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ESSAY

FROM *HIT MAN* TO *ENCYCLOPEDIA OF JIHAD*: HOW TO DISTINGUISH FREEDOM OF SPEECH FROM TERRORIST TRAINING

Rodney A. Smolla*

Late last summer, Professor F. Jay Dougherty invited me to participate in "Tune In, Turn On, Cop Out? The Media and Social Responsibility," the Fourth Annual Entertainment Law Symposium sponsored by Loyola Law School of Los Angeles. I learned that one of the issues to be examined was media liability for violent audience behavior, exploring from both social science and legal perspectives the alleged link between violent speech and violent conduct. Little did I or Professor Dougherty or anyone connected to the conference then know that within weeks a catastrophic terrorist attack on the United States—an attack largely spurred by violent religious and political rhetoric and detailed training information in the dark arts of terrorist violence—would force the entire nation to confront with unprecedented intensity the cultural and legal issues surrounding the relationship between violent speech and violent action.

It was quite fitting, then, that the events of September 11, 2001 would color much of our symposium discussion. One of the principal panel discussions for the conference was organized around a hypothetical involving various video and audio recordings capturing possible terrorists engaged in suspicious activity that might have involved the propagation of Anthrax or other forms of biological toxins.¹ In preparation for this panel discussion, I began to investigate the types of published material allegedly used by the terrorist organizations that appear to have been behind the September 11 attacks.

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1. The hypothetical and an edited transcript of the panel discussion appear in this Issue. *The Anthrax Investigation: A Newsgathering and Privacy Hypothetical*, 22 LOY. L.A. ENT. L. REV. 263 (2002); *The Anthrax Investigation: A Newsgathering and Privacy Panel Discussion*, 22 LOY. L.A. ENT. L. REV. 267 (2002).

Western intelligence and law enforcement agencies have in their possession a copy of a manuscript entitled the *Encyclopedia of Jihad*, a comprehensive training manual and religious/political manifesto for the worldwide Al-Qaeda terrorist network, the group held responsible for the September 11 attacks.² The encyclopedia is eleven volumes long, and was reportedly obtained from a disgruntled Libyan fighter who claimed to have stolen the encyclopedia from the Kandahar, Afghanistan headquarters of Taliban fighters loyal to Osama Bin Laden.³ The manual first surfaced in the West during a police raid against a terrorist suspect in Manchester, England in 1998.⁴ I have seen excerpts from the *Encyclopedia of Jihad*, which I obtained by downloading segments released to the public by the U.S. Department of Justice.⁵ Based on what I have read, I am struck by the many similarities between the *Encyclopedia of Jihad* and a number of books published by various American publishers that also contain detailed training information regarding guerrilla warfare, sabotage, espionage, terrorism, and murder.

Most significantly, I am struck by the parallels in purpose, content, and tone between the *Encyclopedia of Jihad* and a book that was the subject of the most high-profile civil liability case to date involving training in violence, a book entitled *Hit Man: A Technical Manual for Independent Contractors*,⁶ which was the subject of a highly controversial federal court of appeals decision, *Rice v. Paladin Enterprises, Inc.*⁷ In that case, the court held that the murder instruction manual at issue might well not be protected by the First Amendment, and that a tort action seeking recovery

2. See Steve McKenzie, *Laden's Blueprint to Destroy West*, SUNDAY MAIL (United Kingdom), Jan. 6, 2002, at 9, available at <http://www.icscotland.icnetwork.co.uk/news/sundaymail/page.cfm?objectid=11517821&method=full>; see also John Cloud, *What Is Al-Qaeda Without Its Boss?*, TIME, Nov. 26, 2001, at 50. The group is referenced in a variety of ways, including "Al-Qa'ida" and "Al-Qaeda."

3. *Bin Laden's Encyclopedia Gives Lessons in Terror*, at http://www.ananova.com/news/story/sm_413630.html (filed Oct. 2, 2001).

4. Sean O'Neill, *Two Men in Court on al-Qa'eda Charges*, DAILY TELEGRAPH (London), Jan. 18, 2002, at 1, <http://www.opinion.telegraph.co.uk/news/main.jhtml?xml=%2Fnews%2F2002%2F01%2F18%2Fnterr18.xml>.

