



RANDOM HOUSE
BERTELSMANN

ZACHARIE J. TRACER
SENIOR VICE PRESIDENT, SECRETARY
GENERAL COUNSEL

BY FAX AND MAIL

June 16, 2003

Mr. Lewis Perdue
201 W. Napa Street
Suite 201
Sonoma, CA 95476

Re: **THE DA VINCI CODE**

Dear Mr. Perdue:

Thank you for sending me a copy of *Daughter of God* (hereinafter "Daughter"). I have now had a chance to read the book. I have also taken the time to review the alleged similarities you have listed in support of your claim that *The DaVinci Code* (hereinafter "DaVinci") infringes the copyright of "Daughter".

First, as I previously advised you, Mr. Brown has never seen or read your novel. Until your letter arrived, he had never heard of you.

I will also tell you at the outset that, based on my reading of the two novels and a close review of the comparisons you provided, I see no basis for your claims of copyright infringement. There simply are not "overwhelming and striking similarities" as you claim. The two books are entirely distinct in plot composition, character development and narrative style. Should this matter ever come to litigation, I am convinced that a court would find, as the court did in the case of *Walker v. Time Life Films, Inc.* 784 F.2d 44 (2d Cir. 1986) that "[n]o reasonable observer could find the works substantially similar," and that whatever similarities may exist are "trivial, abstract or related to noncopyrightable material." (*Walker* at 48)

Furthermore, 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

Mr. Lewis Perdue
Page 2

obtained awards of attorneys' fees in similarly meritless cases alleging copyright infringement. *Adsani v. Miller et al*, 94 Civ 9131 (SDNY 1996); *Nelson v. Grisham*, 942 F. Supp. 649 (DDC 1996), *aff'd* 132 F. 3d 1481 (D.C. Cir. 1997).

One of the critical principles of copyright law is that copyright protection does not extend to ideas; it protects only the original manner in which ideas are expressed by a particular author. As stated in *Nelson v. Grisham* 942 F. Supp. at 652: "the focus [of a copyright infringement analysis] must be on the similarity of the expression of an idea or fact, not on the similarity of facts, ideas, or concepts themselves."

An example of how this test is applied can be found in the *Walker* case referred to above. There, the author of the book "Fort Apache" brought suit against the producers and the screenwriter of the motion picture "Fort Apache: The Bronx" alleging copyright infringement and other claims. The court found that while at the most general level, the movie and the book told the same story (i.e. the experiences of policemen battling the hostile environment of the Bronx's notorious 41st Precinct), "in moving to the next level of specificity, differences in plot and structure far outweigh this general likeness." The court went on to state:

To be sure, the book and the film share an identical setting, and police officers are central characters in both works. But the South Bronx and the 41st Precinct are real places known to the public through media reportage. Accordingly, the notion of telling a police story that takes place there cannot be copyrightable. As to Walker's claim that the film misappropriates characters from his book, we must consider the "totality of [their] attributes and traits" as well as the extent to which the defendants' characters capture the "total concept and feel" of figures in the book. [quoting *Warner Brothers v. American Broadcasting Co.*, 720 F.2d 231, 241 (1983)]

Elements such as drunks, prostitutes, vermin and derelict cars would appear in any realistic work about the work of policemen in the South Bronx. These similarities therefore are unprotectible as "scenes a faire," that is, scenes that necessarily result from the choice of a setting or situation. . . . [citation deleted] Neither does copyright protection extend to copyright [sic] or "stock" themes commonly linked to a particular genre. Foot chases and the morale problems of policemen, not to mention the familiar figure of the Irish cop, are venerable and often-recurring themes of police fiction. As such, they are not copyrightable except to the extent they are given unique – and therefore protectible – expression in an original creation.

(*Walker* at 50)

Mr. Lewis Perdue

Page 3

By the same token, "Daughter" and "DaVinci" are similar only at the most general level. Both books involve the art world, the church, and heroes trying to find secret information. At the most, the only commonalities are unprotected scenes a faire and historical facts. Aside from these general characteristics, the books are different in the most apparent and obvious ways.

Turning to the alleged "similarities" listed in your letter, the only conclusion that can be drawn is that the claim of plagiarism is meritless.

