

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DAN BROWN and RANDOM HOUSE, INC.,

Plaintiffs,

against

LEWIS PERDUE,

Defendant.

Civil Action No.

Index No. 04 CV. 7417 (GBD)

ECF CASE

-----X
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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**DEFENDANT AND COUNTERCLAIM PLAINTIFF LEWIS PERDUE'S
MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF/COUNTERCLAIM DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS, OR, IN THE ALTERNATIVE,
SUMMARY JUDGMENT ON PLAINTIFF'S DECLARATORY JUDGMENT CLAIM
AND IN SUPPORT OF PLAINTIFFS' AND COUNTERCLAIM DEFENDANTS' MOTION TO
DISMISS THE COUNTERCLAIMS, OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT ON THE COUNTERCLAIMS**

COZEN O'CONNOR, a Professional Corporation
909 Third Avenue, 17th Floor
New York, New York 10022
Telephone: (212) 509-9400
Facsimile: (212) 644-7485

Of Counsel:

Donald N. David, Esq. (DD 5222)
Kenneth G. Schwarz, Esq. (KS 6807)
Bruce N. Lederman, Esq. (BL 6371)
Brian A. Bloom, Esq. (BB 5722)
Scott M. Kessler, Esq. (SK 5510)

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PRELIMINARY STATEMENT

The Defendant and Counterclaim Plaintiff, Lewis Perdue ("Perdue"), is an extremely successful author, having had nineteen of his books published,¹ twelve of which are fiction² and seven of which are non-fiction. Although exact sales figures of Perdue's books are not known because of the bankruptcy of his earlier publisher, Pinnacle Books, approximately 2.5 million of his books have been sold according to Pinnacle documents. In contrast, Plaintiff Dan Brown ("Brown") was an almost completely unknown author until the publication of *The Da Vinci Code* ("*Da Vinci Code*") in 2003.³

In 1985, Publisher Donald I. Fine, Inc. published a Perdue novel entitled *The Linz Testament* ("Linz"). In 1988, *Linz* was again published by Pinnacle/Kensington Publishing. Thereafter, Perdue extensively re-worked *Linz* into *Daughter of God* and in 2000 *Daughter of God* was published by Tom Doherty Associates LLC. *Daughter of God* has received extensive critical acclaim, some critics being of the opinion that it is considerably superior to *Da Vinci Code*, which was published three years later.

One of the many other novels authored by Perdue is *The Da Vinci Legacy* ("Legacy"), which was published by Pinnacle Books in 1983. Although Perdue's copyright infringement claims in this action are based primarily on *Daughter of God*, *Legacy* is mentioned because Brown also plagiarized many of the elements of *Legacy* in writing *Da Vinci Code*.⁴

¹ The 20th book is scheduled to be published in September 2005.

² The 13th work of fiction will be published in September, 2005.

³ During an interview conducted on May 8, 2004, Jason Kaufman, Brown's editor, indicated that Brown's earlier three novels had sold only 20,000 copies prior to the publication of *Da Vinci Code*.

⁴ For example, on page 18 of *Legacy*, Perdue made a mistake by stating that Leonardo's Codex was written on parchment. In fact, it was written on linen. In *Da Vinci Code*, page 300, Brown made the same mistake. According to *Nimmer on Copyright* § 13.03 [C], p. 13 – 78.8 "the courts have regarded the existence of common errors in two similar works as the strongest evidence of copying as a factual matter." Realizing that, Elizabeth A. McNamara, one of Plaintiff's attorneys, includes as Exhibit "F" to her affidavit ("Exhibit 'F'") an obscure page from a website of LabView and FieldPoint that also indicates that the Codex was written on parchment. Because of the obscure nature of the website page, it is extremely unlikely that Brown ever even saw that page before writing *Da Vinci Code*. Absent an affidavit from Brown, there is no basis for the Court to conclude that Brown ever saw Exhibit "F."

In a rush to end this action almost before it has begun, Plaintiffs⁵ have asked that a motion for judgment on the pleadings and one to dismiss be converted to a motion for summary judgment. In cases of copyright infringement involving novels, Plaintiffs contend that all that is required in virtually every case is for the Court to simply read the novels to determine whether there is any basis upon which a jury could find “substantial similarity” of the “protected elements” contained in the competing novels. Relying upon *no admissible evidence whatsoever*, and instead based solely upon their unsubstantiated shoot-from-the-hip “say-so,” Plaintiffs wrongly contend that, by mistaken and misrepresented descriptions of Brown’s own work, and unassisted by evidence of any kind, the Court can determine the genre of the novels, can determine the scenes typically found in novels of that genre, can distinguish historical facts from those that are simply “made up,” and can effectively “throw away” the use of significant and important ideas that are essential elements of the plots of each story. Plaintiffs, struggling to show that the novels have nothing in common, rip out the guts of *Daughter of God*, thus misrepresenting what the novel is really about and focus exclusively on dissimilarities, while ignoring the substantial similarities shared by both novels.

Both novels tell the same story. They are stories about religion and religious discovery. They both involve anthropomorphic notions as to the sexuality of God. They both involve the belief that predominated in earlier times, which belief still exists today, that God is a union of the male and female. They both involve the efforts of the Roman Emperor Constantine and the Catholic Church in the fourth century to change the notion of God from one having both male and female components to one that is male only. Both novels involve a woman who is a symbol of the Great Goddess, also presented as the lost female component of God. Both novels involve

⁵ All references to “Plaintiffs” in this memorandum are intended to include the Counterclaim Defendants who have joined in the motion.

physical evidence that proves the existence of the Great Goddess. In both novels, the discovery of that physical evidence will rock the foundations of the Catholic Church. In both novels, the Catholic Church is aware of the existence of that physical evidence and seeks to keep the world from learning of its existence. In both novels, rival groups or organizations seek to obtain possession of the physical evidence for different reasons. In both novels, one of the two rival organizations is part of the Catholic Church. In both novels, the organizations that are part of the Catholic Church seek to obtain the physical evidence in order to blackmail or coerce the Pope. Both novels involve a remarkably similar hero and heroine possessing remarkable abilities who unwittingly and unwillingly become caught up between the rival organizations seeking to obtain possession of the physical evidence. In both novels, the lives of the hero and heroine are threatened as a result of the quest for the physical evidence. In both novels, the hero and heroine are guided by obscure, artistic, historically based and other clues and are called upon to solve mysteries in furtherance of the quest for the physical evidence. Works of art are very important in both novels. In both novels, a gold key is hidden in or behind a work of art. In both novels, the gold key, which does not turn a lock, can be used to open a box in either a bank in Zurich or a branch of a Zurich bank. In both novels, the hero and heroine find combination-locked objects in the Zurich bank boxes that will help them locate the physical evidence. In both novels, the heroine expresses the belief that the object of the quest has found her and not the other way around. Early in both novels, a man in control of a treasure trove of art is murdered. In both novels, the hero and heroine are forced to rely upon the assistance of a person who first appears to be their friend, but who later turns out to be their mortal enemy. In both novels that so-called friend threatens the lives of the hero and heroine. In both novels, the heroine is at first unaware that God was once considered as having both male and female attributes. In both novels, once

the heroine becomes aware of the male/female nature of God, she undergoes a personal transformation. In both novels, the physical evidence is either not found or is lost. Towards the end of both novels, there is an expression of the belief that actual possession of the physical evidence is not as important as is the belief in what the physical evidence represents. All of these events happens in substantially the same order and context. The substantial similarities between the two novels, including actual dialogue, go on and on and will be discussed later in this brief.

In deciding this motion, it should be remembered that Brown and Random House are the ones who fired the opening salvo by suing Perdue for a declaratory judgment. It was only after Plaintiffs commenced this action that Perdue counterclaimed for copyright infringement. If the novels are really as dissimilar as Plaintiffs contend, and if they have absolutely nothing in common, one must wonder why Plaintiffs have elected to go to the time, trouble and expense of bringing this lawsuit. As Perdue demonstrates in this brief, Plaintiffs commenced this action because the novels are substantially similar. Once discovery is commenced and completed, the evidence will show that Brown plagiarized *Daughter of God* when he wrote *Da Vinci Code*.

STATEMENT OF FACTS

In their rush for summary judgment, Plaintiffs have sped right past the heart and substance of both *Daughter of God* and *Da Vinci Code*. Consistent with their approach, Plaintiffs would undoubtedly call Homer's *Odyssey* a boating story, Dostoyevsky's *Crime and Punishment* a crime story, or Kafka's *Metamorphosis* a mystery/thriller about a giant bug. While offered tongue-in-cheek, the foregoing illustrates that a party's unilateral use of labels to pigeon hole a novel into a genre to which it may or may not belong can lead to false results. Based upon nothing more than their unilateral use of a "genre" label such as "thriller," "mystery," "mystery/thriller," or "murder mystery," Plaintiffs set into motion a series of conclusions and observations that cannot be justified by the novels themselves.

