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CASE SUMMARIES

Selected Case Summaries — Fall 1992


Simon & Schuster sued the New York State Crime Victims Board under 42 U.S.C. § 1983, seeking an order declaring that New York’s “Son of Sam” statute violated the First and Fourteenth Amendments. This statute, enacted in reaction to the serial killer David Berkowitz’s plans to profit from his infamy, mandates that an accused or convicted criminal’s income from works mentioning his or her crime be deposited in an escrow account by the contracting publishing company. These funds are then made available to victims of the crime and to the criminal’s other creditors. In this particular action, Simon & Schuster had just signed an agreement with an author who had obtained the rights to write a book about the life of organized crime figure Henry Hill. The Crime Victims Board alleged that Simon & Schuster had violated the Son of Sam Law, and ordered it to turn over all money payable to Hill. Simon & Schuster then brought suit. The district court found for the Crime Victims Board and Simon & Schuster appealed. The Second Circuit Court of Appeals affirmed the lower court’s decision in favor of the Crime Victims Board. The U.S. Supreme Court granted certiorari.

In a six person majority decision delivered by Justice O’Connor, the Supreme Court reversed the lower courts’ decisions and invalidated the Son of Sam law, holding that it violated the First Amendment, and that the statute was not narrowly tailored to achieve the State’s goal of compensating victims from profits of crime. Justices Blackmun and Kennedy filed opinions concurring in the judgment. Justice Thomas took no part in the case.

According to the majority, a statute is presumptively violative of the First Amendment if it imposes a financial burden on speakers because of the content of their speech. The Son of Sam law was viewed to be such an impermissible content-based statute. The
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.


Braxston 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