1. MacGuffin

"Daughter"

The novel discloses that Sophia was a young girl who lived in a remote village near Smyrna during Constantine's reign. She started performing miracles. On Constantine's orders, the Roman troops killed Sophia and everyone else in her village. A week later the shroud of Sophia was empty, but, like the Shroud of Turin, it bore the imprinted image of a young girl. This is deemed to be evidence that she was a second Messiah. Hitler obtained the shroud of Sophia. The Vatican was so desperate to keep the existence of the second Messiah secret that the Pope entered into a written agreement with Hitler in which Hitler agreed not to disclose the truth about Sophia if the Church agreed not to protest the Holocaust. Aware of this explosive secret, a character named Cardinal Braun is trying desperately to find the shroud and documents concerning Sophia's miracles and the pact between the Pope and Hitler. His desire, as revealed in the novel, is to blackmail the current Pope into resigning and appointing the Cardinal as the next Pope. At the same time, former KGB men loyal to Zhirenovsky, the Russian nationalist, are also searching for the secrets of Sophia. Their motive is to blackmail the Church into silence concerning his atrocities and plans for new Russian expansionism.

"DaVinci"

In "DaVinci", no one blackmails the Vatican. The Vatican kills no one and is unaware of the search for the Holy Grail. The Catholic Bishop is looking for the Holy Chalice. The villain (The Teacher) tricks an Opus Dei Catholic Bishop into thinking he can gain possession of the Holy Grail - considered by the bishop to be a sacred religious relic. In "DaVinci" the Grail is revealed to be a family, not an object; that is, that Christ was married to Mary Magdalene and had a child, and therefore a bloodline. The heroine, Sophia, is a direct descendant of Christ and Mary Magdalene. At the end of the novel, the hero realizes that he is near the grave of Mary Magdalene.

Mr. Lewis Perdue
Page 4

2. Male Protagonist

"Daughter"

Seth Ridgeway is a 40 year old professor of philosophy at UCLA and a former member of the LA police department. In the novel, he frequently utilizes his police skills. He is married to Zoe and very much in love with her.

"DaVinci"

Robert Langdon is a Harvard professor of Symbology, meaning he specializes in the interpretation of ancient symbols, riddles and texts. He's had a distinguished academic career to date, the highlight (pre-*DaVinci Code*) of which was his participation in a case that made front-page headlines throughout the world (in which men claiming to represent an ancient group known as the Illuminati hid a potentially devastating anti-matter bomb somewhere inside the Vatican – see *Angels & Demons*, published in 2000).

3. Female Protagonist / Love Interest

"Daughter"

Zoe Ridgeway is an art expert, skilled in detecting forgeries. Zoe has synaesthesia, a harmless neural crossover in which senses are confused; she, in effect, hears sounds in colors.

"DaVinci"

Sophie Neveu is a French cryptographer working for the Paris special police department. Neveu is in her early thirties, is called into the murder investigation and develops a relationship with Langdon as they partner in solving the myriad riddles hidden in the works of DaVinci. They later develop a romantic relationship.

4. Antagonist

"Daughter"

Cardinal Braun is the head of the Papal Secretariat for Non Believers. As previously described, he is seeking Sophie's shroud in order to blackmail the Vatican.

"DaVinci"

Bishop Manuel Aringarosa is the head of Opus Dei, and a deeply devout man who the reader believes to be good, but possibly misguided in his arch-conservative views. Aringarosa has been contacted by "The Teacher", who has promised him the Holy Grail if he will mobilize one of his most trusted followers (an albino named Silas) to carry out several necessary crimes to secure the Grail – and therefore prevent the true Grail from

Mr. Lewis Perdue
Page 5

being used to undermine or destroy the Church. He has no personal motives and is not blackmailing anyone.

5. Antagonist Organization

"Daughter"

As previously discussed, Daughter involves two separate villains: the Russians, and Cardinal Braun. The Russians kidnap Zoe and murder many others in their quest for Sophia's shroud. The Cardinal has followers who believe that his motives are unselfish, and that he is trying to preserve the Church, but he is in search of the shroud in order to realize his ambitions.

"DaVinci"

In DaVinci, Opus Dei is manipulated by the villain to assist him in his search for the Holy Grail.

6. Odd Coincidence

There is absolutely nothing similar about "Sophia", the early Christian miracle worker who left the imprint of her body on a shroud, and "Sophie", the modern day French cryptographer, working for the French police.

7. Plot Elements

Both books are thrillers involving the art world and the Church. Aside from that, the plots are totally different. Upon examination, each of your alleged "similarities" does not exist.

"Daughter"

Willie Max, the proprietor of a magnificent art collection, is a former Nazi. After the war, Max fled to Switzerland with stolen works of art and bought others from other fleeing Nazis. Dying, he has remorse and asks Zoe to help him return the artworks to their rightful owners.

