

# THE DAVIN

## THE DAVINCI CODE

author Dan Brown was acquitted of copyright infringement this spring in a high-profile London trial. Across the Atlantic, he and Random House have also won a two-year legal battle with California writer Lewis Perdue—even though two respected experts agree that Brown's blockbuster borrowed its plot from Perdue's novel *Daughter of God*. Investigating the case, SETH MNOOKIN uncovers striking similarities, mysterious e-mails that may trace back to Brown's wife and researcher, Blythe, and yet another angry author

# CI CLONE?

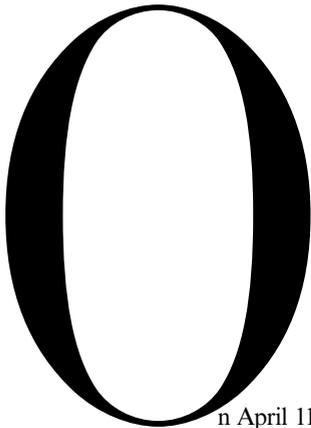


## NOTHING TO SMILE ABOUT

Leonardo da Vinci's *Mona Lisa*, which, unlike Dan Brown's *The Da Vinci Code*, has never been subject to copyright-infringement charges.

Nothing in Christianity is original.

—Leigh Teabing in Dan Brown's  
*The Da Vinci Code*.



On April 11, Lewis Perdue sat on a bench in a gallery on the 17th floor of Manhattan's Thurgood Marshall United States Courthouse and did his best to contain himself. Before him, a panel of judges from the Court of Appeals for the Second Circuit debated his future. As Perdue's lawyer launched into a tortuous and somewhat odd explanation to the court about how, as a science-fiction buff, he was a big fan of Frank Herbert's "Dune" series, Perdue tried in vain to suppress a sigh. Then he began to rock back and forth.

Three years earlier, tipped off by some reader e-mails and a glowing *Washington Post* review, Perdue read *The Da Vinci Code*, which had just been released, and, as he

for someone to talk to me about all of this."

The aftershocks of Perdue's decision to speak out eventually consumed his life. Unprepared for the type of legalistic response that's standard in copyright-infringement cases, Perdue found the reply to his letter condescending and bullying. "There is not one instance of an alleged similarity that is not either trivial or related to noncopyrightable material." Katherine Trager, an in-house lawyer for Random House, the publishing giant that owns Doubleday, wrote to Perdue on June 16, 2003. On the off chance that Perdue was "interested in reading some of the case law in this area," Trager offered her recommendations. "I didn't know anything about copyright law," Perdue says. "But I knew that Dan Brown had completely stolen the plot of my book."

The 57-year-old Perdue looks as if he could be either an ex-seminarian or an ex-Marine. His bristly gray hair, which he wears in a slightly grown-out flattop, is softened by the gentle contours of his face and his pleading eyes. He often displays the overwhelming enthusiasm of a small child, and has a finely honed sense of moral absolutism and an almost masochistic penchant for taking quixotic stands.

Both sides of Perdue's family were born and raised in Mississippi—one of his great-grandfathers helped write the state constitution and served as chief justice of the State Supreme Court. In 1967, in the first

him on a number of varied—some might say scattered—career paths. He's written more than a dozen books, from his many religious-themed thrillers (some of which ended up on regional best-seller lists) to *Supercharging Your PC*. He taught journalism and writing, he started a wine importer and distributorship, and he founded two tech companies. Perdue had achieved a reasonable amount of success in these endeavors, and by 2003 he had what he considered a blessedly comfortable life. He was able to afford a 1,300-square-foot ranch house on a fourth of an acre two miles west of Sonoma, California, where he lived with his wife of 22 years and their two children.

Prior to getting Katherine Trager's response to his letter, Perdue had almost convinced himself to just move on and forget about Dan Brown. But once he felt patronized, he became determined to prove he wasn't just some nut looking to hitch a ride on a best-seller's coattails. (*The Da Vinci Code* debuted on the *New York Times* best-seller list at No. 1 on April 6, 2003.) Perdue spent much of the rest of 2003 researching copyright law and trying to find a local firm to take him on as a pro bono client. By the end of the year, he'd persuaded the Santa Monica-based Alschuler Grossman Stein & Kahan to help him with the case. Before long, Perdue was talking openly about the possibility of a payday: in March 2004, he told a reporter that if he won a lawsuit against Brown "then everything he has is mine."

