted sooner. But who knows? Not to make fun of the matter, but I anticipate the 9th Circuit will be thumbs down for the defense."

Defense lawyer Thomas Mesereau, who won the Michael Jackson trial in Santa Maria in 2005, said that Mr. Blatt has taken the correct route in challenging the matter.

"He has accomplished a lot in this regard, but it will be very difficult to enjoin the release of a film for this purpose," Mr. Mesereau said. "Here you have a prosecutor who went over the line in working with a film company -- not in a misdemeanor case, but in a death penalty case."

"Prosecutors are supposed to be extra cautious in a case like this. But certainly the courts have to think seriously about what kind of message they are going to send to prosecutors who deal in high-profile cases when they rule on this case."