

13-4829-CV

United States Court of Appeals for the Second Circuit

THE AUTHORS GUILD, BETTY MILES, JIM BOUTON, JOSEPH
GOULDEN, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

HERBERT MITGANG, DANIEL HOFFMAN, individually and on behalf of all
others similarly situated, PAUL DICKSON, THE MCGRAW-HILL
COMPANIES, INC., PEARSON EDUCATION, INC., SIMON & SCHUSTER,
INC., ASSOCIATION OF AMERICAN PUBLISHERS, INC., CANADIAN
STANDARD ASSOCIATION, JOHN WILEY & SONS, INC., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX (UN-SEALED REDACTED VERSION) Volume 4 of 6 (Pages A-901 to A-1200)

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<p style="text-align: right;">Page 186</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. So as I describe in the report, as</p> <p>3 I've discussed, locating rights holders is a</p> <p>4 very, you know, as Dr. St. Clair reports,</p> <p>5 locating rights holders is a very difficult and</p> <p>6 costly process.</p> <p>7 If you're referring to an</p> <p>8 organization where book rights holders, you</p> <p>9 know, provide, you know, register or provide</p> <p>10 their books, I think there are already, I think</p> <p>11 there are already mechanisms in the marketplace</p> <p>12 for book rights holders who want to, you know,</p> <p>13 who want to -- I don't, I think the problem is</p> <p>14 the rights holders who cannot be found, largely</p> <p>15 speaking, or the rights holders who, the orphan</p> <p>16 works problem.</p> <p>17 And the thing you're describing to me</p> <p>18 does not solve the orphan works problem.</p> <p>19 Sorry, I don't, I cannot, since I</p> <p>20 can't tell you whose need would be met, it's</p> <p>21 hard for me to tell you why it doesn't fill an</p> <p>22 unmet need.</p> <p>23 The product you describe, I can't, I</p> <p>24 cannot figure out whose need would be met by</p> <p>25 that product.</p>	<p style="text-align: right;">Page 188</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 how an entity that relies on the active</p> <p>3 depository of rights with it, would solve unmet</p> <p>4 needs of libraries in the short run.</p> <p>5 Q. I'm not just talking about libraries.</p> <p>6 What about unmet needs of Google, if</p> <p>7 that was the only way it could get the books?</p> <p>8 MR. McGOWAN: Objection, incomplete</p> <p>9 hypothetical, foundation.</p> <p>10 You may answer.</p> <p>11 A. So I guess I -- in this case, as</p> <p>12 opposed to the case I cite in the footnote, I</p> <p>13 don't quite see the service -- that the source</p> <p>14 of the efficiencies are not apparent to me.</p> <p>15 Q. Well, AMCAP and BMI -- ASCAP, excuse</p> <p>16 me, and BMI, were created because the rights</p> <p>17 holders had a legal copyright interest; correct?</p> <p>18 MR. McGOWAN: Objection, foundation.</p> <p>19 You may answer.</p> <p>20 A. So my understanding is that ASCAP and</p> <p>21 BMI arose -- yes, so the rights holders, yeah,</p> <p>22 the composers, mostly, yes, or the rights</p> <p>23 holders, yes, as I say in my report.</p> <p>24 Q. Right, so it's not just that there</p> <p>25 were problems of widely disbursed rights holders</p>
<p style="text-align: right;">Page 187</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. Well, what about the need of</p> <p>3 copyright owners to obtain compensation for the</p> <p>4 digitization of their books?</p> <p>5 MR. McGOWAN: Objection, foundation.</p> <p>6 You may answer.</p> <p>7 A. So as I've said in the report, I</p> <p>8 don't think, I don't think there are a body of,</p> <p>9 for example, libraries or other entities, with</p> <p>10 an interest in digitizing books, who are willing</p> <p>11 to pay for licenses for less than the full text</p> <p>12 of books.</p> <p>13 And if this product helped those</p> <p>14 libraries, let's say, find the copyright</p> <p>15 holders, it might be valuable.</p> <p>16 But if it, if it doesn't solve that</p> <p>17 problem, I don't think it would be --it wouldn't</p> <p>18 meet an unmet need of a buyer.</p> <p>19 Q. What if it, what if the collective</p> <p>20 licensing organization created efficiencies for</p> <p>21 entities like libraries and others who are</p> <p>22 trying to get rights to use books?</p> <p>23 A. So it may be the case that some</p> <p>24 entities could create some efficiencies, but I</p> <p>25 don't -- I think what I'm saying is I don't see</p>	<p style="text-align: right;">Page 189</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 and widely disbursed music users, there was also</p> <p>3 the issue that the rights holders had a right to</p> <p>4 withhold the music users from listening to their</p> <p>5 works; right?</p> <p>6 MR. McGOWAN: Objection, incomplete</p> <p>7 hypothetical, lacks foundation</p> <p>8 significantly.</p> <p>9 You may answer.</p> <p>10 A. Sorry, so my understanding is that</p> <p>11 the purpose of ASCAP and BMI was that rights</p> <p>12 holders, you know, deposit their rights with</p> <p>13 ASCAP and BMI, and ASCAP and BMI provide an</p> <p>14 efficiency by tracking down and monitoring the</p> <p>15 disbursed rights users on the other side.</p> <p>16 Q. Do you understand that ASCAP and BMI</p> <p>17 arose after music users attempted to use music</p> <p>18 without paying royalties?</p> <p>19 MR. McGOWAN: Objection, foundation.</p> <p>20 You may answer.</p> <p>21 A. I don't know exactly. I don't know</p> <p>22 the history of ASCAP and BMI that completely.</p> <p>23 My understanding is that, you know,</p> <p>24 that these disbursed rights holders were</p> <p>25 required to pay for the music that they were</p>

<p style="text-align: right;">Page 190</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 performing, and that ASCAP and BMI served the</p> <p>3 intermediary function of negotiating and</p> <p>4 transacting with those disbursed rights holders.</p> <p>5 Q. So you don't know the genesis of it</p> <p>6 beyond what you said here?</p> <p>7 A. I know that ASCAP and BMI are a</p> <p>8 solution -- are a solution to the economic</p> <p>9 problem of disbursed rights holders.</p> <p>10 I don't know that much more about the</p> <p>11 history than that. Sorry, disbursed rights</p> <p>12 holders and disbursed users.</p> <p>13 Q. Right, but there would be no problem</p> <p>14 to solve from the perspective of the music</p> <p>15 users, if they didn't have to pay for the use of</p> <p>16 the music; right?</p> <p>17 MR. McGOWAN: Objection, foundation,</p> <p>18 calls for legal conclusion.</p> <p>19 A. So my understanding is that, yes, the</p> <p>20 users -- that the purpose of ASCAP and BMI, is</p> <p>21 to track down the users and get them to pay.</p> <p>22 Q. Because what they're using is</p> <p>23 copyrighted music?</p> <p>24 MR. McGOWAN: Same objections.</p> <p>25 A. So my understanding is that the user</p>	<p style="text-align: right;">Page 192</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 A. So I think as I've described in my</p> <p>3 report, what I said in my report is absent the</p> <p>4 existence of Google Books, I do not believe a</p> <p>5 market for snippet display would arise. That's</p> <p>6 the opinion I express in my report.</p> <p>7 Q. But you're not expressing the</p> <p>8 opposite?</p> <p>9 A. So I'm surely not expressing the</p> <p>10 opposite of the opinion in my report, but what's</p> <p>11 the -- what is your question?</p> <p>12 Q. You're not expressing the opinion</p> <p>13 that if Google, we have -- Google Books now</p> <p>14 exists?</p> <p>15 A. Yes.</p> <p>16 Q. And if a court determined that Google</p> <p>17 could not legally display snippets, are you</p> <p>18 expressing an opinion about whether or not</p> <p>19 Google, as a matter economics, would enter into</p> <p>20 a license to display snippets?</p> <p>21 MR. McGOWAN: Objection, incomplete</p> <p>22 hypothetical.</p> <p>23 You may answer.</p> <p>24 A. So I'm not expressing an opinion</p> <p>25 about whether Google would enter into licenses</p>
<p style="text-align: right;">Page 191</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 -- my understanding is that the users have to</p> <p>3 pay because the performance rights are a right</p> <p>4 that has, it has been determined by some, by a</p> <p>5 court that users of music, in these</p> <p>6 circumstances, have to pay.</p> <p>7 But the full scope of when users of</p> <p>8 music have to pay, etcetera, you know, is</p> <p>9 factually fairly complicated.</p> <p>10 Q. But you would agree that music users</p> <p>11 wouldn't be paying unless they had to; right?</p> <p>12 A. I am sure some music users would be</p> <p>13 paying, you know, if they didn't have to.</p> <p>14 But the point of ASCAP and BMI is to</p> <p>15 make sure they all pay, to collect from them.</p> <p>16 Q. So if it was determined that Google</p> <p>17 could not display snippets without permission</p> <p>18 under the copyright laws, are you expressing an</p> <p>19 opinion about whether a market would or would</p> <p>20 not develop for Google to pay for the use of the</p> <p>21 materials necessary for them to produce the</p> <p>22 snippets?</p> <p>23 MR. McGOWAN: Objection, incomplete</p> <p>24 hypothetical.</p> <p>25 You may answer.</p>	<p style="text-align: right;">Page 193</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 with rights holders. They may well abandon the</p> <p>3 project. I don't know the answer to that.</p> <p>4 MS. ZACK: I don't have anymore</p> <p>5 questions.</p> <p>6 (Time noted: 2:59 p.m.)</p> <p>7</p> <p>8</p> <p>9 JUDITH A. CHEVALIER</p> <p>10</p> <p>11 Subscribed and sworn to before me</p> <p>12 this ____ day of _____, 2012.</p> <p>13</p> <p>14</p> <p>15 Notary Public</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 194	Page 196
1	1
2 CERTIFICATE	2 EXHIBITS (Cont'd)
3	3
4 STATE OF NEW YORK)	4 Defendant's Exhibit 97, a series of pages 181
5 : ss.	5 from the Internet concerning the acquisition
6 COUNTY OF NEW YORK)	6 by Google of Rightsflow
7	7
8 I, NANCY SORENSEN, Notary Public	8
9 within and for the State of New York, do	9
10 hereby certify:	10
11 That JUDITH A. CHEVALIER, the witness	11
12 whose deposition is hereinbefore set forth,	12
13 was duly sworn by me and that such	13
14 deposition is a true record of the	14
15 testimony given by the witness.	15
16 I further certify that I am not	16
17 related to any of the parties to this	17
18 action by blood or marriage, and that I am	18
19 in no way interested in the outcome of this	19
20 matter.	20
21 IN WITNESS WHEREOF, I have hereunto	21
22 set my hand this 8TH day of JUNE, 2012.	22
23	23
24	24
25 NANCY SORENSEN	25
Page 195	Page 197
1	1 ERRATA SHEET
2 INDEX	2 VERITEXT REPORTING COMPANY
3 WITNESS EXAMINATION BY PAGE	3 1250 BROADWAY
4 JUDITH A. CHEVALIER MS. ZACK 4	4 NEW YORK, NEW YORK 10001
5	5 800-362-2520
6	6 CASE: AUTHORS GUILD, ET AL. VS. GOOGLE, INC.
7 INFORMATION REQUESTS	7 DEPOSITION DATE: JUNE 8, 2012
8 DIRECTIONS:	8 DEPONENT: JUDITH A. CHEVALIER
9 RULINGS:	9 PAGE LINE(S) CHANGE REASON
10 TO BE FURNISHED:	10
11 REQUESTS: 20	11
12 MOTIONS:	12
13	13
14 EXHIBITS	14
15 PLAINTIFF'S FOR ID.	15
16	16
17 Plaintiff's Exhibit 95, Expert 4	17
18 Report of Judith A. Chevalier	18
19	19
20 Plaintiff's Exhibit 96, a number of 4	20
21 pages collected from Google's website	21 JUDITH A. CHEVALIER
22 concerning the Partner Program	22
23	23 SUBSCRIBED AND SWORN TO BEFORE ME
24	24 THIS ____ DAY OF ____, 20__.
25	25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:

*Confidential***Errata Sheet**

Name of Case: THE AUTHORS GUILD, et al. v. GOOGLE, INC.

Date of Deposition: June 8, 2012

Name of Deponent: Professor Judith A. Chevalier

Page	Line	Change	To	Reason
5	12	analysis group	Analysis Group	Typographical error
11	23	So that in that case	So in that case	Misquote
18	12	listing of members of publishers that were	listing of members - of publishers that were members	Punctuation error
22	22	I did similar	I did similarly	Misquote
23	8	variety of platform	variety of platforms	Misquote
24	17	on his reports	on his report	Typographical error
26	8-11	this is "Amazon announces the first publicly available source. Amazon announces sales impact from new Search Inside the Book features."	this is "Amazon announces..." – the first publicly available source – "Amazon announces sales impact from new Search Inside the Book features."	Punctuation error
36	19-20	all of the books in the partner Program	all of their books in the Partner Program	Misquote
38	9	some cost	some costs	Typographical error
38	22	why my understanding	why -- my understanding	Typographical error
44	16-18	and so to the extent that, you know, copyrights and perhaps they play a particular role in the economics of technology	and so to the extent that, you know, copyrights and patents play a particular role in the economics of technology	Misquote
46	8	compliment	complement	Misquote
48	6	opinions about their	opinions about the	Misquote
48	11	Expert reports for academic	Expert reports or academic	Misquote
50	10	the deposition Stephane	the deposition of Stephane	Missing word
55	24	the add revenues	the ad revenues	Misquote

Confidential

60	19-25	On the preview page for your book, we display a set of links to buy the books at the major retailers, as well as to a site of your choice. These links are not paid for by the site features. Clicking on a link to purchase your book at an on-line retailer, won't generate any revenue directly.	"On the preview page for your book, we display a set of links to buy the books at the major retailers, as well as to a site of your choice. "These links are not paid for by the site features. Clicking on a link to purchase your book at an on-line retailer, won't generate any revenue directly."	Missing punctuation
61	17-18	combined with what do I earn from the program,	combined with "what do I earn from the program,"	Missing punctuation
61	20-21	and what do I earn from this program	and "what do I earn from this program"	Missing punctuation
63	23-24	interest in demand	interest and demand	Misquote
71	4	is a compliment	is a complement	Misquote
80	18	So is my understanding	So it is my understanding	Missing word
93	6-7	the message you have searched this book too many times	the message "you have searched this book too many times"	Missing punctuation
108	5	Well, I may	While I may	Misquote
108	19-21	the important test for whether tests for whether a good is a new good	the important test for whether -- tests for whether a good is a new good	Missing punctuation
111	4	is a compliment	is a complement	Misquote
112	15	as I explained in the thing	as I explained in the beginning	Misquote
113	5	That's if's	That's if	Misquote
113	21	is the scan	is the scanned	Typographical error
114	7-8	Google has provided the functionality of two libraries for libraries	Google has provided the functionality to libraries -- for libraries	Misquote
115	15-16	that at the output	that the output	Misquote
116	16	use of the word employs	use of the word "employs"	Missing punctuation

Confidential

122	17-18	I'm not an expert in the exactity of exactly how	I'm not an expert in exactly how	Misquote
124	3	Google Go Books	Google Books	Typographical error
127	19	more relevant in the marketplace	more prevalent in the marketplace	Misquote
129	18	ff I	if I	Typographical error
130	9	moved to those books off	sold those books off	Misquote
138	6	there's a number sites	there's a number of cites	Misquote
139	6	As though	Although	Typographical error
140	5	I'm exactly sure	I'm not exactly sure	Missing word
143	18	If the publisher wasn't more	If the publisher wants more	Typographical error
151	16-19	My analysis is neither assuming, nor expressing an opinion about what Google does. It's about what whether Google does is a fair use	My analysis is neither assuming, nor expressing an opinion about whether what Google does. It isn't about whether what Google does is fair use	Misquote
154	25	primarily	primary	Misquote
160	11	compliment	complement	Misquote
172	5	is that the	is the	Extra word
172	19	The word	they were	Misquote
180	8	disbursed	dispersed	Misquote
180	16	disbursed	dispersed	Misquote
180	18	disbursed	dispersed	Misquote
183	5	by which	about which	Misquote
189	15	disbursed	dispersed	Misquote
189	24	disbursed	dispersed	Misquote
190	4	disbursed	dispersed	Misquote
190	9	disbursed	dispersed	Misquote
190	11	disbursed	dispersed	Misquote
190	12	disbursed	dispersed	Misquote

Confidential

A handwritten signature in cursive script, appearing to read "Judith A. Chevalier", written in black ink.

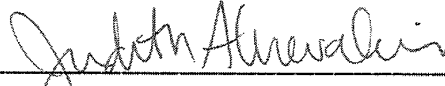
Judith A. Chevalier
July 11, 2012

Page 193

1 J.A. Chevalier - C O N F I D E N T I A L
2 with rights holders. They may well abandon the
3 project. I don't know the answer to that.

4 MS. ZACK: I don't have anymore
5 questions.

6 (Time noted: 2:59 p.m.)

7
8 
9 JUDITH A. CHEVALIER

10
11 Subscribed and sworn to before me
12 this ____ day of _____, 2012.

13
14 _____
15 Notary Public

16
17
18
19
20
21
22
23
24
25

EXHIBIT 43

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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., Associational
Plaintiff, BETTY MILES, JOSEPH
GOULDEN, and JIM BOUTON, on behalf of
themselves and all other similarly situated,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 05 CV 8136 (DC)

ECF Case

**DEFENDANT GOOGLE INC.'S RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 26 and 33, Defendant Google Inc. (“Google”), by its attorneys, hereby responds and objects to Plaintiffs’ First Set of Interrogatories (the “Interrogatories”) dated March 14, 2012.

These responses are based on the information currently available to Google. Google reserves the right to amend, supplement or modify its responses and objections at any time in the event that it obtains additional or different information.

GENERAL OBJECTIONS

1. Google objects to the preface, instructions, and definitions to the Requests to the extent that they purport to impose obligations that exceed those imposed by the Federal Rules of Civil Procedure, relevant local rules, and applicable case law. In responding to these requests, Google has followed the applicable law and has ignored the improper preface, instructions, and definitions.

2. Google objects to the Requests in their entirety and to each request to the extent that the documents and information sought are protected from discovery by the attorney-client privilege, the work-product doctrine, or any other applicable privilege.

3. Google objects to each and every request to the extent that it seeks information that is confidential and/or proprietary information. To the extent not otherwise subject to objection, Google will provide such confidential information in accordance with the terms of the protective order entered in this case.

4. Google objects to Plaintiffs’ definition of “Google” as vague, ambiguous, unintelligible, and overly broad. For purposes of responding to these discovery requests, Google will interpret “Google” to mean Google, Inc. and/or its agents.

RESPONSES AND OBJECTIONS TO INTERROGATORIES**INTERROGATORY NO. 1:**

Identify all factual and legal bases supporting Google's defense that its digital copying in libraries of Books in their entirety is a fair use under 17 U.S.C. § 107, including without limitation all facts Google intends to rely on with respect to the four factors set forth in Section 107.

RESPONSE TO INTERROGATORY NO. 1:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory's use of the term "digital copying in libraries of Books" is vague and ambiguous, and understands it to refer to Google's digitization of Books from library collections. Google objects to this interrogatory to the extent it seeks more than "the claims and contentions" of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google's digitization of Books from library collections is a fair use under 17 U.S.C. § 107. Specifically:

- The "purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," weighs in favor of a finding of fair use.
 - The purpose and character of Google's use is transformative, because it adds something new, with a further purpose or different character, and does not merely supersede the objects of the original.
 - The purpose of Google's use is to assist users in identifying Books which may be of interest by creating a search engine by which the text of Books may be searched.

- Google’s digitized copies do not serve as a substitute for Books, but rather are necessary to create Google’s book search engine, which is a new tool for finding books.
- The nature of Google’s use is at least partially noncommercial, because the use facilitates access to the collections of libraries, enables research and scholarship, and does not directly generate revenue for Google.
- The “nature of the copyrighted work” weighs in favor of a finding of fair use.
 - All of the Books at issue have been published.
 - Some of the Books at issue are factual in nature, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are less factual in nature, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
 - Some of the Books at issue are out of print, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are in print, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
- The “amount and substantiality of the portion used in relation to the copyrighted work as a whole” weighs in favor of a finding of fair use.
 - Because the use is transformative, and the use of the whole is necessary to the transformative purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified, the digitization of the entire work does not militate against a finding of fair use.

- The “effect of the use upon the potential market for or value of the copyrighted work” weighs in favor of a finding of fair use.
 - A search engine is not a market substitute for a book.
 - The effect of the use on the traditional market for the sale of Books is positive, because it enables the creation of a search engine by which the text of books may be searched so that books of interest may be identified.
 - There is no market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified is not a traditional market.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified is not a reasonable market.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified is not a market which is likely to be developed.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified is a transformative market, and is thus not cognizable.
- Balanced in light of the purposes of copyright, the four factors favor fair use.
 - Each factor either favors fair use or is neutral.