The inclusion of certain themes in both novels is anything but typical of such genre. Simply stated, notions of a divine feminine, the unity of the male and female in pagan worship, the importance of Sofia, the "Great Goddess" of the Gnostic Gospels, the fact that history is relative and is controlled by victors, not losers, the importance of the Roman Emperor Constantine in requiring a transition from a female to a male dominated religion, as well as to create a unified religion having a common dogma, the quest not only for physical objects, but for spiritual fulfillment as well, are not the type of things that are common to the mystery/thriller genre. Lewis Perdue first incorporated those elements in a novel when *Linz Testament* was published in 1985. Perdue later extensively re-worked *Linz Testament* into *Daughter of God*, which was published in January 2000.⁶ Dan Brown was the second to incorporate those elements in 2003 when Random House published *Da Vinci Code*. That is a chronological fact that cannot be disputed by the Plaintiffs in this action.

Plaintiffs have also woefully overlooked the important use of symbols in both novels. Based both on a reading of *Da Vinci Code* itself, as well as statements by Brown and his publisher, Brown has constructed a novel that rejects the sort of literal interpretation given to it by Plaintiffs in this action.⁷

⁶ The novel was actually on store shelves in December 1999.

⁷ For example, the surname of Brown's heroine, Sophie Neveu, is translated as meaning "New Eve." Likewise, the name "Zoe" of Perdue's heroine, Zoe Ridgeway, means "Eve." And, of course, Sophie and Sophia are the same name meaning "wisdom" and also names of the Great Goddess. Furthermore, the names of a number of the other characters in *Da Vinci Code* have a symbolic meaning. Jonas Faukman is Langdon's editor in Brown's novel. Faukman is an anagram of Kaufman. Jason Kaufman is Brown's real-life editor. Bezu Fache, is the top police investigator in Brown's novel. Bezu is a name taken from Holy Blood, Holy Grail. Fâche, in French, means "angry." Fache is constantly portrayed as angry. "Fache carried himself like an angry bull." (DVC:21). Similarly, Marie Chauvel, Sophie Neveu's grandmother, is named for an actual historical figure, Marie Chauvel de Chauvigny, a bishop and head of the Église Gnostique Apostolique, the French Church of Gnostic Apostles (<http://www.gnostique.net/ecclesia/succession.htm>). Jacques Sauniere, the murdered Da Vinci Scholar was an actual priest interested in occult and Grail. [Taken from Holy Blood, Holy Grail.] Andre Vernet was head of Swiss Bank in Brown's novel. In real life, Vernet was Emeritus French professor at Exeter and was one of Brown's teachers.

The elements of both *Daughter of God* and *Da Vinci Code* that are discussed below are used in both novels to achieve the same results in the same way. The basic plots involve the unwitting and unwilling search by a remarkably similar hero and heroine to locate extraordinary documents and relics that prove the divinity of the identical sacred woman who had been wronged by the church and who is a symbol for the Great Goddess. The documents will shake the foundations of the Catholic Church. Key to the documents is proof that the church has conducted a spin campaign to smear the Goddess in order to support the male-domination in church ranks. The actions are called a cover-up. The cover-up is necessary because Jesus was a feminist.

The quests are launched by the murders of art experts who are curators of fabulous collections. Immediately before their deaths, the art experts, through various clues, gave the hero and heroine cryptic and puzzling clues to find the things they were looking for. The message is an awesome religious puzzle that provides the heroine a clue leading to a painting that was painted on wood. The painting provides the heroine with a gold key. Gold keys are rare in the real world because of their impracticality due to gold's softness. The golden key provides access to a safe deposit box in a Zurich Bank. The contents of the container from the safe deposit box are another puzzle that sends them on a quest for a container of religious relics and documents.

The Quest is further complicated by a secretive brotherhood with a contentious relationship with the Vatican headed by a man of the cloth who believes the Catholic Church has strayed and that his Brotherhood's way is the true faith. The hero and heroine are stalked by people who are intent on killing them and who are seeking the religious relics and documents themselves. The hero and heroine need help for the journey and turn to a shapeshifter who joins the Quest. The Shapeshifter manipulates the hero and heroine. The shapeshifter has no

compunction about killing those close to him. The shapeshifter has an intense emotional relationship with the Catholic Church and is motivated by that. The shapeshifter almost wins but ultimately loses the prize. In the end, the hero and heroine realize that faith in the ideas behind the physical objects of their quest is more important than the physical objects themselves.

The elements used by both authors are virtually the same, if not identical. The following are elements that are common both to *Daughter of God* and *Da Vinci Code*.

A. The Role of the Female

Da Vinci Code and *Daughter of God* tell essentially identical stories. The conceptual starting point of both novels involves the notion that in the so-called pagan religions, as well as in early Christianity, the female played a much more important role than today. Significantly, *Da Vinci Code* is not so much about the marriage of Jesus and Mary Magdalene as it is about the larger issue of the suppression of the divine feminine in Christianity. The marriage of Jesus and Mary Magdalene is merely symbolic of that suppression. The issue of symbolism is vital in understanding the substantial similarity between the novels. Brown has plagiarized Perdue's symbolism time after time. And both authors have clearly stated their use of symbolism in the characters, the names chosen, etc.

In antiquity, the female was believed to have been the ultimate Creator or to have shared in the divinity of God. This Goddess was considered as being a part of the deity by ancient peoples. In addition, the sexual union between man and woman had religious overtones and was anything but prurient. That changed and both novels explore the identical ways in which that change came about. References to "DOG" mean *Daughter of God*. References to "DVC" mean *Da Vinci Code*. The items in the tables are taken *verbatim* from the novels. The foregoing represent themes that are common both to *Daughter of God* and to *Da Vinci Code*.

1. Discussion of the Sexual Union of Man and Women in the Novels

<p>Most sex laws control the behavior of women and not men. Men transgress with a wink and a nod; women get pilloried, shunned or burned at the stake. Over the ages, the male-centric religious spin doctors couldn't handle the incomprehensibly sensual nature of the Great Goddess Creator, so they gradually marginalized her into a local fertility deity and turned sex from a pleasurable, spiritual experience into a dirty little act. It was about the only way their big heads could exercise any control over their little heads. DOG, p. 110</p>	<p>Women, once celebrated as an essential half of spiritual enlightenment, had been banished from the temples of the world. There were no female Orthodox rabbis, Catholic priests, nor Islamic clerics. The once hallowed act of Hieros Gamos—the natural sexual union between man and woman through which each became spiritually whole—had been recast as a shameful act. Holy men who had once required sexual union with their female counterparts to commune with God now feared their natural sexual urges as the work of the devil, collaborating with his favorite accomplice . . . <i>woman</i> DVC, p. 125</p>
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B. The Great Goddess is Re-cast as Being Evil

Both novels discuss how the early church re-cast the Great Goddess into something that was evil.

<p>The serpent and leaf of the sycamore fig - that's what that is -- "Thalia pointed to the stone "Are two of the most potent symbols of the Great Goddess. That's why the authors of Genesis represented Satan as a snake - they were saying the Great Goddess was evil. They had to make her look as bad as possible so that they could close her temples and forbid her worship. DOG, p. 204</p>	<p>As part of the Vatican's campaign to eradicate pagan religions and convert the masses to Christianity, the Church launched a smear campaign against the pagan gods and goddesses, recasting their divine symbols as evil. DVC, p. 37</p>
<p>Thalia nodded. "I think the conference at Nicea was really as much about Sophia as it was Christ. The orthodox Christians had changed Wisdom to the male word, Logos. The real fight, the real heretics were those who argued that the church should return to its roots - to Sophia and not Logos - and acknowledge that she was an original and inseparable part of the Creator. They argued that it was wrong to try and restrict God to one sex or one form or as the God</p>	<p>The Priory believes that Constantine and his male successors successfully converted the world from matriarchal paganism to patriarchal Christianity by waging a campaign of propaganda that demonized the sacred feminine, obliterating the goddess from modern religion forever. DVC, p. 124</p>

of just one people. They said this set a human limit on the limitless and that was blasphemy.” “They obviously lost.” DOG, p. 205	
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C. The Role of the Emperor Constantine

The Emperor Constantine is central to both novels.⁸ While many historians dispute the contention, both novels state that the Roman Emperor Constantine, known as the first Christian Emperor, was not baptized a Christian until he was on his death bed. Before his baptism and death, Constantine convoked the Council of Nicea. At the time of the Council, unrest existed between the Romans, who worshiped many pagan gods, and the early Christians. In addition, there were disagreements among early Christians regarding certain pivotal religious issues. By importing some of the elements of the pagan religion into Christianity, Constantine made Christianity acceptable to the pagans and caused many to convert to Christianity. In addition, the Council of Nicea determined the acceptable boundaries of Christian dogma for the first time. Through his military might, Constantine enforced the dogma that had been promulgated by the Council.

In a nutshell, as a result of Constantine and the Council of Nicea, the following changes occurred:

- Christianity officially became a male dominated religion in which the female played little or no role.⁹ Religious texts arguing to the contrary were suppressed.
- The celebratory nature of the sexual union between man and woman in religious ritual was eliminated.

⁸ None of the exhibits to the moving affidavit of Elizabeth McNamara list a source to Constantine that was used by Brown in writing *Da Vinci Code*.

⁹ Christianity had grown increasingly male dominated as it moved away from its roots, something that was little known, but which Brown and Perdue wrote about.