"This is the most blatant example of in-your-face plagiarism I've ever seen," a forensic linguist told the *New York Post* in 2004.

says, "was overcome with the sensation that I'd read the book before. In fact, I'd written it [in 2000] as *Daughter of God*." Almost immediately, Perdue sent a letter to Doubleday, Brown's publisher, in which he sketched out what he saw as the similarities between his work and *The Da Vinci Code*. Perdue concluded his May 28, 2003, letter—which was sent without the advice of an attorney—by writing, "Please let me know of [sic] there is any other information I can provide or any further assistance you might need in looking this over." Back then, before *The Da Vinci Code* had become one of the best-selling novels in history, Perdue wasn't sure exactly what he was hoping to accomplish. "I'm doing fine," he said at the time. "All I want is

semester of his freshman year, Perdue was asked to leave the University of Mississippi for leading a civil-rights march that concluded with him giving a man-the-barricades speech on the mayor's front porch. His family decided that if he couldn't figure out a way to make a go of it at Ole Miss they weren't interested in paying for him to go anywhere else. At the age of 18, Perdue got a job with Westinghouse and moved to Elmira, in upstate New York. About a year later he enrolled at Corning Community College. He graduated in 1970 with a 4.0 grade-point average and was admitted to Cornell, where he paid his tuition by working as the police and fire reporter for *The Ithaca Journal*.

Perdue's wide-ranging interests have led

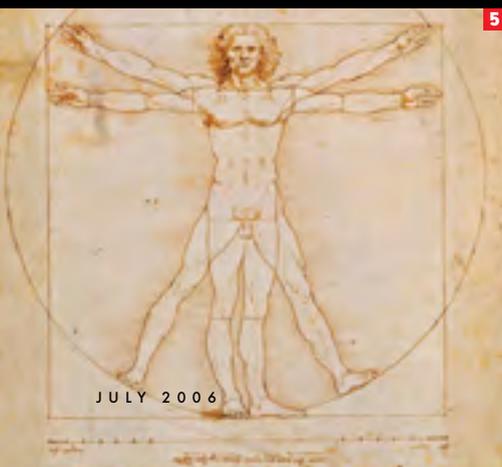
On July 30 of the same year, the legal maneuvering in the case began when Alschuler Grossman sent a letter to producer Brian Grazer and director Ron Howard demanding that they "cease and desist from proceeding with the contemplated movie based upon 'The Da Vinci Code.'" On September 2, the firm sent a letter to Random House. "Before we commence an action for copyright infringement," the letter read, "we would like to provide Random House and Mr. Brown with an opportunity to resolve this matter. If we do not hear from you by September 13, 2004, we will assume that Random House and Mr. Brown are not interested in discussing settlement and we will proceed

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### THE BROWNS AND THE FURY

(1) *Holy Blood, Holy Grail* and *The Da Vinci Code*. (2) Blythe and Dan Brown at a benefit in Florida on March 15, 2006. (3) Dan Brown arriving at court in London, March 14, 2006. (4) Mark Rosheim, whose academic paper is quoted from verbatim in *The Da Vinci Code*, with a model of a robot designed by Leonardo da Vinci, photographed in St. Paul, Minnesota, May 13, 2006. (5) Leonardo's *Vitruvian Man*. (6) The media frenzy surrounding Dan Brown's British trial.





Perdue says he  
“was overcome with the sensation that  
I’d read [*The Da Vinci Code*] before.  
In fact, I’d written it.”



**TROUBLE IN  
VATICAN CITY**

Lewis Perdue, author of *Daughter of God* (2000), photographed in front of the Vatican and St. Peter's Square, in Rome, Italy, May 8, 2006. He claims that Dan Brown stole crucial elements of the plot of *Daughter of God* for *The Da Vinci Code*. Perdue has lost a battle in court with Random House but says he will appeal to the U.S. Supreme Court.

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CONTINUED FROM PAGE 102 accordingly.” Instead of waiting for Perdue to file a suit of his own, Random House initiated the legal action in the case by asking a district court for a declaratory judgment stating that no copyright infringement had taken place.

Because Random House filed its initial claim against Perdue in New York and Alschuler Grossman doesn't have offices in

the Northeast, the firm stopped its work on the case, sending Perdue on a search for an East Coast firm that would work with him on a contingency basis. He ended up with Fischbein Badillo Wagner Harding, which later merged with Cozen O'Connor, an international firm with more than 500 attorneys. Donald David took on the case and promptly filed a counter-suit.

David's briefs at times have been muddled. There are minor errors such as misspellings: James Frey, the disgraced Doubleday-published author of the debunked memoir *A Million Little Pieces*, is referred to as “James Frye.” At one point, David claims that it's rare for mysteries or thrillers to have backstories that help to drive the main plot. Some of David's efforts to draw out parallels between *Daughter of God* and *The Da Vinci Code* seem strained. “In both novels,” one brief reads, “the physical evidence is either not found or is lost.”

