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**Banks v. National Collegiate Athletic Association,
No. 91-1666, U.S. App. LEXIS 25790 (7th Cir. Oct.
13, 1992)**

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Court held that the law singled out profits earned from an expressive activity, a burden the State placed on no other income, and it was directed solely at works with a particular content. In order to be consistent with the First Amendment, the identity of the speaker had to be irrelevant in such a case.

The compelling state interest of preventing criminals from profiting from their crimes and of compensating the victims of crime may have been valid, but the Son of Sam statute was seen as overinclusive and overbroad in its remedial effect. There was little interest in limiting victim compensation to the proceeds of the criminal's speech about the crime. And, the statute applied to works on any subject that expressed an author's thoughts or memories about his or her crime. This overly broad definition meant that the author need not be actually accused or convicted of a crime, but need only mention that a crime was committed in his or her work. The Court feared that if the statute was permitted to stand, a broad range of literature (including many classics) would be subjected to the law's requirements.

Justice Blackmun, in his one paragraph concurrence, stated that the New York Statute was underinclusive as well as overinclusive. Justice Kennedy's concurrence argued that there was no need to look at compelling state interests because the Son of Sam statute could be reversed using solely First Amendment restricted content of speech analysis.

-C.L.

BANKS V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, No. 91-1666, U.S. APP. LEXIS 25790 (7TH CIR. OCT. 13, 1992).

Braxton Lee Banks played three years of collegiate football at the University of Notre Dame. Due to knee injuries, he was unable to play football during portions of his sophomore and junior years. Fearing that another season of college football might exacerbate his knee injury and prevent him from playing in the National Football League (NFL), he sat out his last year of collegiate eligibility and entered the 1990 NFL draft. Unfortunately, Banks failed to be selected in the draft or as a free agent. In an effort to improve his marketability as a professional football player, Banks returned to the University of Notre Dame to re-enter its football program and play his last year of collegiate eligibility. The application of two National Collegiate Athletic Association (NCAA) eligibility rules, however, barred his participation in college football; Rule 12.2.4.2, the "no-draft" rule, which provides that an amateur

loses eligible status when he asks to be placed on the draft list of a professional sport, and Rule 12.3.1, the "no-agent" rule, which provides that an amateur is ineligible to participate in intercollegiate sports if he or she has ever asked to be represented by an agent for the purpose of marketing that amateur in that sport. Since Banks participated in the 1990 NFL draft and had asked to be represented by an agent prior to the draft, the application of either of the two rules would sufficiently bar him from taking advantage of his final year of eligibility.

Banks filed and amended a complaint requesting that the NCAA be permanently enjoined from enforcing the no-draft and no-agent rules and seeking treble damages from the NCAA for losses stemming from the NCAA's bar of Banks from intercollegiate sports. The 7th Circuit addressed three issues: (1) whether Banks had standing as representative for the class action seeking to permanently enjoin the NCAA's enforcement of the no-draft and no-agent rules, (2) whether the lower court erred in dismissing Banks' antitrust claim under Rule 12(b)(6), and (3) whether Banks stated a valid claim in his antitrust suit for treble damages.

First, because Banks' ineligibility to take part in college football prevented him from having a personal stake in the question of whether the NCAA should be enjoined from enforcing its no-draft and no-agent rules, the 7th Circuit held that Banks did not have standing to bring a class action. The court proclaimed that had Banks filed suit immediately after realizing that he had not been chosen in the draft or as a free agent, he might have had a stronger argument for representing the class, even lacking a personal stake in the outcome. As such, the court lacked jurisdiction to hear the class action claim, and held that the district court should have dismissed the class action claim for injunctive relief.

Second, since Banks failed to allege anti-competitive effects in support of the anti-trust claim in the district court, the lower court was justified in dismissing his claim under Rule 12(b)(6). Banks argued that because the record below was not thoroughly developed, it was not appropriate for the lower court to dismiss his claim. Banks' assertion was that the lower court's dismissal was not based on Banks' failure to allege anti-competitive effects, thus evading a 12(b)(6) motion, but rather was improperly decided on the opinion that the NCAA's no-draft and no-agent rules were pro-competitive and reasonable. Banks' argument was unpersuasive and immediately dismissed.

Third, because Banks' antitrust claim was properly dismissed, the appellate court failed to see how Banks could expect a reversal

of the lower court's judgment without assigning error to its judgment. Irrespective of this, the 7th Circuit ruled that the NCAA's no-draft and no-agency rules were, in fact, reasonable. The rules were not terms of employment, nor did they force college football players to sell their services which would possibly have supported Banks' anti-competitive proposition. The Court pronounced that the respective rules served to maintain the distinction between amateur athletes and professional athletes.

-E.A.

LAKELAND LOUNGE OF JACKSON, INC. v. CITY OF JACKSON, 973 F.2D 1255 (5TH CIR. 1992).

The City of Jackson, Mississippi appealed from a ruling by the United States District Court for the Southern District of Mississippi. The ruling declared unconstitutional an amendment to a zoning ordinance restricting adult businesses to areas zoned for light industrial use and, with a use permit, to some areas in the central business district. The ordinance also restricted adult establishments from being within 250 feet of each other or within 1,000 feet of any residentially zoned property, church, school, park, or playground. The court permanently enjoined the enforcement of the ordinance.

The Fifth Circuit Court of Appeals stated that such an ordinance presumptively violates the First Amendment if it was "enacted for the purpose of restraining speech on the basis of its content," and that it must be "designed to serve a substantial government interest" and "may not unreasonably limit alternative avenues of communication." In establishing that a substantial government interest is served, the court held that the bad "secondary effects" of adult entertainment, such as a decrease in property values, increased crime, the movement of businesses elsewhere, and neighborhood blight, were properly relied upon by the city council when it drafted the ordinance. The court also held that the language of the amended ordinance indicated the council's concern with secondary effects.

The court further stated that any regulation must provide reasonable alternative avenues of communication for the protected expression. It held that a substantial number of potential sites exist as alternative locations for adult businesses. In finding that the Jackson City Council properly considered the secondary effects of adult business and provided sufficient alternative avenues of expression for them, the circuit court held that the amended ordi-