

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

-----X
 :
 J.D. SALINGER, individually and as TRUSTEE :
 OF THE J.D. SALINGER LITERARY TRUST, :
 :
 Plaintiff, :
 :
 -against- :
 :
 JOHN DOE, writing under the name JOHN :
 DAVID CALIFORNIA; WINDUPBIRD :
 PUBLISHING LTD; NICOTEXT A.B.; and :
 ABP, INC. d/b/a SCB DISTRIBUTORS, INC., :
 :
 Defendants. :
 :
 -----X

09 Civ. 05095 (DAB)

DECLARATION OF ROBERT SPOO

DECLARATION OF ROBERT SPOO

I, Robert Spoo, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. My name is Robert Spoo. I am a tenured Associate Professor of Law at the University of Tulsa College of Law, where I teach, among other subjects, Law and Literature and Copyright Law. I earned my J.D. at the Yale Law School in 2000. Prior to entering law school, I was a tenured Professor of English at the University of Tulsa, where I taught modern English, Irish, and American literature to graduate and undergraduate students for more than ten years. I received my Ph.D. in English from Princeton University in 1986 and taught there as a lecturer in English for two years. I have authored or coauthored numerous books, editions, and articles on modern authors, and was Editor of the *James Joyce Quarterly* for ten years. My articles and essays on modern literature, copyright law, and intellectual-property issues affecting scholarship have appeared or are forthcoming in the *Yale Law Journal*, the *UCLA Law Review*, the *Journal of Modern Literature*, the *Journal of Scholarly Publishing*, *American Archivist*, and other journals and collections. A copy of my biographical information describing my professional activities, education, academic honors, and publications is attached to this declaration as Exhibit "A."

2. In June 2009, I agreed to assist the attorneys from the firm of Frankfurt Kurnit Klein & Selz PC with an assessment of the creative and transformative uses to which John David California in his novel *60 Years Later: Coming Through the Rye* puts J.D. Salinger's *The Catcher in the Rye*.

3. I have read the novels *The Catcher in the Rye* (Little Brown and Company, 1951; paperback edition, May 1991) (hereafter, “*Catcher*”) and *60 Years Later: Coming Through the Rye* (Windupbird Publishing, 2009) (hereafter, “*60 Years*”).

4. *60 Years* narrates an entirely different set of events from those in *Catcher*. *Catcher* tells the story of several days in the life of 16-year-old Holden Caulfield who, after learning he is to be expelled from Pencey Prep, secretly leaves the school at night and goes to New York City, where he has a number of seemingly random experiences while trying to avoid returning to his family’s apartment in the City. In contrast, *60 Years* tells of several days in the life of a much older Holden, now 76 years old and referred to throughout the novel as “Mr. C.” As restless and dissatisfied as he was in *Catcher*, but for very different reasons, Mr. C. sneaks out of the nursing home, Sunnyside, to which he has been confined and travels to New York City, where he has a number of encounters, real or imagined, that culminate in his visit to the home of his own creator, J.D. Salinger, and his reunion with his son, Daniel. Whereas *Catcher* is a portrait of frustrated adolescence, *60 Years* is a portrait of anguished old age—a portrait that in various ways comments on and critiques the earlier picture of troubled youth. Numerous persons referred to in *60 Years*—notably, Mr. C’s deceased wife Mary, their son Daniel, and Mr. C’s former student Charlie—are new inventions that are nowhere to be found in *Catcher*.

5. Moreover, unlike *Catcher*, in which Holden Caulfield is the exclusive narrator, *60 Years* is a two-ply narrative in which the voice of Mr. C. alternates with the imagined thoughts of Salinger himself, thus creating a sort of duet between author and character. Having discovered the need to complete the life of Holden Caulfield, Salinger resurrects him as the aging Mr. C., and sporadically ruminates on the difficulty of controlling a character that has such a complex identity as Mr. C.’s. “*My creation, a piece of living art, seems to have grown a will of its own.*”

[*60 Years*, p. 83.] Intermittently aware of a dreamlike “tapping” he cannot place (it is Salinger’s life-giving typewriter), Mr. C. struggles to make some sort of sense of his tangled family past and personal relationships, until he comes face to face with his creator, Salinger, in a scene that paves the way for the novel’s denouement. Nothing like this double storyline, and the complex meditation on authorship and creativity that it makes possible, is present in *Catcher*.