For its part, Random House hired Davis

Wright Tremaine partner Elizabeth McNamara, a former in-house counsel for Simon & Schuster and one of the most widely used and best-respected copyright lawyers in the city. Her briefs do an admirable job of highlighting what McNamara describes as the “fundamental differences in plot, characters, themes, setting and ‘total concept and feel’” between Brown's and Perdue's works. The case was heard in Manhattan in early 2005, and in August, U.S. District Court judge George Daniels ruled in Brown and Random House's favor. Perdue, who'd grown more outraged and incensed as time went on, appealed. And so he found himself on April 11 back in court, where three Second Circuit judges had given David 10 minutes to persuade them to overturn Daniels's decision.

As the appeals-court hearing progressed, Perdue sighed, then shook his head, and then rocked a little bit more. In the three years since *The Da Vinci Code* had been published, he'd sharply curtailed his writing so he could

devote himself to the case. Again and again, he had pushed on, in part because, he says, he wanted to show his 13-year-old son that you should never give in to a bully. But by this time *Dan Brown & Random House, Inc., et al. v. Lewis Perdue* had become about more than abstract principles. If the appeals court upheld Judge Daniels's decision, there was the distinct possibility Random House would also win its formal request to have Perdue pay its legal fees. And then Perdue, who had depleted his savings to pay for the case's research and filing costs and had recently seen the option for his next book dropped by his publisher, would face bankruptcy. According to Random House, *The Da Vinci Code* has sold more than 60 million copies worldwide and has earned hundreds of millions of dollars. For the sake of a relative pittance in legal costs, Lewis Perdue was worried he would face financial ruin. "This is my career, my house, college for my children and everything I have on the line," he wrote late one night in an e-mail to Donald David. Three hours later, in another e-mail to David, he wrote, "I am sleeplessly tormented by what I am facing if we do not succeed. It is a nightmare situation for me because—lacking money—there is nothing I can do."

#### "A Stolen 'Da Vinci'?"

I first heard from Lewis Perdue on May 14, 2003. At the time, I was writing about the media for *Newsweek*, and I'd just published a story about former *New Republic* fabulist Stephen Glass's first novel. After reading that story, Perdue sent me an e-mail with the subject line "Total Fiction that's Total Fuction [sic]: Making up outrageous yarns . . . by copying someone ELSE'S outrageous yarns." In his e-mail, Perdue said he thought *The Da Vinci Code* had lifted "the plot, the protagonist, the love interest, the antagonist, the antagonist's organization, religious back story, historical back story, many significant plot elements, and even tiny details" from his own novels, notably *Daughter of God*, published in 2000, and *The Da Vinci Legacy*, published in 1983.

Before the publication of *The Da Vinci Code*, Dan Brown had had a career path almost as peripatetic as Lewis Perdue's. He graduated from Phillips Exeter Academy in 1982 and Amherst College in 1986. By the early 1990s he had moved to Los Angeles, where he tried to make it as a musician and a songwriter. (In addition to an album of synthesizer music for children, Brown self-published several other albums, which included everything from songs about phone-sex operators to lyrics such as "There is a man with no hands / And you're wondering / How he ties his tie.") It was in Los Angeles that Brown met his future wife, the previously married Blythe Newlon, 12 years his senior. After several disappointing years in the music industry, Brown and Newlon moved to Exeter, New Hampshire, where Brown had been

raised, and he got a job teaching at his old high school. After reading Sydney Sheldon's thriller *The Doomsday Conspiracy* Brown, struck by "the simplicity of the prose and the efficiency of the storyline," began to wonder if he could make it as a writer. In 1995 he published his first book, *187 Men to Avoid*, which offered exactly what the title promised: a list of 187 men, ranging from "men with plastic houseplants" to "men who think ovulation is a chocolate breakfast drink," whom women should avoid. Brown published the book under the pseudonym Danielle Brown, whose "About the Author" entry reads, "Danielle Brown currently lives in New England—teaching school, writing books, and avoiding men." Brown's first thriller, *Digital Fortress*, came out in 1998. That was followed by *Angels & Demons* (2000) and *Deception Point* (2001), both of which were published by Pocket Press, where Brown worked with a young editor named Jason Kaufman. None of these books achieved any commercial success.

