

FIRST DAY

Chicago-based Diamond Technology Partners has launched Context, a quarterly business magazine with controlled circulation of 35,000, and named ex-Wall Street Journal editor Paul Carroll as its editor.

The leading news source for the magazine industry -- twice weekly from FOLIO:

MPA, N.Y. Times et al. Back Paladin in Wrongful-Death Suit

Following to the letter--or so it's alleged--meticulous instructions in a Paladin Press book titled "Hit Man," James Perry, hired by Lawrence Horn, visited Maryland in March 1993 and shot Horn's ex-wife through the eye from about three feet away (there's less blood-splatter from that range than from point-blank range, notes "Hit Man," subtitled "A Technical Manual for Independent Contractors"); strangled his temporary boss's 8-year-old son Trevor Horn, a quadriplegic whose \$2-million settlement for permanent injuries Lawrence Horn lusted after; and shot Trevor's nurse through the eye. For Perry, convicted in October 1994, and Lawrence Horn, the case essentially is as dead as their three victims: Perry's on death row and Horn is serving a life term with no chance for parole. Now it's a wrongful-death lawsuit and First Amendment battle pitting the victims' survivors against several parties but chiefly Paladin, based in Boulder, Colo., and its president, Peder C. Lund. Numerous media businesses are siding with Paladin in *amici curiae* (friend-of-the-court) briefs, including Magazine Publishers of America, the American Civil Liberties Union, Washington Post Co., New York Times Co., ABC, America Online and McClatchy Newspapers Inc. (the company acquiring FIRST DAY parent Cowles Media Co.).

Those companies and Paladin were gratified when a federal district court in Maryland in August 1996 dismissed the wrongful-death suit filed against Paladin by Vivian Rice, guardian of the victims' survivors. "Hit Man," that opinion said, "does not purport to order or command anyone to any concrete action at any specific time, much less immediately.... First Amendment protection is not eliminated simply because publication of an idea creates a potential hazard." On Nov. 10 of this year, however, the U.S. Court of Appeals for the Fourth Circuit, in Richmond, Va., reversed the lower

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court's ruling. It agreed with the plaintiffs in *Rice v. Paladin* that the publisher abetted the murders with the publication of "Hit Man," purchased by Perry in January 1992. In a unanimous opinion, the three-judge panel said: "Paladin ...contends that *any* decision recognizing even a potential cause of action against Paladin will have far-reaching chilling effects of the rights of free speech and press....That the national media organizations would feel obliged to vigorously defend Paladin's assertion of a constitutional right to *intentionally and knowingly* assist murderers with technical information which Paladin *admits* it intended and knew would be used immediately in the commission of murder and other crimes against society is, to say the least, breathtaking." Lawrence Savell, an attorney in the New York office of the Chadbourne & Parke law firm who specializes in media-law cases, admits Paladin is "a worst-case scenario" for upholding the First Amendment, but he hopes the company prevails in appealing the Nov. 10 ruling. "Countless works from the Bible onward could fall within the broad scope of publications that contain descriptions--often graphic and specific--of illegal acts," Savell says. "The court's suggestion that other works which wrongdoers might 'copy' in their actions would not be so subsumed because of the absence of provable *intent*, motive or purpose by the publisher that the described activities be followed is not totally convincing."

Paladin will ask for reconsideration by the full Fourth Circuit Court and, if that fails, seek to have the U.S. Supreme Court hear the case. "It's hard to predict what a court will do, but I think it'll be very difficult to prove liability based on the facts," Savell says. Steven Zansburg, an attorney with Faegre & Benson in Denver, representing Paladin, cited an article in the August '97 issue of *Harper's*--an excerpt from a CIA manual titled "A Study of Assassination"--as an example of the threat Paladin's defeat would pose. "If our client's work is considered unprotected because of its how-to nature," he tells FIRST DAY, "I don't see any way to distinguish the books in our case from [the *Harper's*] article, but I'd love to hear someone try."

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