

ACLU and North Carolina Department of Corrections

Digital Media and Data Privacy Law Blog

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Posted in First Amendment

Pursuant to the terms of a recent settlement between the American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) and the N.C. Department of Correction (DOC), prison inmates in North Carolina may now write novels and other manuscripts and send them to publishers, even if those written materials portray criminal activity. The ACLU-NCLF reported the settlement in a press release.

The ACLU-NCLF had filed a federal lawsuit on behalf of Victor L. Martin, a habitual felon with several theft-related convictions and whose “urban fiction” authored while in prison features gangsters, hustlers, drugs, and raw language. The terms of the settlement require the DOC to adopt a policy that allows inmates to prepare a manuscript for publication, for outside typing, and for copyrighting. The policy protects fiction, nonfiction, poetry, music, and drawings. An inmate may not receive direct compensation for publication of the manuscript but may receive compensation indirectly by authorizing a family member to handle all correspondence related to the business aspect of publishing for compensation.

The issues raised by this lawsuit are similar to those surrounding “Son of Sam” laws. Son of Sam laws are designed to prevent criminals from profiting from their crimes through contracts relating to a depiction of their crimes in a movie, book, or other publication or production. The New York Legislature passed the very first Son of Sam law in 1977 in response to reports that a killer who called himself Son of Sam – later identified as David R. Berkowitz, the man whose murder spree terrorized New York City in 1977 – was being offered large sums from publishers and film producers for the rights to his story.

Frequently these “Son of Sam” laws give to victims and their families any money that the criminal earns from expressive works about his/her crimes. Supporters say the laws help crime victims and prevent criminals from profiting from their misdeeds. Opponents raise First Amendment concerns.

New York's original "Son of Sam" law was struck down on First Amendment grounds in an 8-0 decision by the U.S. Supreme Court, which held that it was unconstitutionally overinclusive in the case of *Simon & Schuster v. Crime Victims Board*. The case involved a book that was written with the assistance of former mobster Henry Hill, who was portrayed in the movie *Goodfellas*. The Supreme Court noted that New York's law as written would have escrowed payments for works such as the *Autobiography of Malcolm X*, Henry Thoreau's *Civil Disobedience*, and the *Confessions of Saint*

ACLU and North Carolina Department of Corrections Reach Settlement over Prisoner Publications

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There are no North Carolina statutes or reported decisions relating to “Son of Sam” laws. However, pursuant to the terms of the settlement between the ACLU-NCLF and the DOC, prison inmates in North Carolina have more rights than before to write and publish work authored in prison, even work that deals with criminal activity.