By 2003, Kaufman had left Pocket for Doubleday, and he took Brown with him. The move would prove lucrative for both men. When I first heard from Perdue, *The Da Vinci Code*, backed by an enormous pre-publication marketing campaign, already looked to be the publishing success story of the year. I hadn't read the book at the time, but after looking at the documentation Perdue included with his initial e-mail, I decided to read *Daughter of God*, the book Perdue felt had been most blatantly appropriated, and *The Da Vinci Code* in the order in which they'd been published.

Neither book is a work of high literature. *Daughter of God* is oftentimes clunky. Some sections—particularly those in which Perdue discusses the presence of the sacred feminine—are reminiscent of the half-baked rambblings of a 19-year-old majoring in gender studies. But the book does succeed as a thriller; I read it straight through and found myself skipping meals rather than putting it down. *The Da Vinci Code*, while featuring equally two-dimensional characters and hackneyed dialogue, is unquestionably a more tightly crafted novel. There are fewer superfluous tangents. The backstory is more streamlined, the action more focused. The book unfolds over a couple of days (and 454 pages), as opposed to *Daughter of God's* several months (and 415 pages). While it's impossible to say what kind of traction *Daughter of God* would have achieved with the type of marketing campaign *The Da Vinci Code* received, it wasn't hard to see why Brown's book had had more success than Perdue's.

Equally apparent was the fact that *The Da Vinci Code* contained a plot, pacing, and structure that were very similar to *Daughter of God's*. Perdue's book opens with an American mysteriously summoned to Europe to meet with the owner of a priceless collection of art. Brown's book opens with an American mysteriously summoned to meet with the curator

of the Louvre. In *Daughter of God*, the collector is charged with passing on "an ancient secret; a religious truth; knowledge that can change the entire course of human affairs." In *The Da Vinci Code*, the curator of the Louvre must pass on "one of the most powerful secrets ever kept" to allow an "unbroken chain of knowledge." In Perdue's book, the art collector is murdered in an effort to keep this secret hidden; in Brown's book, the curator is murdered in an effort to keep this secret hidden. (The opening scene in *The Da Vinci Code* is a vividly violent one in which the Louvre's curator writes a message on his naked body in his own blood before he dies. There is not a similar scene in *Daughter of God*; however, in Perdue's *The Da Vinci Legacy*, a murdered Leonardo scholar—"da Vinci" actually refers to the artist's hometown—leaves a final message written on his pants in his own blood.)

The parallels continue throughout much of the text. In both books the secret that drives the plot is the proof of the divinity of women in early Christianity, and in both books this truth has been alternately suppressed and protected since biblical times. In both books clues hidden in artworks lead the protagonists on their frantic, dangerous searches. Both books have two story lines that unfold simultaneously, usually in alternating chapters. In both books the main story line focuses on the action-laden quest of the hero and heroine, while the secondary story line focuses on a shadowy group within the Catholic Church that's willing to commit murder in order to gain control of the secret. And in both books these nefarious Catholic groups want the secret to use as a trump card in a power play with the Vatican.

There were also the many smaller examples Perdue had come up with: the keys hidden in paintings; the fact that the keys lead to safe-deposit boxes in Swiss banks; those banks' sitting rooms being compared to luxury hotels and featuring bottles of Perrier.

It seemed like more than enough to justify a piece, so I wrote a 384-word story titled "A Stolen 'Da Vinci'—or Just Weirdness? It's a Real-Life Mystery" for the June 9, 2003, issue of *Newsweek*. Brown refused to speak to me for the article, but his lawyer, Michael Rudell, said, "Dan Brown has never heard of Lewis Perdue. . . . This could not be more emphatic on behalf of Mr. Brown."

That, I assumed, would pretty much be that. The rest of the media had little interest in the story; as far as I could tell, only one other reporter who ended up writing about the case had actually read Perdue's books. When asked about my article on a *Today*-show segment, Brown told Matt Lauer, "When *Da Vinci Code* debuted at No. 1, I actually got a lot of calls from best-selling authors . . . warnings saying, 'Well, get ready, because there are going to be people that you've never heard of coming out of the woodwork sort of wanting to ride your coattails.'" Lauer nodded sympathetically

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before responding, "So, it's like one of those prob—nice problem for a best-selling author to have." That was the end of the discussion.

That summer, I left *Newsweek* to write a book (published, incidentally, by Random House). Every couple of months, I'd get a flurry of e-mails from Perdue. Some contained updates on his plight; others were impassioned pleas to help out with this or that charity or cause. At times, Perdue appeared as if he was barely in control. I was more likely to get 10 e-mails in quick succession than just 1 or 2. His obsession with Dan Brown seemed to have become all-consuming, and eventually he set up three different Web sites that detail his case against Brown and *The Da Vinci Code*, including one that focuses on what Perdue claims are "Dan Brown's pattern of falsehoods and embellishment of his personal achievements."