- The divinity of Christ as a member of the Holy Trinity consubstantial to the Father and the Holy Spirit was declared to be a matter of dogma. Both Brown and Perdue assert this dogma and Christ's divinity was by a vote to be enforced by Constantine's military might. Many historians vociferously dispute this.

The stories in both novels are frontal assaults on Constantine and the determinations made by the Council of Nicea. That is hardly typical of the mystery/thriller genre. In addition, neither author sticks to the "party line" of historical consensus, but instead express identical interpretations of history in order to further the plots.

1. Discussion of Constantine In the Novels

<p>No, but I think he was the first true master at shaping religion to help consolidate governmental power. He saw that this new religion wasn't going away, and that over the previous three centuries it had been a destabilizing influence on the rule of the empire. He saw it as clearly a growing force so, instead of fighting it, he co-opted it. He controlled the Church for his own purposes and shaped theology for the sake of political expediency. DOG, p. 16</p>	<p>Historians still marvel at the brilliance with which Constantine converted the sun-worshipping pagans to Christianity. By fusing pagan symbols, dates, and rituals into the growing Christian tradition, he created a kind of hybrid religion that was acceptable to both parties. DVC, p. 232</p>
<p>So many things that people today think are divinely inspired were actually Constantine's political edicts enforced by the power of the sword."</p> <p>"Such as?"</p> <p>Seth thought for a moment. He sipped at his wine and turned toward the window to gaze at the setting sun. Finally, he turned back toward Zoe and said: "How about something that is about as fundamental to the Christian Church as you can get: The Trinity."</p> <p>Zoe frowned.</p>	<p>Constantine needed to strengthen the new Christian tradition, and held a famous ecumenical gathering known as the Council of Nicaea."</p> <p>Sophie had heard of it only insofar as its being the birthplace of the Nicene Creed.</p> <p>"At this gathering," Teabing said, "many aspects of Christianity were debated and voted upon—the date of Easter, the role of the bishops, the administration of sacraments, and, of course, the <i>divinity</i> of Jesus."</p> <p>"I don't follow. His divinity?"</p>

<p>"There was absolutely no agreement in the Christian Church that Jesus was to be worshipped on an equal basis as God. Indeed, you could find a lot of solid evidence that Jesus himself would not be happy with this. DOG, p. 16</p>	<p>"My dear," Teabing declared, "until <i>that</i> moment in history, Jesus was viewed by His followers as a mortal prophet. . . a great and powerful man, but a <i>man</i> nonetheless. A mortal."</p> <p>"Not the Son of God?"</p> <p>"Right," Teabing said. "Jesus' establishment as 'the Son of God' was officially proposed and voted on by the Council of Nicaea." DVC, p. 233</p>
<p>And so it is that the Trinity – the undisputed centerpiece the Christian religion – was legislated at the point of a sword by a fellow who wasn't even a Christian at the time and it was not for the faith <u>but to restore civil order</u>. DOG, p. 17</p>	<p>Hold on. You're saying Jesus' divinity was the result of a <i>vote</i>?</p> <p>"A relatively close vote at that," Teabing added. DVC, p. 233</p> <p>Nonetheless, <u>establishing Christ's divinity was critical to the further unification of the Roman empire</u> and to the new Vatican power base. By officially endorsing Jesus as the Son of God, Constantine turned Jesus into a deity who existed beyond the scope of the human world, an entity whose power was unchallengeable. This not only precluded further pagan challenges to Christianity, but now the followers of Christ were able to redeem themselves <i>only</i> via the established sacred channel—the Roman Catholic Church. DVC, p. 233</p>
<p>"But Constantine is known as the first Christian emperor," Zoe said.</p> <p>"Only on his deathbed," Seth said. "Sol Invictus, the Sun God was his main deity until the last hours of his life. For the most of his life, Christianity was a political power tactic for Constantine, a method of governing rather than a religion." DOG, p. 15-16</p>	<p>"I though Constantine was a Christian," Sophie said.</p> <p>"Hardly," Teabing scoffed. "He was a lifelong pagan who was baptized on his deathbed, too weak to protest. In Constantine's day, Rome's official religion was sun worship – the cult of <i>sol Invictus</i>, or the Invincible Sun – and Constantine was its head priest." DVC, p. 232¹⁰</p>
<p>But back in 324 or so A.D. the issue came to a head with a bishop named Arius, the presbyter of Alexandria, who was</p>	<p>Unfortunately for him, a growing religious turmoil was gripping Rome. Three centuries after the crucifixion of Jesus</p>

¹⁰ Note that the context is exactly the same in both segments.

<p>preaching that Jesus “The Son” had been created, begotten by God “The Father” and, therefore, was not quite as divine. Others disagreed and there were riots in the streets all over the Empire caused by this and maybe another half-dozen major theological issues. This doctrine spread like wildfire and with it more riots and bloodshed.</p> <p>Riots in the streets are not something an Emperor likes to see. The whole thing truly baffled him. He called the issue ‘truly insignificant’ and was astounded when all the feuding parties ignored his directive to stop arguing. That’s when he called the Nicean conference. Church theologians today put a spin on the conference as a divinely inspired gathering of holy men guided to a common decision by the Holy Spirit. In reality, it was Constantine’s way of calling them all to a meeting behind the woodshed. DOG, p. 16-17</p>	<p>Christ, Christ’s followers had multiplied exponentially. Christians and pagans began warring, and the conflict grew to such proportions that it threatened to rend Rome in two. Constantine decided something had to be done. In 325 A.D., he decided to unify Rome under a single religion. Christianity. DVC, p. 232</p> <p>"It was all about power," Teabing continued. "Christ as Messiah was critical to the functioning of Church and state. Many scholars claim that the early Church literally <i>stole</i> Jesus from His original followers, hijacking His human message, shrouding it in an impenetrable cloak of divinity, and using it to expand their own power. I’ve written several books on the topic." DVC, p. 233</p>
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D. Integration of Pagan Practices: Worship God on Sunday

Both novels contain a discussion about how Christianity adopted pagan practices into the Christian religion.

<p>For the church to prevail, it also needed to reach an accommodation with the pagan Romans. This is why the day set aside for worshipping Sol, the Sun god became our Sunday. And why the birth dates of the Roman god Mithra – December 25 – became the birth date of our Savior. There are scores and scores of such incorporation of pagan practices. DOG, p. 80</p>	<p>Nothing in Christianity is original. The pre-Christian God Mithras—called <i>the Son of God</i> and <i>the Light of the World</i>—was born on December 25, died, was buried in a rock tomb, and then resurrected in three days. By the way, December 25 is also the birthday of Osiris, Adonis, and Dionysus. The newborn Krishna was presented with gold, frankincense, and myrrh. Even Christianity’s weekly holy day was stolen from the pagans. DVC, p. 232</p>
<p>“Just one of many things that Christianity and Judaism borrowed from the past. Incorporate enough of the old, forbidden religion to satisfy people’s cravings for it...co-opt and conquer, only the Great</p>	<p>"Originally," Langdon said, "Christianity honored the Jewish Sabbath of Saturday, but Constantine shifted it to coincide with the pagan’s veneration day of the sun." He paused, grinning. "To this day, most</p>

<p>Goddess has had the last laugh.” “How’s that?”</p> <p>“She was transmuted by the Greeks into Cybele and Artemis. But even after Constantine decreed an end to Goddess worship throughout his empire, the faithful simply converted those Goddess shrines into places to worship the Virgin Mary. This is one of the things that scares the ecclesiastical shit out of the old <i>schnorrers</i> in the Vatican. They <i>know</i> without a doubt that veneration of Mary is just thinly disguised Goddess worship.” DOG, p. 204-05</p>	<p>churchgoers attend services on Sunday morning with no idea that they are there on account of the pagan sun god’s weekly tribute—Sunday.” DVC, p. 232-33</p>
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E. The Divine Feminine in *Da Vinci Code* and *Daughter of God*

Both novels involve the existence of a divine feminine that stand in stark contrast to Constantine and the Council of Nicea. While the divine feminines have different names in each novel, they are essentially the same person. Furthermore, their existence plays an identical role in each novel. In *Da Vinci Code* the name of the divine feminine was Mary Magdalene. As discussed below, Mary Magdalene was really the Great Goddess of the Gnostic Gospels. According to *Da Vinci Code*, Magdalene was the wife of Jesus, with whom a child was born. According to *Da Vinci Code*, Mary Magdalene was to be the intended successor to Christ, a notion that was incompatible with dogmas proclaimed by the Council of Nicea.¹¹

The divine feminine in *Daughter of God* was Sophia. Sophia performed miracles and possessed many of the same attributes as Jesus Christ. It is a central thesis of *Daughter of God*

¹¹ Mary Magdalene also figures in *Daughter of God*. “You sounded like a lawyer when you talked about no women apostles as recognized by the orthodoxy. Does this mean there were women in this position, just not recognized?” “Most certainly,” Braun said. “Chief amongst them was Mary Magdalene. She and Peter got into some pretty hot arguments.” “And you know this because of the Gnostic Gospels?” Braun nodded. “Those and other holy scriptures.” “And they are just as valid as the books that were included?” “Just as valid, but terribly inconvenient to Constantine and the man who defined the institution we have today. Peter, you see, won his power struggle with Mary Magdalene which is why women are relegated as adjuncts, secondary worshipers in every church. Christianity had borrowed from Judaism and institutionalized the doctrine of male dominance in its new religion, rationalizing the authority to do so on spiritual grounds.” DOG, p. 79

that Sophia was a second messiah, albeit a female one. In the Gnostic Gospels, Sophia was the Great Goddess. Furthermore, Zoe was Sophia's daughter. Hence, Zoe Ridgeway, the heroine of *Daughter of God*, is to be viewed as the daughter of the Great Goddess. Like in *Da Vinci Code*, the notion of Sophia being a female messiah was incompatible with the dogmas proclaimed by the Council of Nicea.

