IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RICHARD BRODERICK JONES	APPELLANT
VS.	NO. 2006-CA-00974
NEVADA RAE BARR JONES	APPELLEE

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

APPEAL FROM THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

Richard Borderick Jones, Appellant,

Mark A. Chinn, Attorney for Appellant

Matthew Thompson, Attorney for Appellant

Nevada Rae Barr Jones, Appellee

Michael Malouf, Attorney for Appellee

Honorable Stuart Robinson, Chancellor

SO CERTIFIED this the 21st day of November, 2006.

Respectfully submitted,

Mark A. Chinn, MSB #6086

STATEMENT OF ORAL ARGUMENT

Richard Broderick Jones submits that Oral Argument will assist this Court in rendering its decision. This involves a matter essential to the very foundation of our justice system; perjury. Oral Argument will assist this Court in grasping the depths of the perjury as well as provide an opportunity to view first hand the deception and perjury committed against the Court.

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IV. **The Chancellor was manifestly wrong and clearly erroneous in refusing to award Alimony to Richard.**

V. **The Chancellor was manifestly wrong and clearly erroneous in refusing to award attorneys fees, with much additional expense incurred because of Nevada's perjury and discovery violations.**

STATEMENT OF THE CASE

This is an appeal from a decision of the Chancery Court of Hinds, County, Mississippi, Honorable Stuart Robinson, presiding, regarding alimony, equitable distribution and perjury by the Appellee. The case began on December 23, 2004, when Plaintiff, Nevada Rae Barr ("Nevada") filed for divorce on the ground of habitual cruel and inhuman treatment, or, in the alternative, irreconcilable differences. On March 16, 2005, Richard Jones ("Richard") filed his counterclaim for divorce on the ground of adultery or, in the alternative, irreconcilable differences. On August 8, 2005, the parties filed a *Joint Motion and Consent to Trial and Divorce on the Ground of Irreconcilable Differences*, requesting that, at trial, the Chancellor determine all remaining financial issues. Richard filed two Motions to Strike Nevada Barr's defense or for other sanctions based upon perjury and destruction of evidence by Nevada. A hearing was conducted on Richard's motions immediately prior to trial on the merits, which took place on November 7 and 8, 2005.

Richard Jones appeals the Chancellor's refusal to take any action regarding the perjury and destruction of evidence and his denial of alimony and his award of only 21% of the marital assets.

STATEMENT OF THE FACTS

This is a tale of deception, debauchery, chicanery and perjury worthy of the novelist, Nevada Barr, who is involved. On an unsuspectingly beautiful November day, Richard Jones–former career National Park Service employee–returned to his comfortable home in Clinton to find that his wife of nine years had left him without warning and left in her wake only the following evidence of the motivation for her departure:

Brodie-[1]

I do not wish to leave you in a bad financial place. I know you do not wish to work. I will take care of you as we find appropriate. I will give you the house and the money that meets your needs. I don't want to punish you or hurt you; I want you to have what you need to make a life for yourself, money that is YOURS, a house that is YOURS, a life that you can be proud of and share and enjoy. I only want out. I want the place in N.O. and the doggies. All else we will negotiate between us till you are safe and secure and financially taken care of. It was in my mind to wait till after the holidays but that was selfish; I just wanted to be with April and Ryan. Perhaps it will be good for you to have your family around you as you adjust to this. I will call you in a couple of days, when you've had time to think things through. I shall split my time between here and N.O. till the duplex deal closes then I hope you will allow me to take some of the things from the house to furnish the duplex. I ask that you don't try and track me down, call me, etc. I need this time alone and, till the dust has settled, it isn't wise to meet without a mediator.

I thought to wait till you were gone this weekend that I might pack my computer and some clothing I will need but, since I decided to go, every moment here is a lie, and I can't take it even one more night.

This may seem sudden, shocking even, but it's not. It's been a long time coming. Both of us have worked unbelievably hard to make this marriage work. You have changed and I have changed and both of us have changed some more. But it doesn't work. When I stopped fighting with you a couple of months ago, I thought that would be a good thing. In a way it was, but not in the way I thought it would be. What happened was I began to ACCEPT the way things were, not to hope anymore for change. I accepted that it was normal to shriek obscenities at one's husband two or three times a month, that it was fine to want to occasionally smash his face in, that it was okay that he lied about money, that promises were nothing much, that a wife, when her husband was late, often wished he'd gotten in a car accident and was dead, that it was **normal** to be happy when your husband left and sorry when he returned. That this was the way life was. Then I snatched the money back and you set up yet another USAA acct. and I realized that not only did I not trust you but **you** did not trust me, did not trust me to make monetary decisions with you, did not trust that I had your best interests at heart. You lived as silently desperate a life as I did; you could not trust me with your needs and thus must lie. We grew ever more parallel.

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[1] "Brodie" means and refers to Richard Broderick Jones, Appellant in the case at bar.

> Maybe because I bought the duplex and now have a place I can live. Maybe because I gave up. Whatever, a couple of weeks ago, I began to see that I cannot look forward to another 30 years of this. It's killing me. I must end our marriage. There is no give to this. I am gone and will stay gone. Of course I care for you, I remember good times and your great kindness. But this marriage has ended.
>
> It is my hope you will not fight me on this but let us work it out in a way that feels just and right and safe for both of us. Other than to ascertain what the legalities are, I would like to do this without the expense of lawyers if we can. Lawyers will pit us against each other and make themselves richer and us poorer and angrier. If, after you've talked to a legal council and thought about it, you could find a mediator that would work with us, that would be good. I hope you will not call friends and family and demand to know where I am. They don't know. I have kept them out of it just for this reason. I hope you will find in this the excitement of a new beginning where you don't have to feel beholden, under-appreciated, less than.
>
> I know this nocturnal departure is not logical, linear, perhaps not even polite but, I fought for logical, tonight I reached the point where I couldn't do it anymore. Please forgive the drama and the apparent haste. I have always found it better to hear this sort of stuff in writing so I have time to absorb it before I have to talk about it with others. I hope this is true for you. I'll talk with you soon and we can be rational. I do care about you and will help you get what you need and want.

(R. 82-83, Ex. 1, R.E. 26-27)(emphasis in original).[2]

This shocking departure and ruthless "Dear- I wished you died in a car accident--John Letter" were a total and complete surprise to Richard. (R.E. 26). After all, Nevada had written in a published book in 2003 that Richard was the ideal man and husband. Richard also soon learned that Nevada had raided their joint account of approximately $500,000, leaving him with around $50,000. (Tr. 99).