If anything, these efforts made me less inclined to take Perdue seriously, and several times the increasingly tenuous examples he came up with made me wonder if I'd been wrong to think there was any story to begin with. He kept coming back to passages that appeared to me as if they'd bolster Brown's argument more than his own. In *The Da Vinci Code*, the following exchange occurs: "I thought Constantine was a Christian," Sophie said. '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 *Sol Invictus*, or the Invisible Sun—and Constantine was its head priest.'" Perdue held that up to this back-and-forth in *Daughter of God*: "'But Constantine is known as the first Christian emperor,' Zoe said. 'Only on his deathbed,' Seth responded. '*Sol Invictus*, the Sun God, was his main deity until the last hours of his life.'"

Were those similar passages? Sure. But they weren't cut-and-dried cases of plagiarism. I was beginning to wonder if I'd been right to take Perdue seriously in the first place.

## The London Trial

In 1982, *Holy Blood, Holy Grail*, by Michael Baigent, Richard Leigh, and Henry Lincoln, was published in England, and it was released a year later in the United States. The book—a compendium of crackpot pseudo-history that set out to illustrate that there is evidence of a far-reaching conspiracy to hide proof that Jesus had not died on the Cross but had instead married and produced children with Mary Magdalene—was a huge sensation. *Holy Blood, Holy Grail* doesn't perform well under scrutiny; its increasingly fantastical theses are supported with the use of rhetorical devices such as "the possibility cannot be proved, but . . . if it is true" and "given the existing evidence, it is certainly possible, if not

likely . . ." Because it's often impossible to disprove something that appears patently ridiculous—if you're convinced aliens have abducted you, there's no real way for someone to prove you wrong—the book achieved a certain notoriety that continues to this day.

Most of the pseudo-history and supposed conspiracy theories that helped propel *The Da Vinci Code* from the land of successful thrillers to one of the best-selling adult novels of all time can be found in *Holy Blood, Holy Grail*. Brown acknowledges his considerable debt to Baigent, Leigh, and Lincoln more than once in his book. The Louvre curator whose murder opens *The Da Vinci Code* has the same surname as Bénéger Saunière, a 19th-century French priest whose unexplained wealth drives *Holy Blood, Holy Grail*. One of Brown's villains, Leigh Teabing, takes his first name from Richard Leigh and his last name from an anagram of Baigent. At one point, Teabing explains that *Holy Blood, Holy Grail* is the "best-known tome" about the secret that lies at the heart of *The Da Vinci Code*.

Still, it was something of a surprise when, in 2004, Baigent and Leigh sued Brown in London for copyright infringement. (Lincoln did not take part in the suit.) Copyright law does not protect historical facts, and since the authors of *Holy Blood, Holy Grail* presented their book as being historically accurate, Brown was fully within his legal rights to use these "facts" to bolster the fictional narrative in his novel. Earlier this year, Brown and Random House, to the surprise of almost no one, won the case.

But Brown didn't emerge unscathed from his London trial. He had submitted a 69-page witness statement in which he made a number of bizarre assertions, chief among them that, despite all the indications to the contrary, *Holy Blood, Holy Grail* had been one of the less important research texts Brown had consulted. In his ruling, Peter Smith, the presiding justice in London, took Brown to task. "I cannot accept [*Holy Blood, Holy Grail*] was acquired at a much later time if it is going to be seriously contended that extensive research is gone into before [*The Da Vinci Code*] is written," the judge wrote. Smith also took issue with the absence of Blythe Brown, whom the novelist, in his witness statement, credited with doing much of his research: "Blythe Brown's role in that exercise is crucial and I do not accept that there are reasons of a credible nature put forward as to why she has not appeared to give evidence." A copy of *Holy Blood, Holy Grail*, with extensive notations by Blythe Brown, was introduced as evidence in the case. (Blythe Brown did not respond to requests for comment for this article.)

Dan Brown's witness statement in the *Holy Blood, Holy Grail* case made me wonder anew about Perdue and his case. Why would Brown claim he'd barely used a book he seemed to go out of his way to acknowl-

edge? If he'd left much of the research to his wife, did he even know where she was getting her source material?

Before long, I found other writers who felt Brown's work echoed their own. David Morrell, the author of *First Blood* (which was the basis of the Sylvester Stallone movie *Rambo*) and the co-president of the International Thriller Writers organization, says he has long felt Brown borrowed from his work. In *Angels & Demons*, Brown's villain is named Janus, the same as the code name of Morrell's villain in *The Fraternity of the Stone*. Janus, the two-faced Roman god, is not that unusual a choice, but what, Morrell asked, of the two rhythmically similar passages that explain how the word "assassin" comes from "hashish."