- A finding of fair use promotes the purpose of copyright, which is to promote the dissemination of knowledge by granting limited exclusive rights to authors.

Google's use promotes the dissemination of knowledge, by assisting users in identifying books which may be of interest, while not serving as a substitute for the Books themselves.

In addition, Google's use is fair because it is necessary to the fair use purpose set forth in Google's response to Interrogatory No. 3. Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs' contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 2:

Identify all factual and legal bases supporting Google's defense that its distribution to libraries of entire digital copies of Books is a fair use under 17 U.S.C. § 107, including without limitation all facts Google intends to rely on with respect to the four factors set forth in Section 107.

RESPONSE TO INTERROGATORY NO. 2:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory to the extent it seeks more than "the claims and contentions" of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google does not distribute entire digital copies of Books to libraries. Rather, Google makes available to libraries an automated system, called GRIN, by which a library may choose to create and download digital copies of Books which have been scanned from its collection. A

library performs the volitional acts which result in the creation of the digital copies which are created by the GRIN system and which result in the transmission of the content of those digital copies to that library. Accordingly, Google can be at most liable under doctrines of secondary liability, and cannot be directly liable for the library copies.

Google is not secondarily liable with respect to the library copies. First, Google is not secondarily liable with respect to the library copies under any theory of secondary liability because there is no underlying act of direct infringement by the libraries, since the libraries' volitional acts in creating and downloading the library copies are fair use, not infringement. Second, Google is not vicariously liable because vicarious liability requires a financial benefit directly attributable to the particular infringing activity, and Google does not derive any financial benefit directly attributable to the library copies. Third, Google is not liable under a theory of contributory liability because (1) the GRIN system has at least substantial noninfringing uses; (2) the libraries were and are contractually bound to use the GRIN system only in a noninfringing manner; and (3) Google lacks knowledge of any use of the GRIN system which is infringing, as opposed to fair use.

The libraries' volitional acts in creating and downloading the library copies are fair use under 17 U.S.C. § 107. Specifically:

- The libraries' use is in part for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.
- The "purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," weighs in favor of a finding of fair use.

- The purpose and character of the libraries' use is transformative, because it adds something new, with a further purpose or different character, and does not merely supersede the objects of the original.
 - One purpose of the libraries' use is to assist users in identifying books which may be of interest by creating a search engine by which the text of books may be searched.
 - The libraries' digitized copies do not serve as a substitute for Books, but rather are necessary to create the libraries' book search engine, which is a new tool for finding books.
- The nature of the libraries' use is entirely for nonprofit educational purposes.
- The "nature of the copyrighted work" weighs in favor of a finding of fair use.
 - All of the Books at issue have been published.
 - Some of the Books at issue are factual in nature, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are less factual in nature, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
 - Some of the Books at issue are out of print, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are in print, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
- The "amount and substantiality of the portion used in relation to the copyrighted work as a whole" weighs in favor of a finding of fair use.

- Because the use is transformative, and the use of the whole is necessary to the transformative purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified, the digitization of the entire work does not militate against a finding of fair use.
- The “effect of the use upon the potential market for or value of the copyrighted work” weighs in favor of a finding of fair use.
 - A search engine is not a market substitute for a Book.
 - The effect of the use on the traditional market for the sale of Books is positive, because it enables the creation of a search engine by which the text of books may be searched so that books of interest may be identified.
 - There is no market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified or for the creation of a “dark archive.”
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified or for the creation of a “dark archive” is not a traditional market.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified or for the creation of a “dark archive” is not a reasonable market.
 - The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified or for the creation of a “dark archive” is not a market which is likely to be developed.

- The market for a license to scan Books for the purpose of creating a search engine by which the text of books may be searched so that books of interest may be identified or for the creation of a “dark archive” is a transformative market, and is thus not cognizable.
- Balanced in light of the purposes of copyright, the four factors favor fair use.
 - Each factor either favors fair use or is neutral.
 - A finding of fair use promotes the purpose of copyright, which is to promote the dissemination of knowledge by granting limited exclusive rights to authors. The libraries’ use promotes the dissemination of knowledge, by assisting users in identifying books which may be of interest, while not serving as a substitute for the Books themselves.

Google provides this response as a courtesy to Plaintiffs, and the burden of proving infringement (be it direct or secondary) remains with Plaintiffs. To the extent Google performed any volitional act with respect to library copies, which Google denies, Google’s conduct was fair use because it was necessary to the foregoing fair use purposes and was conducted at the behest of the libraries expressly for the purpose of achieving the foregoing fair use purposes. Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs’ contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 3:

Identify all factual and legal bases supporting Google’s defense that its display of verbatim expression from Books in response to search requests is a fair use under 17 U.S.C. §

107, including without limitation all facts Google intends to rely on with respect to the four factors set forth in Section 107.

RESPONSE TO INTERROGATORY NO. 3:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory's use of the term "display of verbatim expression from Books in response to search requests" is vague and ambiguous, and understands it to refer to Google's display of snippets of Books from library collections in response to search requests. Google objects to this interrogatory to the extent it seeks more than "the claims and contentions" of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google's display of snippets of Books from library collections in response to search results is a fair use under 17 U.S.C. § 107. Specifically:

- The "purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," weighs in favor of a finding of fair use.
 - The purpose and character of Google's use is transformative, because it adds something new, with a further purpose or different character, and does not merely supersede the objects of the original.
 - The display of snippets is important to helping users find books which may be of interest.
 - The snippets displayed do not serve as a substitute for Books, but instead serve as a tool to identify books which are of interest.

- Snippets are not displayed with respect to those Books for which there is a possibility that a snippet could serve as a substitute for a Book, such as dictionaries and books of quotations.
- The nature of Google's use is at least partially noncommercial, because the use facilitates access to the collections of libraries, enables research and scholarship, and does not directly generate revenue for Google.
- The “nature of the copyrighted work” weighs in favor of a finding of fair use.
 - All of the Books at issue have been published.
 - Some of the Books at issue are factual in nature, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are less factual in nature, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
 - Some of the Books at issue are out of print, and as to those Books, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the Books at issue are in print, and as to those Books, this factor tilts less strongly in favor of a finding of fair use.
 - Some of the snippets at issue are factual in nature, and as to those snippets, this factor tilts more strongly in favor of a finding of fair use.
 - Some of the snippets at issue are less factual in nature, and as to those snippets, this factor tilts less strongly in favor of a finding of fair use.
- The “amount and substantiality of the portion used in relation to the copyrighted work as a whole” weighs in favor of a finding of fair use.
 - Snippets are displayed only in response to user search queries.

- Each snippet is only approximately one-eighth of a page.
- At maximum, three snippets are displayed in response to a particular search query.
- Only snippets containing the user's search query are displayed.
- The location of a snippet on a page is fixed.
- Some snippets are blacklisted.
- Some pages are blacklisted.
- Measures are in place to prevent any one user, or users in the aggregate, from abusing the system by repeated queries.
- Some of the snippets at issue are taken from long books, and as to those snippets this factor tilts more strongly in favor of fair use.
- Some of the snippets at issue are taken from short books, and as to those snippets this factor tilts less strongly in favor of fair use.
- The “effect of the use upon the potential market for or value of the copyrighted work” weighs in favor of a finding of fair use.
 - A snippet is not a market substitute for a Book.
 - The effect of the use on the traditional market for the sale of Books is positive, because it enables the creation of a search engine by which the text of books may be searched so that books of interest may be identified.
 - There is no market for a license to display short snippets as part of a search engine so that books of interest may be identified.
 - The market for a license to display short snippets as part of a search engine so that books of interest may be identified is not a traditional market.

- The market for a license to display short snippets as part of a search engine so that books of interest may be identified is not a reasonable market.
- The market for a license to display short snippets as part of a search engine so that books of interest may be identified is not a market which is likely to be developed.
- The market for a license to display short snippets as part of a search engine so that books of interest may be identified is a transformative market, and is thus not cognizable.
- Balanced in light of the purposes of copyright, the four factors favor fair use.
 - Each factor either favors fair use or is neutral.
 - A finding of fair use promotes the purpose of copyright, which is to promote the dissemination of knowledge by granting limited exclusive rights to authors. Google's use promotes the dissemination of knowledge, by assisting users in identifying books which may be of interest, while not serving as a substitute for the Books themselves.

Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs' contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 4:

Identify by title, author, publisher and ISBN (if applicable) all Books as to which Google claims a license to digitally copy in full, and for each Book identify all factual and legal bases supporting the defense of license.

RESPONSE TO INTERROGATORY NO. 4:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory to the extent it seeks more than “the claims and contentions” of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google claims the defense of license with respect to those Books listed in the document bearing Bates number GOOG05004752. Google is permitted by law, at least under the doctrine of fair use, to digitally copy in full all of the remaining Books at issue, as set forth in Google’s response to Interrogatory No. 1. Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs’ contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 5:

Identify by title, author, publisher and ISBN (if applicable) all Books as to which Google claims a license to distribute digital copies to libraries, and for each Book identify all factual and legal bases supporting the defense of license.

RESPONSE TO INTERROGATORY NO. 5:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory to the extent it seeks more than “the claims and contentions” of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google claims the defense of license with respect to those Books listed in the document bearing Bates number GOOG05004752. Google is permitted by law, at least under the doctrine of fair use, to digitally copy in full all of the remaining Books at issue, as set forth in Google's response to Interrogatory No. 1. Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs' contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 6:

Identify by title, author, publisher and ISBN (if applicable), all Books as to which Google claims a license to display verbatim expression in response to search requests, and for each book identify all factual and legal bases supporting the defense of license.

RESPONSE TO INTERROGATORY NO. 6:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory to the extent it seeks more than "the claims and contentions" of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google claims the defense of license with respect to those Books listed in the document bearing Bates number GOOG05004752. Google is permitted by law, at least under the doctrine of fair use, to digitally copy in full all of the remaining Books at issue, as set forth in Google's response to Interrogatory No. 1. Google reserves the right to make different or additional contentions for the purpose of rebutting Plaintiffs' contentions. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

INTERROGATORY NO. 7:

Identify any and all affirmative defenses other than fair use and license which Google claims in this case and, for each such defense, identify all factual and legal bases supporting such defense.

RESPONSE TO INTERROGATORY NO. 7:

Google objects to this interrogatory to the extent it calls for attorney-client privileged information, attorney work product, or information protected by any other privilege or immunity. Google objects to this interrogatory to the extent it seeks more than “the claims and contentions” of Google, as permitted by Local Civil Rule 33.3(c). Subject to and without waiving these objections, Google responds as follows:

Google does not claim any affirmative defenses other than fair use and license affirmative defenses with respect to Plaintiffs’ claims of direct copyright infringement as to Books scanned from the collections of libraries, but does not intend to waive any such defenses to the extent they overlap with Google’s fair use and license defenses. Google reserves the right to present different or additional affirmative defenses in the event Plaintiffs make other or further claims, or for the purpose of rebutting Plaintiffs’ contentions. Google reserves the right to present defenses which rebut or negate elements upon which Plaintiffs bear the burden, which defenses are not encompassed within this interrogatory because they are not affirmative defenses. Pursuant to the agreement of the parties, Google is willing to meet and confer in good faith in the event Plaintiffs require additional details regarding the contentions identified herein.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1(a) of the Local Rules of the Southern District of New York, Representative Plaintiffs Betty Miles, Joseph C. Goulden, and Jim Bouton, and Associational Plaintiff The Authors Guild, Inc., individually and on behalf of all others similarly situated, submit the following statement of undisputed facts.

UNDISPUTED FACTS

1. Representative plaintiff Jim Bouton holds the United States copyright in BALL FOUR (registration number A173097). *See* Copy of U.S. Copyright Registration No. A173097 for JIM BOUTON, BALL FOUR (Declaration of Joanne Zack in Support of Plaintiffs' Motion for Partial Summary Judgment (hereinafter "Zack SJ Decl.") Ex. 1).

2. Representative plaintiff Betty Miles holds the United States copyright in THE TROUBLE WITH THIRTEEN (registration number TX0000338841). *See* Copy of U.S. Copyright Registration No. TX0000338841 for BETTY MILES, THE TROUBLE WITH THIRTEEN (Zack SJ Decl. Ex. 2).

3. Representative plaintiff Joseph Goulden holds the United States copyright in THE SUPERLAWYERS: THE SMALL AND POWERFUL WORLD OF THE GREAT WASHINGTON LAW FIRMS (registration number A346254). *See* Copy of U.S. Copyright Registration No. A346254 for JOSEPH GOULDEN, THE SUPERLAWYERS: THE SMALL AND POWERFUL WORLD OF THE GREAT WASHINGTON LAW FIRMS (Zack SJ Decl. Ex. 3).

4. Each of the books identified in Nos. 1-3 above has been copied and displayed by Google in its Library Project without plaintiffs' permission. *See* Print-outs from Google's website displaying search results in JIM BOUTON, BALL FOUR (Zack SJ Decl. Ex. 4); Print-outs from Google's website displaying search results for the term "pitch" in JIM BOUTON, BALL FOUR (Zack SJ Decl. Ex. 5); Print-outs from Google's website displaying search results for the term "pitches" in JIM BOUTON, BALL FOUR (Zack SJ Decl. Ex. 6); Print-outs from Google's website displaying search results in BETTY MILES, THE TROUBLE WITH THIRTEEN (Zack SJ Decl. Ex. 7); Print-outs from Google's website displaying search results in JOSEPH GOULDEN, THE SUPERLAWYERS: THE SMALL AND POWERFUL WORLD OF THE GREAT WASHINGTON LAW FIRMS

(Zack SJ Decl. Ex. 8); Defendant Google Inc.'s Responses and Objections to Plaintiff's First Set of Requests for Admission (hereinafter "Google Admissions") at 11 (Zack SJ Decl. Ex. 27).

5. Google had distributed approximately 2.7 million scanned books to the partnering libraries, as of March 26, 2012. *See* Zack SJ Decl. Ex. 9 (excerpts from spreadsheet produced by Google to plaintiffs on March 26, 2012).

6. Digital copies of BALL FOUR and SUPERLAWYERS have been distributed to the University of California library: BALL FOUR on July 20, 2010, and SUPERLAWYERS twice, on July 29, 2009, and November 16, 2010. *See id.*

7. The Authors Guild, Inc. is the nation's largest organization of published authors. Print-out from <http://www.authorsguild.org/about/history.html> (Zack SJ Decl. Ex. 10).

8. The Authors Guild advocates for and supports the copyright and contractual interests of published writers. *Id.*

9. Defendant Google Inc. ("Google") owns and operates the largest Internet search engine in the world. *See* Print-out from <http://investor.google.com/corporate/faq.html> ("Google is now widely recognized as the world's largest search engine.") (Zack SJ Decl. Ex. 11, p.1).

10. Each day, millions of people use Google's search engine free of charge, while commercial and other entities pay to display ads to visitors to Google's websites and other websites that contain Google ads. *See* Google Dec. 14, 2004 press release, "Google Checks Out Library Books," p.2 (Zack SJ Decl. Ex. 12).

11. For the year ended December 31, 2011, Google reported over \$36.5 billion in "advertising revenues." 2011 Google Form 10-K, p.56 (Zack SJ Decl. Ex. 13).

12. For the year ended December 31, 2010, Google reported over \$29 billion in revenue generated "primarily by delivering relevant, cost-effective online advertising."

See 2010 Google Form 10-K, p.3 (Zack SJ Decl. Ex. 14).

13. In October 2004, Google first announced its digital books program, calling it Google Print. See GOOG000101103 (noting that Google Print was launched on October 6, 2004) (Zack SJ Decl. Ex. 15); *see also* Transcript of deposition of Daniel Clancy taken February 10, 2012 (hereinafter “Clancy Dep.”) at 93-94 (Zack SJ Decl. Ex. 16).

14. Google Print later became Google Books. Clancy Dep. at 94 (Zack SJ Decl. Ex. 16).

15. Google’s Partner Program together with Google’s Library Project comprise the Google Books program. *Id.*

16. Works in the Partner Program are displayed with permission of the rightsholder. Clancy Dep. at 215 (Zack SJ Decl. Ex. 16); Google Books Partner Program Standard Terms and Conditions (hereinafter “Terms and Conditions”) ¶¶ 2-3 (Zack SJ Decl. Ex. 17).

17. Since 2004, the Partner Program has allowed publishers and other rightsholders to permit Google to display their works in exchange for a split of ad revenue. GOOG000101103 (Zack SJ Decl. Ex. 15); Clancy Dep. at 93 (Zack SJ Decl. Ex. 16).

18. The Partner Program is aimed at “help[ing] publishers sell books” and “help[ing] books become discovered,” while “adding authoritative content” to Google’s website. Transcript of the deposition of Thomas Turvey taken February 17, 2012 (hereinafter “Turvey Dep.”) at 18-19 (Zack SJ Decl. Ex. 18).

19. To participate in the program, rightsholders enter into a contract with Google and send a printed copy of their books to Google for scanning (or provide Google with an existing digital copy). Clancy Dep. at 215 (Zack SJ Decl. Ex. 16); Terms and Conditions ¶¶ 2-3 (Zack SJ Decl. Ex. 17).

20. Partners decide “how much of the book is browsable” on Google, “anywhere from a few sample pages to the whole book.” *See* Print-out from <http://support.google.com/books/bin/answer.py?hl=en&answer=43729/> (Zack SJ Decl. Ex. 19).

21. Google agrees to share with its partners a portion of the revenue it earns from ads shown next to pages of books searched in the Partner Program. Turvey Dep. at 31 (Zack SJ Decl. Ex. 18); Terms and Conditions ¶ 8 (Zack SJ Decl. Ex. 17).

22. During 2004, Google entered into dozens of contracts with publishers covering tens of thousands of books. GOOG000101103 (Zack SJ Decl. Ex. 15).

23. By 2004 year end, Google had received nearly 200,000 books for the Partner Program, even though Google’s extensive outreach efforts focused almost exclusively on publishers, with little or no attempt to sign up authors. *Id.*; Turvey Dep. at 76-80 (Zack SJ Decl. Ex. 18); Clancy Dep. at 93 (Zack SJ Decl. Ex. 16).

24. As of early 2012, the Partner Program included approximately 2.5 million books, by permission of approximately 45,000 rightsholders, with the number of partners continuing to grow. Turvey Dep. at 32 (Zack SJ Decl. Ex. 18).

25. Google publicly announced a new program in December 2004, stating that it had entered into agreements with four university libraries (Harvard, Stanford, the University of Michigan, and Oxford) and the New York Public Library to “digitally scan books from their collections so that users worldwide can search them in Google.” Dec. 14, 2004 Google press release, “Google Checks Out Library Books” (Zack SJ Decl. Ex. 12, p.1).

26. Google refers to the endeavor identified above in No. 25 as its Library Project. Clancy Dep. at 33-34 (Zack SJ Decl. Ex. 16); June 6, 2007 Google press release, “Committee on Institutional Cooperation (CIC) Joins Google’s Library Project” (Zack SJ Decl. Ex. 20).

27. Since its December 2004 announcement, Google has entered into agreements with additional libraries (such as the Library of Congress, University of Texas at Austin, University of Virginia, University of Wisconsin-Madison, Columbia University, Cornell University, Princeton University, University of California, and the Committee on Institutional Cooperation (a consortium of twelve research universities)). June 6, 2007 Google press release, “Committee on Institutional Cooperation (CIC) Joins Google’s Library Project” (Zack SJ Decl. Ex. 20); Zack SJ Decl. Ex. 23 (compilation of agreements between Google and the various libraries, hereinafter “Library Agreements”).

28. Google has also developed and patented scanning technology that allows library books to be copied. Clancy Dep. at 14, 211 (Zack SJ Decl. Ex. 16).

29. Google has used this technology to copy the entirety of over twenty million books. *See id.* at 30; Declaration of Daniel Clancy in Support of Google Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (hereinafter “Clancy Decl.”) ¶ 4 (Zack SJ Decl. Ex. 21).

30. In exchange for access to a library’s print books, Google distributes digital copies of the scanned books to the contributing library. *See* Print-out from <http://support.google.com/books/bin/answer.py?hl=en&answer=43751> (“Each library will receive a digital copy of every book we scan ... from their respective collections.”) (Zack SJ Decl. Ex. 22); Clancy Dep. at 44-45 (Zack SJ Decl. Ex. 16).

31. To carry out its scanning *en masse*, Google set up scanning facilities in Mountain View, California, where Google is headquartered, as well as in Ann Arbor and near Boston. Clancy Dep. at 180-81 (Zack SJ Decl. Ex. 16).