5. ENCYCLOPEDIA OF JIHAD (Dep't of Justice 2001), <http://www.usdoj.gov/ag/trainingmanual.htm>. The Justice Department identifies the translation as the *Al-Qaeda Training Manual*. See *id.* The manual may also be referenced as the *Encyclopedia of Afghan Jihad*.

6. REX FERAL, *HIT MAN: A TECHNICAL MANUAL FOR INDEPENDENT CONTRACTORS* (1983), <http://www.lizmichael.com/hitman.htm>. "Rex Feral" is a pseudonym. Brian Levin, *Murder by the Book*, INTELLIGENCE REPORT (Summer 1998), <http://www.splcenter.org/cgi-bin/goframe.pl?refname=/intelligenceproject/ip-4f10.html>. *Hit Man* was never widely distributed through retail outlets. *Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 254-55 (4th Cir. 1997). The online copy cited herein is thus one of the few means remaining to access the book.

7. 128 F.3d 233 (4th Cir. 1997), *cert. denied sub nom.*, 523 U.S. 1074 (1998).

for violence allegedly aided by the manual could proceed to a jury trial.⁸ In this Essay I wish to briefly explore the similarities between *Hit Man* and the *Encyclopedia of Jihad*, and in so doing offer some comments on how the events of September 11, 2001 may influence the evolution of legal doctrine regarding the intersection of speech and violence.

A preliminary disclosure is in order: I was one of the lawyers in *Rice*, representing the plaintiffs. I was a principal draftsman of the briefs submitted in the litigation, and argued the case in the district court and the court of appeals. I subsequently wrote a book about the entire saga, defending the outcome of the case.⁹ So I am hardly a dispassionate observer, either of the result in *Rice* or what it reveals about the constitutional standing of the *Encyclopedia of Jihad*. An observer need not be dispassionate, however, to have a point worth considering, and I believe open consideration of the points raised by a comparison of the *Encyclopedia of Jihad* and *Hit Man* is compelled by current events.

The eleven volumes that comprise the *Encyclopedia of Jihad* include: detailed instruction on how to handle, manufacture, and detonate explosives (including Semtex, C4 explosives); methods of first aid, including the handling of psychological shock, the treatment of burns, and the handling of other medical needs; an illustrated guide to the handling of revolvers, specialized handguns, and other small arms; instruction on hand grenades, mines, and various bomb recipes; detailed instruction on military intelligence, sabotage, communications within Jihad, secret observation, assassination, brainwashing, protection of leaders, analyzing intelligence information, psychological warfare, use of poisoning, American military training procedures, and drive-by assassination using motorcycles; instruction in principles of war, including reconnaissance, infiltration, ambush, and incursion; information and diagrams regarding the tools and machines required to manufacture ammunition and silencers; biochemical warfare, sabotage, and bio-terrorism; instruction in tank warfare, including descriptions of how to maintain and operate tanks, and strategy and tactics in tank warfare; instruction in hand-to-hand combat and self-defense, including attacking and defending with knives; instruction in the use of maps, compasses, and military surveys, judging distance, height, and speed for military purposes; instruction in the use of anti-aircraft arms, machine guns, anti-tank arms and artillery; and the assembly and cleaning of weapons.¹⁰

8. *Id.* at 267.

9. ROD SMOLLA, DELIBERATE INTENT: A LAWYER TELLS THE TRUE STORY OF MURDER BY THE BOOK (1999).

10. See ENCYCLOPEDIA OF JIHAD, *supra* note 5; Cloud, *supra* note 2, at 51, 53, 55;

The Jihad is described as a long-term war of infiltration and terror, and the contemplated strategies include the recruitment of very young mujahideen who can be put into place as “sleepers” to carry out terrorist missions ten years after their initial recruitment.¹¹

The *Encyclopedia of Jihad* describes targets of opportunity in terms of both their symbolic and psychological importance and their practical destructive significance. Suggested targets thus include such symbols as: the Statue of Liberty in New York and the Eiffel Tower in Paris; critical societal infrastructure components, such as nuclear power stations, large skyscrapers, ports, train stations, and airports; and various human targets, including arenas where there are high concentrations of people and high-visibility individual targets, such as political or cultural leaders.¹²

