

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAN BROWN and RANDOM HOUSE, INC., :  
 :  
 : Plaintiffs, :  
 :  
 : against :  
 :  
 LEWIS PERDUE, :  
 : Defendant. :  
-----X

Civil Action No.  
Index No. 04 CV 7417 (GBD)

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LEWIS PERDUE, :  
 : Counterclaim-Plaintiff, :  
 :  
 : against :  
 :  
 DAN BROWN, RANDOM HOUSE, INC., :  
 COLUMBIA PICTURES INDUSTRIES, INC., :  
 SONY PICTURES ENTERTAINMENT INC., :  
 SONY PICTURES RELEASING CORPORATION, :  
 and IMAGINE FILMS ENTERTAINMENT, LLC, :  
 :  
 : Counterclaim- :  
 Defendants. :  
 :  
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**DECLARATION OF  
LEWIS PERDUE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES  
AND COSTS**

I, Lewis Perdue, hereby declare under penalty of perjury that the following statements are true:

1. I am the Defendant and the Counterclaim-Plaintiff in this action. I am fully familiar with the facts set forth below and make this Declaration in opposition to the motion by Plaintiffs Dan Brown and Random House, Inc. and Counterclaim-Defendants Dan Brown, Random House, Inc., Columbia Pictures Industries, Inc., Sony Pictures Entertainment, Inc., Sony Pictures Releasing Corporation, and Imagine Films Entertainment, LLC (collectively "Plaintiffs") for attorneys' fees and the costs of this action.

2. I am outraged by the claim of Dan Brown (“Brown”) and Random House that I brought an action against them in bad faith.

3. First, they sued me. While I did interpose a counterclaim in that lawsuit, that counterclaim was the mirror image of their claim against me. No issues not raised by Plaintiffs’ declaratory judgment claim had to be decided by my counterclaims.

4. After they sued me, what did Plaintiffs expect me to do to show my good faith? Are they suggesting that I had an obligation to default? Are they saying that I manifested bad faith in resisting their claims against me? After they sued me, what did Plaintiffs expect me to do? It remains my belief that Dan Brown stole from me and I have a right to state as much.

5. I lead a modest, but interesting life, with my wife and two children in Sonoma, California. My economic resources are such that I fully realized that I could not afford to engage in a prolonged litigation battle with the publishing behemoth known as Random House. That is why I did not commence an action against Plaintiffs. It was only after they sued me and it was only after my present attorneys agreed to represent me pursuant to a pro bono/contingency arrangement that I was able to defend myself in this action brought by Random House.

6. Notably, knowing full well that I am a resident of California, Random House brought the action in New York in order to make the lawsuit even more financially difficult to defend.

7. Both before and after this lawsuit, Random House was well aware that it possessed a considerable economic advantage against me in any lawsuit. I would go so far as to say that Random House possesses a considerable economic advantage over any author like me. Regardless of the fact that copyrighted intellectual property has been stolen, it may not be economically possible for an author to do anything about it because of their financial edge.

8. That is why, prior to the commencement of this action by Random House, I did everything I could to avoid a lawsuit. Although I honestly believe that Brown illegally misappropriated portions of my earlier novels, I knew I could not afford a prolonged legal battle against Random House.

9. Random House undoubtedly understands exactly what I am saying. It understands that whether one of its authors has or has not infringed on the copyrighted works of someone else is not as important as the fact that the mere threat of litigation with Random House creates a sufficient chilling effect to deter other authors from even dreaming about bringing a copyright infringement action against Random House or one of its authors.

10. In furtherance of its strategy, Random House now seeks to make an example of me by asking the Court to impose costs and attorneys' fees of over \$300,000. Knowing that such an award will bankrupt me, Random House seeks to send a message to the community of writers and authors.

11. The message is not merely that thou shall not litigate with Random House. The message is that you cannot even talk publicly about the wrongs done to you by a Random House author.

12. Because I talked publicly about the illegal misappropriation by Brown of my works, Random House sued me and now accuses me of bad faith.

13. Hence, Random House not only seeks to deter authors from commencing copyright infringement actions, but also seeks to deter them from exercising their rights of free speech as well.

## EVENTS LEADING UP TO THIS LAWSUIT

14. In the early spring of 2003, I began receiving unsolicited emails from readers – complete strangers –expressing their strong opinions that *The DaVinci Code* (“Code”) had plagiarized my novels. I paid these no attention because I accept the fact that different writers can, and do, write similar books that do not infringe on one another.