32. For some libraries, Google undertook “selective scanning,” which entailed a library identifying a collection or set of books, and Google determining which books it had

already scanned or planned to scan from another library partner, to avoid duplicative scanning and to “increase efficiency.” *Id.* at 185-86.

33. The “selection” process identified in No. 32 above was unrelated to the content of the book. *Id.* at 187.

34. Google engaged in “bulk scanning,” with libraries providing “carts of books” for Google to scan. *Id.* at 15, 103.

35. Google’s scanning operations involved approximately three hundred scanning machines, and reached an annual budget of \$30 to \$40 million for the scanning alone. *Id.* at 84-85, 179.

36. Some libraries (*e.g.*, the New York Public Library, Harvard, Columbia, and Princeton) allowed Google to scan only public domain works, while others (*e.g.*, the Universities of California, Michigan, Wisconsin, Cornell, University of Virginia, CIC, Stanford, and Texas) allowed Google to scan in-copyright works as well. *See generally* Library Agreements (Zack SJ Decl. Ex. 23); Clancy Dep. at 19 (“Harvard, New York Public Library, Columbia, and I believe Princeton is only providing us public domain.”).

37. A “large number” of independent contractors – “on the order of hundreds” – served as Google’s scanning operators who performed the physical scanning, often working five to six days per week, two shifts per day. Clancy Dep. at 14, 181 (Zack SJ Decl. Ex. 16).

38. In scanning up to four million books per year, Google’s contractors did not make any judgments concerning a book’s content. *Id.* at 182-83.

39. Google copies every book its library partners provide, regardless of content, unless (a) Google determines that it already has or will copy the book from another library; (b) the book is physically not fit to be copied; or (c) Google has received a specific request from a

copyright owner not to scan the book. *See* Transcript of the deposition of Kurt Groetsch (hereinafter “Groetsch Dep.”) at 27-31 (Zack SJ Decl. Ex. 24); Transcript of the deposition of Stephane Jaskiewicz (hereinafter “Jaskiewicz Dep.”) at 16-17 (Zack SJ Decl. Ex. 25); Clancy Dep. at 182-87 (Zack SJ Decl. Ex. 16).

40. Each book copied by Google as part of its Library Project was copied by Google in its entirety multiple times. Jaskiewicz Dep. at 22-29 (Zack SJ Decl. Ex. 25); Defendant Google Inc.’s Supplemental Narrative Responses and Objections to Plaintiffs’ Second Request for Production of Documents and Things (hereinafter “Supplemental Narrative”) at 5-6 (Zack SJ Decl. Ex. 26); Google Admissions at 8 (Zack SJ Decl. Ex. 27).

41. Google maintains digital copies of each book it copied as part of its Library Project on its servers and on back-up tapes. Jaskiewicz Dep. at 22-29, 69 (Zack SJ Decl. Ex. 25).

42. In response to search inquiries by users of its search engine, Google searches the complete text of books copied in its Library Project. *Id.* at 45-46; Supplemental Narrative at 8 (Zack SJ Decl. Ex. 26); Google Admissions at 11 (Zack SJ Decl. Ex. 27).

43. Since 2005, pursuant to uniform rules of its own devising, Google has displayed verbatim expression from these books on the Internet in response to search requests by users of its search engine. *See* Google Admissions at 10 (Zack SJ Decl. Ex. 27); Supplemental Narrative at 11-12 (Zack SJ Decl. Ex. 26).

44. Google generally divides each page into eighths, each of which Google calls a snippet. Supplemental Narrative at 11-12 (Zack SJ Decl. Ex. 26); Print-out from <http://www.google.com/googlebooks/library.html> (Zack SJ Decl. Ex. 28); *see also* Print-out from <http://support.google.com/books/bin/answer.py?hl=en&answer=43729/> (Zack SJ Decl. Ex. 19).

45. By performing multiple searches using different search terms (including multiple search terms suggested by Google), a single user can view far more than three snippets from a Library Project book. *See* Print-outs from Google’s website displaying search results in JIM BOUTON, BALL FOUR (Zack SJ Decl. Ex. 4); Clancy Dep. at 43-45 (Zack SJ Decl. Ex. 16).

46. Zack SJ Decl. Ex. 4 demonstrates that Google displayed to one user – making a series of consecutive searches within BALL FOUR – about 37 different snippets, consisting of over **1900** words of verbatim expression.

47. Even minor variations in search terms will result in different displays of text. *Compare* snippet results for search term “pitch” in BALL FOUR (Zack SJ Decl. Ex. 5) *with* snippet results for search term “pitches” in BALL FOUR (Zack SJ Decl. Ex. 6); *see also* Clancy Dep. at 44 (Zack SJ Decl. Ex. 16) (“[F]or a given query, we might display up to three snippets, but then if you entered a different query, you might see different snippets.”).

48. Google shows its users snippets from all portions of the books displayed in its Library Project, except for the small proportion of each book that it “blacklists.” Supplemental Narrative at 11 (Zack SJ Decl. Ex. 26); Clancy Decl. ¶ 10 (Zack SJ Decl. Ex. 21).

49. For those books in snippet view, Google blacklists 10% of the pages of books and one snippet per page. *See* Supplemental Narrative at 11 (Zack SJ Decl. Ex. 26); Clancy Decl. ¶ 10 (Zack SJ Decl. Ex. 21).

50. For those books in snippet view, Google makes the vast majority of the text available for verbatim display to its users collectively. *See* Supplemental Narrative at 6-7 (Zack SJ Decl. Ex. 26); *see also* Zack SJ Decl. Ex. 4.

51. Some of the books copied in the Library Project are placed by Google into metadata only view, where no text is displayed. *See* Supplemental Narrative at 6-7 (Zack SJ Decl. Ex. 26).

52. In general, reference works (*i.e.*, encyclopedias, almanacs, dictionaries, thesauri, trivia books, books of quotations, bibliographies, indexes, poetry books, sheet music, pricing guides, travel guides, joke books, recipe books and catalogs), books published within the preceding two years which would have been placed in snippet view, and works for which the rightsholder has instructed Google not to display the work are placed in metadata only view. *Id.*; “QA Training Manual,” at GOOG05002440 (Zack SJ Decl. Ex. 29).

53. To date, in its Library Project, Google has digitally copied over four million in-copyright English language books (Clancy Decl. ¶ 4) (Zack SJ Decl. Ex. 21); *see also* Zack SJ Decl. Exs. 30-31 (spreadsheet and accompanying email from Google identifying a list of over eight million English language books copied and that Google has determined not to be in the public domain); distributed complete digital copies of over 2.7 million of in-copyright books to libraries (*see* Zack SJ Decl. Ex. 9) (spreadsheet from Google identifying the scanned books which have been distributed to the partnering libraries, including certain books distributed more than once); and displayed verbatim expression as snippets from millions of in-copyright books over the Internet in response to search requests from its users. Google Admissions at 10 (Zack SJ Decl. Ex. 27).

54. Google did not seek or obtain permission from copyright owners before it made the uses described in No. 53 above. Google Admissions at 12-14 (Zack SJ Decl. Ex. 27).

55. Google has not compensated copyright owners for its copying, distribution to libraries, or display of verbatim expression from these books. *Id.* at 13.

56. Google has admitted in its responses to Plaintiffs' Requests for Admissions that it digitally copies books in their entirety – including in-print and out-of-print books, fiction and nonfiction books, reference books, anthologies, educational books, textbooks, dissertations, monographs, journals, government publications, and other types of works; provides entire digital copies of books to libraries, and displays snippets from books in response to user requests, all without copyright owner permission. *Id.* at 5-12; *see also* Supplemental Narrative at 5-9 (Zack SJ Decl. Ex. 26).

57. Pursuant to their cooperative agreements with Google, each library provides books to Google, Google scans the books, makes a digital file of the books for Google's use, and distributes digital copies of scanned books to the providing library. Clancy Dep. at 44-45 (Zack SJ Decl. Ex. 16); Library Agreements (Zack SJ Decl. Ex. 23).

58. One of Google's earliest library agreements, its digitization agreement with Stanford University, summarizes their agreement as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Digitization Agreement with Leland Stanford Junior University, p.1 (Zack SJ Decl. Ex. 23 at GOOG05002264).

59. Google's library agreements refer to dissemination of information or making information publicly available, often stating that "Google and the University share a mutual interest in making information available to the public." *See, e.g.*, Cooperative Agreement with the University of California, p.1 (Zack SJ Decl. Ex. 23 at GOOG05000306).

60. Google's agreements with each of the libraries have many of the same or similar terms. *See* Library Agreements (Zack SJ Decl. Ex. 23).

61. [REDACTED]

[REDACTED]

62. Google executed the digitization by scanning the covers and every page of in-copyright books, performing optical character recognition on the scanned images to obtain machine-readable text, and then, through an "automated process compil[ing] a digital copy of the book." Supplemental Narrative at 5-6 (Zack SJ Decl. Ex. 26); *see also* Jaskiewicz Dep. 25-30 (Zack SJ Decl. Ex. 25).

63. To facilitate the mutual interest in making information available to the public (*see* No. 59 above), Google will "digitize" mass quantities of books, with "digitize" defined as "to convert content from a tangible, analog form into a digital representation of that content." Cooperative Agreement with the University of Michigan, p.1 (Zack SJ Decl. Ex. 23 at GOOG0500355).

64. After digitization, the agreements require that Google provide the libraries with digital copies of the books provided to Google from each library. *See, e.g.,* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. Google itself explained that after the library requests a copy of a particular book that Google has scanned, Google provides its digital copy by placing the file of the book on a server that the requesting library can access to download the file over the Internet. *See* Supplemental Narrative at 8 (Zack SJ Decl. Ex. 26); *see also* Jaskiewicz Dep. at 65 (Zack SJ Decl. Ex. 25); Clancy Dep. at 217-19 (Zack SJ Decl. Ex. 16).

66. The distribution of the digital copies to the libraries was an important component of the Library Project. *See* Clancy Dep. at 44 (Zack SJ Decl. Ex. 16); Zack SJ Decl. Ex. 23.

67. Dan Clancy stated at his deposition, “it is part of the Library Project that – as I stated – that we provide a copy, the ability to get a copy, for our library partners of the books we scan, in addition to any other uses.” Clancy Dep. at 45 (Zack SJ Decl. Ex. 16).

68. Google also transfers ownership of the distributed copies to the libraries, as the agreements clarify that the libraries solely own the rights to use the digital copies provided by Google. *See, e.g.*, Cooperative Agreement with the United States Library of Congress, p.4 (Zack SJ Decl. Ex. 23 at GOOG05000237); [REDACTED]

[REDACTED]

69. The University of Virginia’s agreement states that, regarding the library’s copy, “As between Google and University... University shall own all rights, title, and interest to the University Digital Copy.” Cooperative Agreement with the University of Virginia, p.5 (Zack SJ Decl. Ex. 23 at GOOG05000385).

70. Each of the agreements in Exhibit 23 contains a similar transfer of ownership clause. *See, e.g.*, Cooperative Agreement with the University of Michigan, p.5 (Zack SJ Decl.

Ex. 23 at GOOG05000359) (“As between Google and U of M . . . U of M shall own all rights, title, and interest to the U of M Digital Copy.”); [REDACTED]

71. Google’s cooperative agreements with the libraries presume the libraries’ further use of the digitized works. *See, e.g.*, [REDACTED]

[REDACTED]; Cooperative Agreement with the University of Wisconsin-Madison, p.5 (Zack SJ Decl. Ex. 23 at GOOG05000432) (“University shall have the right to use the University Digital Copy . . . as part of services offered openly on University’s website and internally for research, scholarly and academic purposes.”).

72. For example, Google’s agreement with the University of Michigan specifically allows for the use of Michigan’s copies for “inclusion in Michigan’s search services.” Cooperative Agreement with the University of Michigan, p.1 (Zack SJ Decl. Ex. 23 at GOOG0500355); *see also* Clancy Dep. at 35 (Zack SJ Decl. Ex. 16) (“In addition, libraries receive a copy, and with that copy, they may use it for similar search and indexing or other nondisplay uses, various different research initiatives and, also, archiving it for posterity.”)

73. [REDACTED]

74. Michigan’s Dean of Libraries, Dr. Paul Courant, testified that “Google did scan works from the University of Michigan libraries, and Google – and we did indeed receive copies

of those scans”; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Courant Dep. at 15, 20-21, 43-45 (Zack SJ Decl. Ex. 33).

75. Google undertook the Library Project for commercial reasons. GOOG05004756 (Zack SJ Decl. Ex. 34); GOOG000645741 (Zack SJ Decl. Ex. 35); Supplemental Narrative at 9 (Zack SJ Decl. Ex. 26); Clancy Dep. at 84-85, 117, 120, 141, 198-203 (Zack SJ Decl. Ex. 16)

76. A Google internal presentation in 2003 states that “[w]e want web searchers interested in book content to come to Google not Amazon;” “[e]verything else is secondary . . . but make money.” GOOG05004756 (Zack SJ Decl. Ex. 34).

77. An October 15, 2004 Google PowerPoint presentation states that Google’s purpose is to “[g]ain a competitive advantage.” GOOG000645741 (Zack SJ Decl. Ex. 35).

78. Dan Clancy testified that, “to the extent other search engines were not similarly investing in such a project, then the belief [within Google] would be that this would enhance our experience for users and, therefore, improve the product we might offer, which would tend to give us an advantage.” Clancy Dep. at 141 (Zack SJ Decl. Ex. 16).

79. Google monetizes its search product by running advertisements in response to search queries. *Id.* at 117.

80. As such, when Microsoft initiated a project “similar to [Google’s] Partner Program” it was the subject of internal discussions at Google. *Id.* at 142.

81. Clancy testified that during the six years he was chief engineer for Google Books, Google invested at least \$180 million in its books scanning operations alone, and that this

amount does not include the salary and other expenses associated with the Google Book team of over twenty people. *Id.* at 84-85, 120.

82. To protect this commercial investment, Google even restricts the way its Library Partners can disseminate access to out-of-copyright (public domain) works that Google distributes to the library. *Id.* at 198-203.

83. As Clancy testified, “[w]e were investing a fair amount in digitizing these documents, and so this was an investment where we did not want third parties that might be building an equivalent service to be able to obtain the documents directly from us.” *Id.* at 200.

84. Clancy testified that Google did not want its competitors to obtain a “complete corpus of all the public domain documents” that Google had scanned. *Id.* at 200-01.

85. Google has stated: “Google admits that it has entered into agreements with certain libraries, pursuant to which those libraries have requested that Google scan books, including in-copyright works, provided to Google by the library, and Google has provided digital copies of millions of those books to the libraries....” Google Admissions at 7 (Zack SJ Decl. Ex. 27).

86. Google also makes a number of non-display uses of Books it copies in its Library Project. Supplemental Narrative at 9 (Zack SJ Decl. Ex. 26).

87. The non-display uses identified in No. 86 above have commercial benefits to Google. *Id.*

88. Google makes available over four million books on the Internet in snippet display. *See* Zack SJ Decl. Exs. 30-31.

89. An “index” of books’ metadata already exists. Transcript of the deposition of Gloriana St. Clair taken May 31, 2012 (hereinafter “St. Clair Dep.”) at 46-48 (Zack SJ Decl. Ex. 36).

90. Libraries use what is known as MARC records to catalog books. *Id.* at 48.

91. “MARC records are essentially the electronic version of a card catalog record,” and contain the book’s metadata, such as author, title, publishing information. *Id.* at 46, 48.

92. To create MARC records, the book does not need to be scanned or copied. Clancy Dep. at 25-26 (Zack SJ Decl. Ex. 16); Groetsch Dep. at 21-25 (Zack SJ Decl. Ex. 24).

93. The cataloging of metadata through MARC records is done by hand with the cataloger reviewing the physical book and identifying enumerated fields of information. *See* Groetsch Dep. at 21-25 (Zack SJ Decl. Ex. 24).

94. The Copyright Clearance Center presently licenses “essentially printed content, much of the same nature as the material scanned by Google.” *See* Report of Daniel Gervais ¶ 11 (Zack SJ Decl. Ex. 37).

95. If Google’s uses are found to be fair, this will legitimize widespread digital copying without permission, thereby impeding the development of collective licenses for digital uses of books and excerpts from books by search engines, libraries, and others. *Id.* ¶ 17, 42.

96. Collective management of copyright provides important advantages in licensing uses of copyrighted works, as it reduces transaction costs, benefitting authors and users. *Id.* ¶ 19.

97. Collective management of copyright has existed for more than two centuries and is indispensable for many types of copyright uses. *Id.* ¶¶ 12, 15.

98. For example, in the United States, ASCAP, BMI and SESAC are well-known organizations that license the use of music. *See id.* ¶ 18.

99. The Copyright Clearance Center (“CCC”) is another well-known collective management organization (“CMO”). *Id.* ¶ 28.

100. If they wish to participate, authors or publishers register their works with the CCC, which offers per-use and annual repertory licenses. *Id.*

101. A business or academic institution can enter into an agreement with the CCC that permits it to, for instance, photocopy a periodical article or create an electronic coursepack. *Id.*

102. CMOs typically pay authors and other rightsholders based on actual usage of their works, *id.* ¶ 15, which can result in substantial revenue to rightsholders.

103. In its 2011 fiscal year, CCC reported revenues in excess of \$238 million, with payments to rightsholders exceeding \$171 million. *Id.* ¶ 28. The difference between the two numbers includes but is not all a service charge. Due to the time period required to process usage data, the 2011 distributions were mostly of 2010 collections which were significantly lower than 2011 collections. *Id.* at 9 n.15.

104. Collective licensing markets have often developed in response to new technologies: “Often, after a new form of use has emerged, collective management systems are established to license uses that have been found to be desirable but unauthorized.” *Id.* ¶ 41.

105. A collective management system “would develop here if some or all of Google’s uses are found not to be fair.” *Id.* ¶ 17.

106. If Google’s conduct is permitted as fair use and becomes widespread, such an outcome can be expected to thwart the development of collective management systems for the digital uses of books (and book excerpts) that would otherwise likely develop. *Id.* ¶ 42; *see also Id.* ¶ 17.

107. Google admits in its Form 10-K that its “security measures may be breached due to the actions of outside parties, employee error, malfeasance, or otherwise, and, as a result, an unauthorized party may obtain access to our data or our users’ or customers’ data. Additionally,

outside parties may attempt to fraudulently induce employees, users, or customers to disclose sensitive information in order to gain access to our data or our users' or customers' data. Any such breach or unauthorized access could result in significant legal and financial exposure, damage to our reputation, and a loss of confidence in the security of our products and services that could potentially have an adverse effect on our business. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures." Google 2011 Form 10-K, at 15 (Zack SJ Decl. Ex. 13).

108. Google is not contractually obligated to, and does not in practice, monitor or control the security of the digital copies of books provided by it to libraries in its Library Project, and the security measures of libraries who receive digital copies of books from Google are subject to similar breaches. Clancy Dep. at 195-202 (Zack SJ Decl. Ex. 16); [REDACTED]; [REDACTED]; Transcript of the deposition of James Crawford taken April 10, 2012 (hereinafter "Crawford Dep.") at 56 (Zack SJ Decl. Ex. 38); *see generally* Expert Report of Benjamin Edelman (hereinafter, "Edelman Report") (Zack SJ Decl. Ex. 39).

109. Subsequent copying by the libraries of the digital files received by them from Google, *see* Courant Dep. at 22-27 (Zack SJ Decl. Ex. 33), risks further security breaches. Edelman Report ¶¶ 20-26 (Zack SJ Decl. Ex. 39).

110. As the number of unlawful copies of an in copyright book increases, so does the risk of further infringement and/or piracy of the work. *Id.* ¶¶ 14-19.

111. The copyright holder's control over the distribution and publication of his or her work becomes increasingly threatened when multiple unauthorized digital copies are created, and even more so when they are placed on and/or distributed over the Internet. *Id.* ¶¶ 34, 36.

112. If Google's bulk and indiscriminate copying is found to be "fair," other website operators, no matter how small, will also be given sanction to create online databases of books and other works.). *Id.* ¶¶ 9, 13, 18.

113. These website operators may have insufficient security to prevent widespread piracy of such works. *Id.* ¶¶ 18-19.

114. In particular, less sophisticated operators have a reduced capability to design, install, and maintain systems to secure books, as well as a lesser ability to screen their internal staff to prevent data theft by rogue employees or to adapt their systems to prevent hacking by outsiders. *Id.* ¶ 18.

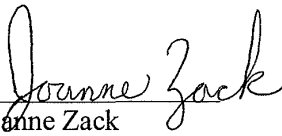
115. These concerns will only be amplified if "numerous companies and organizations scan books," because "attackers can focus their efforts on whichever installs the weakest security. Similarly, attackers can take advantage of even a brief period when a single book provider is insecure...." *Id.* ¶ 19.