The *Encyclopedia of Jihad*'s practical instruction in violence is presented under the rubric and imprimatur of religious obligation. This marriage of holy war and holy duty is captured symbolically by an image that appears at the beginning of each volume, depicting a belt-fed machine-gun standing up in a window next to a copy of the Koran.¹³ The faithful are admonished that as devout Muslims they are commanded by Allah to follow Jihad.¹⁴ As a matter of religious obligation, they are told that it is an imperative to wage Jihad against non-Islamic states and states where Islam is not practiced.¹⁵ Each volume begins with praise for Osama bin Laden, who “took part in the Jihad with his life and money in Afghanistan,” and “is the one who is still inducing the young mujahideen for Jihad.”¹⁶ The volumes are dedicated to Abdullah Azzam, an early architect of terrorism and the Jihad who was killed during the Soviet occupation of Afghanistan,¹⁷ and who in death would become one of the preminent

McKenzie, *supra* note 2; *Bin Laden's Encyclopedia Gives Lessons in Terror*, at http://www.ananova.com/news/story/sm_413630.html (filed Oct. 2, 2001); *Terrorist Bible*, Radio Crow, at http://radiocrow.com/news_docs/terrorist_bible.htm (last visited March 11, 2002).

11. *Terrorist Bible*, Radio Crow, at http://radiocrow.com/news_docs/terrorist_bible.htm (last visited March 11, 2002).

12. ENCYCLOPEDIA OF JIHAD, *supra* note 5, at UK/BM-12–UK/BM-13; *Terrorist Bible*, Radio Crow, at http://radiocrow.com/news_docs/terrorist_bible.htm (last visited March 11, 2002).

13. *Terrorist Bible*, Radio Crow, at http://radiocrow.com/news_docs/terrorist_bible.htm (last visited March 11, 2002).

14. ENCYCLOPEDIA OF JIHAD, *supra* note 5, at UK/BM-8–UK/BM-9.

15. *Id.*

16. *Encyclopedia of Jihad Makes Chilling Reading*, HINDUSTAN TIMES, at <http://www.hindustantimes.com/nonfram/thewar/jihad.shtml> (last visited March 11, 2002).

17. Hamzi Henawi, *Manual for Murder—Stadiums, Landmarks Targeted*, SUNDAY TELEGRAPH (Sydney), Feb. 3, 2002, at 43, LEXIS, News, News Group File, Most Recent Two Years.

religious folk-heroes and martyrs of the fundamentalist Islamic terrorist movement.¹⁸

A sense of the tenor of the *Encyclopedia of Jihad's* overlay of religious and political propaganda may be gathered from this excerpt, appearing early in the encyclopedia:

In the name of Allah, the merciful and compassionate

PRESENTATION

To those champions who avowed the truth day and night . . .

And wrote with their blood and sufferings these phrases . . .

The confrontation that we are calling for with the apostate regimes does not know Socratic debates . . . , Platonic ideals . . . nor Aristotelian diplomacy. But it knows the dialogue of bullets, the ideals of assassination, bombing, and destruction, and the diplomacy of the cannon and machine-gun. . . .

Islamic governments have never and will never be established through peaceful solutions and cooperative councils. They are established as they [always] have been

by pen and gun

by word and bullet

by tongue and teeth¹⁹

This combination of religion and violence is a stock-in-trade within the Islamic terrorist movement. Other terrorist training manuals used by Al-Qaeda, as well as various sermons and speeches preached by its leaders, constantly interweave practical military and terrorist instruction with a steady drumbeat of religious and political exhortation and indoctrination.²⁰

Within the United States, a society dedicated to freedom of speech and freedom of religion with a well-developed set of constitutional doctrines protecting both, what are we to make of the constitutional status of a work such as the *Encyclopedia of Jihad*? Is it constitutionally protected political and religious expression? Should our First Amendment be understood to forbid the imposition of criminal or tort liability against those who publish and distribute it? Should it matter who distributes the material, to whom it is distributed, or why it is distributed? And if we take as basic assumptions of our constitutional democracy the principle that individuals cannot be prosecuted or held civilly liable for merely being

18. Robert Marquand, *The Tenets of Terror*, CHRISTIAN SCI. MONITOR, Oct. 18, 2001, at World 1, LEXIS, News, News Group File, Most Recent Two Years.

19. ENCYCLOPEDIA OF JIHAD, *supra* note 5, at UK/BM-3.

20. See McKenzie, *supra* note 2.

members of a group with a violent, criminal, or anti-social agenda (such as merely being a member of the Ku Klux Klan), or for merely engaging in *abstract* advocacy of that agenda, to what extent do we take into account social and historical context (such as the September 11 attacks and the subsequent American war on terrorism) to determine if a person has gone beyond mere “membership” or “abstract advocacy?”

