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'Wind' Book Wins Ruling In U.S.

By DAVID D. KIRKPATRICK MAY 26, 2001

Correction Appended

The United States Court of Appeals in Atlanta overturned a preliminary injunction yesterday blocking publication of "The Wind Done Gone," a novel that revisits the plantation setting of "Gone With the Wind" from a slave's perspective.

The ruling clears the way for publication of the book, which was suspended last month after United States District Court Judge Charles A. Pannell Jr. concluded its author, Alice Randall, had committed "unabated piracy" of Margaret Mitchell's 1936 original. The narrator of the "The Wind Done Gone" is half-sister to Ms. Mitchell's heroine, Scarlett O'Hara, and daughter of her character Mammy; Ms. Randall borrows 15 characters, several scenes and some verbatim dialogue from the original book.

In a tersely worded two-page preliminary summary of its opinion issued just moments after a one-hour hearing yesterday, a three-judge panel of the United States Court of Appeals for the 11th Circuit called the preliminary injunction "an unlawful prior restraint in violation of the First Amendment." The panel's ruling makes it likely the book will appear in stores within the month, before the case is ultimately settled.

Martin Garbus, a First Amendment lawyer representing trusts that own the copyright to "Gone With the Wind," said his clients would appeal the latest ruling, seeking a new injunction or monetary damages.

The order against the book's publication set off a widespread debate over the boundaries between intellectual property rights and freedom of expression, pitting arguments about literary originality against claims about racial justice. It has also stirred up criticisms about the duration of copyright laws, which Congress has extended several times in recent years. Once expected to expire in 1993, the copyright to "Gone With the Wind" will now run until 2032, 70 years after Ms. Mitchell's death.

The legal issues at the heart of the case revolve on the permissibility of borrowing in the name of parody or criticism. The issue is especially complicated when the imitation serves a political purpose, entitling it to the protection of the First Amendment. The Supreme Court has taken up the question of parody only once, ruling that the rap group 2 Live Crew's bawdy remake of Roy Orbison's song "Oh, Pretty Woman" was perhaps a legitimate parody. But the court stopped short of settling the boundaries between parody and plagiarism.

Lawyers for Ms. Randall and her publisher, the Houghton Mifflin Company, have argued that she borrowed no more from Ms. Mitchell's book than was necessary to effectively ridicule the racist depictions of African-Americans in a perennially popular American icon. A long roster of prominent writers, scholars and artists, including the novelists Toni Morrison and Harper Lee, signed statements supporting the publication of "The Wind Done Gone." Several media and technology companies, including Dow Jones & Company, AOL Time Warner and the Microsoft Corporation, filed briefs on Ms. Randall's behalf as well.

In response, lawyers for trusts that own Ms. Mitchell's original copyright argued that permitting the publication of Ms. Randall's book would inspire a torrent of unauthorized sequels masking as political commentary or adopting a new character's perspective.

Mr. Garbus said the judges had yielded to "political correctness" and pressure from the media. "The racial issues -- namely that Margaret Mitchell's book is being

attacked as racist and the fact that it is Randall, who is black, writing this -- I think obscured the copyright issues," he said.

Joseph Beck, the lawyer for Houghton Mifflin, called that characterization unfair. "The only racial issue here is the racism in 'Gone With the Wind,' " he said.

In their ruling yesterday, the presiding judge, Stanley Francis Birch Jr., sitting with Judges Harlington Wood Jr. and Stanley Marcus, appeared to favor Houghton Mifflin's position strongly. The judges ruled that "it is manifest that the entry of a preliminary injunction in this copyright case was an abuse of discretion," adding that, "a preliminary injunction is an extraordinary and drastic remedy." The judges are expected to issue a further explanation of their opinion.

Mr. Garbus said he planned to ask the full court to overturn the ruling of its panel. He also said he might appeal to the Supreme Court. If those appeals are not taken up, the case will pass to the Federal District Court for a full hearing and then presumably return to the appeals court. But the appeals are unlikely to be resolved before the book is in stores.

Ms. Randall's book was originally scheduled for distribution in May and official publication in June. "It will take us a few weeks to get it into the marketplace, but we will do it as fast as we can," said Wendy Strothman, publisher of Houghton Mifflin's trade division.

Houghton Mifflin originally planned to print 25,000 copies, but is now expected to print far more. Early review copies of Ms. Randall's book drew bids up to \$400 on the online auction service eBay before the company removed the listings at Mr. Garbus's request.

Correction: May 28, 2001, Monday Because of an editing error, an article on Saturday about a federal appeals court ruling that allows the publication of a parody of "Gone With the Wind" misidentified one company that signed a brief supporting the author, Alice Randall, and omitted another from the list. Along with Dow Jones and Microsoft, the companies included CNN, but not its parent, AOL Time Warner. The list also included The New York Times Company. **Correction:** June 1, 2001, Friday An article in Business Day on Saturday about a court ruling

that cleared the way for the publication of a novel that revisits the scene of "Gone With the Wind" misstated the number of years that will have elapsed between the death of the author Margaret Mitchell and the expiration of the copyright on "Gone With the Wind," in 2032. It is 83 years, not 70; Mitchell died in 1949.

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