

**Sundeman v. The Seajay Soc’y, Inc.,
142 F.3d 194 (4th Cir. 1998)**

Year	1998
Court	United States Court of Appeals for the Fourth Circuit
Key Facts	<p>Plaintiffs the Florida Foundation and John Sundeman, personal representative of Pulitzer Prize-winning author Marjorie Rawlings’ estate, alleged that defendant The Seajay Society, Inc. infringed Rawlings’ unpublished work, <i>Blood of My Blood</i>. After Rawlings died, her literary executrix took physical possession of Rawlings’ papers, including <i>Blood of My Blood</i>. When the executrix also died, Rawlings’ estate did not take possession of the collection. Eventually defendant, a nonprofit organization devoted to enhancing public interest in southern culture, came into possession of <i>Blood of My Blood</i>. Defendant made a complete copy of the unpublished novel available to a Seajay Society officer and scholar specializing in Rawlings’ works. Defendant also sent a partial copy to the University of Florida Library to evaluate it for publication and make it available to plaintiffs. The scholar wrote a critical review of the unpublished novel that she orally presented to the Marjorie Kinnan Rawlings Society and which she planned to use as an introduction if the novel was published. The presentation quoted 2,464 words or four- to six- percent of the total novel. Plaintiffs appealed the district court’s ruling that defendant’s distribution of copies and use of quoted material was fair use.</p>
Issue	Whether defendant’s unauthorized distribution of an unpublished novel and use of quoted material from it, for purposes relating to literary criticism and seeking permission to publish it, constituted fair use.
Holding	<p>The court ruled in favor of defendant’s fair use defense, finding that the critical review was a scholarly appraisal of the work. While the paper extensively quoted or paraphrased the novel, its underlying purpose was to comment and criticize the work. The court also found that, while the scholar hoped to profit from the review, she used her copy of the novel to pursue a scholarly objective and as a means of preserving the delicate original. Further, she did not publish the review after failing to obtain appropriate permissions, so there was no commercial gain in this case. The court therefore found that the challenged uses of the manuscript were for noncommercial, educational purposes.</p> <p>The court rejected plaintiffs’ argument that the unpublished nature of the work completely barred a fair use defense because Congress amended 17 U.S.C. 107 in 1992 to explicitly bring unpublished works within the purview of fair use analysis. The court then found that defendant’s use of the work did not usurp plaintiffs’ right of first publication because neither the purpose nor the effect of the copies amounted to anything resembling first publication. It also ruled that the scholar did not quote more than was necessary to effectively comment or criticize the work. Finally, the court found that defendant’s uses had minimal effect on the market or potential market for plaintiffs’ work.</p>
Tags	Fourth Circuit; Education/Scholarship/Research; Review/Commentary; Textual work; Unpublished
Outcome	Fair use found