"This isn't something I've been fretting about," says Morrell, who has never contacted Brown or Doubleday. "The feeling I got, and what I've heard from a lot of people in the community, was that he was a kind of literary vacuum cleaner: he went through the literature and stuff got sucked up and blended together into a kind of mélange. . . . I get e-mails, I guess about once a week, from someone asking, 'Was Dan Brown a student of yours?'"

The more I looked, the more some of what Perdue's e-mails (and blog entries) claimed appeared worth pursuing. Brown, it seemed, had indeed on occasion blurred the lines between fact and fiction dating back more than a decade. In several newspaper articles, including at least one posted on danbrown.com, Brown is given credit for writing "Peace in Our Time," a song these articles say was performed at the 1996 Summer Olympics. According to a database of all the songs performed at the Olympics, no song by that name was performed in 1996. In 1988 a song titled "Peace in Our Time" was performed at the Summer Olympics, but it wasn't the version that was written and recorded by Dan Brown.

Even the most fantastical of all of Perdue's claims seemed to have at least some grounding in reality. Perdue blogged about how he'd been receiving mysterious messages from someone who went by the handle "Ahamedd Saaddodeen," which Perdue wrote might be a pseudonym employed by Blythe Brown. Ahamedd Saaddodeen, as far as I can tell, is not a real person; however, an independent database search indicates that on at least one credit report Blythe Brown and Ahamedd Saaddodeen, in addition to sharing at least the first five digits of their Social Security numbers, are listed at several identical addresses from 1979 until very recently. (The e-mail address Saaddodeen used to send Perdue the mysterious e-mails was comprised of the two last names Blythe Brown had been previously known by, and is no longer active. Elizabeth McNamara says that Blythe Brown has never e-mailed or contacted Lewis Perdue. The Browns and both Dan Brown's

personal attorney and his agent refused to comment on any of the accusations brought up by Perdue.)

There was still the possibility that all this was nothing more than odd coincidences unearthed by an overactive imagination. That was not the situation with one unambiguous case in which *The Da Vinci Code* mirrored word for word a previously published text.

### The Case of the Copied Robot

Shortly after my *Newsweek* article about Perdue and Brown was published, I received an e-mail from a Philadelphia-based psychologist. He wrote of how he had been listening to *The Da Vinci Code* on tape while simultaneously surfing the Web. He chanced upon a site on the history of computing and was reading a section about Leonardo's lost robot when, the psychologist wrote, he heard the hero of *The Da Vinci Code*, Robert Langdon, speak "these exact words to sophie. . . is this plagiarism? frankly, it is to me. i only came across this by accident. what else is out there?" At the time, I tried to track down the site the psychologist referred to, but I couldn't find the relevant text, and I soon forgot all about it.

This spring I searched through my notes to find the old e-mail. The passage in question in *The Da Vinci Code* describes Leonardo's lost robot as "an outgrowth of his earliest anatomy and kinesiology studies" that was "designed to sit up, wave its arms, and move its head via a flexible neck while opening and closing an anatomically correct jaw." I put the phrases "anatomy and kinesiology studies" and "anatomically correct jaw" into Google and eventually ended up on the Web site of Florence's Institute and Museum of the History of Science. On its site was a description of "Leonardo's lost robot," which was described as "an outgrowth of his earliest anatomy and kinesiology studies. . . This armored robot knight was designed to sit up, wave its arms, and move its head via a flexible neck while opening and closing its anatomically correct jaw." The museum attributes the passage to Mark E. Rosheim.

Rosheim, it turns out, is a self-taught inventor, scholar, and robotics expert who lives in St. Paul, Minnesota. I e-mailed Rosheim, explaining that I wanted to ask him "a question with the understanding" that he not tell anyone "what I'm working on or my specific reasons for getting in touch with you." Rosheim agreed. After signing his name, he tacked on a PS: "Now you got me curious—Is it the the [sic] text Dan Brown ripped off from my [1996] paper?"

Rosheim, who dropped out of high school and moved to Minneapolis as a teenager, shares some of Lewis Perdue's overbearing enthusiasm. He lives alone, and his house is decorated with framed Houdini posters and handmade models of metal robots he crafts in his basement workshop. Since the 1970s,

he's been fascinated by Leonardo, and in the mid-1990s he befriended Carlo Pedretti, one of the world's leading Leonardo scholars. Pedretti had identified Leonardo drawings that seemed to sketch out some kind of early, archetypal robot, and working from these drawings, Rosheim had done the first engineering study on what had been previously known as the robot knight. Rosheim's paper, "Leonardo's Lost Robot," was published in 1996 in the *Achademia Leonardi Vinci*, a Pedretti-edited "Journal of Leonardo Studies and Bibliography of Vinciana."