116. These are not merely hypothetical risks, but reveal a real danger to authors, as book piracy is already occurring. *Id.* ¶¶ 11-12; *see also id.* ¶¶ 13-17 (discussing multiple ways in which books may be redistributed through piracy).

117. A security breach could have a "devastating impact" on the Class. *Id.* ¶ 38; *see also id.* ¶ 36 (describing how information may remain widely available, even after measures are taken to correct the breach, as information cannot be "unpublished" once it becomes publicly available on the Internet).

118. If Google's unauthorized reproduction, distribution and display is found not to be fair, licenses will be required for such uses, and copyright owners can require in such licenses that financial responsibility for the risks of unauthorized uses of the copies be fairly allocated between the parties to the license. *Id.* ¶¶ 9, 39.

Dated: July 6, 2012



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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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The Authors Guild, Inc., Associational Plaintiff,	:	
Betty Miles, Joseph Goulden, and Jim Bouton,	:	
individually and on behalf of all others similarly	:	
situated,	:	
	:	Case No. 05 CV 8136-DC
Plaintiffs,	:	
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v.	:	
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Google Inc.,	:	
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Defendant.	:	
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**PLAINTIFFS' RESPONSE TO
DEFENDANT GOOGLE INC.'S LOCAL RULE 56.1 STATEMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1(a) of the Local Rules of the Southern District of New York, Representative Plaintiffs Betty Miles, Joseph C. Goulden, and Jim Bouton, individually and on behalf of all others similarly situated, and Associational Plaintiff The Authors Guild, Inc., submit the following response to Defendant Google Inc.'s Local Rule 56.1 statement (ECF No. 1033).

1. Research libraries house millions of books. Decl. Dan Clancy Supp. Def. Google Inc.'s Mot. Summ. J. ("Clancy Decl.") ¶ 3.

RESPONSE: Uncontroverted.

2. Most books included in the Google Books Library Project are academic works. Clancy Decl. ¶ 3.

RESPONSE: Controverted. The term "academic" is undefined and vague in the context of this statement, there is no factual basis for Clancy's statement, which refers to works in unspecified research libraries in general rather than books included in the Google Books Library Project, and the statement otherwise lacks foundation and any factual basis.

3. Most books included in the Google Books Library Project are non-fiction. Brian Lavoie and Lorcan Dempsey, *Beyond 1923: Characteristics of Potentially In-copyright Print Books in Library Collections*, 15 D-Lib 11/12 (2009), available at <http://www.dlib.org/dlib/november09/lavoie/11lavoie.html>.

RESPONSE: Controverted. The cited reference does not support the paragraph as the article “characterizes the aggregate collection of US-published print books in WorldCat,” an online collective library catalog, and does not purport to undertake any analysis of books actually included in the Google Books Library Project.

4. Most books included in the Google Books Library Project are out of print. Clancy Decl. ¶ 3; Decl. Stephane Jaskiewicz Supp. Def. Google Inc.’s Mot. Summ. J. (“Jaskiewicz Decl.”) ¶ 4.

RESPONSE: Controverted. There is no factual basis for Clancy’s statement, which refers to works in unspecified research libraries in general rather than books included in the Library Project, and Jaskiewicz’s statement refers to “Google Books” in general, which encompasses both a “Partner Program” (under which Google displays portions of books with rightsholder permission), *see* Plaintiffs’ Statement of Undisputed Facts in Support of Their Motion for Summary Judgment, ECF No. 1054 (“Pls.’ 56.1 Stmt.”) ¶¶ 15-24, and a “Library Project” (where Google copies, distributes, and displays books without permission), *id.* ¶¶25-85.

5. All of works in the Google Books corpus were published. Decl. Joseph C. Gratz Supp. Def. Google Inc.’s Mot. Summ. J. (“Gratz Decl.”) Ex. 3, Plas.’ Resp. Obj. Def. Google Inc.’s 1st Set Interrogs. No. 1 at B(1).

RESPONSE: Controverted as stated. Uncontroverted if re-stated as follows: “All of the works in the Library Project corpus were published in print form.” Additionally, the statement is irrelevant as stated. The only relevant corpus is the Library Project, as Google Books includes both a Partner Program and a Library Project (as differentiated in response to Paragraph 4, above).

6. The Google Books corpus contains novels, biographies, children's books, reference works, textbooks, instruction manuals, treatises, dictionaries, cookbooks, books of poetry, and memoirs, among other works. Jaskiewicz Decl. ¶ 4.

RESPONSE: Uncontroverted. However, the statement is irrelevant as stated. The only relevant corpus is the Library Project, as Google Books includes both a Partner Program and a Library Project (as differentiated in response to Paragraph 4, above).

7. Beginning in the late nineteenth century, libraries indexed books using index cards, which recorded some bibliographical information and classified the book under a handful of subject headings chosen by librarians. Decl. Gloriana St. Clair Supp. Def. Google Inc.'s Mot. Summ. J. ("St. Clair Decl.") Ex. A ¶ 40.

RESPONSE: Controverted as stated. Uncontroverted if re-stated as follows: "From the late 19th century through the first half of the 20th century, libraries used small index cards stored in file drawers. These cards recorded some information about a book-its title, author, publication date and publisher, and three or four general subject headings." See St. Clair Decl. Ex. A. ¶ 40.

8. In the second half of the twentieth century, the gradual digitization of card catalogues allowed library users to perform electronic searches for the names of authors and to search within a book's title as well as a few subject fields per book. St. Clair Decl. Ex. A ¶ 41.

RESPONSE: Uncontroverted. By way of further response, libraries use MARC records as electronic versions of card catalogs, which generally contain "Author, title, publishing information, typically two or three subject headings and some kinds of notes about additions and so forth." Declaration of Joanne Zack in Support of Plaintiffs' Motion for Summary Judgment, ECF No. 1053 ("Zack Decl.") Ex. 36, St. Clair Dep. at 48:4-9.

9. Electronic card catalogue searches do not allow a user to search for information not tied to the author, title, or one of the specific subject fields. Gratz Decl. Ex. 1, Courant Dep. Tr. 96:16-97:2.

RESPONSE: Controverted. The deposition testimony cited does not refer to "author," "title," or "subject" fields, and the deponent refers to only the possibility that full text searching

will lead to results (referring to “subject matter that *might* not be apparent”) that differ from those using the card catalog. Gratz Decl. Ex. 1, Courant Dep. at 96 (emphasis added).

10. Google Books allows a user to search the full text of the Google Books corpus using a query of the user’s own design. Clancy Decl. ¶ 7.

RESPONSE: Uncontroverted. However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

11. A search for “Archimedes” using Google Books locates many thousands of books in less than one second. Clancy Decl. ¶ 7.

RESPONSE: Controverted as stated. Uncontroverted if re-stated as follows: “A search for ‘Archimedes’ using Google Books locates many thousands of books in less than one second, according to information provided by Google in connection with its display of search results.” However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

12. A search for Archimedes using Google Books returns the most relevant books in the Google Books corpus that contain any reference to Archimedes. Clancy Decl. ¶ 7.

RESPONSE: Controverted. The phrase “most relevant books” is undefined, subjective, and vague in the context of this statement, and searches using Google Books return results that may not be pertinent to the user. For example, a user who searches for books about the mathematician “Archimedes” will locate the book, ARCHIMEDES AND THE SEAGLE: A NOVEL, by David Ireland.

Archimedes and the seagle: a novel
books.google.com/books?isbn=0140080902
David Ireland - 1986 - Snippet view - [More editions](#)

Archimedes, a dog, offers his opinions on life, people, seagulls, and the way of the world

Additionally, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

13. The ability to search electronically the full text of books can be achieved only by digitizing the full texts of those books. Gratz Decl. Ex. 1, Courant Dep. Tr. 96:16-97:2; Gratz Decl. Ex. 2, Aiken Dep. Tr. 104:7-105:2.

RESPONSE: Controverted in part as stated and as overbroad. The term “digitizing” is undefined and vague. To the extent the term implies that the ability to search electronically the full text of books can only be achieved by all of the conduct Google has undertaken with respect to the books in the Library Project, including the copying, retention, display, and distribution of .jpeg or other image files of the pages of books, the statement is denied. For example, the ability to search electronically does not require the retention or display of full or partial images of pages of a book as opposed to optical character recognition (OCR) text files. *See generally* Declaration of Michael J. Boni in Support of Plaintiffs’ Opposition to Defendant Google’s Motion for Summary Judgment (“Boni Decl.”) Ex. 7, [REDACTED]

14. In 2004 Google began scanning books in the collections of several significant research libraries, including the University of Michigan and the University of California. Clancy Decl. ¶ 5.

RESPONSE: Uncontroverted.

15. A book is scanned at one of a small number of scan centers. Clancy Decl. ¶ 6.

RESPONSE: Uncontroverted.

16. Physical access to the scan centers is limited to Google employees and contractors. Clancy Decl. ¶ 6.

RESPONSE: Controverted in part as incomplete. It is uncontroverted that Google's policy is to limit access to its scan centers to its employees and independent contractors. However, the statement is incomplete inasmuch as it obscures the fact that the overwhelming majority of the individuals—"[o]n the order of hundreds"—who have access to the scan centers are independent contractors, not Google employees. Zack Decl. Ex. 16, Clancy Dep. at 14.

17. Images of the book pages are stored in a secure manner for processing. Jaskiewicz Decl. ¶ 3.

RESPONSE: Controverted in part. The phrase "secure manner" is vague and ambiguous as neither the statement nor the declaration cited in support of the statement describes the steps to secure the stored images of book pages. It is uncontroverted that Google intends to store these images in a secure manner. However, Google is not immune from design flaws and security breaches. *See* Zack Decl. Ex. 39, Edelman Report ¶¶ 27-35. Additionally, Google recognizes the risk of a security breach. *See* Zack Decl. Ex. 13, Google 2011 Form 10-K, at 15; *see also* [REDACTED]

[REDACTED].

18. Optical character recognition (OCR) is performed on the images to generate machine-readable text, which is also stored on Google servers. Jaskiewicz Decl. ¶ 3.

RESPONSE: Uncontroverted.

19. The Google servers on which books are stored are not publicly accessible. Decl. Brad Hasegawa Supp. Def. Google Inc.'s Mot. Summ. J. ("Hasegawa Decl.") ¶ 3.

RESPONSE: Controverted as stated. The phrases "Google servers on which books are stored" and "publicly accessible" as used in this statement are undefined, vague, and potentially misleading. It is undisputed that, subject to rules of its own devising, Google has displayed verbatim expression from books on the Internet in response to search requests by users of its search engine. *See* Zack Decl. Ex. 27, Google Resp. to Pls.' RFAs at 10; Zack Decl. Ex. 26, Supplemental Narrative at 11-12. [REDACTED]

[REDACTED]. *See* Boni Decl. [REDACTED].

20. The Google servers on which books are stored are protected by the same security Google employs to protect its own confidential information. Hasegawa Decl. ¶ 3.

RESPONSE: Uncontroverted. However, Google is not immune from design flaws and security breaches. *See* Zack Decl. Ex. 39, Edelman Report ¶¶ 27-35; Zack Decl. Ex. 13, Google 2011 Form 10-K, at 15.

21. Google is aware of no security breaches resulting in unauthorized access to books. Hasegawa Decl. ¶ 7.

RESPONSE: Controverted. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Google analyzes each scan and creates an overall index of all the books that have been scanned. Clancy Decl. ¶ 6.

RESPONSE: Controverted as stated. The statement lacks foundation and the terms and phrases “analyzes each scan” and “overall index” are vague in the context of this statement and oversimplify the actual processes involved. *See* Zack Decl. Ex. 26, Supplemental Narrative at 5-8.

23. The Google Books index links each word or phrase appearing in each book with all of the locations in all of the books in which that word or phrase is found. Clancy Decl. ¶ 6.

RESPONSE: Uncontroverted. However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

24. The Google Books index allows a search for a particular word or phrase to return a result that includes the most relevant books in which that word or phrase is found. Clancy Decl. ¶ 6.

RESPONSE: Uncontroverted. However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

25. When a user performs a search, Google Books uses the index to generate search results for a user’s query. Clancy Decl. ¶ 8.

RESPONSE: Uncontroverted. However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

26. The search results return a list of books in which that user’s search term appears. Clancy Decl. ¶ 8.

RESPONSE: Uncontroverted.

27. A user can click on a particular result to be directed to an “About the Book” page. Clancy Decl. ¶ 9.

RESPONSE: Controverted as stated and potentially misleading. It is uncontroverted that users can click a particular search result and see another webpage. However, the title “About the Book” does not appear on that page, *see* Clancy Decl. Ex. C, but rather is how Google refers to that page. Moreover, the statement is misleading to the extent it implies that this page is uniform for different books scanned as part of the Library Project. *See* Zack Decl. Ex. 16, Clancy Dep. at 126:7-17.

28. The “About the Book” page allows the user to obtain more information about the book in question. Clancy Decl. ¶ 9.

RESPONSE: Controverted as stated, potentially misleading, and incomplete. *See* Pls.’ Response to Paragraph 27. Additionally, the statement is incomplete and misleading to the extent that the statement the “page *allows* the user to obtain more information” implies that such information would be unavailable in the absence of the Library Project. For many books, this page would only provide metadata on the book, *see* Zack Decl. Ex. 16, Clancy Dep. at 126-127, which is available from other existing electronic card catalogs, *see, e.g.*, Paragraph 8, above; *see also* Pls.’ 56.1 Stmt. ¶ 89.

29. The About the Book page includes links to sellers of the book. Clancy Decl. ¶ 9.

RESPONSE: Controverted as stated and as incomplete. *See* Pls.’ Response to Paragraph 27. Additionally, the page may include links to sellers of the book with respect to books that are in print or link to sellers of used books for out-of-print books where the author gets no royalties for such sales. For example, by clicking the link to Amazon.com on the Google Books page for Joseph Goulden’s *The Super-Lawyers*, a user is taken to a page on the Amazon website listing used copies of that book for sale, along with links to numerous other unrelated

books for sale. *See* Boni Decl. Ex. 8. By way of further response, [REDACTED]

[REDACTED]; *see also* Declaration of Paul Aiken in Support of Plaintiffs' Opposition to Defendant Google's Motion for Summary Judgment ("Aiken Decl.") ¶¶ 4-5, 32-33, and generally.

30. The About the Book page includes links to libraries listing the book as part of their collections. Clancy Decl. ¶ 9.

RESPONSE: Controverted as stated and as incomplete. *See* Pls.' Response to Paragraph 27. Additionally, rather than "links to libraries," the page includes a link titled "Find in a Library," *see* Clancy Decl. Ex. C, which when clicked runs a search for libraries the book may be found on a separate website using the WorldCat online catalog, at <http://www.worldcat.org>.

31. No advertisements have ever appeared on any About the Book page for any book that is part of the Library Project. Clancy Decl. ¶ 9.

RESPONSE: Controverted. *See* Pls.' Response to Paragraph 27. Additionally, the term "advertisements" as used in this statement is vague and ambiguous. The page attached as Exhibit C to the Clancy Declaration includes links for the sale of books at various online booksellers, as well as Google's own advertisement to "Shop for Books on Google Play," which it states is "the world's largest eBookstore." *See, e.g.,* Clancy Decl. Ex. C. Moreover, there are links on the page to Google's search engine and other services, *see id.*, and the statement is misleading and incomplete inasmuch as it omits the fact that the primary aim of the Library Project is for Google to gain a competitive advantage and drive traffic to its search engine where it does generate advertising revenue. *See* Pls.' 56.1 Stmt. ¶¶ 75-79.

32. In some uses of Google Books, users can also see a small amount of text from the book (a “snippet”). Clancy Decl. ¶ 10.

RESPONSE: Controverted as stated. Uncontroverted if re-stated as follows: “For all of the millions of books in ‘snippet display,’ users can also see text from the book (a ‘snippet’).” However, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

33. Google employs security measures to ensure that users cannot recover the entire text of a snippet view book. Hasegawa Decl. ¶ 4.

RESPONSE: Controverted as stated. Uncontroverted if restated as follows: “Google employs security measures that attempt to prevent users from recovering the entire text of a snippet view book.” Google’s security measures cannot “ensure” anything as there is always the risk that its “security measures may be breached due to the actions of outside parties, employee error, malfeasance, or otherwise, and, as a result, an unauthorized party may obtain access to our data or our users’ or customers’ data.” Pls.’ 56.1 Stmt. ¶ 107; *see also* Zack Decl. Ex. 39, Edelman Report ¶¶ 27-35.

34. Google employs security measures to ensure that users cannot recover one complete page of a snippet view book. Hasegawa Decl. ¶ 4.

RESPONSE: Controverted as stated. Uncontroverted if restated as follows: “Google employs security measures that attempt to prevent users from recovering one complete page of a snippet view book.” Google’s security measures cannot “ensure” anything as there is always the risk that its “security measures may be breached due to the actions of outside parties, employee error, malfeasance, or otherwise, and, as a result, an unauthorized party may obtain access to our data or our users’ or customers’ data.” Pls.’ 56.1 Stmt. ¶ 107; *see also* Zack Decl. Ex. 39, Edelman Report ¶¶ 27-35.

35. A user cannot cause the system to return different sets of snippets for the same search query. Hasegawa Decl. ¶ 4.

RESPONSE: Uncontroverted. However, even minor variations in search terms will result in different displays of text. *See* Pls.’ 56.1 Stmt. ¶ 47.

36. Google Books does not allow the searcher to copy the text of snippets. Hasegawa Decl. ¶ 4.

RESPONSE: Controverted. Users can take a screen shot of the text of snippet images. *See* Boni Decl. Exs. 1, 2, and 3; *see also* Zack Decl. Ex. 16, Clancy Dep. at 149:15-24; Boni. Decl. Ex. 7, Hasegawa Dep. at 61, 79-80.

37. The position of each snippet is fixed within the page, and does not represent a “sliding window” around the search term. Hasegawa Decl. ¶ 4.

RESPONSE: Uncontroverted.

38. Only the first responsive snippet available on any given page will be returned in response to a query. Hasegawa Decl. ¶ 4.

RESPONSE: Uncontroverted.

39. One of the snippets on each page is blacklisted (meaning that it will not be shown). Hasegawa Decl. ¶ 4.

RESPONSE: Uncontroverted.

40. At least one out of ten entire pages in each book is blacklisted. Hasegawa Decl. ¶ 4.

RESPONSE: Uncontroverted.

41. Even if an “attacker” had a physical copy of the book in question in front of him, and used that physical copy to identify words appearing in successive passages to use as the basis for the attack, the most complete patchwork of snippets he could end up with would still be missing at least one snippet from every page and 10% of all pages. Hasegawa Decl. ¶ 5.

RESPONSE: Uncontroverted. However, as alternatively stated, by removing just 10% of the pages and only 1 out of 8 snippets on the remaining pages, approximately 78% of the work is available to such an “attacker.”

42. Not all books are placed in “snippet view.” Clancy Decl. ¶ 11.

RESPONSE: Uncontroverted.

43. Works whose text is organized in short “chunks” such as dictionaries, cookbooks, and books of haiku are excluded from snippet view. Clancy Decl. ¶ 11.

RESPONSE: Uncontroverted.

44. The determination whether to place a work in snippet view is made by human operators who examine each book to ascertain whether it is organized in short chunks. Clancy Decl. ¶ 11.

RESPONSE: Controverted. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45. No book is designated for “snippet view” without a manual review. Clancy Decl. ¶ 11.

RESPONSE: Controverted. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. Google has a policy of excluding works a rightsholder has asked Google not to display. Clancy Decl. ¶ 11.

RESPONSE: Controverted. The statement is misleading and confusing inasmuch as it does not state from what it is that Google has “a policy of excluding” works under such circumstances. Uncontroverted if re-stated as follows: “Google has a policy of excluding from snippet display works a rightsholder has asked Google not to display.”

47. Any rightsholder can ask to exclude a book by filling out an online form which has been available since 2005. Clancy Decl. ¶ 11.

RESPONSE: Controverted as stated. The statement is misleading and confusing inasmuch as it does not state from what it is a rightsholder can ask to exclude a book under such circumstances. Uncontroverted if re-stated as follows: “Any rightsholder can ask to exclude a book from snippet display by filling out an online form which has been available since 2005.” Moreover, the statement omits the fact that in order to seek such exclusion, the rightsholder would first need to be made aware of the fact that Google has made the work available in snippet display and Google does not first seek permission from the rightsholder to do so nor does it notify the rightsholder that it has done so. *See* Pls.’ 56.1 Stmt. ¶ 54.

48. For excluded works, users may view bibliographic information about the book but not text from the book itself. Clancy Decl. ¶ 12.

RESPONSE: Controverted as stated. Uncontroverted if re-stated as follows: “For works excluded from snippet display, users may view bibliographic information about the book but not text from the book itself.”