F. The Heroines and Constantine

Prior to the events of the two novels, neither heroine, each of whom are the symbolic offspring of the Great Goddess right down to their names, knew anything of their connection to the Goddess or had any knowledge of Constantine or his role in suppressing the role of the Great Goddess in religion. Learning of these things was an epiphany and represented a spiritual awakening for both heroines. In *Da Vinci Code*, Sophie first learns this from Teabing. In *Daughter of God*, Zoe first learns this from her husband, Seth, and later from Thalia. The scenes in which these epiphanies occur is almost identical in both novels because they were both didactic presentations. The foregoing is not typical of novels of this genre nor is it a scene a faire in such genre.

G. The Physical Evidence of the Divine Feminine

Physical evidence of the divine feminine is critical in both novels. In *Da Vinci Code*, the physical evidence consisted of the bones of Mary Magdalene and well as certain documents establishing the bloodline of Mary Magdalene and Jesus Christ. From *Da Vinci Code*:

"Holy Grail is the literal meaning of Sangreal. The phrase derives from the French *Sangraal*, which evolved to Sangreal, and was eventually split into two words, *San Greal*." DVC, p. 162

According to *Da Vinci Code*, its heroine, Sophie Neveu, is a product of the royal bloodline of Jesus and Mary Magdalene. Hence, the heroines in both novels are portrayed as being of divine ancestry.¹²

In *Daughter of God*, the physical evidence consisted of the burial shroud of Sophia bearing her image as well as Roman documents that establish the divinity of Sophia as a second Messiah.

H. The Keepers of the Physical Evidence

Both novels have keepers of the physical evidence. In *Da Vinci Code*, the keeper of the physical evidence was the Priory of Sion. The last mentioned grand master of the Prior of Sion was Jacques Sauniere, who was the grandfather of the heroine, Sophie Neveu.¹³ While Sauniere did not have actual possession of the physical evidence, the unspoken fact in *Da Vinci Code* is that he knew where the physical evidence was located and could tell someone how to find it.

In *Daughter of God*, the original keeper of the physical evidence was the Catholic Church, which hid the evidence known as the Sophia Passion in the ground underneath St. Peter's Basilica in Rome. Eventually, after the evidence was removed, it was discovered by Hitler and the Nazis. While some of the Sophia Passion was in a salt mine in Austria, a part was in the possession of Willie Max, a former Nazi. In addition, Willie Max, like Jacques Sauniere in *Da Vinci Code*, was in possession of the means to locate the rest of the physical evidence.

It was for the express purpose of learning the location of the physical evidence in both novels that Sauniere in *Da Vinci Code* and Willie Max in *Daughter of God* were murdered.

¹² It is a central thesis of both novels that men and women share equally in the divinity of God. Hence, were Christ divine, but Mary Magdalene not divine, Christ would be infinitely more powerful than Mary. On the other hand, if both Christ and Mary were human, but not divine, there would be nothing royal about the bloodline. The only thing that makes sense in the context of the novel is that both Christ and Mary were divine.

¹³ Which is literally translated as "new Sophia." As *Da Vinci Code* itself points out, Sophia was the Greek Goddess of Wisdom. In addition, the Gnostic Gospels, which figure very heavily in both novels, identify Sophia as being the Great Goddess.

I. The Role of the Catholic Church

The Catholic Church was aware of the existence of both the Mary Magdalene physical evidence (Holy Grail) as well as the Sophia Passion. Either set of physical evidence could rock the foundations of the Catholic Church because they could undermine the actions of the Council of Nicea. Hence, the goal of the Catholic Church in both novels was to prevent the disclosure of the physical evidence.

1. Discussion of How the Disclosure of the Physical Evidence Would Undermine the Catholic Church

A woman's secret containing, "Something, Mr. Ridgeway, that would undermine one of the Church's strongest foundations." DOG, p. 56	A woman who carried with her a secret so powerful that, if revealed, it threatened to devastate the very foundation of Christianity! DVC, p. 239
We must find the Sophia Passion and make sure the world never learns the secret of Sophia – or the possibility that she and our Lord Jesus Christ may be two of many Messiahs that God has sent to teach and to test us. Revealing this secret would tear our institutions apart and in the end open the door for the enemies of the Faith. For, once people begin to question even one part, they will question every part. If they believe they have been deceived before, the trust can never be recovered. It would create only misery and death. DOG, p. 81	<p>Teabing resisted the urge to reveal how he had brilliantly implicated Opus Dei in the plot that would soon bring about the demise of the entire Church. That would have to wait. Right now there was work to do. DVC, p. 412</p> <p>"What happens to <i>those</i> people, Robert, if persuasive scientific evidence comes out that the Church's version of the Christ story is inaccurate, and that the greatest story ever told is, in fact, the greatest story ever <i>sold</i>."</p> <p>Langdon did not respond.</p> <p>"I'll tell you what happens if the documents get out," Teabing said. "The Vatican faces a crisis of faith unprecedented in its two-millennium history." DVC, p. 266-67</p>

J. The Competition to Obtain Possession of the Physical Evidence

In both novels, there were two organizations or people who would stop at nothing, including murder, to obtain the physical evidence. Each of the two organizations or people in each novel had different reasons for wanting to obtain the physical evidence.

In *Da Vinci Code* the competitors were Opus Dei and Sir Leigh Teabing. Opus Dei was headed by a Bishop Aringarosa, founder of Opus Dei. Years earlier, Opus Dei had been made a prelature of the Catholic Church. However, the Catholic Church became disenchanted with some of the methods employed by Opus Dei. As a result, the Pope threatened to end the status of Opus Dei as a prelature. Bishop Aringarosa sought to obtain the Mary Magdalene physical evidence to blackmail or coerce the Catholic Church into allowing Opus Dei to remain a prelature of the Church. The antagonist of Opus Dei in *Da Vinci Code* was Sir Leigh Teabing. Teabing was an historian who hated the Catholic Church and wanted the Mary Magdalene physical evidence to destroy the Church.

One of the antagonists in *Daughter of God* was The Congregation for the Doctrine of the Faith (“CDF”), an actual part of the Catholic Church. Significantly, the CDF is the current name for the Holy Inquisition. The historical acts of the Inquisition play a prominent role in both *Daughter of God* and *Da Vinci Code*, serving as a symbolic antagonist in latter novel. The head of CDF was an archbishop named Neils Braun. Braun was an ultraconservative Cardinal who believed that the Church’s liberalization had gone too far and that the only way to cure that and return the institution to its “true” roots was for him to become Pope. Thus, Braun needed the Sophia physical evidence in order to blackmail the Pope into resigning and having the College of Cardinals name him the new Pope. Hence, in both novels, the head of a religious organization of the Catholic Church sought to obtain the physical evidence to blackmail/coerce the Pope. In *Da Vinci Code* it was to allow Opus Dei to remain a prelature; in *Daughter of God* it was to allow

Neil Braun to become the new Pope. Braun's antagonist was the Russian KGB/Mafia, which wanted the Sophia physical evidence to blackmail the Church, as has been done by Hitler in World War II.

K. Similarities Between Opus Dei and the Congregation for the Doctrine of Faith

Both organizations felt that the Catholic Church had strayed from the "true path" as a result of the 20th Century Vatican Councils and wanted the Church to revert to its earlier conservative ways.

L. The Hero and Heroine as Unwilling Participants in a Contest that Is Not of Their Making

In both novels, the hero and heroine became unwilling participants in the struggle between the competitors to obtain the physical evidence. In *Da Vinci Code*, Robert Langdon is falsely accused of murdering Jacques Sauniere, grand master of the Priory of Sion and keeper of the Magdalene physical evidence. It was as much to clear his name and to avoid being arrested that Langdon unwillingly became enmeshed in the conflict between the competitors for the physical evidence. Likewise, Sophie Neveu became involved because Jacques Sauniere was her grandfather, because she knew that Robert Langdon was innocent and because she knew that her murdered grandfather wanted her to solve certain mysteries in order to preserve the secrets he guarded.

In *Daughter of God*, Seth and Zoe Ridgeway became involved in the struggle between the competitors for the physical evidence when Willie Max summoned them to Zurich to assess his art collection that had been stolen by Nazis in order to return the art to their rightful owners. Zoe is kidnapped by the Russian KGB/Mafia. Seth searches for her and, in the process, becomes a murder suspect like Robert Langdon of *Da Vinci Code* became a murder suspect.

As a result of their unwilling participation in the competition by third parties for the physical evidence of the divine feminine, the lives of the hero and heroine are repeatedly threatened. Ultimately, their lives are changed forever.