Rosheim says he was lying on a couch in his living room reading *The Da Vinci Code* a couple of months after it had been published when he came across his words in Brown's book. On September 16, 2003, he sent Jason Kaufman, Brown's editor at Doubleday, a letter. A line from his academic paper, Rosheim wrote, "sounds a lot like Bob Brown's [sic] line pg 199. . . Please contact me at the above number to discuss this." Kaufman, according to Rosheim, told him Brown's copying of Rosheim—which, in totality, amounted to 32 words—was covered under the fair-use principle of copyright law. (Kaufman responded to an e-mailed request for comment for this article by saying he didn't want to be interviewed. Neither Kaufman nor Brown responded to specific requests asking about Rosheim.)

Over the next three years, Rosheim stayed in sporadic touch with Kaufman and his assistant. At one point Rosheim asked Kaufman if Dan Brown would consider blurring his latest work, *Leonardo's Lost Robots*, which was published this year by Springer, an academic press based in Berlin that specializes in science, medicine, and engineering. "I figured since [Brown] obviously liked my work, maybe he'd just say how interesting this was." Kaufman, according to Rosheim, never responded. "Every now and then I'll be giving a talk and someone will come in with *The Da Vinci Code* and ask me to sign a copy," Rosheim says. "Either that or they'll accuse me of copying him."

### "Hundreds of Parallels"

United States copyright law can be convoluted and thorny. Take the oft-cited fair-use principle: the general theory is that copyrighted material may be quoted for either commentary or criticism. It's this principle that allows critics to quote from the books they're reviewing; it's also this principle that allows for parody. Commonly agreed upon interpretations of the fair-use doctrine have held that if the amount of copyrighted text taken is small and if the effect upon the original work's application in the marketplace is negligible, then it's probable that no copyright infringement has occurred, even if the original work is not

## SKETCHBOOK BY MARGARET CUSACK



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given credit. (This is not the case in plagiarism guidelines that govern much of academia and journalism, fields in which it is not permissible to use someone's work without attribution.) In this regard, Jason Kaufman may well have been correct if he told Mark Rosheim that, as far as Doubleday was concerned, it was perfectly acceptable for Dan Brown to use Rosheim's words without attribution.

The case law as it relates to Lewis Perdue's situation is more complex. Perdue was not alleging that Brown had copied his work word for word; he was saying that Brown had essentially gotten the premise and plotting for *The Da Vinci Code* from *Daughter of God*. In these types of copyright cases, one of the tests case law refers to is what's known as *scènes à faire*, in which certain situations are considered so typical of a genre they cannot be copyrighted. A police drama can reasonably be expected to include some discussion of gang violence and corruption; a spy novel will likely include assassinations, secret identities, and international intrigue.

In Random House's briefs and in the courtroom, McNamara argued that many of the things Perdue was calling substantial similarities were, in fact, *scènes à faire*. What's more, McNamara argued, there were countless "fundamental differences" in the two books. But upon close reading, these differences often seem like little more than the changing of superficial details. The difference between *Daughter of God's* search for proof of a female Messiah and *The Da Vinci Code's* search for proof of Mary Magdalene's marriage to Jesus does not significantly impact the books' shared central theme: that a millennia-long conspiracy to cover up the role women played in early Christianity has been perpetuated.

There are other ways in which Random House deftly skirted the issue. In one of her court filings, McNamara compared Perdue's Cardinal Neils Braun with Brown's Leigh Teabing in an effort to show the books' "radical differences in the ultimate villain." The actual comparison of Braun should be to Brown's Bishop Manuel Aringarosa: both Braun and Aringarosa are Catholic leaders who ask devotees to commit murder in order to capture evidence to be used to blackmail the Pope. The "absence in *Da Vinci Code* of Nazis and Russian mafia" is not necessarily proof, as McNamara claimed, that the two books are fundamentally different; it may simply be that Brown is a more streamlined writer or that he had a better editor.