"DaVinci"

Jacques Sauniere is the curator of the Louvre, who is killed in the first scene by Silas. Sauniere is also, it turns out, the grand master of the Priory of Sion, a real secret society that is thought to have grown out of the Knights Templar, whose mission, as was the Templar's, is to protect the secret location (and meaning, identity, and revelation of) the Holy Grail until the world is ready to know it. As he is dying, Sauniere writes a clue

Mr. Lewis Perdue
Page 6

in invisible ink and positions his body in such a way as to provide clues for Sophie and Langdon.

(By the way, the murder of a museum curator is common in thrillers about the art world. See, for example, *The Bone Vault* by Linda Fairstein, *The Jewel That Was Ours* by Colin Dexter, and *Rattle His Bones* by Carola Dunn).

As to the murder charges, a hero mistakenly charged with murder is a very common plot element in thrillers. And, as anyone who has read both novels knows, the murder charge is a very minor element in "Daughter" occurring very late in the novel, while the police suspicion of Langdon is a major theme in "DaVinci".

In "Daughter", Ridgeway's search for Zoe launches the adventure; the Russians' and others' search for the Stahl painting also propels the action. In "DaVinci", a message on the floor of the Louvre launches the adventure. Not until deep into the novel (after deciphering numerous symbols, body positions and anagrams) do Sophie and Langdon even realize the mystery involves a painting.

As to the key, in "Daughter", a very small gold ingot is fixed into the front of the painting, hidden under layers of paint. The ingot bears the swastika, eagle and lightning bolts of the SS. Beneath the ingot is a key to a safe deposit box. In "DaVinci", Sophie's grandfather had tucked a key into the back of the frame of the painting. The fact that both keys are for safe deposit boxes in Swiss banks is a coincidence – but Swiss banks are very common in thrillers set in Europe.

The contents of the safe deposit boxes are totally different: in "Daughter", the box contains documents from the Nazis and the Vatican, the blueprint of the salt mines where the Nazis kept their stolen artworks, a picture of Sophia's shroud, and the agreement between Hitler and Pope Pius XII. In "DaVinci", it is a cryptex: a handmade cylinder within a cylinder that dates back to Leonardo's time.

While both books involve scenes in which the protagonists escape from the bank, the description of the escape, the consequences, and the characters involved are totally different.

The other alleged "similarities" describing the early church are statements of historical fact. It may be possible that you and Mr. Brown consulted the same historical sources. Mr. Brown read books by Lynn Picknett, for example. Ms. Picknett has written non-fiction books on Mary Magdalene, goddess worship, the shroud and Nazis. Her titles, Mary Magdalene: Christianity's Hidden Goddess, The Templar Revelation: Secret Guardians of the True Identity of Christ, Turin Shroud: In Whose Image?, and Double

Mr. Lewis Perdue
Page 7

Standards: The Rudolf Hess Cover-Up refer to the various historical facts mentioned in "DaVinci" and in "Daughter". As I am sure you know, historical facts are not subject to copyright protection.

The other "similarities" are, at best, so attenuated as to be ridiculous. For example, chase scenes are common to most thrillers; there is no similarity between a salt mine and a subway. Your statement that Mary Magdalene plays a key role in "Daughter" is surprising to this reader since she has no relevance to the shroud; in contrast, in "DaVinci", she is a key figure. As for betrayal by a trusted friend, this convention probably predates Othello.

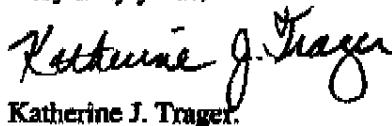
In conclusion, I have studied your list of similarities carefully and read both books. There is not one instance of an alleged similarity that is not either trivial or related to noncopyrightable material, in the manner of the examples set forth above.

If you are interested in reading some of the case law in this area, I would recommend the following opinions, which are instructive in the process that a court would follow in analyzing alleged instances of so-called "non-literal comprehensive similarity":

- *Walker v. Time Life Films, Inc.* 784 F.2d 44 (2d Cir. 1986)
- *Warner Bros. Inc. v. American Broadcasting Companies, Inc.* 720 F.2d 231, (2d Cir., 1983)

This letter is without prejudice to all of our rights, remedies and defenses and those of Dan Brown, which are hereby expressly reserved.

Very truly yours,



Katherine J. Trager

KJT/vm

cc: Stephen Rubin