M. The Hero in Each Novel Could Accomplish Little Without the Heroine, and Vice Versa

The underlying theme of both novels is that the female had as much claim to divinity as the male and that, through their union, they become much more than the sum of their parts. That theme is expressed in the story line of both novels. That is a far cry from the usual mystery/thriller, where usually the male saves the female from a disaster. While sometimes the roles are reversed and it is the female who saves the male from a disaster, it is not common that neither the male nor the female can save even themselves from a disaster without the help of the other. Such mutual dependence is a throw back to ideas more prevalent in ancient times and symbolic of the divine feminine roles at the heart of both novels.

In *Da Vinci Code*, neither Neveu nor Langdon, acting alone, had the ability to unravel the clues left by Sauniere. Furthermore, Langdon probably would have been captured early in the novel, or possibly even been killed, were it not for the assistance of Neveu. Similarly in *Daughter of God*, by themselves neither Zoe nor Seth could have located the Sophia Passion were it not for the skills of the other. Likewise, as in *Da Vinci Code*, both Zoe and Seth would have been murdered were it not for the help of the other.

In short, the ancient view of the importance of the male/female union is lived out in the stories of the hero and heroine in each novel.

N. The Wolf in Sheep's Clothing

An important role is played in each novel by a character who, while first appearing to be a friend and an ally of the hero and heroine, later turns out to be a deadly enemy. In *Da Vinci*

Code, that character is Sir Leigh Teabing. In *Daughter of God*, that character is George Stratton. In Defendant's Answer in this action, that person is described as being a "shapeshifter." While shapeshifter is a standard archetype in some novels, they are expressed in very similar ways in both novels.

The hero and heroine in both novels join forces with the shapeshifter, not because they want to, but because they perceive no other alternative.¹⁴

In *Daughter of God*, the shapeshifter is George Stratton, an employee of the United States National Security Agency.¹⁵

The shapeshifters in both novels are used in the story in similar ways and in the same order and sequence, namely:

- They help the hero and heroine to escape those pursuing them.
- They help to save the lives of the hero and heroine.
- They appear to be the allies of the hero and heroine, but actually have their own agendas that are diametrically opposed to the hero and heroine.
- They attempt to kill the hero and heroine.
- They fail in their attempt to kill the hero and heroine.

¹⁴ In *Da Vinci Code*, Neveu and Langdon were on the run from the police and needed a place to hide. Because the home of Teabing was in the area, because he was known to Langdon and because he may have possessed knowledge regarding the mysteries created by Sauniere, Neveu and Langdon visit him at his home. At first, Teabing appears to be a friend. He helps Neveu and Langdon to flee to England on a private jet. He helps them to solve the clues left by Sauniere. However, as it later turns out, Teabing is actually one of the contestants for the physical evidence and was the mastermind behind the killings that occurred in the novel, including the killing of Sauniere. At one point, Teabing comes close to killing Neveu and Langdon.

¹⁵ After Stratton had saved Seth Ridgeway's life at least once, and after he had helped Zoe Ridgeway escape from the Russian KGB/Mafia, Seth realizes that he needs Stratton's protection from those who were trying to kill him and Zoe. Accordingly, Stratton joined Seth and Zoe in the search for the physical evidence. Unbeknownst to Seth and Zoe, Stratton was really working for Neil Braun, who, as mentioned above, wanted the physical evidence to blackmail the Pope. In the end, Stratton turns on Seth and Zoe, takes possession of the physical evidence, and attempts to kill Seth and Zoe.

- They either fail to obtain the physical evidence or the physical evidence is destroyed, thereby making it impossible for the evidence to be used to blackmail the Pope.

O. The Hero and Heroine Redefine the Meaning of Success

Both novels are similar, unusual and diverge greatly from the thriller genre in that the hero and heroine neither succeed nor fail in their quest, but rather come to a similar understanding that redefines the nature of success. In both novels, the hero and heroine are left understanding that it is not so much the actual possession of the physical evidence that is important as it is the understanding of what the physical evidence represents. Indeed, in the epilogue to *Da Vinci Code*, the author leads the reader to believe that Langdon has figured out the true location of the physical evidence. That fact becomes almost anticlimactic when Langdon makes no attempt to take actual possession of the physical evidence.

1. Discussion in the Novels of the Unimportance of the Physical Evidence

<p>Faith in the unseen is stronger than faith in things we can touch or see. The truest test of our faith in a supreme being is the willingness to believe without seeing. And in the long run, the Christian churches – all religions of all faiths, for that matter -- are better off without such visible signs. Because there will always be those who will see and never believe. But God will especially bless those who believe without seeing. DOG, p. 415</p>	<p>"It is the mystery and wonderment that serve our souls, not the Grail itself. The beauty of the Grail lies in her ethereal nature." Marie Chauvel gazed up at Rosslyn now. "For some, the Grail is a chalice that will bring them everlasting life. For others, it is the quest for lost documents and secret history. And for most, I suspect the Holy Grail is simply a grand idea. . . a glorious unattainable treasure that somehow, even in today's world of chaos, inspires us." DVC, p. 444</p>
<p>"Maybe the mystery is the point." He shrugged. "Maybe the mystery has to remain because we're looking at the infinite through finite eyes. Maybe what God really wants is not blind acceptance of dogma, but a lifetime of searching...discarding what is obviously false, testing the rest." DOG, p. 18</p>	

P. The Quest Finds the Protagonists – Not the Other Way Around, Which Would Have Been Common

In both novels, the reader is lead to the unmistakable conclusion that the hero and heroine were themselves pursued by the quest for the physical evidence. The following quotes are breathtaking in their similarity to each other.

<p>Zoe had loved art all her life with a passion that had driven her to make it her profession. But despite the satisfaction of spending her life surrounded by the world's most beautiful objects and historical antiquities, she had always dreamed of discovering buried treasure: unearthing a hitherto-unknown trove of priceless art that would be nearly impossible to value.</p> <p>Instead, <u>it had discovered her</u>. DOG, p. 3 (emphasis added)</p>	<p>You do not find the Grail, <u>the Grail finds you</u> And tonight, incredibly, the key to finding the Holy Grail had walked right through his front door." DVC, p. 273-74 (emphasis added)</p> <p>"Gentlemen," Sophie <i>said</i>, her voice firm. "To quote your words, "You do not find the Grail, <u>the Grail finds you</u>. I am going to trust that the Grail has found me for a reason, and when the time comes, I will know what to do." DVC, p. 295 (emphasis added)</p> <p><u>The Grail found us</u> all, and now she is begging to be revealed. We must work together. DVC, p. 410 (emphasis added)</p> <p>He smiled. "Our paths together could not be more clear. <u>The Grail has found us</u>." DVC, p. 412 (emphasis added)</p>
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Q. Sophia, the Great Goddess

The heroine in *Daughter of God* is Zoe Ridgeway. As Lewis Perdue indicates in his Declaration, Zoe means "life" in Greek. The corresponding Hebrew name (also meaning "life") is Eve. Indeed, Zoe and Eve are common matching names for identical twins. In the Gnostic Gospels (also know as the Nag Hammadi manuscripts) Zoe is the daughter of Sophia and was known as Eve when sent by her mother to give life to Adam. "After the day of rest Sophia sent her daughter, Zoe being called Eve, as an instructor in order that she might make Adam, who had no soul, arise so that those whom he should engender might become containers of life." Nag

Hammadi text, *On the Origin of the World*, (115:31-35).) Zoe can thus be interpreted as either the daughter of wisdom or the daughter of God. Hence the title of Perdue's novel.

While *Da Vinci Code* is, on its face, about Mary Magdalene, and *Daughter of God* is about Sophia, the Declaration of Lewis Perdue establishes that Mary Magdalene is Sophia, the Great Goddess.

Furthermore, Brown writes in *Da Vinci Code*: "The Priory of Sion, to this day, still worships Mary Magdalene as the Goddess, the Holy Grail, the Rose, and the Divine Mother." (DVC:Ch60). The evidence is indisputable that Brown and Perdue were talking about the same person.

1. Discussion of Sophia from the Two Novels

That's also the reason the Romans and my people had to kill the man Jesus. He believed in women as equals; the Jewish and Christian Gnostics saw God as both male and female; the Essenes who wrote the Dead Sea Scrolls also believed that God was both man and woman. They couldn't even censor all the old religious scriptures to their liking. The Book of Proverbs and the Wisdom of Solomon are pretty clear when they refer to Wisdom as female. Sophia is the Greek word for wisdom." DOG, p. 205

Langdon was nodding enthusiastically. "Yes, *Sophia* literally means *wisdom* in Greek. The root of your name, Sophie, is literally a 'word of wisdom.'" DVC, p. 320

R. History in the Two Novels

It is ironic that while the two novels besmirch history, Plaintiffs contend that many of the similarities between the two novels are unprotected historical facts.¹⁶ Indeed, the authors of both novels express a dim view regarding the accuracy of so-called historical facts. More

¹⁶ It is important to keep in mind that while historical facts are not protected, the way in which those facts are presented, the context of presentation by the same characters in the same way, the order in which the facts are presented and the manner in which the characters interpret their validity and significance are all protected expression and are virtually identical in both novels.

importantly, both authors interpret history in identically different variations from “accepted” historical and theological dogma and express those interpretations in astoundingly similar ways.