I do not presume to know the answers to these questions. As a starting point, however, I will confess that I am much vexed by what, to me, seems to be a number of disturbing similarities between the tenor and tone of the *Encyclopedia of Jihad* and the book *Hit Man*, the object of the much-disputed decision in *Rice*, a case in which I was intimately involved.²¹ To make a very long story very short, in *Rice* the Fourth Circuit held there existed against the publisher of the murder manual *Hit Man* a viable cause of action in tort for aiding and abetting murder.²² The book was allegedly used by a professional hit man as a written guidebook for the commission of three murders.²³

For the purposes of contesting a motion for summary judgment in the case, the defendant publisher and the plaintiffs had stipulated that the book was marketed for a variety of purposes, some benign and some sinister.²⁴ The publisher wished to attract readers who would read the book and do no harm.²⁵ These might include readers who would fantasize about being a hit man, readers who wished to learn about killing techniques so as to write novels and plays with greater detail and verisimilitude, readers who were law enforcement officials wishing to peer inside the criminal mind, and readers simply interested in “real crime” materials.²⁶

But the publisher also intended to market and sell the book to readers who would use it as an actual killing manual.²⁷ The publisher thus stipulated that it knew and intended that the manual would be used, upon receipt, by real murderers to plan and execute killings.²⁸ These stipulations were made only for the purpose of creating the record for the motion for summary judgment; once that motion was ultimately denied (through the opinion of the court of appeals), the publisher was free to abandon the stipulations and argue that it did not have any knowledge that the book

21. See *supra* text accompanying notes 6–9.

22. *Rice*, 128 F.3d at 267.

23. *Id.* at 239.

24. SMOLLA, *supra* note 9, at 121–22.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

would be used by real killers, or any intent that it be so used.²⁹ The publisher ultimately settled the case rather than proceed to trial on these issues, and that settlement, coupled with the opinion of the court of appeals, was widely perceived as a victory for the plaintiffs, and widely criticized by many First Amendment advocates as an unjustified defeat for the First Amendment.³⁰

I did not believe in this position because I think that in publishing *Hit Man* the publishers went beyond the mere abstract advocacy of violence and crossed into the realm of actually assisting in the crime.³¹ It was my belief in litigating the *Hit Man* case—and it is my belief now—that the publishers of the book were simply terrorism trainers. While I was pilloried as a traitor to the First Amendment, I did not repute myself a traitor, and I took great solace in a remark written by the First Amendment stalwart Justice William O. Douglas in his dissenting opinion in *Dennis v. United States*.³² That case involved the prosecution of American communists largely for their speeches and writings advocating the overthrow of the United States.³³ The Supreme Court (wrongly, in my view) sustained the convictions.³⁴ Justice Douglas dissented, arguing that the First Amendment protected the expression of the communist leaders,³⁵ and I believe his dissent was well-grounded. In the course of his discussion, however, he voiced a caveat:

If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching of methods of terror and other seditious conduct should be beyond the pale³⁶

In *Rice*, the major doctrinal challenge we faced as plaintiff's lawyers was to somehow convince the court that the reigning constitutional standard, articulated in *Brandenburg v. Ohio*,³⁷ either was satisfied by the facts of our case or the standard ought not apply. In *Brandenburg* the

29. *Id.*

30. SMOLLA, *supra* note 9, at 121–22.

31. *Id.* at 264–72.

32. 341 U.S. 494 (1951).

33. *Id.* at 497.

34. *Id.* at 516–17.

35. *See id.* at 581–91 (Douglas, J., dissenting).

36. *Id.* at 581 (Douglas, J., dissenting).

37. 395 U.S. 444 (1969) (per curiam).

Supreme Court had declared:

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.³⁸

The court of appeals in *Rice* was persuaded that the *Brandenburg* requirement of imminence need not be satisfied in those instances in which the speaker provides substantial detailed assistance in the commission of a crime with the intent that the information will be used to commit the crime.³⁹ Even though the publishers of *Hit Man* did not know that the specific murderers in our case would use the *Hit Man* book to commit the specific murders they perpetrated, the court reasoned that the publishers of *Hit Man* did both know and intend that some of its readers would use the book to kill.⁴⁰ The opinion in *Rice* is especially powerful because the court did not confine its ruling to the consequences of the publisher's stipulations alone, but argued at length that other evidence in the record *aside from the stipulations* would have been enough to establish the requisite intent, including the language contained in the *Hit Man* book itself.⁴¹

38. *Id.* at 447.