49. Rightsholders may request that Google display text through the Partner Program. Clancy Decl. ¶ 13.

RESPONSE: Uncontroverted. However, the statement is irrelevant in that it refers to the Partner Program, which is not at issue in this litigation, rather than the Library Project, which is at issue. *See* Response to Paragraph 4, above.

50. The rightsholder can choose what percentage of the text of the book to display as part of the Partner Program. Clancy Decl. ¶ 13.

RESPONSE: Uncontroverted. However, the statement is irrelevant in that it refers to the Partner Program, which is not at issue in this litigation, rather than the Library Project, which is at issue. *See* Response to Paragraph 4, above.

51. Most rightsholders in the Partner Program choose to display at least 20% of the text of their books. Clancy Decl. ¶ 13.

RESPONSE: Controverted as stated. The term “most” as used in the statement is vague and the statement otherwise lacks a factual basis as the supporting declaration only states that “usually” the rights holder chooses to display “at least 20%.” Additionally, the statement is irrelevant in that it refers to the Partner Program, which is not at issue in this litigation, rather than the Library Project, which is at issue. *See* Response to Paragraph 4, above.

52. Over 45,000 publishers have included works within the Partner Program, including HarperCollins, Penguin, Simon & Schuster, and Macmillan. Clancy Decl. ¶ 14.

RESPONSE: Uncontroverted. However, the statement is irrelevant in that it refers to the Partner Program, which is not at issue in this litigation, rather than the Library Project, which is at issue. *See* Response to Paragraph 4, above.

53. Google Books advances scholarly research. Gratz Decl. Ex. 5, Samuelson letter to Judge Chin at 1; St. Clair Decl. Ex. A ¶ 43.

RESPONSE: Controverted. The statement is irrelevant and/or overbroad inasmuch as it and the cited materials refer to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, and are not specific to the Library Project, which is the only program at issue here. For example, the St. Clair declaration speaks primarily of the advantage of a student who “sits comfortably in his office reading the relevant texts on his or her computer,” St. Clair Decl. Ex. A ¶ 43, which would only be applicable to books either made available through the Partner Program or available in the public domain.

54. A search on Google Books for “Steve Hovley” returns dozens of books that discuss that major leaguer, including *Ball Four* and a book about the 1969 Seattle Pilots (for whom Hovley played). Decl. Kurt Groetsch Supp. Def. Google Inc.’s Mot. Summ. J. (“Groetsch Decl.”) ¶ 12.

RESPONSE: Controverted in part as misleading and incomplete. The statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, which is not at issue in this litigation, and is not specific to the Library Project, which is at issue. *See* Response to Paragraph 4, above. The statement is also misleading inasmuch as it purports to imply that Google Books is the only way to search for “Steve Hovley” to find books that discuss the major leaguer. For example, a search for “Steve Hovley” on Amazon.com, where works are searched by permission of the rightsholder, returns dozens of books on the subject, including *Ball Four*: *See* Boni Decl. Ex. 9, Printout from Amazon.com; *see also* Gratz Decl. Ex. 2, Aiken Dep. at 105:3-24 (discussing other searchable databases); *see generally* Aiken Decl.

55. A search in of the catalogue of the Library of Congress produces no results for Steve Hovley. Groetsch Decl. ¶ 11.

RESPONSE: Uncontroverted. However, the statement is potentially misleading and incomplete for the reasons set forth in response to paragraph 54.

56. A researcher searching the catalog of the Library of Congress for information about attorney Minoru Yasui will find only one book containing information about Mr. Yasui. Groetsch Decl. ¶ 13.

RESPONSE: Uncontroverted.

57. A search of Google Books for attorney Minoru Yasui will identify dozens of books available in bookstores and libraries with information about Mr. Yasui, from a reproduction of the Supreme Court filings in *Yasui v. United States* to an oral history of Japanese settlers in Oregon containing a whole chapter in which Mr. Yasui recounts his story. Groetsch Decl. ¶ 14.

RESPONSE: Controverted in part as misleading and incomplete. The statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, which is not at issue in this litigation, and is not specific to the Library Project, which is at issue. *See* Response to Paragraph 4, above. The statement is also misleading inasmuch as it purports to imply that Google Books is the only way to search for “Minoru Yasui” to find books that discuss Mr. Yasui. For example, a search for “Minoru Yasui” on Amazon.com, where works are searched by permission of the rightsholder, returns dozens of books on the subject: *See* Boni Decl. Ex. 10, Printout from Amazon.com; *see also* Gratz Decl. Ex. 2, Aiken Dep. at 105:3-24 (discussing other searchable databases); *see generally* Aiken Decl.

58. Text from the books in the Google Books corpus was used as an input to the “ngrams” research project. Clancy Decl. ¶ 15.

RESPONSE: The statement in paragraph 58 is neither controverted nor relevant to the issues in this lawsuit. Additionally, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

59. The n-grams project provides a tool for users to determine how frequently different terms or phrases appear in books published at different times. Clancy Decl. ¶ 15.

RESPONSE: The statement in paragraph 59 is neither controverted nor relevant to the issues in this lawsuit. Additionally, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally and not the Library Project (*see* response to Paragraph 4, above).

60. The n-grams project has resulted in the publication of a paper in the journal *Science*. Jean-Baptiste Michel et al., *Quantitative Analysis of Culture Using Millions of Digitized Books*, 331 SCIENCE 176 (2011), available at <http://www.sciencemag.org/content/early/2010/12/15/science.1199644>.

RESPONSE: The statement in paragraph 58 is neither controverted nor relevant to the issues in this lawsuit.

61. Google entered into agreements with participating libraries pursuant to which the libraries’ books would be scanned, after which the physical copies of the books would be returned to the libraries. Clancy Decl. ¶ 5.

RESPONSE: Uncontroverted.

62. The libraries promise contractually to abide by the copyright laws with respect to their copies. Clancy Decl. ¶ 5.

RESPONSE: Controverted. Google’s agreements with libraries, collectively attached at Zack Decl. Ex. 23, are the best evidence of the contractual terms referred to in this statement.

The obligations with respect to copyright law are not uniform among those agreements, and the statement does not accurately and completely capture the provisions relating to copyright law set forth in those agreements. For example, [REDACTED]

[REDACTED]. (Notwithstanding that provision, there have been instances where the University of Michigan inadvertently displayed in copyright books from the digital files it received from Google as part of the Library Project that was not authorized by the rightsholder. Zack Decl. Ex. 33, Courant Dep. at 37-39.) [REDACTED]

63. Pursuant to its agreement with Google, a library that has submitted a book to be scanned may make and download a copy of the scan of its book using a system called the Google Return Interface (GRIN). Jaskiewicz Decl. ¶ 6.

RESPONSE: Controverted as stated and as incomplete. The statement is incomplete and potentially misleading inasmuch as it purports to imply that Google does not actually make and provide the digital copies of the books to the libraries. Google has admitted that it “provided digital copies of millions of those books to the libraries.” Pls.’ 56.1 Stmt. ¶ 85; *see also* Zack Decl. Ex. 27, Google Resp. to Pls.’ 1st Set of RFAs Nos. 6 and 8; Pls.’ 56.1 Stmt. ¶¶ 30, 57, 64-70.

64. No library may use GRIN to make a digital copy created from another library's book. Jaskiewicz Decl. ¶ 8.

RESPONSE: Controverted in part as incomplete. The statement is also potentially misleading inasmuch as it purports to imply that no library may obtain a digital copy of another library's book scanned by Google. Libraries that received copies of books digitized by Google have deposited copies of those digital books in the HathiTrust database, which is a collective depository of numerous research libraries. *See, e.g.,* Zack Decl. Ex. 33, Courant Dep. at 20-25.

65. To make a copy, a library first submits a request to the GRIN system. Jaskiewicz Decl. ¶ 8.

RESPONSE: Controverted as stated. *See* Pls.' Response to Paragraph 63. Uncontroverted if re-stated as follows: "To obtain its copy, a library first submits a request to the GRIN system."

66. The library's request to the GRIN system triggers the creation of an encrypted copy of the book that is placed on a secure Google server. Jaskiewicz Decl. ¶ 8.

RESPONSE: Controverted as stated. *See* Pls.' Response to Paragraph 63. Uncontroverted if re-stated as follows: "The library's request to the GRIN system triggers the creation by Google of an encrypted copy of the book that is placed on a secure Google server."

67. Each book is encrypted, and each library has a unique encryption key. Jaskiewicz Decl. ¶ 8.

RESPONSE: Uncontroverted.

68. The library may download the encrypted copy of the book it made. Jaskiewicz Decl. ¶ 8.

RESPONSE: Controverted. *See* Pls.' Response to Paragraph 63. Uncontroverted if re-stated as follows: "The library may download the encrypted copy of the book made by Google."

69. Some but not all of the books in the class have been copied by the libraries using GRIN. Jaskiewicz Decl. ¶ 9.

RESPONSE: Controverted. *See* Pls.’ Response to Paragraph 63. Additionally, the phrase “books in the class” is vague. Uncontroverted if re-stated as follows: “Some but not all of the books meeting the definition of ‘Books’ in the class definition have been distributed by Google to libraries using GRIN.”

70. Where a library takes no action with respect to a particular book, the GRIN system does not do anything with respect to that book. Jaskiewicz Decl. ¶ 9.

RESPONSE: Controverted as vague and potentially misleading. *See* Pls.’ Response to Paragraph 63. Uncontroverted if re-stated as follows: “Because the library’s request to the GRIN system triggers the creation by Google of an encrypted copy of the book that is placed on a secure Google server, Google will not create such a copy for the library where the library has taken no action to request that particular book.”

71. No library has loaned out any digital copy it made using GRIN. Gratz Decl. Ex. 1, Courant Dep. Tr. 46:3-20.

RESPONSE: Controverted. The statement lacks foundation and is not supported by the cited material as the deponent speaks only for the University of Michigan and does not purport to testify as to what any other library has done.

72. Libraries have used the downloaded copies to make their own full-text indices of the works in their collections. Gratz Decl. Ex. 1, Courant Dep. Tr. 105:2-12.

RESPONSE: Uncontroverted.

73. Libraries have used the downloaded copies to make the digital copies available to the blind. Gratz Decl. Ex. 1, Courant Dep. Tr. 43:2-15.

RESPONSE: Uncontroverted.

74. Libraries have used the downloaded copies to archive digital copies for the purpose of preservation. HathiTrust Mot. Summ. J. at 3; *see also* Gratz Decl. Ex. 1, Courant Dep. Tr. 85:12-86:11.

RESPONSE: Uncontroverted.

75. The participating libraries have taken security precautions to protect their copies of works included in the Google Books corpus. Gratz Decl. Ex. 1, Courant Dep. Tr. 106:23-107:8.

RESPONSE: Controverted. The statement lacks foundation and is not supported by the cited material as the deponent speaks only for the University of Michigan and does not purport to testify as to what any other library has done. The statement is further controverted to the extent that it implies that a university's security "protections" eliminate the risk that its security measures may be breached. *See* Pls.' 56.1 Stmt. ¶¶ 107-109; *see also* Zack Decl. Ex. 39, Edelman Report ¶¶ 27-35.

76. There is no evidence that any security breach has occurred with respect to any of the library copies of works included in the Google Books corpus. Gratz Decl. Ex. 1, Courant Dep. Tr. 107:5-8.

RESPONSE: Controverted. The statement lacks foundation and is not supported by the cited material as the deponent speaks only for the University of Michigan and does not purport to testify as to what any other library has done.

77. No library has reduced its purchasing of books as a result of downloading of scans using GRIN. Gratz Decl. Ex. 1, Courant Dep. Tr. 108:15-19.

RESPONSE: Controverted. The statement lacks foundation and is not supported by the cited material as the deponent speaks only for the University of Michigan and does not purport to testify as to what any other library has done.

78. Libraries historically have not paid authors or publishers for the right to scan books in order to index them. Gratz Decl. Ex. 1, Courant Dep. Tr. 112:6-9; St. Clair Decl. Ex. A ¶¶ 5(c), 9.

RESPONSE: Controverted as misleading and incomplete. The statement as to whether libraries historically paid authors or publishers for the right to scan books in order to index them is meaningless in the absence of evidence that libraries did, in fact, scan books in order to index them, which not supported by the cited materials and contrary to Google's own statements concerning the relatively new development of such practice. *See, e.g.*, Google 56.1 Stmt. ¶¶ 7-9, above. With the development of new forms of use found to be desirable, collective management systems are often developed to license such uses. *See* Zack Decl. Ex. 37, Gervais Report ¶ 41.

79. Libraries historically have not paid authors or publishers for the right to scan books in order to search them. Gratz Decl. Ex. 1, Courant Dep. Tr. 112:6-9; St. Clair Decl. Ex. A ¶¶ 5(c), 9.

RESPONSE: Controverted as misleading and incomplete. The statement as to whether libraries historically paid authors or publishers for the right to scan books in order to search them is meaningless in the absence of evidence that libraries did, in fact, scan books in order to search them, which is not supported by the cited materials and contrary to Google's own statements concerning the relatively new development of such practice. *See, e.g.*, Google 56.1 Stmt. ¶¶ 7-9, above. With the development of new forms of use found to be desirable, collective management systems are often developed to license such uses. *See* Zack Decl. Ex. 37, Gervais Report ¶ 41.

80. One traditional way to promote book sales is to provide readers with the ability to browse books. Decl. Bruce S. Harris Supp. Def. Google Inc.'s Mot. Summ. J. ("Harris Decl.") Ex. A ¶¶ 10-14.

RESPONSE: Uncontroverted.

81. Books in bookstores are typically displayed on shelves or tables where they can be browsed. Gratz Decl. Ex. 2, Aiken Dep. Tr. 146:10-147:19; Harris Decl. Ex. A ¶ 15.

RESPONSE: Uncontroverted.

82. Browsing can occur through websites such as Amazon.com, where publishers and authors can agree to allow users to “Search Inside the Book.” Harris Decl. Ex. A ¶ 17; Decl. Albert N. Greco Supp. Def. Google Inc.’s Mot. Summ. J. (“Greco Decl.”) Ex. A ¶ 15; Gratz Decl. Ex. 2, Aiken Dep. Tr. 147:20-23.

RESPONSE: Controverted as stated. The term “[b]rowsing” is vague as used in the context of this statement and is misleading to the extent that it implies that the vast majority of a book is subject to “browsing” on Amazon’s site without the rightsholder’s permission.

83. Some but not all of the books at issue in this case can be browsed on Amazon’s site using “Search Inside the Book.” Decl. Judith A. Chevalier Supp. Def. Google Inc.’s Mot. Summ. J. (“Chevalier Decl.”) Ex. A ¶¶ 40-42; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

RESPONSE: Controverted as unsupported by the cited materials. None of the material cited, which discuss Amazon’s “Search Inside the Book” feature generally, address whether any of the “books at issue in this case” are available using that feature. To the contrary, materials cited that reflect that are available on the Amazon’s “Search Inside the Book” feature are books that are subject to the control of the publisher whereas the majority of the “books at issue in this case” are likely to be out of print. In addition, the statement is misleading to the extent that it implies that the vast majority of a book is subject to “browsing” on Amazon’s site without the rightsholder’s permission. *See generally* Aiken Decl.

84. Search Inside the Book displays excerpts that are larger than the Google Books snippets. Chevalier Decl. Ex. A ¶ 47; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

RESPONSE: Controverted. The cited materials do not support the statement. The Chevalier Declaration only generally speaks of “excerpts often voluntarily provided by publishers,” not the Amazon.com Search Inside the Book feature, and the deposition testimony

cited makes no mention of the size of the display of excerpts on the Search Inside the Book feature. Moreover, the statement and any comparison between the Search Inside the Book feature, which only displays excerpts with the permission of the rightsholders, *see* Gratz Decl. Ex. 2, Aiken Dep. Dep. 183:20-184:20, and the Library Project's snippet display of a book, which occurs without such permission, is irrelevant. *See generally* Aiken Decl.

85. Rightsholders give permission for online browsing using "Search Inside the Book" without compensation to authors. Chevalier Decl. Ex. A ¶ 41; Gratz Decl. Ex. 2, Aiken Dep. Tr. 183:20-184:20.

RESPONSE: Controverted as stated as "without compensation" is undefined and vague in this context. In addition, the statement is controverted as misleading, as rightsholders may receive compensation for certain books that are sold from Amazon.com, unlike the out-of-print books in the Library Project, which provide no compensation to the author.

86. The Authors Guild believes that online browsing has a net positive effect on book sales. Gratz Decl. Ex. 2, Aiken Dep. Tr. 186:14-17.

RESPONSE: Controverted in part. The statement cited is limited to the Amazon.com Search Inside the Book feature. Gratz Decl. Ex. 2, Aiken Dep. at 186:14-17. Further, the users of Amazon.com can only view those portions of a book that are permitted to be viewed by the permission of the rightsholder. Gratz Decl. Ex. 2, Aiken Dep. Dep. 183:20-184:20; *see also* Aiken Decl.

87. The Authors Guild has recommended to its members that they make the entire first chapter of a book freely available on the Internet. Gratz Decl. Ex. 2, Aiken Dep. Tr. 176:1-8, 13-24.

RESPONSE: Controverted. The statement mischaracterizes the testimony cited, which is limited to recommendations made "in conjunction with the Back in Print Program." Gratz Decl. Ex. 2, Aiken Dep. at 176:18-19.

88. The “Back in Print” program allows authors to digitize their out-of-print books and make them available for sale through a company called iUniverse. Gratz Decl. Ex. 2, Aiken Dep. Tr. 172:25-175:25.

RESPONSE: Controverted in part as incomplete. The Back in Print program, which operates with the permission of the rightsholder, allows authors to provide copies of their out-of-print books to iUniverse, which creates digitized image (not text) files of those books. Gratz Decl. Ex. 2, Aiken Dep. at 172-176. Those image files are then used to create print-on-demand copies of those books. *Id.*; *see also* Aiken Decl. ¶ 29.

89. William Morris is the largest literary agency in the world. Gratz Decl. Ex. 6, Zohn Dep. Tr. 12:24-13:9.

RESPONSE: Controverted. The statement lacks any foundation or factual basis as the witness qualified his characterization of William Morris’s size with terms, such as “probably” and “I believe.” Gratz Decl. Ex. 6, Zohn Dep. at 12:24-13:9.

90. William Morris believes that inclusion in Google Books “is a fair use and not detrimental to the copyright owner in any way.” Gratz Decl. Ex. 7, Zohn Dep. Ex. 2 at 1.

RESPONSE: Controverted as stated. The statement is vague and ambiguous with respect to the phrase “inclusion in Google Books.” The document quoted refers to “simple inclusion in the database.” Gratz Decl. Ex. 7, Zohn Dep. Ex. 2 at 1. Additionally, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, and is not specific to the Library Project, which is at issue. Moreover, the statement is an improper legal conclusion lacking any factual basis.

91. Google Books has not displaced the sale of even a single book. Chevalier Decl. Ex. A ¶ 47.

RESPONSE: Controverted. The source cited does not support the statement and any opinions offered by Prof. Chevalier concerning the whether Google Books has displaced the sale of any books does not satisfy the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the Federal Rules of Evidence. However, such an opinion is meaningless speculation because at her deposition, Prof. Chevalier testified “I have not done any empirical analysis of the sales of books that were on Google Books.” Zack Decl. Ex. 42, Chevalier Dep. at 158:25-159:3. Moreover, Prof. Chevalier further testified that, with regard to analyzing the sales of books that had been displayed in snippet view on Google Books, “I think it would be a difficult, if not impossible project.” Zack Decl. Ex. 42, Chevalier Dep. at 161:24-162:2. Additionally, the statement is irrelevant and/or overbroad inasmuch as it refers to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, and is not specific to the Library Project, which is the only program at issue here. *See also* Aiken Decl. ¶¶ 4-5, 32-33 and generally.

92. A survey of authors has shown that the majority of authors approve of their inclusion in Google Books. Decl. Hal Poret Supp. Google Inc.’s Opp’n Plas.’ Mot. Class Certification Ex. 1 at 14, ECF No. 1001-1.

RESPONSE: Controverted. The survey cited in this statement is irrelevant, misleading and does not support the statement. The phrase “inclusion in Google Books” is vague and ambiguous. The survey asked respondents about “the extent to which” they “approve of or object to Google scanning your copyrighted books so that they can be searched online and short excerpts displayed in search results.” *See* ECF No. 1001-3, at Question 245. However, the survey did not specifically inquire as to whether authors approved of or objected to Google doing so without permission from or notice to authors and without any compensation. The majority of

the authors surveyed (508 out of 880—57.7%) were not at all familiar with or had never heard of Google Books. *See* Poret Decl. at 26, ECF No. 1001-1. Moreover, most of the authors surveyed (759 out of 880—86.25%) were unaware of whether their books were available on Google Books or thought that they were not available. *See* Poret Decl. at 22, ECF No. 1001-1.