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Citations to the Record are designated as (R.__), the Record Excerpts as(R.E.__), the Transcript of testimony as (Tr.__), Composite Exhibits as (Ex.__, No. __, Pp. __), and Exhibits as (Ex.__).

As it turns out-- from proof evolved from truthful sources other than Nevada-- Nevada was engaged at the time of her separation in an affair with one Donald Paxton, with whom she would later live. Seeking to distract the courts and the parties' community of friends from her adultery and skulduggery, Nevada began an elaborate campaign to sully Richard's reputation and to accuse him of, and sue him for, habitual cruel and inhuman treatment which was purely the figment of her author's imagination and which was belied by her writings and her sworn testimony. (Tr. 23-24). During discovery, Nevada blatantly lied under oath about her affair. (Tr. 24). First she denied having an affair. Later, upon more thorough questioning, she admitted having an affair, but not until January of 2005. Of course, to admit that the affair was going on when she left in November, 2004 would discredit her fabricated tale of cruelty by Richard. She knew this, so she concocted an elaborate scheme to admit the adultery, denounce her crime, and profess to tell the truth in the future. (Tr. 24). She declared under oath that her newfound sense of morality compelled her to admit that the affair was adultery and that it had taken place in January.[3]

Of course, that was not true either, but Nevada allowed the lie to simmer and fester for months until her deposition was taken again when she did not elect to set the record straight. It was her paramour who set the record straight in his deposition which took place later. Nevada never personally corrected the record of her testimony until forced to do so at the hearing on the Motions to Strike.

Also during her deposition, Nevada was asked about the "Dear- I wished you died in a car

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3

Included with this brief are video segments of the actual deposition. These demonstrate first hand Nevada's perjury, cover-up, denial, purported confession and declaration that she was then testifying truthfully. It is imperative that this Court review these materials, in addition to the print, to appreciate the depths of deception perpetrated against Richard Jones.

accident--John Letter," that she left. (R.E. 26-27). Apparently stunned by the despicable nature of her own letter, Nevada attempted to deny that she had left the letter. She then accused Richard of changing the letter she had actually written. When asked where the true copy of the letter was, Nevada said it was on her computer. (Ex. 2, No. 12, Deposition pp. 84). At trial, she admitted she smashed this computer into pieces and threw it into a bayou after Richard's attorneys asked for its production. (Tr. 26).

Richard and Nevada were married on June 29, 1996 in Clinton, Hinds County, Mississippi. (R. 000001). At the time of trial Richard was 55 years old and Nevada was 53. Both parties are in good health. At the time of the marriage, Richard and Nevada both worked for the National Park Service, but Nevada quit her job with the Park Service to devote full time to fiction writing. Nevada began writing books prior to the marriage and wrote and published books prior to and during the course of the marriage as follows:

- *Bittersweet* - 1983
- *Track of the Cat* - 1993
- *A Superior Death* - 1994
- *Ill Wind* - 1995

– Date of Marriage - June 29,1996

- *Firestorm* - 1996
- *Endangered Species* - 1997
- *Blind Descent* - 1998
- *Liberty Falling* - 1999
- *Deep South* - 2000
- *Blood Lure* - 2001
- *Hunting Season* - 2002
- *Flashback* - 2003
- *Seeking Enlightenment - Hat by Hat* - 2003
- *High Country* - 2004
- *Hard Truth* - (Expected 2005)
- untitled book - (Writing began September/October 2004)

At trial Nevada and her publicist, Dominick Abel, testified that Nevada's most lucrative publications were written during the marriage -- *Bloodlure*, published in 2001, and *Hunting Season*, published in 2002, respectively. (Tr. 194-95).

Social Security Administration reports were introduced into evidence which showed that at the time of marriage, Richard's earned income was $38,067 and Nevada's earned income was $32,791. Nevada's success in book writing increased steadily during the marriage. The parties' joint tax return for 1997 (the first full year of marriage) showed an adjusted gross income of $477,439 and their amended joint tax return for 2003 (the last full year of the parties' cohabitation) showed an adjusted gross income of $994,072. (Ex. 2, No. 4, 10).

The parties jointly own the marital home, located at 603 Merganser Trail in Clinton, Mississippi, where Richard resides. In addition, there is a home located in New Orleans, Louisiana, in which Nevada resides, titled solely in Nevada's name. There is also a home located in Berkley, West Virginia, titled solely in Richard's name. Total assets involved exceeded Two Million Dollars and proof showed that Nevada stands to earn residuals on her books as well as future earnings from movies and other sources.

Prior to trial, Richard presented proof of Nevada's repeated perjuries on the relevant issue of adultery and her lies about her computer and her ultimate destruction of that piece of evidence. (Tr. 2-34). Even though the Chancellor found Nevada guilty of perjury at the hearing, this evidence was completely ignored by the trial judge in the final opinion, ignored with regard to sanctions and ignored as a factor in the credibility of Nevada. At trial, Richard, relying upon precedent from not only Mississippi, but all other states that have addressed the issue of intellectual property as a marital asset, contended he was entitled to a fifty percent share of all earnings during the marriage and a suitable proportion of residuals which would passively flow to Nevada in the future from books written during the marriage. Richard–who is nearing retirement age and had been unemployed for years during the marriage–asked for alimony. In what is an unprecedented award in reported decisions, the Chancellor gave Richard only 21% of the assets, no interest in residuals and no alimony.

SUMMARY OF THE ARGUMENT

The chancellor erred in relying on Nevada Barr's testimony and averments as it was demonstrated time and again that she was guilty of perjury and destruction of relevant evidence. Nevada testified to whatever most benefitted her and should not have been affordered any defferance regarding her veracity. Richard offered testimony and evidence contradicting Nevada that is far more credible than Nevada Barr. The Chancellor was aware of the many instances of perjury and proven destruction of evidence, but erroneously chose to ignore it.

The chancellor erred in his reliance on Nevada's Rule 8.05 financial declaration. It is undeniably false and innaccurate. It was relied upon by the Chancellor to Richard's detriment. This wrong must be corrected for equity to reign and for fairness to be upheld.

The chancellor erred in his application of equitable distribution. The division was undeniably one-sided and unfair. The Chancellor did not consider Richard's contributions to the marriage. Because Nevada earned the bulk of the income with her work as an author, and because Richard is a man, the Chancellor discounted Richard's efforts to support the bread winning spouse. Most assuredly had the gender roles been reversed the outcome would not be the same.

