

THE ROLE OF PARODY IN COPYRIGHT:

IS A NEW WIND BLOWING?

INTRODUCTION*

Melvin Simensky**

This discussion is divided into several parts. Our two speakers are Martin Garbus, who is a founding partner of the New York law firm of Frankford, Garbus, Kurnit, Klein & Selz, PC, and Joseph Beck, who is a partner in the Atlanta firm of Kilpatrick Stockton LLP. Marty and Joe have been lead counsel in several of the major decisions to be discussed tonight, particularly *The Wind Done Gone* case¹ where they directly opposed each other. We are pleased to have Professor Edward Samuels joining us tonight as a panelist. Ed Samuels a professor of copyright at New York Law School, will share his view of the jurisprudential meaning of the decisions we explore here tonight.

This program will explore the ever-increasing tension between copyright law and the First Amendment through several important cases. For example, in one matter, which is commonly referred to as *The Wind Done Gone* case², the author Alice Randall, allegedly sought through satire and parody, to critique the original novel, *Gone with the Wind* in her own novel, *The Wind Done Gone*. The novel *Gone with the Wind* has been an incredibly important commercial work, with worldwide sales second only to the Bible. This is an amazing phenomenon! Miss Randall copied into her book the characters, plot, and major scenes and verbatim dialogue from *Gone with the Wind*.

A trustee of the Mitchell Trust for Margaret Mitchell, the author of *Gone with the Wind*, sued Ms. Randall and her publisher for copyright infringement. Miss Randall defended on the ground of parody and fair use. The district court decided in favor of the trustee, and enjoined the publication and distribution of Miss Randall's book³. On appeal, however, the 11th Circuit reversed on the ground of fair use and

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¹ *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257 (11th Cir. 2001).

² See *supra* note 1.

³ *Suntrust Bank v. Houghton Mifflin Co.*, 136 F.Supp.2d 1357 (N.D. Ga. 2001).

parody, which Ms. Randall had argued below⁴. Frankly, my personal opinion is the 11th Circuit is right, but I am sure you will hear contrary opinions. This 11th Circuit decision has given vent to major controversy. People saw in *The Wind Done Gone* a form of copyright infringement in the nature of the theft of derivative sequel writing.

⁴ See, 268 F.3d 1257 (11th Cir. 2001).