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Federal judge expected to rule on timing of 'Alpha Dog'

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A federal judge will likely decide this week whether a defense request to delay the opening of a Universal Studios movie based on the high-profile Jesse James Hollywood murder case has enough merit to move forward to a hearing.

The high-stakes case highlights the tension underscoring the tug of war between the defendant's Sixth Amendment right to a fair trial, and the entertainment industry's First Amendment right to publish without prior restraint.

"Alpha Dog," starring Emile Hirsch, Justin Timberlake, Bruce Willis and Sharon Stone, will either become the first major motion picture based on a criminal prosecution in the U.S. to be shown in theaters before the trial in that case even begins, or it will become the first film to ever be temporarily shuttered from the public.

While the courts have long upheld the entertainment industry's rights to release movies about accused criminals, the unprecedented aspect of this case is that the fictional account about the homicide suspect is based on material the Santa Barbara County District Attorney's Office provided to the filmmakers. Appellate justices recently recused veteran prosecutor Ron Zonen from the case for cooperating with these filmmakers while the death-penalty case was still pending.

Defense lawyer James Blatt wants the film's release delayed until after his client's capital trial is over -- claiming it will irreparably poison the jury pool if it's shown beforehand. However, Universal Studios lawyer Kelli Sager wants the judge to throw out the defense motion requesting the injunction, asserting it is not only absolutely baseless, but effectively erodes the core intent of the First Amendment.

Ms. Sager and a Universal spokeswoman declined comment Friday, but Mr. Blatt said: "When a prosecutor or a defense attorney releases their entire criminal file and then becomes part of the creative process with the filmmakers, this causes a destruction of the presumption of innocence and the ability to receive a fair trial. I believe that Hollywood (the movie industry) has, in this case, gone too far."

However, Mr. Blatt acknowledged the courts rarely enforce prior restraint: "This is a major uphill battle -- there's no question about it. But when an appellate court takes a look at the problems created in this case, the rulings are in the defense's favor because the (prosecution) conduct is so egregious."

The high-powered lawyers in the federal matter were scheduled to go head to head this morning in the United States District Court in Los Angeles before Justice Gary Klausner. However, late Friday the judge notified the lawyers he did not want to hear oral arguments and would instead issue a written decision based on the submitted pleadings. If the judge rules the defense request has merit and the matter deserves further exploration, arguments are scheduled for Dec. 11.

However, if the judge grants Universal's request to toss the case, Mr. Blatt told the News-Press that he will file an emergency request with the Ninth U.S. Circuit Court of Appeal in an attempt to keep "Alpha Dog" from hitting the big screen on Jan. 12, 2007, as scheduled -- or earlier if there is a limited release later this month, as expected by movie critics, to qualify it for Oscar consideration. The film premiered in January at the Sundance Film Festival in Park City, Utah.

"Alpha Dog" closely follows the prosecution's theory about the kidnapping and murder of 15-year-old Nicholas Markowitz in August 2000; however, the names and places have been changed.

The teen was snatched near his West Hills home near Los Angeles and taken to Santa Barbara where he was held captive for three days before he was placed alive in a shallow grave amidst the bucolic hills here, next to a hiking trail off East Camino Cielo and then shot nine times with a Tec-9 semi-automatic pistol. 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, putting the triggerman on San Quentin's death row.

The case has captured national attention not only because Mr. Hollywood -- who, at age 20, became the youngest man ever listed on the FBI's Most Wanted List -- was regularly featured on the TV show "America's Most Wanted," but also because of the issues surrounding the film.

Ms. Sager stated in legal papers: "The extraordinary remedy sought by Hollywood is especially inappropriate here, where his counsel waited for more than a year after attending a screening of the film to seek any relief from its national distribution. Because of this inexplicable and unwarranted delay, this Court must weigh the certainty that an injunction not only would violate Universal's First Amendment rights, but also would jeopardize Universal's sizable investment in the film, against Hollywood's speculative claims of prejudice."

She suggests the judge instead use other measures to remedy any potential of prejudice: "Even in the highest publicity cases -- including cases involving John DeLorean, the Watergate burglars, and Charles Manson -- courts have found that voir dire, venue changes and other mechanisms sufficiently protect against any possible prejudice."

Mr. Blatt shot back, telling the News-Press on Friday that he intentionally waited to file the request to delay the movie release until the studio had a firm release date. He also insisted the prior restraint he seeks is not unconstitutional. In documents filed last week, Mr. Blatt asserts that the cases Ms. Sager cites in regard to prior restraint with news do not apply: "'Alpha Dog' is not news and should not be treated as such. 'Alpha Dog' is an artistic motion picture, made to

entertain and generate profit. While it should enjoy First Amendment protection, that protection should not be as great as that received by the news media."

The defense lawyer pointed out: "Where filmmakers rely on a prosecutor in their creative process, obtain nonpublic materials illegally disseminated and use the prosecutor's opinions regarding movie character development, substantial risk exists. That risk is most significant where, as here, the filmmakers seek to release their creation prior to the criminal trial."

Mr. Blatt continued: "Hollywood submits that the cost of that risk is the delay in releasing 'Alpha Dog.' The filmmakers were aware of this risk when they 'consulted' with Deputy District Attorney Zonen and received his discovery. To make them pay for that risk by delaying the release of the film cannot be characterized as unconstitutional."

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