The Chancellor erred in not awarding alimony. After the "equitable distribution" there was a tremendous disparity in the the parties' estates. Richard, approaching 55 & 53 ? retirement age, had not worked in a number of years, other than in his effrots to support Nevada's writing career which blossomed during the course of the marriage. The lack of an award of alimony was not equitable and again attributable to the gender discrimination that is evident in this case.

Finally, the chancellor erred in not awarding attorneys fees to Richard and his counsel. An attorneys fee award is left to the sound discretion of the Chancellor. However, much expense was directly related to Nevada's perjurous statements, which she maintaind for as long as she could.

Along with her admitted destruction of relevant evidence, an award of attorney fees was warranted and failure to do so was an abuse of discretion.

ARGUMENT

This Court has held that the findings of a chancellor may be disturbed or set aside on appeal if the decision of the trial court is manifestly wrong and not supported by the substantial credible evidence, or an erroneous legal standard was applied. *Pearson v. Pearson*, 761 So.2d 157 (Miss. 2000).

This Court will reverse where the chancellor was 'manifestly wrong, clearly erroneous or an erroneous legal standard was applied.'" *West v. West*, 891 So.2d 203 (Miss. Dec. 2, 2004) (*quoting Perkins v. Perkins*, 787 So.2d 1256, 1260 (Miss. 2001)).

This is a case that is manifestly wrong, clealry erroneous and not supported by the substantial evidence and it must be reversed and rendered in favor of Richard Broderick Jones.

I. The Court erred in denying the motion to strike and for sanctions and in failing to take any action whatsoever to redress admitted, repeated, blatant perjury, discovery violations and destruction of evidence.

Long before trial, Richard filed a *Motion to Strike and for Sanctions* against Nevada for committing perjury while under oath during her deposition, and failing to correct her blatantly false statements, even after they were discovered. Richard respectfully requested that the Court (1) strike any reference to or proof offered by Nevada at the trial of this matter concerning her allegations of fault against Richard, and (2) award to Richard reasonable attorney fees, costs, and expenses incurred in pursuing this matter. (R. 000134-40).

Later, Richard filed a *Second Motion to Strike and for Sanctions* against Nevada for committing discovery violations and spoliation of evidence, and moved the court for an order (1) presuming that the "Dear–I hope you get hit by a truck-- John letter" at issue was written by Nevada in its entirety, and (2) striking and prohibiting Nevada from referring to allegations of fault against Richard, and (3) awarding Richard reasonable attorney fees, costs and expenses incurred for having to bring this motion. (R. 000149-53). In argument before the court, Richard's counsel beseeched the Chancellor to view the perjury as a serious matter which jeopardized the very foundations of our justice system and our society.

Counsel pointed out that in the Wayne Law Review, in 1996, the author wrote, "The crime of perjury...attacks the very foundation of the judicial system." Harris, L. C., *Perjury Defeats Justice*, 42 Wayne L. Rev. 1755, 1755 (Spring 1996).

Counsel pointed out that in the American Journal of Jurisprudence in 1995, the author writes: "The legal system is geared to two things: order ...and the finding and discovery of truth. In many ways, the first is dependent on the second because unless a people perceive that justice has been done as based on truth, the legal system will be perceived as one of chicanery, procedures and legal tricks." The author went on to explain that "[t]he discovery of truth remains a cornerstone of the Western legal system because without it, the relationship of citizens becomes disruptive and suspicious and finally impossible. There can be no truly free civil society without citizens trying to deal truthfully and honestly with each other." Riga, Peter J., *The Nature of Truth and Dissent*, American Journal of Jurisprudence, 40, 71-78, 71 (1995).

Richard's counsel pleaded with the court to view the perjury with intolerance and not–as argued by Nevada's counsel–as something that happens in divorce cases. Counsel for Richard cited the following:

> The general acceptance of perjury as inevitable by legal professionals needs to be replaced by **intolerance** of its presence, criminal prosecution and disciplinary sanctions of perjurers and suborners of perjury must be elevated from low to top priority. To achieve this result, lawyers, judges and prosecutors needs to be educated and reeducated on the urgency of prosecuting this crime.

Harris, L. C., *Perjury Defeats Justice*, 42 Wayne L. Rev. 1755, 1779-80 (Spring 1996)(emphasis added).

After hearing Motions, the Chancellor stated the following from the bench: "**Admittedly by the witness, there's been a tremendous amount of perjury committed in this case, over and over again...I think that it's certainly subject to sanctions because of that. I mean sanctions is the least of it, really for this kind of perjury, but I'm going to declare that she has committed perjury and is going to be sanctioned, and I'll it take under advisement as to what the sanction will be.**" (Tr. 30-31)(emphasis added).

Astonishingly, the Chancellor did not make good on his assurances that there would be sanctions in the final order! (R.E. 9-12). The Court denied all requests for relief regarding the perjury and **gave no reason therefor** and then went on in its finding to give credit to Nevada's trial testimony over that of Richard and over that which she had said in other testimony and in her book.(R.E. 9-25). Here is some of what the Judge ignored. (We suggest the Court view the video of the actual deposition for the truest picture.)

"There's Something Addictive About Lying"

Nevada Barr, Seeking Enlightenment, 81

During her March 8, 2005, deposition, Nevada blatantly lied while under oath. During deposition questioning, Nevada repeatedly attempted to mislead the undersigned counsel and the court, even after undersigned counsel pointed out her apparent inaccurate testimony. After further

questioning by undersigned counsel, Nevada eventually admitted that she intended to lie and did, in fact, lie while under oath, after first being duly sworn. During her deposition, Nevada testified as follows:

> Q: Have you committed sexual intercourse with anyone other than your husband during your marriage?
> A: The entire time I have been with Richard, I didn't even hold hands, kiss, flirt, or receive dirty e-mails from other men.

(Ex. 2, No. 12, Deposition pp. 143-144).

She later testified:

> Q: Have you stayed the night at Don's house?
> A: No.
>
> Q: You nodded yes and said no?
> A: No, I shook my head.
>
> Q: Have you not stayed the night at Don's house?
> A: No.

(Ex. 2, No. 12, Deposition p. 145).