15. In or about the first couple of weeks in May, 2003, after reading a book review of Code in The Washington Post, I thought, perhaps, there might be some substance to the emails. I then bought a copy of Code, read it, then began to think that it may have misappropriated significant portions of my earlier novels, particularly *Daughter of God* (“Daughter”).

16. Astounded by the similarities between Code and my earlier novels, in or about mid-May, with neither legal representation nor an intention to sue, I contacted Random House to determine the identity of the person(s) with whom I could discuss the similarities. I made no threats. Indeed, all I sought was a conversation.

17. But, Random House refused to provide me with the appropriate contact information. In or about late May of 2003, I was able to ascertain that the General Counsel of Random House was Katherine Trager (who was likewise an officer of Random House).

18. In late May of 2003, I wrote to Ms. Trager outlining, in part, details of some of the similarities between Code and Daughter. I asked Ms. Trager to contact me to discuss the similarities. At that time, I did not include an outline of the similarities between Code and my novels; nor did I make any threat (in my letter to Trager or otherwise) about suing anyone for copyright infringement. That letter is annexed hereto as Exhibit “A.”

19. After waiting in vain for approximately two weeks for Ms. Trager (or anyone else from Random House) to contact me, I contacted Newsweek magazine, and Newsweek published a story on the controversy.

20. Thereafter, in mid-June of 2003, after taking time to circle the wagons, Plaintiffs, via their counsel, Ms. Trager, responded to my letter with a vehement and threatening denial, stating, among other things, that “you should be aware of the fact that, should you bring any action, as you have threatened in the media, Doubleday and Mr. Brown would vigorously defend the action and seek attorneys’ fees. You should be further advised that Doubleday has obtained awards of attorneys’ in similarly meritless cases alleging copyright infringement”. A copy of the letter of Ms. Trager is annexed as Exhibit “B.”

21. The letter of Ms. Trager is typical of what I have said. An author cannot even politely discuss the possibility of copyright infringement with Random House without being threatened.

22. Because I had no legal representation at the time, no intention to sue, no experts to counsel me and no thorough understanding of copyright law, I believe that had someone from Random House been willing to have a calm, polite, non-confrontational discussion at the time, I probably would have not taken things further. However, as a former investigative reporter, I felt that Random House's extreme reaction – a level of arrogant hostility out of all proportion to my request – could be evidence that they saw a legitimate threat, where I had seen a set of questions.

23. Because of their over-reaction, I began to investigate the issue, trying to find experts, an attorney and to educate myself on copyright infringement. This is a monumental task for a person of moderate means who cannot hire lawyers and experts at the drop of a hat. That is the key reason why I set up an Internet bulletin board, soliciting people's opinions and hoping that some of those might be experts willing to share their expertise.

24. Fast forwarding to September 2, 2004, the California law firm of Alschuler Grossman Stein & Kahan LLP sent a letter to Ms. Trager that addressed the points made by her in her letter to me. The letter (“Alschuler letter”) is annexed as Exhibit “C.”

25. My representation by Mike Plonsker of the Alchuler firm was for settlement purposes only ... NOT litigation. At the time, I would have settled for an acknowledgement of my work ...something like that given to *Holy Blood, Holy Grail*. Getting credit for my creation was the most important thing. If Random House had bothered to have a phone call or two, they would have learned that, and all the litigation would have been unnecessary.

26. But instead of picking up the phone to discuss things, they launched their blitzkrieg and caused ALL the attorneys' costs themselves.

27. The Alschuler letter is not uncommon in cases of copyright infringement. It constitutes a point-by-point refutation of what Ms. Trager had said in her letter. While it does suggest that I was contemplating commencement of a lawsuit, it also expressed my desire to amicably resolve the issues being discussed.

28. In spite of our efforts to resolve the matter, no telephone calls from Random House were received, which would have kept this lawsuit from ever happening.

29. Clearly, Random House was not interested in amicable discussions because days later it commenced this lawsuit. Contrary to their incorrect statements in their legal filings, I was not out "to extract a settlement." I have never sought a single penny for myself in this entire affair. I have been clear with all my attorneys and have said publicly that should money come from this, that it would go to charity.

30. Hence, we have the sorry spectacle of one party – Random House -- who is not even willing to discuss the issues, impugning the motives of someone who was seeking to avoid

litigation. Because of the unwillingness of Random House to discuss the issue, it has only itself to blame for its attorneys' fees, which should never have been incurred.