In his district-court ruling, Judge Daniels agreed with almost every aspect of the Random House argument. He wrote that all of the similarities between *Daughter of God* and *The Da Vinci Code*—including "the Church's recasting of the great goddess as evil; the

role of Emperor Constantine; Christianity's adoption of pagan practices; the existence of the divine feminine; . . . the Catholic Church's awareness of the existence of the Holy Grail and the Sophia Passion; the existence of two organizations who seek to obtain the physical evidence; similarities between Opus Dei and the Congregation for the Doctrine of Faith; . . . similarities between the treatment of Mary Magdalene in *The Da Vinci Code* and Sophia in *Daughter of God*; [and] the use of historical references, particularly Constantine"—were "unprotectable ideas, historical facts and general themes that do not represent any original elements of Perdue's work." Because case law maintains that an average lay reader and not an expert should determine the standard for copyright infringement, outside-witness statements were not permitted in the case.

Still, Ed Condren, an English professor at U.C.L.A., performed a textual analysis of Perdue's work and *The Da Vinci Code*. Perdue's California law firm had initially hired Condren, an expert on libel, copyright, and intellectual property. Condren continued to help Perdue even after it became clear he would likely never be paid for his work. "I didn't think there was any question the one borrowed from the other," Condren says. "And the notion that all this is covered under *scènes à faire* is odd to me. Yes, many thriller-type books open with a murder. But the details that make Willi Max a marked man in *Daughter* and Jacques Saunière a target in *Code*"—the fact that both men possess proof of the Catholic Church's suppression of its history regarding women—are "not encountered anywhere else. And those kind of unique situations come up throughout the books." In his final report, Condren wrote, "*Daughter of God* and *The Da Vinci Code* employ identical narrative strategies. . . . These novels share the same background story, not only in the personages and events they refer to, but more important, in the identical ways they distort these historical events to support their nearly identical stories. . . . The expression of this story in *The Da Vinci Code* is substantially similar to the earlier expression of the same story in *Daughter of God*."

Condren wasn't the only expert who was persuaded by Perdue's case. John Olsson, the director of Britain's Forensic Linguistics Institute, was also contacted by Perdue and ended up analyzing the books for free. "This is the most blatant example of in-your-face plagiarism I've ever seen," Olsson, who prepared a study of the two books, told the *New York Post* in 2004. "There are literally hundreds of parallels." Perdue was not allowed to introduce those witness statements at the Appeals Court hearing either. On April 18, 2006, one week after hearing arguments in the case, the Second Circuit Court of Appeals unanimously affirmed Judge Daniels's decision, saying that Perdue's arguments were "without merit."

Since then, Perdue has become increas-

ingly despondent. He says he is still hoping for some sort of miracle, and is preparing to file a petition asking the Supreme Court to review the rulings in the case. Meanwhile, his e-mails to his lawyers have become more frantic, his pleas for help more desperate. It's unlikely that the Supreme Court will hear Perdue's case: unanimously affirmed decisions regarding copyright infringement don't deal with the sort of pressing constitutional issues the court likes to tackle. Whatever happens, it seems fitting that there's at least one more eyebrow-raising oddity concerning the strange saga of Dan Brown and Lewis Perdue.

## A Borrowed Decision

Random House's initial filing against Perdue was in September 2004. Three months later, before the opening arguments in the case had been heard, Judge Daniels was blistered in a front-page *New York Times* article headlined JUDGE'S DECISIONS DRAW NOTICE, FOR BEING CONSPICUOUSLY LATE. Daniels, the *Times* wrote, had the worst record for tardiness of any judge in the country: "Of about 1,500 active and senior Federal District Court judges and magistrates in the United States, none come close to Judge Daniels's record of motions that have been awaiting action for more than six months." In May 2005, when the courtroom phase of the Perdue-Brown trial ended, Daniels said he would read both *The Da Vinci Code* and *Daughter of God* before making a ruling. A mere three months later, on August 4, he dispatched the case when he ruled in Brown and Random House's favor.

Three days after the decision had come down, Perdue used plagiarism-detection software developed by a physics professor at the University of Virginia to show that the descriptions in Daniels's ruling of both *Daughter of God* and *The Da Vinci Code*—the descriptions which Daniels used in deciding that no protectable elements had been stolen—had been lifted, in many cases word for word, from Random House's own filings. It is not unusual for judges to use the winning side's legal arguments when deciding a case; after all, the judge is essentially agreeing with that side. But in this case, Daniels wasn't merely using one side's interpretation of case law; he was borrowing Random House's synopses of two byzantine novels and using those to bolster his ruling that the two books were not similar. (Judge Daniels did not respond to phone calls or e-mails requesting comment.)

"The [Random House] brief totally misstated what *Daughter [of God]* is about and totally distorts what *The Da Vinci Code* is about," says Perdue. "If I thought those were accurate descriptions of the two books, I'd rule against me also. Sometimes it's hard not to feel as if I'm going crazy." □



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