6. The events and plot elements of the two novels are dramatically different. *60 Years* draws upon *Catcher* for certain broad elements: the general use of Holden Caulfield (Mr. C.) as narrator, and Mr. C.’s fleeting and fragmentary memories of certain characters that appear or are mentioned in *Catcher*: e.g., Holden’s siblings, Allie, D.B., and Phoebe, his Pencey schoolmate, Stradlater, and his history teacher, Mr. Spencer. References to these characters in *60 Years* serve chiefly as departure points for the aging Mr. C.’s extended dreamlike thoughts and fantasies, which occur nowhere in *Catcher*. Once a name or event from *Catcher* crops up, *60 Years* takes off in a new direction, weaving a narrative that is very different, verbally and thematically, from the treatment of the name or event in *Catcher*. Consistently, elements from *Catcher* are used as triggers for entirely original, transformative fictional experiments in *60 Years*. Typical examples of this approach are as follows:

(a) In the nursing home, Mr. C. is confused and believes that he is a young man who is only dreaming that he is old. He thinks of old Mr. Spencer, his history teacher at Pencey Prep, recalling how Mr. Spencer would “shuffl[e] around in a robe showing everyone his goddamned [wrinkled] chest.” [*60 Years*, p. 28; *Catcher*, p. 7.] This fragmentary glimpse of Mr. Spencer from *Catcher* is woven into an expansive, original rumination by the septuagenarian Mr. C. on the physical limitations and frustrations of old age, leading him to conclude that “I do understand [Mr. Spencer] a bit better now, because of everything that’s happened to me.” [*60*

Years, p. 28.] With his richer understanding of the challenges faced by Mr. Spencer, Mr. C. compares getting old to a “deserted and run down house that nobody cares about anymore.” [*Id.*] Mr. C.’s broader perspective, born of his own experience of aging (which he still believes to be a dream at this point), serves as a critique of the callous attitude toward old age that the teenage Holden exhibited in *Catcher*.

(b) In *Catcher*, Holden dislikes his handsome, athletic roommate Stradlater, whom he regards as insensitive, arrogant, and conventional. [*Catcher*, p. 27.] In *60 Years*, Mr. C. decides on an impulse to phone Stradlater, and the two meet for coffee in New York City. Although they have as little to say to each other as they did sixty years ago at Pencey Prep, Mr. C. is startled when Stradlater begins to weep, and he responds by “feel[ing] sorry for the guy.” [*60 Years*, p. 93.] Prior to Stradlater’s emotional reaction, Mr. C. had expected to cling to his old contempt for him, but he finds that he cannot, and after Stradlater leaves, Mr. C. realizes “he [Mr. C.] didn’t really share anything with him” and feels “the urge to give him something of myself before we part.” [*Id.*, p. 96.] This scene provides perspective and commentary on Holden’s immature stubbornness and rigidity in *Catcher*, his inability to see beyond the surface of the students he knew at Pencey Prep.

(c) Towards the end of *Catcher*, Holden spends part of a day with his little sister Phoebe, who is one of the few people in his life to whom he is able to relate. At one point, he watches Phoebe ride a carousel with some other children. When she asks him to join her, he refuses, preferring to look on from a distance and let her compete for the gold ring by herself. [*Catcher*, pp. 211-12.] A very different carousel scene occurs in *60 Years*. Phoebe is now in her sixties and suffering from dementia. Mr. C. spirits her out of her nursing home, and together they go to New York and somehow arrive at the same carousel that Phoebe had ridden sixty

years before. This time, however, Mr. C. joins her and rides on the horse next to hers, accompanied by all the other children clinging to their horses. Mr. C. feels his “heart stir,” and he and Phoebe are transported across a prairie in a moment of freedom and exhilaration. [*60 Years*, p. 267.] Holden’s refusal to join his sister in *Catcher* gives way in *60 Years* to a transformative participation and sharing that underscore the limitations of the teenage Holden.