39. *Rice*, 128 F.3d at 263–65.

40. *Id.* at 248.

41. *Id.* at 251–53. The majority opinion noted:

Even without these express stipulations of assistance, however, a reasonable jury could conclude that Paladin assisted Perry in those murders, from the facts that Perry purchased and possessed *Hit Man* and that the methods and tactics he employed in his murders of Mildred and Trevor Horn and Janice Saunders so closely paralleled those prescribed in the book Furthermore, even if the stipulation only established knowledge, summary judgment was yet inappropriate because a trier of fact could still conclude that Paladin acted with the requisite intent to support civil liability. Wholly apart from Paladin's stipulations, there are four bases upon which, collectively, if perhaps not individually, a reasonable jury could find that Paladin possessed the intent required under Maryland law, as well as the intent required under any heightened First Amendment standard.

Id. at 252–53. This analysis appeared to be endorsed by the United States Department of Justice:

Therefore, insofar as criminal culpability for dissemination of such information depends upon the distributors' intent—for example, upon whether a disseminator of bombmaking manuals had the conscious purpose of helping others to use the information to engage in unlawful conduct—the substance of the advocacy in such manuals could be used as material evidence of such intent.

DEP'T OF JUSTICE, REPORT ON THE AVAILABILITY OF BOMBMAKING INFORMATION, THE EXTENT TO WHICH ITS DISSEMINATION IS CONTROLLED BY FEDERAL LAW, AND THE EXTENT TO WHICH SUCH DISSEMINATION MAY BE SUBJECT TO REGULATION CONSISTENT WITH THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION n.47 (Apr. 1997), in *Freedom of Speech*, Derechos Human Rights, <http://www.ripco.com/download/text/e-texts/tbbom/usbombreport.html> (last visited Feb. 25, 2002) (citations omitted).

When I was in the midst of preparing the briefs and arguments in *Rice*, and indeed even as late as the actual presentation of the oral argument itself, I was deeply conflicted over a seeming paradox presented by the *Hit Man* manual. Much of the book seemed to be pure technical instruction in the arts and sciences of murder. Other parts of the book, however, seemed to possess a different quality—an element of psychological training, a kind of “argument,” if you will, that paid assassins constitute an honorable profession and a socially worthy and valuable calling, and explaining the thrill, the sense of pride and accomplishment, the superiority, the manliness, the glory of a life as a professional assassin. For the longest time I did not know what to make of this non-technical material, did not know how to characterize it, did not know how to place it within the context of the First Amendment. My fear was that this psychological exhortation would form the “redeeming social value” of the book, the element of “abstract advocacy,” the political or social “message” of the book that would save the publisher from liability.

What I eventually came to see, however, was that it was the *combination* of the technical training and the psychological suasion that made the book so lethal. Neither the technical material alone nor the brainwashing rhetoric of violence alone would have been nearly as dangerous as the explosive cocktail produced when the two ingredients combined. This conclusion—which seems obvious now but was a long time coming (at least to me)—was crystallized in my mind when I began to imagine what it really takes to produce a first-rate killer. The technical training is just part of the job—in fact probably the easiest part. You can teach just about anybody to shoot straight. Yet obviously not every crack shot is a crackpot. Atticus Finch, the heroic attorney in *To Kill a Mockingbird*, who may be the most morally honorable lawyer-character in American literature, was fabled as the best marksman in the Alabama county where he lived.⁴²

No, to train a truly great assassin, a great terrorist, one must work on the killer’s mind. The psychological training is the trick. Training the killer to believe in the righteousness of the cause, training the killer to carry forward his deadly task without flinching, without fear, without disabling remorse or guilt—that is the key. What made *Hit Man* so evil and so dangerous was not just that it taught the tricks of the trade; it was that it taught the tradesman to be so proud of them, to be so calm and composed during the execution. The *Encyclopedia of Jihad* is replete with this theme: teaching, for example, that the terrorist member “should have a calm

42. HARPER LEE, *TO KILL A MOCKINGBIRD* 98 (Warner Books 1982) (1960).

personality that allows him to endure psychological traumas such as those involving bloodshed, murder, arrest, imprisonment, and reverse psychological traumas such as killing one or all of his Organization's comrades."⁴³

Harken back to the brief excerpt printed above from the *Encyclopedia of Jihad* and to its highly effective use of religious sentiment, and then consider the similar effort at glorification, moral justification, and indoctrination that permeates much of the *Hit Man* book. Consider the opening passages of the book. The *Hit Man* book begins with the dedication:

*To Those Who Think,
To Those Who Dare,
To Those Who Do,
To Those Who Succeed.*

Success is nothing more than taking advantage of an opportunity.