But like Constantine, we know very well that our holy Scriptures and the history of our faith and religion have been re-written, edited and altered to fit the exigencies of many different times DOG, p. 28	[H]istory is always written by the winners. When two cultures clash, the loser is obliterated, and the winner writes the history books—books which glorify their own cause and disparage the conquered foe. As Napoleon once said, ‘What is history, but a fable agreed upon?’ "He smiled. "By its very nature, history is always a one-sided account. DVC, p. 256
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S. The Gold Keys

Although gold, because of its softness, is unsuitable for making keys, both novels feature gold keys. In both novels, the gold keys are hidden in or behind a painting. In both novels, the gold keys will be used to unlock a box in a Zurich bank. In both novels, the contents of the boxes in the Zurich banks will enable the hero and heroine to find the physical evidence. In both novels, the hero and heroine do find materials that tell them how to find the physical evidence.

In *Da Vinci Code* and *Daughter of God*, the following sequence of events takes place precisely as presented in BOTH books and are identical in events, pacing, tone and sequence in both books:

- A slain curator of art leaves a gold key,
- Concealed in a work of art,
- Painted on wood.
- That work of art is named for the divine feminine at the center of the book.
- The gold key is not a traditional key that opens a tumbler. Indeed, owing to gold's softness and malleability, a key made of it is patently impractical and, for that reason, not employed by banks, Swiss or otherwise.

- This unique gold key is left (with no instruction) for the book's heroine
- Who is, herself, a symbol of and related to the divine feminine.
- The gold key allows access (but does not turn a lock) to a safe deposit box in a Zurich bank.
- At the Zurich bank, the Protagonists are met by an elderly old world Banker and taken to a viewing room that is identical in appearance and appointments in both banks..
- While at the bank, the Protagonists make an error in behavior that could tip-off the bank officials they are not legitimate. But the moment passes.
- Finally, in a unique scene, seen in no other thriller, the Protagonists must break OUT of a bank
- The contents of the container holds additional clues to finding the object of their search that send the hero and heroine to a foreign country.
- The object of their search is a set of physical evidence and documents relating to the divine feminine at the heart of the book.

T. Women, The Goddess, Creation and How God Became a Male

In both novels, the subjects of women, the Goddess, Creation and How God became a male are critical.

<p>The Goddess was about creation - the world, life. Procreation is sexual and from the earliest days it has been a woman's function, something men felt they had no control over. This was a problem. They needed to exert control and since they couldn't really control their own urges, they decided to control the object of the urge. DOG, p. 110</p>	<p>"I should add," Teabing chimed, "that this concept of woman as life-bringer was the foundation of ancient religion. Childbirth was mystical and powerful. Sadly, Christian philosophy decided to embezzle the female's creative power by ignoring biological truth and making <i>man</i> the Creator. Genesis tells us that Eve was created from Adam's rib. Woman became an offshoot of man. And a sinful one at</p>
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	that. Genesis was the beginning of the end for the goddess." DVC, p. 238
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U. Mother Earth

Both novels contain discussions of Mother Earth

<p>"What's more, women's bodies were in tune with nature, the moon and showed all the same sorts of mysterious cycles as the world around them."</p> <p>"Which, I assume, is why we still have mother earth, mother nature."</p> <p>"Absolutely. You can try to cover up the Great Goddess but you can't get rid of her. Also remember, these cultures were matrilineal – inheritance and the family name passed along the mother's side of the family since they had no idea that guys had anything to do with it." DOG, p. 161</p>	<p>Early religion was based on the divine order of Nature. The goddess Venus and the planet Venus were one and the same. The goddess had a place in the nighttime sky and was known by many names—Venus, the Eastern Star, Ishtar, Astarte—all of them powerful female concepts with ties to Nature and Mother Earth.. DVC, p. 36</p> <p>Mother Earth had become a <i>man's</i> world, and the gods of destruction and war were taking their toll. The male ego had spent two millennia running unchecked by its female counterpart. The Priory of Sion believed that it was this obliteration of the sacred feminine in modern life that had caused what the Hopi Native Americans called <i>koyanisquatsi</i>—life out of balance—an unstable situation marked by testosterone-fueled wars, a plethora of misogynistic societies, and a growing disrespect for Mother Earth. DVC, p. 125-26</p>
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V. How People Created God

A theme of both novels is that people create their own gods.

<p>"So you're saying people create the god they need," Zoe said uneasily as the sounds of the previous night, her first prayer in years, echoed clearly in her mind.</p> <p>"According to that theory, God is a human creation devised for the expediency of explaining the unknown and they change him – her – to suit their needs." DOG, p. 202</p>	<p>"Constantine's Bible has been their truth for ages. Nobody is more indoctrinated than the indoctrinator."</p> <p>"What he means," Langdon said, "is that we worship the gods of our fathers."</p> <p>"What I mean," Teabing countered, "is that almost everything our fathers taught us about Christ is <i>false</i>. As are the stories</p>
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	about the Holy Grail." DVC, p. 235
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W. Origins of Communion - God eating

Both novels contain discussions about communion.

Worship and communion involved eating the fruit of the sycamore fig – fruit that was more like clusters of grapes than the figs we usually think of. When the devout consumed the fruit, they were partaking of the body of the Goddess. DOG, p. 204	And virtually all the elements of the Catholic ritual—the miter, the altar, the doxology, and communion, the act of "God-eating"----were taken directly from earlier pagan mystery religions. DVC, p. 232
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POINT I

**PLAINTIFFS HAVE NOT MADE THE EVIDENTIARY SHOWING
REQUIRED ON A MOTION FOR SUMMARY JUDGMENT**

A. Plaintiffs Should Not Be Awarded Summary Judgment Because of the Absence of an Evidentiary Basis.

The absence of an admissible evidentiary basis for many of Plaintiffs' arguments proves the motion is premature. No discovery has been had. In order for the rival parties to establish their cases, they must rely upon matters outside the novels themselves. The fact that Plaintiffs have relied upon matters outside the novels proves the point. Not only have Plaintiffs relied upon matters for which no admissible evidence has been presented, but they have failed to submit an affidavit of Plaintiff, Dan Brown, author of *Da Vinci Code*. Without an affidavit of Dan Brown, Plaintiffs may not argue, as they do, that *Da Vinci Code* was based on extensive research.¹⁷ Indeed, without such evidence, one would be equally justified in concluding that Dan Brown conducted no research and that all of his references to the Divine Goddess, to

¹⁷ Plaintiffs' Rule 56.1 Statement, ¶ 2.

Constantine, etc., were simply copied from Perdue's *Daughter of God*.¹⁸ Furthermore, there is no evidentiary basis in the record for concluding that the "historical facts" contained in *Daughter of God* were actually historical facts, or whether Perdue took artistic liberties with history and simply embellished on history to make his novel more interesting. Finally, Plaintiffs have no evidentiary basis for contending that Brown did not copy Perdue's historical embellishments that were "made up" by Perdue when he wrote *Daughter of God*.

Next, Plaintiffs contend that Brown's discussion of Mary Magdalene and her purported marriage to Jesus Christ, a Divine Goddess, or all of the other religious themes that parallel Perdue's *Daughter of God*, was taken from the Gnostic Gospels discovered at Nag Hammadi, Egypt in 1945.¹⁹ However, without an affidavit from Dan Brown attesting to the fact that he even read the Gnostic Gospels or used them as a basis for *Da Vinci Code*, there is simply no evidence to support such a contention. Copying from Perdue is just as plausible. This is particularly the case because the Gnostic Gospels reflect the religious views of different sects and Perdue's discussion of matters contained in those Gospels constitutes a "blend" of different Gnostic viewpoints, which blend was copied by Brown.

Furthermore, while Plaintiffs have bandied about words such as "genre" or phrases such as "scenes a faire," they have not provided an evidentiary basis for determining what is and is not common to "thriller" or "mystery" novels or what scenes one would expect to find in such novels. Instead, Plaintiffs have acted as if they expect the Court to rely solely upon their unsupported "say so."

¹⁸ More than a dozen books and innumerable articles, many by top academic scholars with no theological axes to grind, have extensively documented a large number of errors in *Da Vinci Code*. The existence of those errors cast substantial doubts on whether Brown actually conducted any research or whether he simply copied from Perdue.

¹⁹ "The idea of the 'sacred feminine' which plays a role in both books stems from historical research involving the Gnostic Gospels, an ancient collection of biblical texts which were unearthed in Nag Hammadi, Egypt in 1945 but not made accessible to the public until the late 1970's." Plaintiff's Rule 56.1 Statement, ¶ 94

A summary judgment motion must be denied where the movant fails to fulfill its initial burden of providing admissible evidence of the material facts. *Giannullo v. City of New York*, 322 F.3d 139, 140-41 (2d Cir. 2003). “In passing on a motion for summary judgment, the Court may consider only admissible evidence, and it is obliged to view the evidence in the light most favorable to the non-moving party.” *Clark v. Meyer*, 188 F.Supp. 416, 419 (S.D.N.Y. 2002). “[A] party seeking summary judgment is obliged to come forward with admissible evidence.” *Griffin v. City of New York*, 287 F.Supp.2d 392 (S.D.N.Y. 2003).