The above deposition testimony was given by Nevada under oath. Nevada expressly denied any sort of relationship with any person, and specifically denied a relationship with Donald Paxton. Nevada testified that while she was with Richard, she did not "hold hands, kiss, flirt or exchange dirty e-mails" with anyone, other than her husband, Richard. On at least three occasions Nevada denied an extra-marital relationship.

"I had developed the habit of lying"

Nevada Barr, Seeking Enlightenment, 82

Upon further examination Nevada finally admitted she was lying. She acknowledged that she was under oath and knew that lying under oath was a crime, but that she had intended on lying to better her position.

Q: You know a second ago I asked you, "Did you stay the night or anything like that," and you answered, "I don't think I stayed that night, no."?
A: I've stayed the night there.

Q: Oh, you have stayed the night there?
A: Uh-huh (affirmatively).

Q: When have you stayed the night there?
A: Off and on since early to mid-February I think.

(Ex. 2, No. 12, Deposition pp. 145-146)

Q: So let me get this straight. You first said you didn't stay the night that night?
A: I was tempted to lie because I wanted to better my position, but I can't do it so I'm telling you the truth.

Q: All right. So what you're admitting now is that you did lie a minute ago when you said- -
A I did.

Q: Excuse me, let me finish. A minute ago when you said - - I asked you, "Have you stayed the night at Don's house," and you answered, "No." That was a lie?
A: That was a big, fat lie.

(Ex. 2, No. 12, Deposition p. 147).

Q: And I asked you again, "Have you not stayed the night at Don's house," and you said, "No"?
A: I wanted to keep on lying.

Q: So that answer was a lie?
A: That was a big, fat lie, yes.

(Ex. 2, No. 12, Deposition p. 147).

Q: Since you left Richard, you have held hands, kissed, and had sexual intercourse with someone other than Richard?
A: Yes, I have.

Q: Who was that?
A: That would be Don Paxton.

Q: All right. So when did your sexual relationship with Donald Paxton begin? Let me say that again. When did you first have intercourse with Don Paxton?
A: Late January, early February.

(Ex. 2, No. 12, Deposition p. 148).

"I still find myself altering facts just a hair..."

Nevada Barr, Seeking Enlightenment, 82

Further questioning elicited the following testimony under oath:

Q: So you're telling me that the only man that you've had sexual intercourse with since the date you married Richard is Donald Paxton?
A: Yes.

Q: Is that the truth?
A: Yes. You can see my career at lying was pretty short lived.

Q: All right. Do you understand this is under oath and if you're lying, it's a crime?
A: I do. And I was going to try and commit the crime and I just can't do it.

(Ex. 2, No. 12, Deposition p. 149).

"Tuning up the Truth"

Nevada Barr, Seeking Enlightenment 82

As the testimony above indicates, upon being caught lying under oath, Nevada apparently confessed to her previous falsehoods and changed her testimony. She then made special effort to aver, under oath, that her revised testimony was, in fact, now truthful with regards to her illicit

relationship. While in the self-proclaimed "truthful" portion of her testimony, Nevada claimed that her first sexual encounter with Donald Paxton occurred in late January or early February, 2005, at the earliest.

A subsequent deposition of Nevada's paramour, Donald Paxton taken on June 29, 2005, indicated that the adultery between Nevada and Paxton took place in November of 2004 and not January or February of 2005, as Nevada had testified.

Q: And as you recall this dinner at the Parker House took place in the first part, perhaps the mid part of November?
A: That's correct.

Q: What was your next communication with Nevada?
A: She called me up, said she'd like to come up. She came up and we had sex.

Q: Do you recall when that was?
A: That was the next day.

Q: The next day?
A: Yeah.

Q: Would that have been either in the early part or mid part of November, 2004?
A: That would be correct, yes.

(Ex. 2, No. 13, Deposition pp. 16-17).

"The practice of justification has stunted my growth"

Nevada Barr, Seeking Enlightenment, 35

Donald Paxton stated under oath that he and Nevada had sexual intercourse in early or mid-November 2004, not January or February 2005, as Nevada had claimed. Further questioning of Don revealed that Nevada told him she had lied, but justified it with the story that undersigned counsel had intimidated her.

Q: Okay. So it's not true, is it, that the first time you and Nevada kissed was in sometime at the end of January, first of February, 2005.

A: We had a relationship in January. And I do recall her having told me that that's what she told you about the first time we had relationships. And I also know that you, just statement of fact, had intimidated or scared her. And she was, I believe, simply trying to protect me in what she was doing.

Q: So Nevada has told you that she lied in her deposition?

A: Nevada told me that she recalled at that point that that's what she had said.

(Ex. 2, No. 13, Deposition pp. 22).

II. The Chancellor was manifestly wrong, and clearly erroneous in relying on perjurous statements and destruction of evidence perpetrated by Nevada.

A. Nevada failed to correct or amend her incorrect statements as required by the Mississippi Rules of Civil Procedure

The previous quoted testimony demonstrated that Nevada was blatantly lying under oath. Further, this testimony also demonstrated that Nevada had since become aware of the error of her testimony, but took no steps to correct or amend it. A subsequent deposition was taken of Nevada on or about June 28, 2005, wherein Nevada had ample opportunity to set the record straight and admit to prior false testimony, yet made no effort to amend her perjurous statements and continued to mislead the Court.

Nevada knew that her prior statements were false and incorrect but failed to correct or amend them as required by the Rules of Discovery. *Mississippi Rules of Civil Procedure*, Rule 26(e)(2)(A) requires that a party seasonably amend a response when "the party knows that the response was incorrect when made" or (B) "is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment." M.R.C.P. 26(e)(2).

"Justification is an offshoot of the art of sophistry, obscuring the clean lines of truth with a complex overlay of words. I am quite good at this."

Nevada Barr, Seeking Enlightenment, 35

Nevada intentionally destroyed her personal computer, after the computer became a disputed issue in this case. During Nevada's March 8, 2005, deposition, Nevada testified under oath regarding the letter that she left for her husband as follows:

Q: Exhibit 1 is the letter that you left for Brodie when you left, right?
A.: Yes.

. . .

Q: My first question is, why didn't you sign it?
A: Maybe I didn't write it. I did leave Brodie a note, but I usually write in longhand, but a lot of these sentiments are mine and I left him a typed note. I remember signing mine.

. . .

Q: Where did you type this note?
A: I would have typed it on my computer or his, probably mine.

(Ex. 2, No. 12, Deposition pp. 84)(emphasis added).