31. The Alshuler letter contained a report of John Gabriel Olsson, a forensic linguist, comparing Code with my novels. For what it's worth, I could never have afforded to pay Mr. Olsson for the work he did, and I am grateful for his having done it without charge to me.

### **MY WEB SITES AND BLOGS**

32. I have an education in the sciences. Many of my novels have scientific or technological themes. Years ago, I realized the great potential of using the internet not only to market my books, but also to discuss issues with the general public, including other authors and the reading public.

33. I have used the World Wide Web extensively since 1994 and in doing so have seen it as an effective tool for connecting people, for gathering and soliciting information and to connect resources with needs. This long track record is significant because Random House somehow thinks that my use of the Internet to explore copyright infringement is somehow unique to them.

34. To give one recent example of how I have used the Internet for ways that are virtually identical to the present case: I am the founder of a project called "Books 'n Blues." In essence, the project raises funds for effective non-profit organizations by running seminars, auctions, and fund raising affairs in which both books and blues music are prominently featured. My efforts would not have been possible without using the internet. Annexed as Exhibit "D" is a printout from my Books 'n Blues website. Because my area of Mississippi was badly affected by Hurricane Katrina, the project has been expanded to include raising funds to help deal with the devastation.

35. The Writer's Day of Action for Hurricane Katrina Relief ([www.writeaction.org](http://www.writeaction.org)) done in conjunction with author Clyde Ford and schools2schools ([www.schools2schools.org](http://www.schools2schools.org)) and Pathetic Bell (<http://www.patheticbell.com>) are three more examples of using the same tools as I employed in the controversy with Random House.

36. I approached the issue of possible copyright infringement in the same way I approached these efforts. In an effort to determine, among other things, how the reading public viewed the similarities between Code and my novels, I created an online forum, posted the correspondence to Ms. Trager referred to above, and requested readers' opinions and thoughts.

37. I then began receiving unsolicited emails and other communications from readers calling my attention to similarities between my books and Code. Those messages are annexed as Exhibit "E."

38. While the email messages started before this, the forum elicited even more messages and a vigorous debate ensued. By way of example and not by way of limitation or exclusivity, the communications state, among other things:

My husband read it first, and then passed it over to me. (He rarely gets to read a book first.) We were laying in bed, both reading, and he asked me what I thought. I was puzzled and said 'I think I've read this before...' Basically, the books were enough similar that ten years after having read your book, I felt 'déjà vu' reading Brown's book...His book, as I recalled on my own, before even remembering your name, is essentially a rewrite of yours — Katherine Coble.

DaVinci Code is not the only book that Dan Brown used your ideas for—Margaret Rainstein

It now appears to me Brown and Kaufman lifted directly from you...—Craig Dirgo

I traded with a friend who had Code. Déjà Vu!! I felt like I was reading parts of the same book over again. That's when I checked the date on yours & realized yours was WAY first. I mean I've seen some similarity in romance, but how many boy-girl scenarios can you have? This was beyond the acceptable coincidence. I



love to read, but I can't write, so I respect the work authors put into their novels. I really think you are justified in your claim of plagiarism...Anyway, I just wanted to say a few words in support of you & let you know that there are people out there who know that YOU are the original.—Gretchen Uchello

After reading Daughter, Legacy & Code, I can't see how anyone could miss the blatant similarities between your books and Code. It's a meld of elements from both your works, but, in this case, the total is less than the parts. I've heard that imitation is the sincerest form of flattery – unless you're a writer!!—Gretchen Uchello

I read it [Daughter of God] before I read The DaVinci Code, and as I was reading Dan Brown's book, I kept feeling as though it was very similar to yours.—Ruth Borkowski

I was reading your book Daughter of God and before I even finished half, I was checking the publication dates between your book and the DaVinci Code. I didn't know anything of the controversy beforehand...Unfortunately, I think the promotion of "The Code" is so widespread, it is beyond recall no matter what you can prove. You have my complete sympathy. There is nothing worse than being the victim of someone else's lack of integrity. Were I Dan Brown, I would feel the proceeds of the book to be ill gotten dirty money...I will show my support for your original work by promoting it to my book club along with your other publications. It's not much, but at least you know there are some common folk out there who understand that it's right to honor intellectual property and ideas.—Melinda Robino

39. Apparently, Random House is arguing that it was a sign of bad faith on my part to test the waters to find out what others thought. In my view, however, it was the very prudent thing to do before making allegations of plagiarism against Brown and Random House.

40. Indeed, I would not have persisted in my contentions that Code had plagiarized my novels had I not received the foregoing email messages.

