



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SUNTRUST BANK as Trustee of)
the Stephens Mitchell Trusts f/b/o Eugene)
Muse Mitchell and Joseph Reynolds Mitchell,)

Plaintiff,)

v.)

HOUGHTON MIFFLIN COMPANY,)

Defendant.)

Civil Action File
No. 1:01 CV-701-CAP

AFFIDAVIT OF WENDY J. STROTHMAN

Wendy J. Strothman, after being duly sworn, states as follows:

1. I am an Executive Vice President of Houghton Mifflin Company. I have worked at Houghton Mifflin since 1995, and have been the head of the Trade and Reference Division of the company since 1996. Before that, I worked for twelve years as the director of Beacon Press, an independent, not-for-profit publisher. I have worked in the publishing industry since 1973. I have personal knowledge of the facts set forth herein.

2. Houghton Mifflin Company was incorporated in 1908 as a successor to a partnership formed in 1880, but antecedents of the partnership date all the way back to 1832. In an era of consolidation in the publishing industry, Houghton Mifflin is one of only a very few publicly-traded American publishing companies to remain independent.

3. Houghton Mifflin is primarily a publisher of textbooks and other educational materials sold into the K-12 and college markets, and by far the largest share of the company's revenue is derived from sales in these markets. Since purchasing decisions for educational materials are mainly made institutionally rather than by individual consumers, Houghton Mifflin's survival as a company depends in large measure on textbook adoptions by college faculty, school district administrators, state education officials and teachers. As such, it is critically important that Houghton Mifflin maintain, across all its publishing divisions, its widespread reputation for literary quality and integrity.

4. Houghton Mifflin also publishes books for general trade distribution through its Trade and Reference Division, but the Trade and Reference Division is responsible for only about 10% of the company's total revenues, and trade publishing traditionally has rewarded publishers with smaller profit margins than educational publishing. Through its trade books, the company has become well known among readers as a publisher of distinguished, sometimes controversial, works, including the works of Thoreau, Emerson and Oliver Wendell Holmes in the nineteenth century, Rachel Carson's "Silent Spring" in the twentieth century, and other literary classics that have been kept in print for many years. Our authors have won many literary prizes, including the Pulitzer Prize for fiction for a young writer we discovered and published in 1999.

5. While we at the Trade and Reference Division obviously hope our books will sell many copies, our editorial standards are such that we publish only books of demonstrable literary merit. Houghton Mifflin views its Trade and Reference Division as providing value to the company that goes well beyond the relatively modest sales the division generates. That is, the

Trade and Reference Division enhances the reputation and goodwill of all the other divisions of the company, and it enables the company to associate itself with the values of serious, enduring literature and free expression. Were publication of "The Wind Done Gone" to be enjoined, Houghton Mifflin's reputation in this regard would be tarnished.

6. Houghton Mifflin's Trade and Reference Division has a smaller budget and publishes fewer titles than its most well-known competitors, such as Random House, which is owned by Bertelsmann, and Simon & Schuster, which is owned by Viacom. Compared with these competitors, Houghton Mifflin has fewer resources available for signing well-known authors to publishing contracts, and it has no interest in publishing highly visible "blockbuster" authors, such as Steven King or Danielle Steele. Instead, Houghton Mifflin prefers to publish books that may not sell as many copies but that will have lasting literary merit, books by less well-known, often younger authors, and books that may come to be taught in elementary schools, high schools, and college courses. We are known for loyally supporting many of our authors throughout their writing careers. In fact, there have been instances in which we have signed a publishing agreement with an author even though the author had received a more generous financial offer elsewhere, because the author preferred to be associated with Houghton Mifflin. If Houghton Mifflin is compelled to withhold publication of "The Wind Done Gone," its reputation as an author-friendly publishing company will be compromised, and Houghton Mifflin may very likely find it more difficult in the future to publish talented authors.

7. Houghton Mifflin decided to publish Alice Randall's "The Wind Done Gone," her first novel, because it fits so well into our strategy of discovering new literary voices and because we

found that the novel was a compelling story set in an historic context of great literary and academic interest. The book has already been lavishly praised by many prominent American writers, and Alice Randall can expect to benefit throughout her career from what we anticipate to be an unusually successful first novel. If publication of "The Wind Done Gone" is enjoined, however, it could easily cause irreversible damage to her career and reputation. In fact, this lawsuit has already damaged Alice Randall's prospects. As part of our prepublication promotion of the book, Houghton Mifflin had firm plans to license first serial rights to *Essence*, a national magazine geared towards an upscale African-American readership and so a particularly good vehicle for ensuring the success of the book and, indeed, of Alice Randall's career. After this lawsuit was brought and we informed *Essence* of it, however, *Essence* decided not to run any excerpt from the book. For an excerpt to appear in this magazine would have been very important to the long-term success of "The Wind Done Gone," and to the reputation of both Houghton Mifflin and Alice Randall.

8. In trade publishing, it is generally the case that books appearing in a publisher's spring catalog and published in the first half of a calendar year face less intense competition from other publishers' offerings than those books appearing on the fall catalog and published in the second half of the year. Because "The Wind Done Gone" is Alice Randall's first novel, we determined that the book would have a greater chance of becoming successful if it were to appear on our spring list, and we have planned the publication of the book accordingly. Any delay in the publication of "The Wind Done Gone" would put our carefully considered publishing plan at risk, and would likely mean that "The Wind Done Gone" would face unplanned-for competitive pressures. Such delay would also disrupt our budget and plans for our fall books, since we

would have to promote "The Wind Done Gone" all over again, and we would therefore have fewer resources available to promote the books we plan to publish in the fall.

9. In planning for the publication of "The Wind Done Gone," Houghton Mifflin has engaged, and continues to engage, in a months-long, carefully coordinated campaign of advertising and promotion. Following normal publishing schedules, our sales representatives began taking advance orders for "The Wind Done Gone" last November. In addition, we have entered into cooperative slotting arrangements with bookstores to provide space to display and market "The Wind Done Gone," we have scheduled a series of press interviews and promotional appearances for the author, and we have sent out and intend to continue to send out advance reading copies of the book accompanied by press kits to elicit reviews and generate prepublication "buzz." Several monthly magazines, in addition to *Essence*, have scheduled articles and author interviews around the publication date. In fact, the Margaret Mitchell House and Museum in Atlanta itself extended an invitation to the author and even agreed to pay her expenses. Our success in marketing all of our trade titles -- as well as many of our college textbooks, which are frequently sold by the same bookstores -- depends on our ability to maintain good working relationships with and not disappoint bookstores, reviewers, the press and readers generally. If our continuing marketing activities for "The Wind Done Gone" are disrupted, it would very likely generate frustration and ill will among all of these entities, and so cause injury to Houghton Mifflin that goes well beyond the financial cost of lost sales of the book itself.

Wendy J. Strothman

Wendy J. Strothman
Houghton Mifflin Company

March 27, 2001

Date

State of Massachusetts)
) SS
Suffolk County)

As subscribed and sworn to me in person came Wendy J. Strothman
on this 27th day of March, 2001.

Joyce M. Laidley
Notary Public

Joyce M. Laidley
Print Name

(Seal):

Commission Expiration:

JOYCE M. LAIDLEY
Notary Public
My Commission Expires
December 2, 2005