Q. Is there anything about this note, which is Exhibit 1, which you do not recognize or is it something you wrote?
A: I don't know that I wrote it at all.

Q: What are you suggesting?
A: I am suggesting that I don't know if I wrote all of this.

Q: Interesting. All right. Did you write – when you left Brodie, did you write that night, "I did not wish to leave you in a bad financial place"?
A: I don't remember. I remember I put in I didn't want to punish him and I didn't want to hurt him and I really wanted him to make a life for himself with money that was his and a house that was his because I had always thought he should work, and have a career and have something that was his, not mine.

Q: Do you recall writing, " I know you do not wish to work"?
A: Yes, because he doesn't want to work, but I wanted him to work.

Q: So one sentence after you say, "I know you do not wish to work," you write or someone writes, "I will give you the house and the money that meets your needs," right?
A: I don't –

Q: Did you write that or you don't recall?
A: I don't recall. I don't think that I would have written that. I would certainly give him the house if I could have the house in New Orleans. We both need a home. And that was our home together. A lot of it is mine, but I don't think it all is.

(Ex. 2, No. 12, Deposition pp. 85-86).

. . .

Q: Are you sure you want to go on record stating that you are not sure this is the letter that you left him?
A: Yes, I do.

Q: Okay. That's how it shall be then. Are you satisfied with that that you don't remember whether you left this letter or not?
A: Mark, I am satisfied with that.

(Ex. 2, No. 12, Deposition pp. 89).

. . .

Q: What computer did you type it on?
A: I believe I answered that as well. Mine, I believe because his –

Q: On yours?
A: On my computer.

Q: Do you still have the computer that you typed it on?
A: Yes, I do have the computer that I typed it on.

(Ex. 2, No. 12, Deposition pp. 84)(emphases added).

On March 15, 2005–seven days after the deposition-- Richard propounded his *Second Requests for Production of Documents* to Nevada. (R.000020). Richard specifically sought production of the aforementioned computer as follows:

> Request No. 4: **Produce** any and all computers its hard drives and any disks that you have had access to at any location, including but not limited to, **your personal computer referenced in your deposition ... on page 108** (lines 15-23)."

(emphasis added).

On March 31, 2005 Nevada provided her Responses to Defendant's Second Request for Production of Documents and responded to request number 4 as follows:

> Response: Plaintiff objects to Request No. 4 as it is overly broad and outside the scope of discovery.

Then on October 19, 2005, after Richard filed his *Motion to Compel*, Nevada provided her Supplemental Response to request number 4 as follows:

> Response: **Plaintiff no longer has a computer inasmuch as her computer was destroyed by her** prior to Defendant's request. (emphasis added).

In shockingly brazen testimony at trial, Nevada admitted she intentionally destroyed the computer and threw it in the bayou:

> Q: What did you do to the computer that you said the letter was on that you disputed the accuracy of ?
> A: I took a cold chisel and a hatchet; I tore it apart; I then took all of the pieces that were inside of it and I put them in the metal box; I burned it by pouring gasoline over it, and I shoveled it into a plastic bag and I dumped it in a bayou.

(Tr. 26)(emphasis added).

Mississippi Rules of Civil Procedure, Rule 37(e) provides for such sanctions which give "greater flexibility to the trial court in the form of a general grant of power which would enable it to deal summarily with discovery abuses, whenever and however the abuse is brought to the attention to the court." *Comment to M.R.C.P. 37.* For example, for the misuse of various discovery vehicles, the Court may impose monetary penalties according to the necessary expense to which the adverse

party was put. *Id.* Further, "[i]t is significant that Rule 37(e) does not enumerate the sanctions available to the court; courts should have considerable latitude in fashioning sanctions suitable for particular applications." *Id.* The relief sought by this motion is in accordance with the great "latitude" and discretion available to the court, provided by M.R.C.P. 37.

"A trial is a proceeding designed to be a search for the truth." *Sims v. ANR Freight Sys., Inc.*, 77 F.3d 846, 849 (5th Cir. 1996). "When a party attempts to thwart such a search, the courts are obligated to ensure that such efforts are not only cut short, but that the penalty will be sufficiently severe to dissuade others from following suit." *Scoggins v. Ellzey Beverages, Inc.*, 743 So.2d 990, 994-95 (Miss. 1999). Rules 37(b)(2)(C) and (E) of the Mississippi Rules of Civil Procedure provide that trial courts may, in appropriate cases, impose the sanction of "dismissing the action or proceeding or any part thereof" for abusing the discovery process. Additionally, "[t]he power to dismiss is inherent in any court of law or equity, being a means necessary to orderly expedition of justice and the court's control of its own docket." *Pierce v. Heritage Properties, Inc.*, 688 So.2d 1385, 1388 (Miss. 1997) (*citing Palmer v. Biloxi Reg. Med. Ctr.*, 564 So.2d 1346, 1367 (Miss. 1990)).

The Mississippi Supreme Court adopted the position of the United States Court of Appeals for the Fifth Circuit for evaluating the appropriateness of dismissal as a sanction for discovery violations. *Pierce*, 688 So.2d at 1389 (adopting analysis outlined in *Batson v. Neal Spelse Assoc., Inc.*, 765 F.2d 51 1 (5th Cir. 1985)). In *Batson v. Neal Spelse Assoc., Inc.*, the Fifth Circuit outlined four factors to be considered when examining a request to dismiss as a sanction:

> First, dismissal is authorized only when the failure to comply with the court's order results from wilfulness or bad faith, and not from the inability to comply. Next, dismissal is proper only in situations where the deterrent value of Rule 37 cannot be substantially achieved by the use of less drastic sanctions. Another consideration is

> whether the other party's preparation for trial was substantially prejudiced. Finally, dismissal may be inappropriate when neglect is plainly attributable to an attorney rather than a blameless client, or when a party's simple negligence is grounded in confusion or sincere misunderstanding of the court's orders.

Batson, 765 F.2d at 5 14 (citations omitted).

Richard Jones–and this counsel who was repeatedly lied to and dishonored by Nevada–respectfully requests this Court to reverse the Chancellor and strike all of Nevada's defense and award Richard the relief he requested in the trial court. Further, Richard requests this Court to forward the evidence of Nevada's perjury and destruction of evidence to the appropriate law enforcement authorities for prosecution, as well as the Mississippi Bar Association.

EQUITABLE DISTRIBUTION

III. The Chancellor committed manifest error in his considerations and application of equitable distribution.

"Not only did I find God in Mississippi, I found a *man*."