41. Furthermore, I would not have persisted in my contentions that Code had plagiarized my novels had I not received the expert report of John Gabriel Olsson.

42. I am perplexed that, given the email messages, given the report of Mr. Olsson, all of which concluded that Brown and Random House had violated my rights, and given the many

similarities of expression that exist in the respective novels, Plaintiffs could nevertheless now contend that I did not have a reasonable basis for taking the positions I did.

43. Plaintiffs' false and speculative assertions, without the benefit of any evidence whatsoever, that I engaged in a scheme to piggyback my novels on the success of Code is utter and total rubbish. Indeed, I find it repulsive that someone who has stolen from me now has the temerity to accuse me of having used the success of the infringing novel to market the sale of my books.

44. First, there are great thematic and specific expressive similarities among my novels and Code, and it was inevitable that persons who read Code would also be interested in reading my novels.

45. Second, I freely admit that I have long used the internet to market the sale of my books, both fiction and non-fiction. I have done this since 1995, eight years before Random House seems to think I discovered the Web as an evil weapon against them. Many authors today also use the web effectively. Such marketing involves more than simply showing the covers of the books. It also includes a discussion of what the books are about. Like me, many such web sites also invite readers and potential readers to comment, not only upon the books themselves, but also on current issues that may be relevant to the books. If the issue is one of plagiarism, there is no legitimate reason why such an issue cannot be discussed.

46. Not surprisingly, Dan Brown also uses the internet to market his books. Exhibit "F" is a copy of an archived page from Mr. Brown's website. In pertinent part, it states:

Chillingly current and filled with more intelligence secrets than  
Tom Clancy, *Digital Fortress* ...

47. It is the height of hypocrisy for Random House to attribute bad motives to me for mentioning Brown and Code on my website when Brown himself compared his novel to those of Tom Clancy who, at the time, was a much better selling author than Brown.

48. Random House also claims that my inclusion of a reading group guide on my website was a sign of my bad faith. Yet Dan Brown, on his website, posted a similar document entitled "Book Group Questions." (Exhibit "G"). Random House cannot explain why it is wrong for me to post a readers' guide, but permissible for Brown to do the same thing.

49. The attitude of Random House that there was something untoward about engaging in such discussions on the internet shows just how far its hubris has taken it. Here we have the largest publishing house in the world objecting to a discussion between an author and his readers about violations to his intellectual property rights. I would not be surprised if the next step of Random House would be to commence legal action against someone for thinking bad things about one of its authors. The last time I looked at the Bill of Rights, the First Amendment was still there.

50. Third, I did not even mention plagiarism on my web sites until I received the expert report of John Gabriel Olsson who said that, in his expert opinion, this was the most "blatant, in-your-face" case of plagiarism he had ever seen. Small wonder that Random House wanted the Court not to consider expert testimony.

51. In summary, I did not stand on a soap box the day Code was published and claim my works had been plagiarized. It was months before I even read Code. What made me suspect that my books had been plagiarized were the email messages I received from readers. Even then, I did not rush forward with accusations, choosing instead to privately contact Random House to discuss what I perceived to be the uncanny similarities in the novels. After I was viciously

threatened by Random House for even having raised the subject, I contacted John Gabriel Olsson. His report confirmed what I had only suspected, namely, that plagiarism did exist. It was only then that I made my charges public.

52. Even at that point, I sought to avoid hopelessly expensive litigation with Random House. It was only after Random House rebuffed my further attempts to negotiate, choosing instead to litigate, that I counterclaimed for copyright infringement. As the accompanying memorandum of law shows, I had no choice but to counterclaim because my failure to do so would have resulted in being forever barred from ever asserting the claim. Once my claim was lost, Random House would have nothing more to gain in its declaratory judgment action.

53. It was bad enough that Brown and Random House had stolen my intellectual property. I could not possibly allow them to take a victory on a silver platter. My rights were violated, and I believe that my resistance of the claims of Brown and Random House was, not only in my interests, but in furtherance of the fundamental purposes of the Copyright Act and all authors writing and publishing in this country. Random House should not be allowed to bully authors or journalists or private citizens who allege plagiarism against one of their authors.

54. Annexed as Exhibit "H" are my redacted tax returns for 2003 and 2004. They show that an award of over \$300,000 against me would bankrupt me.

Dated: September \_\_, 2005  
Sonoma, California

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LEWIS PERDUE

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Dated: September 16, 2005  
Sonoma, California

  
LEWIS PERDUE