The survey was conducted in 2012 for the purpose of opposing class certification. This was after two detailed published class notices from the Court stating they would receive substantial monetary benefits from Google Books (67% of revenue from each book sold, and a substantial up-front amount for each book scanned) *See* ECF No. 56, Ex. 1 thereto, at pp. 8 and 21-41. Thus, to the extent any of those surveyed were settlement class members, certain responses favorable to Google's Library Project could have mistakenly reflected the belief that the settlement benefits were in force. In fact, Google actually played on this misassumption. Google misleadingly asked those surveyed if they "felt" they benefitted financially from Google Books, and 17.6% answered "yes" (no doubt because they either received class notices or read the widespread publicity about the proposed class settlement). This is reflected in at least the following verbatim answers: "You can download my book if you want, you still have to pay for it." ECF No. 1001-7, Response No. 100357. "A lot of them are ebooks. One of my publishers went through Google to get the book electronically. I get royalties through that from the publisher." *Id.*, Response No. 100057. "I have a vague memory of informing [sic] I might be able to get royalties from Google books." *Id.*, Response No. 100756. "I do get a check for permission to download a chapter or whatever is download[ed]." *Id.*, Response No. 100357.

Others believed that Google scanned and displayed only books in the public domain. Google's survey did not disabuse them of this misapprehension. Google did not explain it was scanning and displaying books that were in copyright without the rightsholders' permission.

(E.g., “They’re often old books. They are orphans meaning the author of the book cannot be found or they’re out of copyright.” (ECF No. 1001-7, No. 100040); “Plan to do public domain books in Harvard library.” (*Id.*, No. 100116); “Know that they are out of copyright books that are online and some in copyright books are available with arrangements with the publishers.” (*Id.* No. 100528); “That it’s a project to make electronically available all published books that are not under copyright I assume” (*Id.* No. 100188).

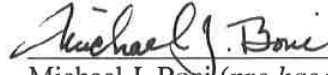
Additionally, the statement and the underlying survey are irrelevant and/or overbroad inasmuch as they refer to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, and is not specific to the Library Project, which is at issue. Google’s reliance on this survey is further controverted for the reasons set forth in their Memorandum of Law in Opposition to Google’s Motion for Summary Judgment and in their Reply in Support of the their Motion for Class Certification (ECF No. 1008).

93. A survey of authors has shown that the majority of authors do not perceive any harm from their inclusion in Google Books. Decl. Hal Poret Supp. Google Inc.’s Opp’n Plas.’ Mot. Class Certification Ex. 1 at 14, ECF No. 1001-1.

RESPONSE: Controverted. There was no question in the survey asking respondents whether they perceived “any harm,” only questions specifically concerning financial harm and the impact on the demand for books. Additionally, the survey is unreliable and misleading because the majority of respondents were not at all familiar with or had never heard of Google Books and the open-ended responses demonstrate fundamental misunderstandings of how Google Books operates. *See* Pls.’ Resp. to ¶ 92, above. Additionally, the statement and the underlying survey are irrelevant and/or overbroad inasmuch as they refer to Google Books generally, including books for which permission of the rightsholder has been obtained in the Partner Program, and is not specific to the Library Project, which is at issue. Google’s reliance

on this survey is further controverted for the reasons set forth in their Memorandum of Law in Opposition to Google's Motion for Summary Judgment and in their Reply in Support of the their Motion for Class Certification (ECF No. 1008).

Dated: August 26, 2013



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Counsel for Plaintiffs

The Authors Guild, Inc., Associational Plaintiff,
Betty Miles, Joseph Goulden, and Jim Bouton,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

Google Inc.,

Defendant.

Case No. 05 CV 8136-DC

~~FILED UNDER SEAL~~

PUBLIC VERSION

I, Michael J. Boni, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in Boni & Zack, LLC, counsel for plaintiffs in this litigation and admitted *pro hac vice* in this Court. I submit this declaration in support of Plaintiffs' Opposition to Defendant Google's Motion for Summary Judgment.

2. Attached hereto as Exhibit 1 is a true and correct copy of a compilation of Google snippet displays from Jim Bouton's baseball memoir *Ball Four*, which was compiled by a paralegal based on searches run between July 12 and August 22 on the Google Books page for *Ball Four*, located at http://books.google.com/books/about/Ball_four.html?id=FSs9AAAAIAAJ.

3. Attached hereto as Exhibit 2 is a true and correct copy of a compilation of Google snippet displays from Joseph Goulden's history *Superlawyers*, which was compiled by a paralegal based on searches run between July 12 and August 22 on the Google Books page

for *Superlawyers*, located at [http://books.google.com/books/about/](http://books.google.com/books/about/The_super_lawyers.html?id=AtO7AAAAIAAJ)

[The_super_lawyers.html?id=AtO7AAAAIAAJ](http://books.google.com/books/about/The_super_lawyers.html?id=AtO7AAAAIAAJ)

4. Attached hereto as Exhibit 3 is a true and correct copy of Google snippet displays from Betty Miles's novel *The Trouble with Thirteen*, which was compiled by a paralegal based on searches run between July 12 and August 22 on the Google Books page for *The Trouble with Thirteen*, located at [http://books.google.com/books/about/](http://books.google.com/books/about/The_Trouble_with_Thirteen.html?id=FCfsNpPWoc0C)
[The_Trouble_with_Thirteen.html?id=FCfsNpPWoc0C](http://books.google.com/books/about/The_Trouble_with_Thirteen.html?id=FCfsNpPWoc0C)

5. Attached hereto as Exhibit 4 is a true and correct copy of internal memos produced by Google to The American Society of Media Photographers, Inc., which has been designated as Confidential by Google and is being filed UNDER SEAL.

6. Attached hereto as Exhibit 5 is a true and correct copy of the cover, table of contents, and complete Chapter Two with Answer Key for *The Seinfeld Aptitude Test* by Beth Golub (Carol Publish Group, 1994).

7. Attached hereto as Exhibit 6 is a true and correct copy of the cover, table of contents, and first three pages of each chapter from *Welcome to Twin Peaks* (1990 Publications International Ltd.).

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the Deposition of Bradley Hasegawa, February 13, 2012, pp. 19-23, 41-42, 52-61, 73-75, 79-80, which has been designated as Confidential by Google and is being filed UNDER SEAL.

9. Attached hereto as Exhibit 8 is a true and correct copy of a print out from a webpage on Amazon.com, which was obtained by clicking on the "Amazon" link on the Google Books page for Joseph Goulden's book *Superlawyers*.

10. Attached hereto as Exhibit 9 is a true and correct copy of print out from a webpage page on Amazon.com, which was obtained by running a search on Amazon.com for “Steve Hovley.”

11. Attached hereto as Exhibit 10 is a true and correct copy of print out from a webpage page on Amazon.com, which was obtained by running a search on Amazon.com for “Minoru Yasui.”

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed on August 26, 2013 in Bala Cynwyd, Pennsylvania.


Michael J. Boni

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X	
The Authors Guild, Inc., Associational Plaintiff,	:
Betty Miles, Joseph Goulden, and Jim Bouton,	:
individually and on behalf of all others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
Google Inc.,	:
	:
Defendant.	:
	:
	:
----- X	

Case No. 05 CV 8136-DC

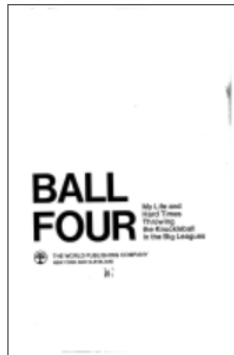
EXHIBIT

1

[PART 1 OF 3]

**TO THE DECLARATION OF MICHAEL J. BONI IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT GOOGLE'S MOTION FOR SUMMARY JUDGMENT**

Ball four: my life and hard times throwing the knuckleball in the Big Leagues



Jim Bouton



265 Reviews

World Pub. Co., 1970 - Sports & Recreation - 400 pages

The diary of a major-league baseball player during one season reveals the game's venal and foolish aspects

Common terms and phrases

asked Astros ballclub **ballgame** ballpark ballplayer Baney base baseball player batting practice
big leagues Blefary boys Brabender **bullpen** called catch catcher **club** clubhouse
coach Dierker **Don Mincher** dugout **Eddie O'Brien** fastball feel felt **Fred**
Talbot funny **Gary Bell** Gelnar getting goddam going guess **guys** happened Harry
Walker Hegan **hell** **hitter** home run Houk hurt infield **Jim Bouton** **Joe Schultz**
Johnny **kids** kind **knuckleball** laughed locker **look** manager **Marty Pattin**
Marvin Milkes McNertney Mickey **Mike Marshall** never night O'Donoghue Okay
outfield Pagliaroni Pattin pennant **pitch** pitcher play pretty Ranew **Ray Oyler**
Sal Maglie scored season Seattle Pilots sitting spring training started **Steve Barber**
Steve Hovley sure **talk** **tell** there's **thing** thought threw **told** **Tommy Davis**
tonight trying umpire Vancouver walked warm **Yankees** Yeah

From inside the book

10 pages matching **umpire** in this book

Page 86

Unless it was Jim Bouton.

Wayne Comer got into an argument with an umpire, and they were jawing back and forth. The last thing said was, "All right, Comer. You'll be sorry you said that."

Page 146

having said anything at all. I try to be especially nice to Ashford because everybody else harasses hell out of him. He's not exactly the best umpire, but he is far from being terrible. He doesn't miss that many calls, and when he does he misses them on both sides, like any good umpire. But other umpires talk behind his back. Sometimes they'll let him run out on the field himself and the other three who are holding

Page 189

a few steps away from our bullpen and he stopped by, as umpires will, to pass the time between innings.

"Why is it that they boo me when I call a foul ball correctly and they applaud the starting pitcher when he gets taken out of the ballgame?" says Neudecker.

From inside the book

36 pages matching "tommy davis" in this book

Page 88

Palm Springs

Tommy Davis is loose and funny and a lot of guys look to him, not only Negroes. Everybody sort of gravitates toward him and his tape machine, and he's asked his opinion about things. Like "How

Page 195

runway or even to go back into the clubhouse for a goddam cigarette, but if you take a candy bar out to the bullpen you get all kinds of static.

The bed in this hotel in Baltimore makes me think these bad thoughts. I think I'll go wash out my brain with soap.

Page 285

position. And today Tommy Davis said, "I wonder if anybody will ever offer me a job like that?"

"All you'll get is a scouting job in Watts someplace," Tommy Harper said.

So I started doing a general-manager bit, giving scout Tommy Davis his instructions. "Now, Tom, you have to make sure to sign the

From inside the book

30 pages matching **strike** in this book

Page 13

I reached Lou in Florida and he said that his impulse was to report, that he was scared it would count against him if he didn't, that he was just a rookie looking to make the big league and didn't want anybody to get angry at him. But also that he'd thought it over carefully and decided he should support the other players and the strike. So he was

Page 86

I couldn't resist, so giving him my sincere look, I said, "This is it."

He turned pale and moped over to Joe, slowly, as if attached to a large rubber band. But all Joe wanted was to tell us to run some extra laps since we were in the bullpen and weren't able to run when everybody else did.

I never saw anybody run laps looking so happy as Dick Banev.

Page 390

3-1 in the seventh and I got called in with two out and runners on first and second. Pete Rose up. Real clutch situation. I throw two knuckleballs for balls. Edwards calls for a fastball and I shake him off. Rose is just going to rip my fastball. I know it. So I throw a knuckleball for a strike, another knuckleball for a foul ball, a third for strike three and strut off the mound

From inside the book

9 pages matching "red sox" in this book

Page 52

By now, though, we're standing in clumps of five or ten and take turns catching whatever fly balls happen to come our way.

It was Dick Stuart-story day today, and this one was about the time Johnny Pesky was managing the Red Sox and Stuart was playing for him and showing up late for a lot of things. For some reason this great Pesky as he called a meeting to talk about MORALE. Stuart was

Page 289

the time. When things are going good Yastrzemski will go all out. When things aren't going so well he'll give a half-ass effort. But he's got so much ability that the only thing you can do is put up with him.

I asked a few of the Red Sox if they thought he deserved the fine and I thought they would defend him. But they said, "He deserved it
.. ..

Page 388

scared. After a while, though, all they could do was giggle.

Dick Williams has been fired as manager of the Red Sox. I think that when a team wins a pennant the tendency is to give too much credit to the manager and when a team loses the tendency is to blame him too

From inside the book

yankees

Search

82 pages matching **yankees** in this book

Page 23

checking the stock tables and because between 1932, when he began to play for the Yankees, and 1968, when he left as a coach, he had pulled down some 23 World Series shares in addition to his considerable salary. And no one has noticed him spending very much of it. In addition, starting at age fifty, he elected—possibly through foolishness, more likely

Page 90

the Newhouse papers. Ogle was a Yankee fan and he reacted to players purely on how much they were helping the Yankees to win. Charm, personality, intelligence—nothing counted. Only winning. Ogle didn't have even the pretense of objectivity. He was the only writer in the pressbox who would take the seventh-inning stretch in the Yankee half.

Once at a winter press conference, when the Yankees were an-

Page 154

actually has them believing they're winners.

I wonder how he is with the pitchers.

The big confrontation is coming closer. The Yankees will be in town in a couple of days and I've been invited to appear at the sportswriters and sportscasters dinner on Monday afternoon. The idea is us

From inside the book

17 pages matching "mickey mantle" in this book

Page 29

Mickey Mantle announced his retirement the other day and I got to thinking about the mixed feelings I've always had about him. On the one hand I really liked his sense of humor and his boyishness, the way he'd spend all that time in the clubhouse making up involved games of chance and the pools he got up on golf matches and

Page 30

once described that look as mickering across his face like the mickering membrane in the eye of a bird." And I don't like the Mantle that refused to sign baseballs in the clubhouse before the games. Everybody else had to sign, but Little Pete forged Mantle's signature. So there are thousands of baseballs around the country that have been signed not by Mickey Mantle but by Pete Previte.

Page 31

...they stop thinking about him a great deal any more going to lunch with Mickey Mantle and Whitey Ford. They got all fancied up, hopped into a cab and told the driver to take them to The Flame. After about a half-hour the cab pulled up in front of a place that was in the heart of the slum section, a hole in the wall with a broken plate-glass window in front and a little broken-down sign over the door: THE

From inside the book

82 pages matching **knuckleball** in this book

Page 20

One of the problems is that the hitters hate to hit against my knuckleball in batting practice. They don't like pitchers to work on

Page 43

a good outing, however. I struck out the first hitter I faced on four pitches, all knuckleballs. (Don't ask me who he was; hitters are just meat to me. When you throw a knuckleball you don't have to worry about strengths and weaknesses. I'm not sure they mean anything, anyway.) I noticed again that I throw a better knuckleball in a game than

Page 141

sota and it was so damn cold—and the American League ball is definitely bigger than the Pacific Coast League ball—that I couldn't get the damn thing to break at all. Every single knuckleball I threw was rolling over, or spinning sideways, and I started to panic. I could feel the sweat break out on me, and I was cold and sweaty at the same time. Here was

From inside the book

3 pages matching **homers** in this book

Page 32

early games, but it looks like I'm not going to be ready here. It's quite different from my last spring with the Yankees in 1967. I was really impressive, right from the beginning. I led the club in innings pitched with thirty, and I gave up the fewest hits, fifteen, and no homers and only two or three extra-base hits. My ERA was .092, which means less

Page 145

who hit one of the homers off me.

Meanwhile, in the dugout, I found out from Darrell Brandon that Sal had thrown a fit when the home run was hit. He had a toothpick in his mouth at the time and he threw it hard on the ground (so hard a tree may yet grow on the spot) and said, "Jesus, he's got to start

Page 240

Fred Talbot says that after listening to Sal in these meetings he's decided what kind of pitcher he must have been. "A mother," Talbot said. "A real mother."

Mother Maglie also said in the meeting that one way to handle Jackson was not to throw him any strikes. So Jackson hit three homers

From inside the book

36 pages matching "home run" in this book

Page 62

up into the infield and The Colonel would look down the bench and say, "The boy's fastball is moving. The boy's fastball is rising." Two innings later, same situation, the very same pitch, home run into the left-field seats. The Colonel looks up and down the bench and says very wisely, "Got the ball up. You see what happens when you get the ball up?"

Page 89

clubhouse. It was a quote from me after Mel Stottlemyre had hit an inside-the-park home run, which is very hard for a pitcher to do. One of the writers came to me after it and said, "What were you thinking when Stottlemyre was going around the bases?" It was a nice, silly question, so I gave him a nice, silly answer. I said I was hoping that

Page 321

so many games this year," she said. "I get nervous every day."
 "Why should you get nervous? I don't. Except once in a while."
 "I don't know, but I do. And every time they hit a home run off you, I just get sick to my stomach. I worry about how you feel, too, because I want you to be happy."

From inside the book

20 pages matching "eddie o'brien" in this book

Page 75

picnic.

I think coach Eddie O'Brien is going to prove a gold-plated pain in the ass. He must think he's Frank Crosetti or something, because when I reached into his ballbag he said, "What are you going to do with it?"

Page 143

Eddie O'Brien has finally been nicknamed. Mr. Small Stuff. It's because of his attention to detail. Says Mr. Small Stuff: "Put your hat on." He said that to me today. Also to Mike Hegan. We were both running laps at the time.

Another thing Eddie O'Brien does is stand next to you when

Page 205

Everybody thought this was all very funny except Eddie O'Brien. "Guess what he said to me," Talbot said. "He said we ought to protest this game to the Commissioner because how could we use the bullpen with fish in our water cooler?"

"He wasn't *serious*," I said.

"Oh yes he was," Talbot said. "He was until he saw us all laugh

From inside the book

20 pages matching **balls** in this book

Page 186

guaranteed, asking me why I'm not wearing my earflap."

Between innings of the game I got up in the bullpen and worked with the iron ball Mike Marshall keeps out there. Talbot was certain I was only doing it so I would get on television, and maybe I was, partly. After the third time up Talbot said, "Jesus Christ, Bouton, why don't

Page 188

opposite direction of a curve ball: when thrown by a righthanded pitcher it breaks in on a righthanded hitter. Mike wants to throw screwballs and Sal wants him to throw curve balls, so they're at each other all the time.

"Why don't you just throw screwballs and tell Sal they were curve balls?" I suggested.

Page 390

3-1 in the seventh and I got called in with two out and runners on first and second. Pete Rose up. Real clutch situation. I throw two knuckleballs for balls. Edwards calls for a fastball and I shake him off. Rose is just going to rip my fastball. I know it. So I throw a knuckleball for a strike, another knuckleball for a foul ball, a third for strike three and strut off the mound

From inside the book

84 pages matching **ball** in this book

Page 53

screaming at the top of his lungs, "I got it! I got it!" He wasn't taking any chances. At the last second guess who ran into him and spiked him. Dick Stuart. The ball went flying and the runner got two bases.

Now Wilson's got a spiked left foot and a man on second and he's steaming mad. The next pitch is a ground ball on the first-base line and Earl runs over, picks it up, whips it to throw to first and Stuart isn't on

Page 172

...all at once, that I was just suddenly, in my spring training, when I wasn't sure I was going to make the team. Also, the team is managing very well without me. We're playing heads-up ball. The guys on the bench are alive, and when the other team makes a mental error we take advantage of it right away. We're hitting the hell out of the ball, and we're even getting the breaks, which is part of it too. Besides, Cali-

From inside the book

8 pages matching **orioles** in this book

Page 196

And then Carl Yastrzemski's name came up because he'd just ignored the strike and Gary Bell said, "Didn't surprise me. Carl Yastrzemski is for himself first and second and the hell with everybody else."

Gee, Gary, Carl Yastrzemski?

Yes. Besides, during the strike Yastrzemski called several super-

Page 201

Talking about Joe Schultz reminded Marshall of something that happened the other night. Although we had just blown a game to the Orioles, when Schultz came back into the clubhouse he was smiling. Mike thought that was kind of strange until he heard Schultz say, to

Page 205

"All right. I'll talk to Eddie about it," Joe Schultz said.
I can't wait.

During batting practice the Orioles sneaked into our bullpen—word is that it was Eddie Watt and Pete Richert—and deposited three

From inside the book

84 pages matching **pitch** in this book

Page 62

the same thing. They're asking you to obey good pitching principles; keep the ball down (most hitters are high-ball hitters), don't make the pitch too good (don't pitch it over the heart of the plate), move the ball around inside the strike zone and change speeds (keeps the hitter off balance), and get ahead of the hitter (when you have two strikes on a

Page 67

ing to do too much. Tommy Sain always told guys who had control problems that they were trying too hard to throw the ball to a specific spot, not that they weren't concentrating. Sain would compare pitching to a golfer chipping to a green and say that if you tried for the cup you might miss the green. The thing to do was just hit the green, pitch to a general area.