Nevada Barr, Seeking Enlightenment, 12

A survey of reported cases since 1995 reflects no decision where a spouse was awarded less than one third of the marital estate. In this case, the Chancellor awarded Richard only 21% of the marital estate. This shocking decision was a misapplication of the law and completely ignored the testimony that Richard was not only a good and faithful husband, but that he contributed directly to Nevada's writing efforts.

The first analysis required under *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) is a determination of "marital assets" or "marital property." In *Hemsley v. Hemsley*, 639 So.2d 915 (Miss. 1994), the Mississippi Supreme Court defined marital property as any and all property acquired or accumulated during the marriage. Furthermore, any asset owned by a spouse is

presumed to be marital. *Yancy v. Yancy*, 752 So.2d 1006, 1011-1012 (Miss. 1999). Accordingly, all income received by Richard or Nevada, and all assets acquired by either of them during the course of the marriage shall be considered when determining equitable distribution.

For the purposes of calculating whether or not assets are marital or non-marital, the "course of the marriage" runs until the date of the divorce judgment, unless a separate maintenance order is entered. *McIlwain v. McIlwain*, 815 So.2d 476 (Miss. Ct. App. 2002), citing *Godwin v. Godwin*, 758 So.2d 384 (Miss. 1999).

The marital property is as follows:

Equity in the marital home	$ 190,000
Equity in the New Orleans Home	$ 360,000
Equity in the West Virginia Home	$ 19,500
Home furnishings (LA & MS homes)	(already divided by agreement)
Noble joint investment account	$ 77
SEP acct. in Nevada's name	$ 280,737
Merrill Lynch IRA in Richard's name	$ 7,572
Merrill Lynch brokerage acct. in Nevada's name	$ 1,435,257
Edward Jones IRA in Richard's name	$ 10,363
Prudential Annuity in Nevada's name	$ 112,024
USAA checking account in Richard's name	$ 4,000
MPECU checking account in Richard's name	$ 1,200
Nevada's 1996 Mazda Miata	$ 9,000
1997 Honda Acccord	$ 4,950
Nevada's Subaru	$ 27,000
Richard's 1992 Cadillac	$ 5,500
Richard's 1984 Coachman RV	$ 3,500
Richard's 2002 Honda S200	$ 1,435
Nevada's 2 scooters	$ 2,000
Richard's motorcycle	$ 2,000
Yard Equipment	$ 500

MARITAL BOOKS:
- *Endangered Species*
- *Blind Descent*
- *Liberty Falling*
- *Deep South*
- *Blood Lure*

- *Hunting Season*
- *Flashback*
- *Seeking Enlightenment- Hat by Hat*
- *High Country*
- *Hard Truth*
- Untitled Book started in 2004

Delayed payments for Hard Truth due in 2006 ($480,000 minus 15% commission)	$408,000
Total Marital Assets: *(plus future income from marital books)*	**$2,884,615**

The marital liabilities are as follows:

Richard's credit cards	(- $70,000.00)
Joint Hinds Co. Property taxes	(- $ 3,000.00)
SunTrust (mortgage on WV home)	(- $61,000.00)
MPECU (Richard's car loan)	(- $16,500.00)
Total Marital Liabilities:	**(- $150,500.00)**

A. The Chancellor did not consider Richard's contributions to Nevada's book writing endeavors.

The *Ferguson* Factors

The factors to be applied in the equitable division of marital property are set forth in *Ferguson v. Ferguson*, 639 So.2d 921, 926 (Miss. 1994). The Court erred in its Ferguson analysis and should have evaluated the proof as set forth below. The first *Ferguson* factor considers:

1. Which party made substantial contribution to the accumulation of the property?

Factors to be considered in determining said contribution include:

a. The existence of direct or indirect economic contribution to the acquisition of the property.

[In marriage to Richard], "I feel I am always working with a safety net..."

Nevada Barr, Seeking Enlightenment, 80

The presumption under Mississippi law is that domestic contributions are presumed as valuable as bread winning contributions. *Hemsley v. Hemsley*, 639 So.2d 909, 915 (Miss. 1994). In this case, Richard not only contributed to the parties' home life, he also assisted Nevada in her book writing endeavors. Both parties made substantial contribution to the accumulation of the property.

At trial Nevada testified that Richard is a good carpenter, better than professionals, and that he made significant improvements to the marital home. Nevada stated that Richard did an "excellent job" of tiling both bathrooms, put up "fabulous cabinets" in the garage, built a contraption which doubled storage space in the garage, built raised flower beds, built a fence, built gates, and built a beautiful brick walk that went from the sunroom out to the sidewalk. (Tr. 47-48). She also testified that Richard built skylights for the marital home and put in a attic fan. (Tr. 48). Nevada testified that he built a pergola and did a fabulous job on it. He installed the gutters, helped with the yard work and took care of the cars. (Tr. 48).

Both parties testified that Richard accompanied Nevada on most of her book tours. (Tr. 66). Nevada admitted that she asked him to go on these trips and wanted his company. (Tr. 67). Nevada also admitted that Richard responded to fan emails on her behalf, and would read books for her and let her know whether he believed she should read the book and give a quote for the jacket. (Tr. 73). Emails evidencing Richard's involvement with Nevada's fan base were admitted into evidence. (Ex. 2, No. 14). Nevada stated under oath that she cannot "minimize the value he [Richard] was." (Tr. 74-75). Nevada admitted that when Richard accompanied her on book tours, he "eased the way for

her." (Ex. 2, No. 12, p. 178) She also admitted that Richard would arrange for the tickets and transportation for research trips that her publisher did not arrange. (Tr. 71-72).

B. The Chancellor did not consider Richard's contributions to the stability and harmony of the marriage.

The second factor to be considered in determining said contribution to assets is:

> **b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage.**

> [Marriage to Richard provides] "a warm place to run."
>
> Nevada Barr, Seeking Enlightenment, 80

Nevada testified that during the marriage Richard cooked most of the evening meals because he was a better cook than she, and during the last eight months before Nevada left the marriage Richard cooked all of the meals. (Tr. 46-47). At trial, Nevada admitted that there had been good, wonderful things in the marriage. She specifically admitted that Richard was good to animals and children, was not unfaithful with other women, and did not curse her. (Tr. 46). Nevada admitted Richard was affectionate, that he would put his arms around her and tell her he loved her. (Tr. 49). She testified that he was a good lover, was "tremendously skilled, tremendously interested in whether his partner has a good time," traits which Nevada admitted were very important to her. (Tr. 49-50).