Furthermore, in the Southern District, Local Rule 56.1 (“Rule 56.1”), requires that a party moving for summary judgment furnish the Court with a short and concise statement setting forth material facts as to which there is no genuine issue to be tried. “Statements in an affidavit or Rule 56.1 statement are inappropriate if they are not based on personal knowledge, contain inadmissible hearsay, are conclusory or argumentative, or do not cite to supporting evidence.” *Epstein v. Kemper Insurance Companies*, 210 F.Supp.2d 308, 314 (S.D.N.Y. 2002). *See also Rowe Entertainment, Inc. v. The William Morris Agency, Inc.*, 2005 WL 22833, at *5 (S.D.N.Y. Jan. 5, 2005). “[A] Local Rule 56.1 statement is not itself a vehicle for making factual assertions that are otherwise unsupported in the record.” *Giannullo v. City of New York*, *supra*, at 322 F.3d 140. *See also General Elec. Co. v. Varig – S.A.*, 2004 WL 253320, at *2 (S.D.N.Y. Feb. 10, 2004).

Reference to statements in an unsworn pleading are not sufficient because such statements have no evidentiary value. *Versace v. Versace*, 2003 WL 22023946, at *1 (S.D.N.Y. Aug. 27, 2003). *See also General Elec. Co. v. Varig – S.A.*, *supra*, at 2004 WL 253320 *3; *Davis v. O-At-Ka Milk Products Cooperative, Inc.*, 2004 WL 2980757, at *2 (W.D.N.Y. Dec. 22, 2004).

Similarly, references to books, or newspaper or magazine articles, should also be disregarded. On a summary judgment motion, such materials are inadmissible hearsay and may not be considered. See *Taylor v. Polygram Records*, 1999 WL 124456 *18 (S.D.N.Y. 1999); *Eisenstadt v. Central Corporation*, 113 F.3d 738, 742 (7th Cir. 1997); *Horta v. Sullivan*, 4 F.3d 2, 8 (1st Cir. 1993).

Plaintiff's motion for summary judgment should be denied because their Rule 56.1 statement refers to matters that are not supported by admissible evidence and because the motion itself relies upon matters that are material but are not in evidence.

1. The 56.1 Statement

The statements contained in the following paragraphs are based solely upon the pleadings in this action and should therefore not be considered: 1, 4, 5, 6, 7, 8, 9, and 10. The statements contained in the following paragraphs are not based on anything at all: 1, 2, 3, 5, 21 and 135. The statements contained in the following paragraphs are based solely upon documents that have not been authenticated, are not in admissible form and the facts contained in those documents have not been shown to be true: 97, 98, 100 and 138.

Next, Plaintiffs' 56.1 statement contains numerous errors. The Court is respectfully referred to Perdue's response to Plaintiffs' 56.1 statement for a list of those errors. Plaintiffs also make repeated references to other matters for which no evidence is presented, namely:

- ¶101: "Swiss bank accounts. Any similarity in the use of this standard feature in international thrillers ends with the abstract concept 'Swiss Bank'."
- ¶114: "Such Characters [villains] are a standard literary ploy in mysteries and thrillers to build suspense."
- ¶124: "[B]oth works have the fast pace of thrillers."

- ¶129: *Da Vinci Code* is an “exhilaratingly brainy thriller” and “gleefully erudite suspense novel.”
- ¶130: The books “share nothing more than stock thriller elements.”
- ¶135: “Brown’s Opus Dei (a real organization) has headquarters in New York City and was founded in 1928 in Spain to promote a return to conservative Catholic values.”
- ¶137: “[M]essages in blood written by murder victims are a stock element in thrillers and mysteries.”
- ¶150: “Both books are fast-paced thrillers.”

Absent an evidentiary basis, those assertions should not be considered by the Court.

2. **Plaintiffs’ Memorandum of Law**

Plaintiffs’ memorandum of law far surpasses their 56.1 statement in relying upon matters for which no evidence has been offered.

- P. 1: The similarities between the two novels are “superficial similarities common to countless thrillers.”
- P.2: “[V]irtually all of the alleged similarities amount to nothing more than abstract ideas, stock elements common to mysteries and thrillers, or the use of similar factual theories.”
- P. 20: “In any thriller, the most critical structural aspect of the plot is, ‘Who is the ultimate villain and what are his/her motivations?’”
- P. 22: “[B]y definition murder mysteries begin with murders.”

- P. 23: “Although Brown’s use of the Priory of Sion reflects his creative imagination, his discussion of Mary Magdalene’s life and the sacred feminine are grounded in the Gnostic Gospels.”
- P. 25: “[R]ival groups within the Church are highly commonplace in thrillers.”
- P. 26: “The Gnostics were early dissidents from the dominant branch of Christianity.”
- P. 27-8: “Chases, confrontations between good and bad characters, murders, mysterious clues, secret religious societies, Swiss banks, and hidden keys are obviously *scenes a faire* in thrillers, present in untold numbers of books.
- P. 33: In *Da Vinci Code* “There are no sex scenes, just a simple kiss.”²⁰

While discussed in greater detail in the next point of this memorandum, Plaintiffs have presented no evidence to show that the novels in question actually are “thrillers.” Likewise, they have presented no evidence to show what are the standard or stock elements of thrillers. Similarly, the Court has been given no evidence of *scenes a faire* in thriller novels. Furthermore, no evidence has been presented to distinguish ideas from inventions that have been made up by the authors. Finally, no admissible evidence has been presented to enable the Court to determine what is and is not an historical fact.

Finally, and perhaps most important of all, Plaintiffs have offered no explanation as to why Brown has told a story that, at its heart, is so similar to that told by Perdue. Time and again, Brown uses the same ideas, the same history, the same symbolism, the same literary devices, the same *scenes a faire* in the same context and the same order, the same basic conflicts, and the same plot resolution as Perdue. Here, what Plaintiffs have done is to dissect non-protected

²⁰ Plaintiffs have ignored the rather torrid sex scene observed by Sophie Neveu between her grandfather and a woman as part of the pagan ritual of Hieros Gamos.

matters from the novels and then presented them in a way that is isolated from all of the other elements of the story. However, stories are not about isolated people, events, ideas or *scenes a faire*. Rather, stories are about those things in combination with each other. Viewed in that light, *Da Vinci Code* is substantially similar to *Daughter of God*.

B. The Motion for Summary Judgment Should Not Be Decided Until Perdue Is Given the Opportunity to Conduct Discovery.

In deciding whether to convert the motion to one for summary judgment, the Court is “obligated ... [to] give the parties an opportunity to conduct appropriate discovery and submit the additional supporting material contemplated by Rule 56.” *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 154 (2d Cir. 2002). The reason for the rule is that “when a district court considers certain extra-pleading materials and excludes others, it risks depriving the parties of a fair adjudication of the claims by examining an incomplete record.” *Id.* at 282 F.3d 155.

Plaintiffs’ mantra that all the Court must do to decide a summary judgment motion is to read the novels is woefully oversimplified. In determining whether substantial similarity exists, the Court must have the tools available to distinguish matters that are protected from those that are unprotected. Plaintiffs have not given the Court those tools. What is the genre? What are the scenes a faire that are typical of that genre? What are the historical facts? How did Perdue weave together unprotected elements to create an original story that is entitled to protection? Did Brown conduct any original research or did he merely copy the original thought and expression of Perdue? At a minimum, Perdue needs to depose Brown and anyone else who contributed to the writing of *Da Vinci Code*, including Jason Kaufman, Brown’s editor, Blythe Brown, Brown’s wife, and everyone else credited by Brown in assisting him to write his novel. If Perdue is not given that opportunity, the Court “risks depriving [Perdue] of a fair adjudication

of the claims by examining an incomplete record.” *Chambers v. Time Warner, Inc., supra* at 282 F.3d 155.

POINT II

THE MOTION SHOULD BE DENIED BECAUSE THE COURT CANNOT SAY, AS A MATTER OF LAW, THAT THERE IS NO BASIS UPON WHICH A JURY CAN FIND THAT THE NOVELS ARE SUBSTANTIALLY SIMILAR

A. The Role of the Court on This Motion

“[A] district court may determine noninfringement as a matter of law on a motion for summary judgment either when the motion concerns only noncopyrightable elements of plaintiff work, or when no reasonable trier of fact could find the works substantially similar.” *Walker v. Time Life Films*, 784 F.2d 44, 48 (2d Cir. 1986). Here, because matters involving the copyrightable elements of Perdue’s novel are involved and because a reasonable trier of fact could find that the works are substantially similar, Plaintiffs’ motion should be denied.