Page 123

The problem for a long-relief man is that he doesn't want to tire himself out before a game in which he may pitch eight innings. But if

From inside the book

36 pages matching **pitches** in this book

Page 167

him between shags. I told him about my conversation with Schultz and his thought that I couldn't be a starter because I had only one pitch. I told him that Nickro said after his last game that he'd thrown 95 knucklers out of 104 pitches.

"Well, you can do that if it's breaking," Sal said.

Page 186

Mantle pointed it out to all the Little League, high-school and college players who were watching, but somehow I doubt it. So I'll do it here. It started in the first inning when Joe Sparma walked Tommy Harper, leading off, on four-straight pitches. Hegan was the next batter. Ball one. On ball two, way over Hegan's head, Harper tries to steal second and

Page 339

good knuckleball with the first pitch. Find that tricky abstract thought, the one that makes you feel so competent and smooth. I tried to recall the last few warm-up pitches I threw and I remember thinking, "Why are they playing the National Anthem so slowly?"

I walked the first hitter on four pitches. The first two pitches to the

From inside the book

arm

Search

63 pages matching arm in this book

Page 49

singing.

Steve Barber went three innings and pitched pretty well. Maybe his arm doesn't hurt him after all—except that he was in the diathermy machine again this morning. Steve reminds me of a guy who was with the Yankees for a while, Billy Short. He was a little lefthander with a

Page 54

thenics I realized that his pitching arm is all bent and much shorter than his right arm. That's from throwing curve balls. It's almost as deformed as Bud Daley's arm. Bud, who had polio as a boy, pitched for the Yankees for a while. The polio left him with a crook in his right arm. It didn't bother him, even when the players would make fun of it. Some-

Page 55

said, yes, but Daley didn't have to pitch with that arm, only catch.

Barber was in the diathermy machine again today and then looked pretty good in batting practice. I've been taking aspirin. My arm hurts and I didn't do as well pitching BP as Barber. Maybe there's something to that diathermy machine.

The only thing I think of these days when I go out to pitch is how

From inside the book

12 pages matching **position** in this book

Page 19

cance to the position. My arm feels good; no pain, no problems. Every once in a while I let a fastball fly and it comes out of my hand real easy and seems like it took no effort. I can almost hear a voice in the back of my mind whispering, "You can go back to it, you can find it, you can find your old fastball and you'll be great again." Of course, I've

Page 337

and throws them back. He's a perfect marine, yet he doesn't seem to have the marine mentality. One winter he spent his time, not selling mutual funds, but working with retarded children. Blefary on the pick-off play: "Now if you see me reaching for my throat—like this—that means you go into your stretch position, take your set, don't even look

Page 375

of vengeance, proving superiority, but not demonstrating much of a record. He said I was a hard worker, a good battler, that I fielded my position well and could pitch under pressure. Just what the Cubs needed. The scout told him no, that the word on me is that I'm a clubhouse lawyer.

From inside the book

17 pages matching **mound** in this book

Page 110

the mound. In front of all those people.

I've felt like that on the mound too, and I don't even chew tobacco.

Page 243

ordinated on the mound, and I threw one to Gene Oliver with the bases loaded that spun, and he knocked it over the center-field wall. On the bus some son of a bitch asked me if it was the longest home run I ever gave up.

It doesn't seem right that my ERA should have jumped back to

Page 291

at the time. I took the top of a beer cap and threw it onto the field during the game. I couldn't believe how far it went—clear out to the infield. It landed halfway between the mound and home plate. I was scared when I saw it was actually going to drop onto the field and I looked around to see if anybody had noticed me throwing it. Johnny Antonelli, who was pitching for the Giants, walked off the

From inside the book

46 pages matching **base** in this book

Page 65

Ray Oyler was racked up at second base by Glenn Beckert of the Cubs, and when he came back to earth he was heard to call Beckert a son of a bitch. This is not on the same order as motherfucker, but he didn't have a lot of time to think.

Page 186

you just run across the field and slide into second base and get it over with?"

The people who watched this game on television saw some of the dumbest baseball ever played this side of a sandlot. I hope Kubek and

Page 339

and it's all glory. I've done a lot of things and nobody could ask for more.

There was a lot of scraping and scrounging after that, hanging tough with men on base, the way it was back in the old days. Each inning I came back to the dugout and I could see a little more respect in the eyes of my teammates. I wasn't with them from the beginning.

From inside the book

83 pages matching **run** in this book

Page 23

beady little eyes shining, not an ounce of fat on him, taking calisthenics with all us kids and never missing a beat; jumping-jacks, pushups and everything. Another thing he does is get up every morning at six-forty-five and take a long, pre-breakfast stroll. When he was with the Yankees, once in a while he'd run into some of us coming back from a night on

Page 146

him run out on the field himself and the other three who are holding back in the dugout will snigger. I hate that kind of stuff. I mean, I don't mind it when it's pulled on a ballplayer. But Ashford, for goodness sakes.

And, of course, the players pick it right up. As soon as he makes a bad call they start yelling. "Oh, that hot dog son of a bitch." Sure he's

Page 298

ballgames in crucial situations and all I can do is agree with Hovley that it's because they think I'm weird and throw a weird pitch. I need a new image. What I ought to do is take up chewing tobacco and let the dark brown run down the front of my uniform and walk up and down the dugout with a slight, brave limp and tape on my wrist and say

From inside the book

4 pages matching **slide** in this book

Page 65

It has become the custom in baseball to slide into second base with a courteous how do you do, so when somebody does slide in hard everybody gets outraged and vows vengeance. A few years ago Frank Robinson slid into Bobby Richardson with murderous aplomb and the Yankees were visibly shocked. *How could he do that to our Bobby? We'll get him for that.* Actually this was a National League play and the Yankees

Page 69

tion and he was a bad guy. He liked to slide into guys spikes high and draw blood. During warm-ups he liked to scale baseballs into the dug-out to see if he could catch somebody in the back of the head. He even used our manager for target practice. So I took my shots at him. We all did. Once I threw a ball at him so hard behind his head that he didn't

Page 186

you just run across the field and slide into second base and get it over with?"

The people who watched this game on television saw some of the dumbest baseball ever played this side of a sandlot. I hope Kubek and

From inside the book

82 pages matching **throw** in this book

Page 61

For instance, a big hitter was up with two men on base and as Baney looked in for the sign Joe Schultz hollered, "Now get ahead of this guy." And Sal hollered, "Get something on this pitch. He's a first-ball hitter."

And just as he cranked up to throw, somebody (I couldn't tell

Page 62

hitter and two balls or fewer, you may then throw your best pitch as a borderline strike and the hitter will have to swing to protect himself).

This is the essence of the battle between the pitcher and the hitter, and it doesn't do any good to yell this kind of advice to a pitcher in a crisis situation. He knows it as well as he knows his name. But pitching

Page 139

hours writing notes for a speech I'd like to deliver to Sal Magne and/or Joe Schultz.

This is what I decided to say:

"I've given a lot of thought to this. In fact it's all I've thought about for weeks. Number one, the knuckleball. I'd like you to understand it takes a feel to throw it, not strength. So I think I have to throw

From inside the book

18 pages matching **hour** in this book

Page 31

couldn't stop thinking about that a great time they were going to have with Mickey Mantle and Whitey Ford. They got all fancied up, hopped into a cab and told the driver to take them to The Flame. After about a half-hour the cab pulled up in front of a place that was in the heart of the slum section, a hole in the wall with a broken plate-glass window in front and a little broken-down sign over the door: THE

Page 201

I also thought that what these kids need is not a half-hour of conversation with some big-name guy who's just passing through. What they

201

Page 300

base, Fred LaBot yelled at him, "Comon, rat boy, regroup out there."
There was a lot of grouching about the flight home. We had a three-hour wait after the game was over and then an hour-and-a-half wait in Chicago. If we had a charter flight we could have gotten in to Seattle at about twelve-thirty instead of four-thirty. The ballclub argues that it costs too much money to charter a plane and generally we just shrug

From inside the book

2 pages matching **miles** in this book

Page 71

field and saw Goossen working out at first base. He's hard to miss, with his blocky build and blond, curly hair, working without a hat. I was already missing him and the nutty things he does and I thought here's a field that's only about fifty yards away and yet it's really hundreds of miles away, the distance between the big leagues and Vancouver.

Page 122

shape and a good pitcher. As Johnny Sain says, "You don't run the damn ball across the plate. If running did it, they'd look for pitchers on track teams." It's one of the reasons he's such a popular pitching coach.

There are pitchers who tell you that they've played for men who made them run miles a day and some who made them run hardly at all

From inside the book

63 pages matching **second** in this book

Page 65

Ray Oyler was racked up at second base by Glenn Beckert of the Cubs, and when he came back to earth he was heard to call Beckert a son of a bitch. This is not on the same order as motherfucker, but he didn't have a lot of time to think.

Page 186

you just run across the field and slide into second base and get it over with?"

The people who watched this game on television saw some of the dumbest baseball ever played this side of a sandlot. I hope Kubek and

Page 339

next hitter were balls. Christ, am I ever going to throw one over? Fortunately the runner tried to steal second and Edwards threw him out. Edwards is a great catcher. He catches the knuckleball better than McNertney, and he doesn't have the big glove. Edwards ought to be President.

From inside the book

 first

81 pages matching **first** in this book

Page 87

balls called.

Sure enough the first pitch to Comer was a high curve and he called it strike one. Comer didn't even look back. He swung at the next pitch and hit a line drive off the fence for a triple. The ump looked over to our bench and said, "See, it makes him a better hitter."

Page 186

she's going to notice first thing that I'm not using the batting helmet with the earflap on it. And tonight she's going to be on the telephone.

Page 337

baseballs fly over fences.

Still, the pressure, I think, is one of the most exciting things about athletics, and it's one of the reasons I have so much fun playing. I remember sitting on the bench before my game in the 1963 Series. I was to pitch against Don Drysdale. Houk was sitting about five feet away

From inside the book

51 pages matching **third** in this book

Page 108

bombed. Three runs in an inning-and-a-third. My knuckleball just doesn't seem to be ready yet. I can't get it over the plate consistently, and when I get behind I have to come in with my fastball, which somehow isn't too fast. So I got ripped for long hits, including one Don Pavletich hit over the left-field wall.

Page 193

The rule is that the starter can't get credit for the win unless he pitches five full innings.

Sure enough we score three in the first, two in the second and another in the third. We've got a 6-0 lead and it looks like Barber is having trouble out there. He's twitching his arm and cranking it around

Page 317

speech for us before the game. Tommy got up and said, "Thanks."

Tommy needs only two more stolen bases to break the American League record and on his Night only 6,000 fans showed up. It's not a good sign for the future of baseball in Seattle. We draw a little better when we're winning, which means the fans have taken this third-place-

From inside the book

25 pages matching **plate** in this book

Page 14

behind the plate yelling "First base! First base!" at the top of his lungs.

Page 86

And he probably will. Umpires do get even with people, even good umpires. I remember when George Scott first came up to Boston. He must have irritated Ed Runge somehow because the word came out from Elston Howard that when Runge was behind the plate and Scott was hitting the strikes wouldn't have to be too good.

Page 146

Emmett Ashford was behind the plate tonight and did an especially good job calling the knuckleball. A couple of times I threw it knee-high and the ball seemed to drop into the dirt. But it was only after it had crossed the plate, so he called both of them strikes. Some umpires call the pitch where the catcher catches it, not where it crosses the plate.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X	
The Authors Guild, Inc., Associational Plaintiff,	:
Betty Miles, Joseph Goulden, and Jim Bouton,	:
individually and on behalf of all others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
Google Inc.,	:
	:
Defendant.	:
	:
	:
----- X	

Case No. 05 CV 8136-DC

EXHIBIT

1

[PART 2 OF 3]

**TO THE DECLARATION OF MICHAEL J. BONI IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT GOOGLE'S MOTION FOR SUMMARY JUDGMENT**

From inside the book

25 pages matching **catcher** in this book

Page 87

RICH ROLLINS has a good story he tells in the same vein. It goes back to when we were playing against each other in the Class-B Carolina League. Rich had hit two home runs in the first game of a doubleheader and the club had some deal that anybody who hit three home runs in one day would get \$300. So the other players on Rollins' team told him to go to our catcher, Norm Kamesher, and get him to tell

Page 126

giving a hot-foot to somebody else at the time and just as he started to turn around and grin at the havoc he had wrought, a look of horror crossed his face and he began to do an Indian dance. The hot-footer had been hot-footed (feeted?) himself. Joe Pepitone is a gas.

Page 197

away, it means she's not interested. If she smiles, something might come of it. It's called shooting stingers.

Roomie got shelled out of the game in four innings. The Orioles are so hot right now it could happen to anybody. But poor Gary took

From inside the book

6 pages matching **baseman** in this book

Page 282

Epstein on three pitches, all knuckleballs. I had Bernie Allen just about struck out, but he reached out and tapped one to the second baseman. Oh, Frank Howard got a single off me. He's liable to do that to anybody, isn't he?

I'm glad the knuckleball is in such happy shape. The Yankees arrive

Page 298

we may not be winning a lot of ballgames, but we've got a lot of spirit. In fact we might have the best "around the horn" in the league. You throw the ball around the horn—catcher to first baseman to shortstop to second baseman to third baseman—after an infield out, and you do it with a lot of élan. We get better at it all the time.

Page 354

Some of the guys were on Nate Colbert, the San Diego first baseman, formerly of the Astros. They kept yelling that he was ugly and calling him "Mullion" and other nice things. Blefary said to cut it out, that the last time they got on him Colbert hit a couple of home runs and beat us. Well, we jumped out to a 4-0 lead, but the first time

From inside the book

3 pages matching **shortstop** in this book

Page 163

speed, great arm, temperamental: shortstop Jose Greco. Or big, hard-
hitting first baseman; strong, silent type: Vaughn Monroe. And center-

163

Page 298

we may not be winning a lot of ballgames, but we've got a lot of spirit. In fact we might have the best "around the horn" in the league. You throw the ball around the horn—catcher to first baseman to shortstop to second baseman to third baseman—after an infield out, and you do it with a lot of élan. We get better at it all the time.

Page 344

"Don't get too far off the bag, Harry."

"Watch out for the pick-off, Harry."

Sure enough, there's a ground ball to the infield and Harry flies into the shortstop and breaks up the double play, a perfect slide.

"Son of a bitch," said Doug Rader, "every time we have an Old-

From inside the book

5 pages matching **jump** in this book

Page 207

knuckleballs would interfere with my job. I said, "You haven't got a job. All you do is go over to that ballbag and hand everybody a ball and then you sit there and watch the game. When the telephone rings you jump up and tell somebody to warm up. That's your whole goddam job. A

Page 342

Baseball players play so many games it's impossible to get emotionally high for any one of them. Football players get all gung-ho in the locker room. They chant and shout and jump up and down and take pills and hit each other on the helmet and shoulderpads and spit and kick and swear and they're ready to go out and bust some heads. If a baseball

Page 344

"You got to break up two, Harry."
"Make sure you get a good jump, Harry."

From inside the book

5 pages matching **error** in this book

Page 43

In the three innings I walked two, committed an error (hit Bert Campaneris in the head trying to throw him out at first), was hurt by a passed ball (a real good knuckler that broke in on a righthanded hitter, went off McNertney's glove and back to the backstop) and a couple of sacrifice flies. Two unearned runs. So the old ERA starts off at zero.

Page 63

kid if he made an error, and everybody hated me for it. In recent years, though, I've turned full circle. I may say to myself, "Ah, Tommy, you should have had that," but I go out of my way to show absolutely no reaction. I don't pick up the resin bag and slam it down, and I don't kick dirt, and I don't stare out at the player.

The reasons are selfish. First of all, people think terrible thoughts

Page 293

time I don't reach for my glove. But it's for me. So I warm up and pitch the ninth. One guy gets on with a single, another on an error. Nobody hits the ball good and I'm out of the inning. This doesn't change the score, which remains 10-3.

I'm saving up all my statistics for my next year's salary drive. I

From inside the book

12 pages matching era in this book

Page 32

early games, but it looks like I'm not going to be ready here. It's quite different from my last spring with the Yankees in 1967. I was really impressive, right from the beginning. I led the club in innings pitched with thirty, and I gave up the fewest hits, fifteen, and no homers and only two or three extra-base hits. My ERA was .092, which means less

Page 184

I know Detroit needs relief help and they could get me cheap. If he looks in the newspaper he'll see a 4.2 ERA, although since I've re-

184

Page 212

his best season in 1967—77 games, 125 innings and a 2.09 ERA. It was a year after Phil Regan of the Dodgers had had his super year—14-1 and a 1.62 ERA—in relief. Short had offered Locker \$16,000 and he was asking for \$18,000. Short said he was asking a lot and that what the hell, Regan had just signed a contract for \$23,000. "If Regan is

From inside the book

67 pages matching **play** in this book

Page 48

or anything.

"Well, do you think you can play?"

"I don't know. I *guess* I can play. Yeah, hell, what the hell. Sure I can play."

"Good. Great. We need you out there. Unless you're hurt— unless it really hurts you. I don't want you to play if you're hurt."

Page 64

them. I've pitched some of my best games when I knew I had sold a lot of tickets for my countless admirers. The longest game in the American League was played in Detroit a few years ago. I pitched the last seven innings for the Yankees in a 22-inning game and there were 15 Bouton passes sitting up there behind the dugout, all relatives of my wife. I really think I did better because I knew they were there. Some-

Page 65

it on.

Legend has it that Linz wasn't sure what Berra said, so he turned to Mickey Mantle and asked, "What'd he say?"

"He said play it louder," Mantle explained.

Linz didn't believe that. On the other hand he didn't stop. In a minute Yosi was in the back of the bus, breathing heavily and demand-

From inside the book

30 pages matching **catch** in this book

Page 197

~~nothing was there for me as though it was over for my team.~~
I don't blame Haney. Or Pagliaroni, who doesn't want to catch me either. And I've told them that. I'm liable to take their living away from

197

Page 203

and walked down that long corridor from the visiting clubhouse in Baltimore to where the cabs unload. I watched him all the way. He didn't turn back once.

I asked Eddie O'Brien to catch me for a while tonight in the bull-

Page 392

Runge, "Hey, Ed, I've got a three-o'clock plane to catch home. See what you can do about getting me out of this ballgame." Runge said he would.

On the first pitch of the game Runge calls a strike and Lary, standing on the top step of the dugout, yells, "Hey, Runge, what the

From inside the book

20 pages matching **fly** in this book

Page 52

By now, though, we're standing in clumps of five or ten and take turns catching whatever fly balls happen to come our way.

It was Dick Stuart-story day today, and this one was about the time Johnny Pesky was managing the Red Sox and Stuart was playing for him and showing up late for a lot of things. For some reason this upset Pesky, so he called a meeting to talk about MORALE. Stuart was

Page 163

competition. I got four more drive singles and got my team to victory. That'll teach them to fool around with the Bulldog.

Another fund-raiser is electing the leading "fly" at the end of each road trip, the guy who had the worst trip for bugging people, being a pest, just flying them. The man elected is charged a dollar. Also, if you get caught eating at the table after a game with Charley uncovered, that

From inside the book

75 pages matching **out** in this book

Page 121

son's home run in 1951, on television again. He enjoyed being reminded.

I went out to work in my long underwear with a warm-up jacket over the top and I thought to myself, "Damn, I wish somebody could see me out here being this conscientious—Whitey Lockman maybe, or a scout." If they only knew how hard I was willing to work and how

Page 204

"Listen, don't worry about Sal," Joe Schultz said. "I let a lot of the stuff Sal says go in one ear and out the other. Don't worry about it. Do whatever you have to do to get ready."

I could've kissed him. I mean there's a man who understands a lot better than I ever suspected. But then he said, "The problem with your

Page 249

"Wayne, I just had enough," Mincher said. "And I had to haul off and punch you."

Comer was still lying in the aisle feeling his jaw. "Well, that doesn't make you a bad person," he said.

Tonight Comer got his revenge. Mincher was on the postgame

From inside the book

3 pages matching **outs** in this book

Page 171

gives a countdown on the outs when we're ahead. "Only eight outs to go—oops, only seven." And he's running up and down the dugout and

171

Page 294

you could get only 27 outs in a nine-inning ballgame, and that the ratio between strikeouts and other kinds of outs would not change. Brabender and Pagliaroni thought differently. They said if you faced a hundred hitters you had a lot more chances to strike somebody out than if you faced only 27 or 28. And as he talked, Brabender got hot, and Brabender

Page 339

made in the previous starting pitcher.

Here it is, my dream. I'm pitching for a pennant contender in August. I really am lucky.

