Salinger et al v. John Doe et al Doc. 24 Att. 1

EXHIBIT A

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Section: A

Gone With the First Amendment

Editorial scores decision by Federal Dist Judge Charles Pannell Jr, stopping publication of Alice Randall's The Wind Done Gone, parody of Margaret Mitchell novel Gone With the Wind presented from slave's point of view; says ruling trumped First Amendment, adding that right to produce comic parodies of prior works is well established in law (M)

The constitutional protection of copyrights was not meant to trump the First Amendment. That is a principle missing from a federal judge's ruling in Atlanta to stop publication of "The Wind Done Gone ," a retelling of "Gone With the Wind" from a slave's point of view. The right to produce comic parodies of prior works is well established in law. The estate of Margaret Mitchell is arguing that this new work is not a parody but an unauthorized sequel appropriating characters covered under its copyrights.

That is a question we believe will be settled in favor of Alice Randall, author of "The Wind Done Gone ." Fictional and historic characters have been migrating among literary works since Shakespeare's time. Denying Ms. Randall the right to produce a novel that is a literary commentary on a well-known work is an undue restriction on artistic creation, even if Ms. Randall's work is not strictly a comic parody. But the main point here is that such copyright issues can be worked out legally without Judge Charles Pannell Jr.'s radical remedy of prior restraint of publication.

Judge Pannell's casual repeal of the constitutional doctrine against prior restraint comes 30 years after the Supreme Court's landmark decision in the Pentagon Papers case. Dismissing government arguments that publication of those documents would harm national security, the Supreme Court made it clear that only a showing of concrete, immediate risk to the nation could justify a judicial order imposing a prior restraint on any kind of publication. An overblown concern that Ms. Randall's critical take on "Gone With the Wind" and its demeaning portrayal of black slaves would infringe on the copyright held by the Margaret Mitchell estate is hardly the sort of monumental risk the justices had in mind.

Even if higher courts ultimately agree that "The Wind Done Gone" is an unauthorized

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sequel that falls outside the recognized exception for parody under copyright law, the correct remedy is monetary damages, not shutting down presses in advance of publication. Moreover, while the line between fair use and a copyright infringement can be blurry, Ms. Randall appears not to have crossed it simply by revisiting some scenes and characters from "Gone With the Wind."

A relevant 1994 Supreme Court decision, in the course of overturning a lower court ruling that found plagiarism in a bawdy satire of Roy Orbison's song "Oh, Pretty Woman" by the rap group 2 Live Crew, recognized that parody requires some borrowing from the original. Ms. Randall's case is actually stronger because her novel's critique of slavery and racism is political expression normally accorded the highest level of First Amendment protection.

This could turn out to be an important test case. In an era when media conglomerates control the rights to vast amounts of intellectual property, routine elevation of copyright to a right of censorship could easily squelch active debate and criticism of important ideas. The 11th Circuit Court of Appeals has agreed to review the injunction against publication of "The Wind Done Gone" on an expedited basis, an encouraging sign that the court understands the damage to free speech each day that it stands.

---- INDEX REFERENCES ----

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