Richard recognized and remembered Nevada's birthday and anniversary each year. (Tr. 51). He remembered special occasions and gave her cards for each, usually more than one. He gave her gifts on Valentine's Day and would bring her flowers and chocolate. He would also bring her stuffed animals, even on non-occasions, because she liked that, and because he liked to make her happy. (Tr. 51-52).

Nevada testified that Richard nursed her when she was sick, stating that "when it came to colds and headaches or surgeries or any of those things, you could not ask for a better nurse than Richard Jones." (Tr. 52). Nevada testified that Richard treated her like a queen. (Tr. 52-53, Ex. 2, Subpart 12, pg. 180).

Nevada testified that in her book *Seeking Enlightenment - Hat by Hat*, she wrote, "not only did I find God in Mississippi, I also found a man." (Tr. 59). Nevada testified that as of 2003, she was thinking that she was married for the last time, meaning she and Richard would always be together. Nevada also admitted to writing that in choosing to be married to Richard, she "experienced real freedom" and referred to him as his her "safety net." (Tr. 60, 64)

The Court also heard evidence of marital troubles between the parties 6 or 7 years ago. After a period of separation, however, the parties reconciled and committed themselves to making the marriage last.

Nevada's income increased from $32,791 at the time of marriage to $991,987 at the time of separation. In fact, Nevada and her publicist, Dominic Abel, both testified that her two most financially successful books, *Blood Lure* and *Hunting Season*, were written and published during her marriage to Richard. (Tr. 194-95).

It is apparent that Richard's efforts contributed to the harmony of the marriage. These efforts, however, were erroneously discounted by the Chancellor. The testimony and evidence adduced at trial demonstrates more than enough to show reversible, manifest error in the Chancellor's considerations of equitable distribution.

A third factor to be considered in determining contribution to the accumulation of marital assets is:

c. Any contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

Again, both parties testified that Richard accompanied Nevada on most of her book tours. (Tr. 66). Nevada admitted that she asked him to go on these trips as well as research trips. (Tr. 67, 71). Nevada admitted that Richard "would go with me on the research trips, which were a great deal of fun." (Tr. 71). Nevada stated under oath that she cannot "minimize the value he [Richard] was." (Tr. 74-75). Nevada admitted that when Richard accompanied her on book tours, he "eased the way for her." (Ex. 2, Subpart 12, p. 178). Richard "eased the way." Nevada's own testimony demonstrates Richard's efforts and contributions to the accumulation of assets. Richard's efforts undeniably impacted the earning power of Nevada, benefitting both.

The *Ferguson* Factors analysis continues with the consideration of:

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

The Chancellor wrongfully placed emphasis on gifts made to Richard's children during the marriage. The testimony was undisputed–from Nevada–that the gifts were **her idea.** (Tr. 359-61). If they were **her idea** they could not possibly be considered to constitute wasteful dissipation of marital assets.

C. The Chancellor erred in not awarding Richard any interest in future income from Nevada's book sales, for books written during the marriage.

3. The market value and the emotional value of the assets subject to distribution.

A key marital asset is future earnings from books written during the marriage. Without explanation or citation to authority, the Chancellor completely discounted Richard's right to an interest in this asset. A review of Mississippi law indicates there are no cases directly addressing

the issue of future income from assets such as books written during a marriage. However, other jurisdictions have addressed similar situations and have uniformly ruled in Richard's favor.

In *Zaentz v. Zaentz*, 218 Cal. App. 3d 154 (1990), the Court of Appeal of California, First Appellate District, Division One, held that where a husband devoted more than two years to the production of the movie *Amadeus* during the marriage, the husband had assumed risk in the production that placed community property at risk, and the wife was, therefore, entitled to her community share of income received from the film. The *Zaentz* Court ordered division of the movies' profits even though production of the movie continued after the couple separated and were divorced.

In *Monslow v. Monslow*, 912 P.2d 735 (1996), the Kansas Supreme Court held that a patent held by the husband was properly classified as a marital asset and that a percentage of future royalties could be awarded to the wife in a divorce action.

In *Teller v. Teller*, 53 P.3d 240 (2002), the Hawaii Supreme Court held that intellectual property is divisible by the Court and stated that the fair market value of the property at the time of the division was the proper valuation because it took into account the future value, reduced by its speculative nature. The Court was concerned with creating a separate property interest past the divorce, and thus they opted to take a present valuation for distribution purposes.

In *Hazard v. Hazard*, 833 S.W.2d 911 (1991), the Court of Appeals of Tennessee held that, although the present value of a husband's medical invention was not ascertainable at the time of the divorce, it did have an intrinsic value for its stage of development. Therefore it was to be considered a marital asset and wife was awarded a 20% interest in proceeds from royalties, licenses and sales.

In *Gallo v. Gallo*, 440 A.2d 782 (1981), the Connecticut Supreme Court affirmed the award to the wife of 20% of the royalties for a term of five years derived from books written by the husband

during the marriage. Although the exact amount of royalties was not known, the right to receive them was contractually established.

In Illinois, the Appellate Court, Third District, held in *Heinze v. Heinze*, 631 N.E.2d 728 (1994), that future royalties from books written during the marriage were clearly marital property. Future royalties could be established with reasonable certainty from the history of royalties during the marriage and were not speculative.

In Re White, 537 N.W. 2d 744 (1995), the Iowa Supreme Court held that where a husband had written textbooks during the course of the marriage, the books were properly classified as marital assets, and the wife received a fixed percentage of future royalties.

And, in Louisiana, the Court of Appeal of Louisiana, First Circuit, held in *Michel v. Michel*, 484 So.2d 829 (1986), that novels written during the marriage were community property.

Novels and other writings created in whole or in large part during the marriage should be classified as marital property in Mississippi as same were accumulated during the marriage, and Richard is entitled to a percentage of Nevada's future earnings received for the books written during their marriage. The books created in whole or in part by Nevada during the marriage should be classified as marital property in Mississippi. As part of equitable distribution, the Court should have ordered that Richard should receive at least 20% of all future income received by Nevada for the books written during the marriage.

4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to the individual spouse.

Testimony at trial indicates that all income received by either party prior to marriage, including income received for books written by Nevada prior to the marriage was commingled and became marital property.