That's what I thought about when I went out to the mound. This is fun, this is kicks. Stay cool. Be calm and try to get the feel of that

From inside the book

fair

Search

18 pages matching **fair** in this book

Page 8

"We couldn't do that. It's out of the question."
 A couple of days later he called again. "Does \$28,000 sound fair to you?"
 "Yes it does, very fair. In fact there are a lot of fair figures. Twenty-eight, twenty-nine, thirty, thirty-two. I'd say thirty-three would

Page 399

2.	H.	4/13	Chi.	1	3	3	3	1	0	—	1½	3	3	2	0	Bad
SENT TO MINOR LEAGUES																
A.	4/19	Tacoma	1	0	0	0	0	2	—							Excellent
A.	4/20	Tacoma	2½	2	1	0	0	0	L							Fair
A.	4/21	Hawaii	1	0	0	0	0	1	—							Excellent
A.	4/22	Hawaii	2½	1	0	0	1	1	—							Excellent

Page 400

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From inside the book

60 pages matching **season** in this book

Page ix

Bouton since he first came up with the Yankees, was familiar with his iconoclastic views and his enthusiastic, imaginative way of expressing them, and it occurred to me that a diary of his season—even if he spent it with a minor-league team as he had the season before—might prove of great general interest. As usual, he was ahead of me. “Funny you

Page 47

Yankees. John was a good, decent man, and no doubt there was lot of pressure on him. He seemed to feel that each day was the most important day of the season and it started right with the opening game of spring training. John always seemed willing to sacrifice a season to win a game. And this caused a lot of long-range problems. Guys played

Page 396

“If you don’t you have to stay in the barracks and they padlock the doors at midnight,” he said. “If you don’t make it in, you have to pound on the door and that’s the way they catch you.”

From inside the book

14 pages matching **average** in this book

Page 3

As the season drew to a close I did better and better. The last five days of the season I finished with a flurry, and my earned-run average throwing the knuckleball was 1.90, which is very good.

The last day of the season I was in the clubhouse and Milkes said he wanted to see me for a minute. I went up to his office and he said,

Page 56

It's one of the only sports that the average fan knows in his heart is completely honest. (I wonder what the football, basketball and hockey people would say to *that*.) I'm not sure all fans feel that way, but I really don't think there is any gambling at all inside baseball. I may be naïve, but I don't think there's any gambling, or any intentional passing along of information.

Page 381

I'm pitching with a runner on third base and Doc Tolan, a lefthanded hitter with a good average, is up. Ted Savage, a right-handed hitter with a batting average of around .220, is the next hitter. Harry Walker motions to Johnny Edwards to see if we want to walk Tolan and pitch to Savage. And I, big thinker that I am, indicate that I want to pitch to Tolan. So Harry gives me an okay wave.

From inside the book

6 pages matching **slider** in this book

Page 167

"Fine," I said. "Then I can throw it all the time."

"But they start looking for the damn thing," Sal said. "And if it doesn't break you got nothing else."

"What about Wilhelm?" I said. "They wait for *his* knuckleball."

"He throws that slider of his once in a while."

"Sure, but they don't look for his slider. They look for his knuckle

Page 190

Like the fellow who rooms with the great chick-hustler. The hustler will spend all of his time pounding the streets, spending money in bars, working like hell at running down girls. His roommate just lounges around the room, watching television, taking it easy. And he does great just taking his roommate's leavings.

Page 341

as a pitching coach. He thinks rather like Johnny Sain.

"You just can't tell some guy he has to throw a slider," Owens says. "That's what they did to me. I had a helluva overhand curve when I first came up and they told me I had to throw a slider. So I worked on the slider until I lost my overhand curve. That taught me never to take

From inside the book

30 pages matching **curve** in this book

Page 118

HAC HIS:

"Pitch him high and tight."

"Hell, he'll hit that one over the left-field wall. You got to pitch him low and away."

"Pitch him away and he'll go to right field on you."

"I don't know about all of that. I do know you got to curve him."

Page 188

The latest adventure of Mike Marshall has him feuding with Sal Maglie about his screwball. A screwball is a curve ball that breaks in the

Page 344

NORM NINEZ was doing the broadcast on in the fourth inning when Joe Morgan came back to the dugout after missing a big curve ball for strike three.

"Joe, Joe Morgan, may I have a word with you?"

"Sure, Norm, how's it going?"

"Fine. Joe, fine. We wanted to ask you about that nitch you

From inside the book

73 pages matching **joe** in this book:

Page 111

APRIL
11

Page 152

I

I caught Joe Schultz without a liverwurst sandwich today, backed him into a corner and asked him, gently, about my chances of starting a game. I talked fast. I told him that I felt strong enough to go

Page 232

"I'm Ted fucking Williams."
Sock!

Today Joe Schultz said, "Nice going out there today, Jim."
The only thing I'd done all day was warm up.

"Joe, I had a fantastic knuckleball today," I said. "Just fantastic."

From inside the book

15 pages matching **pop** in this book

Page 52

which was the first time I had ever been to the hospital.

I guess you could say I'm torn.

Ding Dong Bell gets his first start against Arizona State U. tomorrow and he says he's not ready. I told him it's no sweat because if anybody makes this team it's going to be old Ding Dong. no matter

Page 93

hitter walked. He scored on a double, which was the only well-hit ball off me. I had a good assortment of stuff and was able to throw fewer knuckleballs, which must have pleased Sal Maglie.

After the game John Morris and Darrell Brandon got it. So one lefthander, Bill Henry, and I had made it. It's a good feeling, but if I

From inside the book

3 pages matching **grounder** in this book

Page 60

Stafford came in for two innings and looked terrible. So I was in there in the seventh.

I started off great. I gave the first guy all knuckleballs and got him on a grounder. To the next guy I threw five beautiful knuckleballs. He missed the first two for strikes. Then he fouled three of them off and I fouled now I've got him. He must be expecting another knuckleball!

Page 141

Page 141

Page 203

seven of them for strikes. I struck Buford out on a beauty that went right over the plate, then broke outside. Got the next two guys on a pop-up and soft grounder. After the game no one came over and said I'd been throwing too much.

That was a lot of day today. I'm not sure I can take many like that.

From inside the book

9 pages matching **runner** in this book

Page 143

uh, for crissakes, get the fuck. The runner isn't going anyplace.
So Darrell winds up and lets fly. *And Carew steals home.*
When Darrell comes into the dugout at the end of the inning,
Maglie lets him have it. "Dammit," he says. "You *know* you've got to
pitch from the stretch in that situation."

Page 176

And Ray said, "Well, it doesn't make me a bad person."

Page 339

next hitter were balls. Christ, am I ever going to throw one over?
Fortunately the runner tried to steal second and Edwards threw him
out. Edwards is a great catcher. He catches the knuckleball better than
McNertney, and he doesn't have the big glove. Edwards ought to be
President.

From inside the book

5 pages matching **sun** in this book

Page 61

in shape in the spring is to get a tan. It makes you look leaner and at least five pounds lighter. Following Ford's postulate I was sitting on the bench in the sun while Baney was pitching. This gave me an opportunity to listen in on the pearls of Sal Maglie and Joe Schultz, who were also getting some sun. These pearls are of a special kind, absolutely valueless at best, annoying enough to unsettle your concentration at worst.

Page 74

with cactus and odd rock formations that threw back the flames of the setting sun. The sun was a golden globe, half-hidden, and as we drove along it appeared to be some giant golden elephant running along the horizon and I felt so good I remembered something Johnny Sain used to talk about.

From inside the book

9 pages matching **dirt** in this book

Page 74

Hegan said, "No. On the meat of the arm, the biceps."

"Oh, you'll be okay," Joe said. "Just spit on it and rub some dirt on it."

Hegan couldn't move three of his fingers for an hour. But it didn't hurt Joe at all.

Page 249

radio show because he was the hero of the game. He hit a three-run homer in the first inning, and we won 3-1. The moment Mincher came into the clubhouse, Comer, who by this time was wearing only a jock strap, dirt and no teeth, ran across the room with an insane gleam in his eye, leaped on Mincher's back and kissed him on the ear.

Page 338

Also last night, I was standing in the skin part of the infield before the game and Miller came over and said, "Hey, you're not allowed to stand on the infield dirt." I asked why. "Because Jimmy Wynn was fooling around in the infield and he's an outfielder and he got hit on the finger and couldn't play, so Harry made a rule. Every time something

From inside the book

5 pages matching **steal** in this book

Page 95

is the take, right side of the chest is the bunt, touching the left leg is the steal and right hand to the right leg is hit-and-run. The principle here is that hitting signals are above the belt and running signs are below. The takeoff is wiping the hand across the letters and the indicator will be touching the right arm. That is, no sign is valid until after the right

Page 186

Mantle pointed it out to all the Little League, high-school and college players who were watching, but somehow I doubt it. So I'll do it here. It started in the first inning when Joe Sparma walked Tommy Harper, leading off, on four-straight pitches. Hegan was the next batter. Ball one. On ball two, way over Hegan's head, Harper tries to steal second and

Page 381

Tolan promptly swats my second pitch into right-center for a triple. Savage I strike out on three pitches. In the dugout, Harry says, "Look, you've got a guy hitting .220 as opposed to a guy hitting .320." "I was afraid if we walked Tolan he'd steal second base," Edwards said.

From inside the book

4 pages matching **stole** in this book

Page 28

Although I've enjoyed being in Arizona, there are things about training in Florida I'll miss. Every spring Phil Linz and I would have dinner at Las Novedades in Tampa and we'd order Cuban black-bean soup and *Pompano en papillót* and we'd have a bottle of wine and talk about our old days in the minor leagues (and the time Joe Pepitone stole

Page 78

wives don't know about it. Hell, there are baseball wives who don't know about the money we get for being in spring training, or that we get paid every two weeks during the season. John Kennedy, infielder, says that when his wife found out about the spring money she said, "Gee whiz, all that money you guys get each week. How come you've never

Page 201

nobody in particular. "Lou Brock stole his 25th base tonight. That's 25 out of 25."

And Mike Marshall thought, "My God. The man's living in a dream world. He still thinks he's with the Cardinals."

From inside the book

38 pages matching **fastball** in this book

Page 139

wrong to throw a fastball to a good hitter with a 3-and-2 count unless I've got a big lead, and I think it's wrong to throw a fastball 3 and 1 in a close game, and it's wrong to throw a fastball 3 and 0 when a home run or hit would beat me. In every case I'd rather walk the guy with my best pitch than let him beat me with one swing at my worst.

Page 190

Like the fellow who rooms with the great chick-hustler. The hustler will spend all of his time pounding the streets, spending money in bars, working like hell at running down girls. His roommate just lounges around the room, watching television, taking it easy. And he does great just taking his roommate's leavings.

From inside the book

83 pages matching **pitcher** in this book

Page 34

...since you've been with the club so long, we feel you deserve a single room. It's a status thing. Whitey and Mickey have single rooms, and we thought you should too."

I said that was fine with me and if he wanted Fritz to room with a young pitcher I'd take a single room.

Then Houk called Fritz in and said, "Bouton deserves a single

Page 67

Nobody is a one-pitch pitcher." He added: "Bouton, they're just waiting for your knuckleball. You got to throw something else."

In the immortal words of Casey Stengel, "Now, wait a minute." Are we trying to win ballgames down here or are we trying to get ready for the season? What I have to learn is control of the knuckleball. And

Page 148

off now."

The friendly undertaker really put it to Marshall the other day. He told him that if he didn't use better judgment on the selection of his pitches, they'd be called from the bench by S. Maglie, pitching coach. Mike was furious. Any pitcher would be. As Johnny Sain has pointed

From inside the book

65 pages matching **bullpen** in this book

Page 75

"I'm going to count the laces," I told him. "And then I'm going to juggle it."

Later on O'Brien noticed some of the guys were eating sunflower seeds in the bullpen. "Hey, none of that," he said. "No eating in the bullpen."

Page 131

I called my wife during the seventh inning tonight because I didn't think I'd be used again, and just as the operator was asking her if she'd take a collect call, Sheldon came back to tell me there was a call for me to warm up. In fact, when Lemon gave the signal the guys in the bullpen pretended they didn't understand in order to give Sheldon time to come

Page 205

"All right. I'll talk to Eddie about it," Joe Schultz said.
I can't wait.

During batting practice the Orioles sneaked into our bullpen—word is that it was Eddie Watt and Pete Richert—and deposited three

From inside the book

45 pages matching **ballgame** in this book

Page 104

It took about a day into the season for us to be like every other ballclub, not just an expansion team full of strangers. I'm going out after the ballgame and have a few beers with the guys, maybe six or seven, which makes me blind. There is unquestionably a close feeling among the guys who go out and drink because they look over the

Page 295

came by and Ayca introduced me to him. I congratulated him on the fine job he was doing in Washington and he said that I was doing a pretty good job myself. I said I was glad he'd noticed.

What a beautiful day. Imagine playing for Teddy Ballgame. That's what he calls himself, in his autobiography too. What isn't generally known, except around the comfortable confines of the ballpark, is that

Page 392

Runge, "Hey, Ed, I've got a three-o'clock plane to catch home. See what you can do about getting me out of this ballgame." Runge said he would.

On the first pitch of the game Runge calls a strike and Lary, standing on the top step of the dugout, yells, "Hey, Runge, what the

From inside the book

14 pages matching **foul** in this book

Page 75

Ran my long foul-line-to-foul-line sprints in the outfield and kept myself going by imagining I was Jim Ryun running in the Olympics: I'm in the last fifty yards and I'm going into my finishing kick and thousands cheer. If I'm just Jim Bouton running long laps very little happens. Let's see. Here's the World War I flying ace . . .

Page 191

pitchers to the outfield and ran them hard, foul line to foul line. Sain was angry when he found out. So he went into Mayo's office and said, "Is this the pitching staff that led all baseball in complete games last year?"

"Yes, it is," Mayo said.

Page 291

mound, bent down, picked it up and put it in his back pocket. I got a huge kick out of that. Imagine, Johnny Antonelli picking up the cover of my Dixie cup.

One time my brothers and I and a friend decided that the way to catch foul balls in left field at the Polo Grounds was to have a net and

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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The Authors Guild, Inc., Associational Plaintiff,	:
Betty Miles, Joseph Goulden, and Jim Bouton,	:
individually and on behalf of all others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
Google Inc.,	:
	:
Defendant.	:
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Case No. 05 CV 8136-DC

EXHIBIT

1

[PART 3 OF 3]

**TO THE DECLARATION OF MICHAEL J. BONI IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT GOOGLE'S MOTION FOR SUMMARY JUDGMENT**

From inside the book

20 pages matching **walk** in this book

Page 18

what pepper games are, really: looking busy without actually doing anything.

Sheldon was talking about that today. He says what he does is walk around policing up the area and no one ever hollers at him for that. He also walks back and forth to the dugout as if he's on an important mission. "Do something," Shellie said. "Walk. Bend. Throw a ball into

Page 139

wrong to throw a fastball to a good hitter with a 3-and-2 count unless I've got a big lead, and I think it's wrong to throw a fastball 3 and 1 in a close game, and it's wrong to throw a fastball 3 and 0 when a home run or hit would beat me. In every case I'd rather walk the guy with my best pitch than let him beat me with one swing at my worst.

Page 291

It's interesting that they'd rather pay for a single room than have me room with Hovley. Just like the Yankees. They must think whatever it is I have that they don't like is catching.

I didn't tell Paul about the switch. Let him find out himself.

From inside the book

10 pages matching **bottom** in this book

Page 4

Lauderdale—a bit late because I'd spent six months in the army—Dan Topping, Jr., son of the owner, and the guy who was supposed to sign all the lower-echelon players like me, handed me a contract and said, "Just sign here, on the bottom line."

I unfolded the contract and it was for \$9,000—if I made the team.

Page 149

MAY
4

Page 193

knuckleball. And all I wound up with was a save.

I had a great knuckleball when I went in, but I lost it in the eighth. I got by on fastballs. In the bottom half we took an awful long time hitting so I asked Sal if I could try throwing a little to get the feel of the knuckleball back. "Nah," he said. "You're doing all right. Be-

From inside the book

25 pages matching **top** in this book

Page 132

hollered at the top of his voice, "Hey, Sheldon, Joe wants to see you in his office." Everybody in the outfield heard.

Page 174

...spends more time looking in the mirror than the hair started to get thin on top. And the hair he still has is all curly and frizzy when he lets it grow long. So he carries around all kinds of equipment in a little blue Pan Am bag. Things like a hot comb, various greases and salves, glue for the hairpiece, hair-straightener—and even a hair-dryer. He carries it wherever he goes, on the buses to the park, on airplanes. You

Page 365

I was dying to watch, I turned around and sat down on the bench. It was more neurotic than sensible.

I can't stand the tension of these games. Poor Larry Dierker had a no-hitter going into the ninth inning and hung in there until the top of the thirteenth. We pinch-hit for him, scored two runs and then Gladding

From inside the book

53 pages matching **pitchers** in this book

Page 33

doing the same thing. One day Fritz got Steve Hammon and Joe Verbanic and about three or four other pitchers to carry two balls around with them wherever they went. It drove The Colonel out of his mind.

The following spring Fritz was removed as my roommate. The Colonel kept telling Fritz not to worry that pretty soon he wouldn't have

Page 67

club, and you don't make ballclubs arguing with pitching coaches.

Afterward in the outfield we talked about one-pitch pitchers. Ryne Duren was a one-pitch pitcher. His one pitch was a wild warm-up. Ryne wore glasses that looked like the bottoms of Coke bottles, and he'd be sort of steered out to the mound and he'd peer in at the catcher and let

Page 122

shape and a good pitcher. As Johnny Sain says, "You don't run the damn ball across the plate. If running did it, they'd look for pitchers on track teams." It's one of the reasons he's such a popular pitching coach.

There are pitchers who tell you that they've played for men who made them run miles a day and some who made them run hardly at all

From inside the book

80 pages matching clubhouse in this book

Page 54

to let on you have an education.

Well, Mincher was talking about going to see a Johnny Cash show, and I imagine when he talks about Johnny Cash it's like the Negro players talking about James Brown. Lots of times in the clubhouse you'll have a radio on and every once in a while it gets switched back

Page 155

could air their gripes. At the meeting, which lasted about twenty minutes, there were complaints about the beds in some of the hotels, the lack of a roof over the bench in the bullpen, the bare cement floor in the clubhouse and the absence of a watercooler in the clubhouse. Imagine having to take our greenies with beer. Big things like that.

It was also pointed out that when an exhibition game is scheduled

Page 175

So everyone was tired and angry and upset and you could hear a pin drop in the clubhouse because after a loss that's the way it's run.

From inside the book

26 pages matching **mincher** in this book

Page 91

and pleased me. Don Mincher seconded. Then someone nominated Gary Bell and the two of us left the room. Gary won it by one vote, and

91

Page 249

everybody as funny that Mincher, a member of the club, should suddenly get so uppity with a guy we all knew he was very friendly with.

Page 300

probably around \$5,900."

Naturally I promptly told Mincher that the only difference between a charter flight and commercial was \$700. Just as naturally, Mincher goes to Gabe Paul and says, "What's the story, Gabe? We found out that there's only a \$700 difference between charter and commercial. And we don't think the Bellini should be sitting with that kind of

From inside the book

45 pages matching **talbot** in this book

Page 170

outneider Dick Simpson. We also traded Aker for my old friend Fred Talbot. This is a little disturbing because Talbot and I didn't care too much for each other over there in New York. We're exact opposites. He's country and I'm city, and I always felt uncomfortable around him.

It's interesting, though, to see the Yankees trade Talbot, the guy they decided to keep instead of me two years ago. And they traded him

Page 193

money or something to us?"

Almost everybody laughed.

Ah, the ballgame. Steve Barber started. The last time he got a big lead but had to leave in the fifth. That's how Talbot got his quick win.

Page 225

all knew what it was, a legal document written by a local lawyer friend of Ranew's that announced a paternity suit against Talbot by an anonymous girl in New York. A paternity suit is only somewhat worse than being accused of murder. No matter how innocent you are, you lose. Who wants to win a paternity suit?

Business in the clubhouse seemed to be normal. but in fact every-

From inside the book

39 pages matching "gary bell" in this book

Page 37

...
today."

After the game Bobbie and I were at a party with Gary Bell and his wife and Steve Barber and his. Gary's wife, Nan, said she'd been anxious to meet me since she'd read in the Pilot spring guidebook that

Page 91

...
it was not good news to hear that we're going to start the season with only nine pitchers. Besides that, we traded Chico Salmon to Baltimore for Gene Brabender, "a hard-throwing righthanded country boy," said Steve Barber. I look at the pitching staff and I see six guys who have it made: Diego Segui, Marty Pattin, Jack Aker, Gary Bell, Steve Barber

Page 154

The meeting before the game was marvelous. When we went over the hitters Gary Bell had the same comment on each one: "Smoke