B. By Not Discussing What the Novels Are Really About, Plaintiffs Cannot Contend They Are Not Substantially Similar

Plaintiffs’ approach on their motion is to isolate from the novels matters that are not to their liking. First and foremost, they have ignored the heart and soul of both novels by failing to acknowledge what they are really about. Despite both authors’ public acknowledgement of deep and frequent symbolism and its foundational importance to both novels, Plaintiffs neglect to mention it at all. And by ignoring the importance in the sequence of events of the Divine Feminine, the role of Constantine, the importance to the Catholic Church of suppressing notions of the Divine Feminine, the existence of physical evidence of the Divine Feminine, the existence of rival organizations seeking to obtain possession of the physical evidence for their own motives, etc., Plaintiffs have sought to portray the novels as mere “thrillers” that are devoid of

any meaningful substance. However, those are elements that cannot be ignored because they are what drive the plot in each story.²¹

Next, Plaintiffs have sought to isolate the “unprotected” elements of the novels. By viewing those elements in isolation of one another, rather than the creative decisions of the authors to include those elements in their novels and to use them in the way in which they are used, Plaintiffs have, once more, missed the point of the novels themselves. While it is all well and good for Plaintiffs to argue that any similarities that may exist are only with respect to matters that are not protected by our copyright laws, they have disregarded Perdue’s creative decisions to combine those elements in the way in which he did, many of which decisions were copied by Brown in *Da Vinci Code*.

The isolationist approach taken by Plaintiffs on their motion was rejected in *Tufenkian Import/Export Ventures, Inc. v. Einstein Moomjy, Inc.*, 338 F.3d 127, 134 (2d Cir. 2003):

Essentially, the total-concept-and-feel locution functions as a reminder that, while the infringement analysis must begin by dissecting the copyrighted work into its component parts in order to clarify precisely what is not original, infringement analysis is *not simply a matter of ascertaining similarity between components viewed in isolation*. For the defendant may infringe on the plaintiff’s work, not only through literal copying of a portion of it, but also by parroting properties that are apparent only when numerous aesthetic decisions embodied in plaintiff’s work of art – the excerpting, modifying, and arranging of public domain compositions, if any, together with the development of wholly new motifs ... (emphasis added)

The practical reason for the rule is self-evident. Distilled to their most basic elements, almost every aspect of every creative work is unprotected. The melody of a song uses notes, which are not protected. Yet, there cannot be a melody without notes. In a written work, neither

²¹ Recently, an Italian Roman Catholic Cardinal, Tarcisio Bertone, broadcasting on Vatican Radio, urged Catholic faithful to neither read nor buy *Da Vinci Code*. Such a condemnation would be shocking if the novel were simply another member of the class of “thriller” novels.

the letters of the alphabet nor the words of the language are protected. But without them, there could be no story. Without them almost nothing could be copyrighted “because original works broken down into their component parts would usually be little more than basic unprotectible elements like letters, colors and symbols.” *Boisson v. Banian, Ltd.*, 273 F.3d 262, 272 (2d Cir. 2001).

To varying degrees, all printed works have elements that are not protected. In some cases, such as fact compilations, the vast majority of the work is not protected. However, even telephone books may be entitled to some protection. “The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data, so that they may be used effectively by readers. These choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through the copyright laws.” *Feist Publications, Inc. v. Rural Telephone Service Company, Inc.* 499 U.S. 340, 348, 111 S.Ct. 1282, 1289 (1991). “What is protectible then is the author’s original contributions, the original way in which the author has selected, coordinated and arranged the elements of his or her work.” *Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1004 (2d Cir. 1995)(citations and quotations omitted). In the case of novels, copyright protects “plaintiff’s development of the plot, of characters, of sequences of scenes and incidents, and of the interplay of characters”. *Breffort v. I Had a Ball Co.*, 271 F.Supp. 623 (S.D.N.Y. 1967)

“Where plot is ... properly defined as ‘the sequence of events’ by which the author expresses his ‘theme’ or idea’ it constitutes a pattern which is sufficiently concrete so as to warrant a finding of substantial similarity if it is common to both plaintiff’s and defendant’s works.” 4 *Nimmer* §13.03[A][1][b] at 13-40.2 quoting *Shipman v. RKO*, 100 F.2d 533, 537 (2d

Cir. 1938). Thus, in *Grove Press, Inc. v. Greenleaf Publishing Co.*, 247 F.Supp. 518, 525 (E.D.N.Y. 1965), the court held that the copyright in a novel includes not “only the form of communication or the mechanism employed” but also “the pattern of the story,” adding that “[t]he essence of a novel or any other story for that matter, is the plot, plan, arrangement, characters and dialogue therein contained and not simply its form of articulation”. See 4 *Nimmer* §13.03[A][1][b] at 13-40.2 and 13-40.3. Additionally, the Second Circuit has accepted the definition of “story” in its “broadest sense” as “any account of actions in a time sequence, any narrative of events in a sequential arrangement; ...the collection of things that happen in the work.” See 4 *Nimmer* §13.03[A][1][b] at 13-40.3 quoting *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, 683 F.2d 610, 628 (2d Cir. 1982), quoting from C. Holman, *A Handbook on Literature* 428 (4th ed. 1980).

In both novels, certain common elements drive the plots. The common elements are the Divine Feminine, the suppression of the Divine Feminine by Constantine and the Catholic Church, the existence of physical evidence of the Divine Feminine, the desire of the Catholic Church that the physical evidence never be found, the existence of two rival groups that seek the physical evidence, the desire of one of the groups to use the physical evidence to blackmail or coerce the Pope, etc. In discussing those things, both novels say the same things, sometimes using language that is almost identical and place those events and elements in identical or nearly identical positions. In both novels, there are mysteries, clues, priceless works of art, gold keys, Zurich banks etc. In both novels, the heroine undergoes significant learning experiences and is transformed spiritually as a result. In both novels, the object of the quest find the actors, not the other way around. In both novels, the physical evidence is either not found or is destroyed. Both

novels end on the common note that faith in what the physical evidence represents is much more important than the physical evidence itself.

Even if it is determined that none of the elements in the preceding paragraph are protected under the copyright laws, many of them are quite unusual and the way Perdue used them to tell his story is entitled to copyright protection. Given the substantial similarities, many of which are highly unusual, Perdue is entitled to a trial by jury. The common elements of the novels are so uncannily similar, that Brown could not have independently stumbled upon them in 2003 when *Da Vinci Code* was published, three years after *Daughter of God*.

C. Here, the Similarities Are Much More Important than the Differences

Plaintiffs have sought to distance *Da Vinci Code* from *Daughter of God* by noting the dissimilarities that exist between the novels. Indeed, by presenting the novels in a distorted, incomplete and most superficial way by ignoring the common substance of each of them, Plaintiffs have robbed each novel of their true heart and soul. That approach should be disregarded because in determining whether there is substantial similarity, the key is the similarities rather than the differences in the two works. *Attia v. Society of the New York Hospital*, 201 F.3d 50, 57 (2d Cir. 1999). “[I]t is immaterial that the vast majority of material in defendants’ book is not similar to plaintiff’s book.” *Churchill Livingston, Inc. v. Williams & Wilkins*, 949 F.Supp. 1045, 1055 (S.D.N.Y. 1996). It is well settled that “no plagiarist can excuse the wrong by showing how much of his work he did not pirate.” *Sheldon v. Metro-Goldwyn Pictures Corp.*, 81 F.2d 49, 56 (2d Cir. 1936). See also *United Feature Syndicate, Inc. v. Koons*, 817 F.Supp. 370, 377 (S.D.N.Y. 1993). “If a defendant copies substantial portions of a plaintiff’s sequence of events, he does not escape infringement by adding original episodes somewhere along the line.” *Warner Bros., Inc. v. American Broadcasting Companies*, 720 F.2d 231 (2d Cir. 1983).

While it cannot be disputed that there are differences in the two stories, neither can it be disputed that there are also the substantial similarities that have been noted repeatedly in this memorandum, but which have been ignored by Plaintiffs. Not only do those same elements drive the plots in both novels, but the methods of expressing those elements is so similar as to virtually rule out the possibility that they were accidental or were independently created by Brown. Whether a person does or does not have a nice office, the kind of clothes a character wears, the particular school the heroine attended, the country in which the events of the novels take place, or the fact that the different names are used for the Divine Goddess, both of whom are symbolic of the divine feminine in any event, are not the sorts of differences that can excuse Brown's extensive plagiarism of the works of Lewis Perdue.

CONCLUSION

For the foregoing reasons, Defendant and Counterclaim-Plaintiff Lewis Perdue respectfully requests that this Court deny Plaintiff/Counterclaim Defendants' motion pursuant to Fed.Civ.P. Rule 12(b)(6) and Fed.R.Civ.P. Rule 12(c) for judgment on the pleadings, *or in the alternative*, pursuant to Fed.R.Civ.P. Rule 56 for summary judgment dismissing Perdue's counterclaims, in its entirety.

Dated: New York, New York
April 7, 2005

Respectfully submitted,

COZEN O'CONNOR, P.C.

By: 

Donald N. David, Esq. (DD 5222)
Kenneth G. Schwarz, Esq. (KS 6807)
Bruce N. Lederman, Esq. (BL 6371)
Brian A. Bloom, Esq. (BB 5722)
Scott M. Kessler, Esq. (SK 5510)

909 Third Avenue, 17th Floor
New York, New York 10022
Telephone: (212) 509-9400
Facsimile: (212) 644-7485

*Attorneys for Defendant and
Counterclaim Plaintiff Lewis Perdue*