Anonymous⁴⁴

The Preface to *Hit Man* then begins:

A WOMAN RECENTLY ASKED HOW I could, in good conscience, write an instruction book on murder.

"How can you live with yourself if someone uses what you write to go out and take a human life?" she whined.

I am afraid she was quite offended by my answer.

It is my opinion that the professional hit man fills a need in society and is, at times, the only alternative for "personal" justice. Moreover, if my advice and the proven methods in this book are followed, certainly no one will ever know.

Some people would argue that in taking the life of another after premeditation, you act as God—judging and issuing a death sentence. But it is the employer, the man who pays for the service, whatever his reason might be, who acts as judge. The hit man is merely the executioner, an enforcer who carries out the sentence.

There are many, many instances when atrocities are committed that the law will not or cannot pursue. And other times when the

43. ENCYCLOPEDIA OF JIHAD, *supra* note 5, at UK/BM-16.

44. FERAL, *supra* note 6, at v.

law does its part but the American legal system is so poor that *real* justice is not served. In those cases, as in cases of personal revenge and retribution, a man must step outside the law and take matters into his own hands. . . .

It seems that almost every man harbors a fantasy of living the life of Mack Bolan or some other fictional hero who kills for fun and profit. They dream of living by their reflexes, of doing whatever is necessary without regard to moral or legal restrictions. But few have the courage or knowledge to make that dream a reality. . . .

You might be like my friends—interested but unsure, standing on the sidelines afraid to play the game because you don't know the rules. Within the pages of this book you will learn one of the most successful methods of operation used by an independent contractor. You will follow the procedures of a man who works alone, without backing of organized crime or on a personal vendetta. Step by step you will be taken from research to equipment selection to job preparation to successful job completion. You will learn where to find employment, how much to charge, and what you can, and *cannot*, do with the money you earn.

But deny your urge to skip about, looking for the “good” parts. Start where any amateur who is serious about turning professional will start—at the beginning.⁴⁵

Throughout the *Rice* litigation, and certainly since, those attacking the position we the plaintiffs' attorneys were taking in the case often argued that much of the material contained in the *Hit Man* book was widely available from public sources. Indeed, defendant Paladin Press, the publisher of *Hit Man*, has long published books that could easily have been used as underlying source material for much that is contained in the *Encyclopedia of Jihad*, including scores of books on explosives, sabotage, guerrilla warfare, and home-built weaponry of every variety.⁴⁶ The court of appeals in *Rice* was not detained by the fact that much of the information in *Hit Man* was available elsewhere; instead, they saw (correctly, in my view) that it was the combination of detail, completeness, and exhortation that made the book so lethal, and that stripped it of its claim to immunity under the First Amendment:

45. *Id.* at ix–xi.

46. See SMOLLA, *supra* note 9, at 76, 240–41.

Paladin's astonishing stipulations, coupled with the extraordinary comprehensiveness, detail, and clarity of *Hit Man's* instructions for criminal activity and murder in particular, the boldness of its palpable exhortation to murder, the alarming power and effectiveness of its peculiar form of instruction, the notable absence from its text of the kind of ideas for the protection of which the First Amendment exists, and the book's evident lack of any even arguably legitimate purpose beyond the promotion and teaching of murder, render this case unique in the law. In at least these circumstances, we are confident that the First Amendment does not erect the absolute bar to the imposition of civil liability for which Paladin Press and *amici* contend.⁴⁷

Yet *Hit Man* pales in comparison to the *Encyclopedia of Jihad*. Osama bin Laden may be an unlikely defendant in a suit for money damages; however, there may be others trafficking in material such as the *Encyclopedia of Jihad*—and doing so with the purpose of aiding and abetting future acts of terrorism—who might well be meaningful targets in a civil action. The *Rice* case is a precedent that could be put to good use in such a suit. And I am proud of it.

47. *Rice*, 128 F.3d at 267.