(d) Perhaps the most memorable and iconic moment in *Catcher* is Holden’s admission to Phoebe that his one ambition in life is to be “the catcher in the rye,” protecting children in a rye field by snatching them to safety just as they are about to tumble over a cliff in their play. [*Catcher*, p. 173.] The image of the rye field recurs in *60 Years*, but it is very different. Mr. C. imagines himself running through a rye field by himself, unaccompanied by anything except “the sky and the rye.” [*60 Years*, p. 272.] There are no children, and instead of saving others from falling, Mr. C. himself begins to experience a free fall, “tumbling through empty space.” [*Id.*, p. 273.] This scene of solitary journeying gives way to a new setting, a white room in which Mr. C. can effortlessly review the events of his life. Phoebe is in another room down the hall, and Mr. C. is waiting for the arrival of his son, Daniel. When Daniel appears, Mr. C. embraces him, observing that “hugs can fix what you think can never be fixed.” [*Id.*, p. 276.] The novel ends with Mr. C. holding Daniel’s hand and asking, “Did I ever tell you about the catcher in the rye?” [*Id.*, p. 277.] What had been a fantasy of isolated heroism in *Catcher*—a solitary superhero rescuing anonymous children in a rye field—becomes a vision of committed fatherhood in *60 Years*. This transformative picture revises and comments upon Holden’s limited, if poignant, adolescent fantasy of *Catcher*.

7. As the foregoing examples demonstrate, *60 Years* acts in many ways as a sustained commentary on and critique of *Catcher*, revisiting and analyzing the attitudes and

assumptions of the teenaged Holden Caulfield. In this respect, *60 Years* is similar to a work of literary criticism, with the difference that instead of linear, expository prose, *60 Years* makes use of nonlinear, discontinuous, highly imaginative language to perform its analyses.

8. *60 Years* does not copy the actual, literal verbal expression of *Catcher*. With the exception of certain common words, phrases, and mannerisms (“phony,” “crummy,” “I really don’t”), the portrait of Mr. C. in *60 Years* does not draw upon particular speeches or thoughts of Holden in *Catcher*. In many instances, Mr. C.’s thoughts embody a linguistically more sophisticated, mature sensibility than the adolescent Holden’s—a sensibility that is distinctly literary: “An echo of it is still bouncing around in my head, trapped between the wall of dream and reality” [*60 Years*, p. 41.] “The trees, for example, all look as if they’ve been in a fight during the night, displaying a rainbow of colorful bruises.” [*Id.*, p. 43.] “The girl behind the counter is wearing randomly selected pieces from the flooded hangers. She is a collage of patterns and different material, and so is the store.” [*Id.*, p. 151.] Unsurprisingly, by the end of the novel, Mr. C. has become an author like his creator, Salinger, writing about his own son, Daniel, just as Salinger gave life to a literary son in Holden Caulfield. [*Id.*, p. 275.]

9. In *60 Years*, the general approach to narrative and structure is very different from that in *Catcher*. Both novels are recounted in the first-person voice of Holden Caulfield (in *60 Years*, there are also frequent first-person interpolations by Salinger himself), but in *Catcher*, Holden tells his story in the simple past tense, whereas Mr. C. in *60 Years* makes use of a more offbeat, continuous present-tense voice, as if the events he narrates were happening simultaneously with their telling. Moreover, as innovative as *Catcher* was in its time for its raw, direct adolescent rant, that novel adopted a relatively straightforward, traditional style of narration, with characters and events deployed in linear, predictable ways in time and space. By

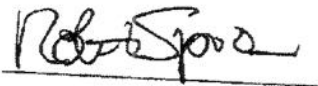
contrast, *60 Years* exploits the experimental structural and stylistic techniques associated with such modernist and postmodernist authors as William Faulkner, Virginia Woolf, Samuel Beckett, and Vladimir Nabokov. These techniques include multiple narrative voices, disorienting breaks in temporal flow and spatial continuity, sudden thematic and imagistic shifts, and a treatment of character and incident that does not discriminate sharply between reality and fantasy.

10. The foregoing are by no means all of the important differences between *60 Years* and *Catcher*, nor all of the transformative and critical elements in *60 Years*.

11. In my opinion, *60 Years* contains a pervasive and profound criticism and commentary upon *Catcher*. It accomplishes this through its presentation of the changes Mr. C. has experienced in the sixty years since he left Pencey Prep, as well in its experimental language, structure, and narrative style. Its richness and complexity are such that I can see *60 Years* being taught at the college and university levels in courses on Contemporary American Literature, Metafiction, or Literary Criticism.

Executed on June 15, 2009

Dublin, Ireland



Robert Spoo, J.D., Ph.D.