In Mississippi, the act of commingling converts separate funds to marital. In *Henderson v. Henderson*, 703 So.2d 262, 265 (Miss 1997), the Mississippi Supreme Court held that the money received from the wife's parents was initially non-marital, but became marital property when she commingled it with the marital assets. *Henderson* at 265. And, in *Maslowski v. Maslowski*, 655 So.2d 18, 20 (Miss. 1995), the Court held that "commingling occurs when there is a combination of marital and non-marital property which loses its status as non-marital as a result." *Id.* at 20.

Any income that Nevada received during the marriage from books written prior to the marriage is marital property, as it was acquired during the marriage. *Striebeck v. Striebeck*, 911 So.2d 628 (Miss.App. 2005). In the instant case, the bulk of income received by Nevada during the marriage, for books written prior to the marriage, was also deposited into the parties' joint checking or investment accounts, along with other marital funds, and was used for marital purposes. As such, even if a portion of these funds could be argued to have been separate property at one time, the funds were clearly commingled with marital funds and lost their separate property status.

5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution.

There was no testimony regarding tax or other economic consequences of any distribution.

6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties.

The Court left Richard with insufficient funds to support himself. Moreover, the court left Richard primarily with retirement accounts which are not liquid and may not be utilized by someone of Richard's age, without penalty. Had the Court awarded Richard an appropriate share of the marital estate, alimony may not have been necessary.

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity.

Richard was unemployed at the time of the trial and had been for years. He was 55 years old and retired from his only career in the National Park Service. Without an award of appropriate assets from the marriage, Richard's financial security is severely threatened. The Judge did not even replace for Richard a portion of the almost half a million dollars which Nevada raided from a joint stock account weeks before her separation.

8. Any other factor which in equity should be considered.

Since the presumption is that the contributions of the non wage earner are equal and since there was considerable testimony of contributions by Richard, and since Nevada left the marriage to pursue an adulterous relationship, the Chancellor should have made a 50/50 division of the parties' marital assets and liabilities. Such a division would have appeared as follows:

Marital Asset	Value	Richard	Nevada
Equity in the marital home	$ 190,000	$190,000	
Equity in the New Orleans Home	$ 360,000		$360,000
Equity in the West Virginia Home	$ 19,500	$19,500	
Home furnishings (LA & MS homes)	(already divided by agreement)		
Noble joint investment account	$ 77		$77
SEP acct. in Nevada's name	$ 280,737		$ 280,737
Merrill Lynch IRA in Richard's name	$ 7,572	$7,572	
Merrill Lynch brokerage acct. in Nevada's name	$1,435,257	$1,196,7737	$238,519
Edward Jones IRA in Richard's name	$ 10,363	$ 10,363	
Prudential Annuity in Nevada's name	$ 112,024		$ 112,024
USAA checking account in Richard's name	$ 4,000	$4,000	
MPECU checking account in Richard's name	$ 1,200	$1,200	
Nevada's 1996 Mazda Miata	$ 9,000		$9,000
1997 Honda Acccord	$ 4,950		$4,950
Nevada's Subaru	$ 27,000		$27,000
Richard's 1992 Cadillac	$ 5,500	$5,500	
Richard's 1984 Coachman RV	$ 3,500	$3,500	
Richard's 2002 Honda S200	$ 1,435	$1435	
Nevada's 2 scooters	$ 2,000		$2,000
Richard's motorcycle	$ 2,000	$2,000	
Yard Equipment	$ 500	$ 500	

MARITAL BOOKS:

- *Endangered Species*
- *Blind Descent*
- *Liberty Falling*
- *Deep South*
- *Blood Lure*
- *Hunting Season*
- *Flashback*
- *Seeking Enlightenment*
- *High Country*
- *Hard Truth*
- *Unnamed book started in 2004*

		Richard	Nevada
Delayed payments for *Hard Truth* due 2006	$408,000		$408,000
Total Assets	$ 2,884,615	$1,442,307	$1,442,307

Marital Liabilities		Richard	Nevada
Richard's credit cards	(-$ 70,000.00)	(-$70,000)	
Joint Hinds Co. Property taxes	(-$ 3,000.00)		(-$3,000)
SunTrust (mortgage on WV home)	(-$61,000.00)	(-$61,000)	
MPECU (Richard's car loan)	(-$16,500.00)	(-$16,500)	
TOTAL LIABILITIES	(-$150,500)	(-$147,500)	(-$3,000)

	Richard	Nevada
Division under Equitable Distribution :	$1,294,807	$1,439,307

ALIMONY

IV. The Chancellor was maifestly wrong and clearly erroneous in refusing to award Alimony to Richard.

Richard requested an award of alimony. An award of alimony is to be based on the following factors:

(1) The income and expenses of the parties;
(2) The health and earning capacities of the parties;
(3) The needs of each party;
(4) The obligations and assets of each party;
(5) The length of the marriage;
(6) The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care;
(7) The age of the parties;
(8) The standard of living of the parties, both during the marriage and at the time of the support determination;
(9) The tax consequences of the spousal support order;
(10) Fault or misconduct;
(11) Wasteful dissipation of assets by either party; or
(12) Any other factor deemed by the court to be "just and equitable" in connection with the setting of spousal support.

Armstrong v. Armstrong, 618 So.2d 1278, 1280 (Miss. 1992); *Henderson v. Henderson*, 757 So.2d 285, 293-94 (Miss. 2000).

The Supreme Court has also held that once the marital property has been equitably divided the chancellor shall do no more only "[i]f there are sufficient marital assets which, when equitably divided and considered with each spouse's non-marital assets, will adequately provide for both parties." *Knutson v. Knutson*, 704 So.2d 1331, 1333 (Miss. 1997).

There is only one reason that the Chancellor could have had for denying Richard alimony: he's a man. Such gender based discrimination must be removed from judicial decision making. Richard was approaching retirement age and had not worked in years, whereas, Nevada was in full bloom as a writer and was earning almost a million dollars per year.

In *Driste v. Driste*, 738 So.2d 763 (Miss. Ct. App. 1999), the Chancellor awarded the wife of an 8 year marriage (with no children born of the marriage) rehabilitative alimony of $750 per month for 18 months, lump sum alimony of $20,000, nearly $5,000 in attorney fees, 1/3 of the tax refund, and a near 50/50 division of the remaining property. The Mississippi Court of Appeals reversed and remanded this decision, however, stating that the overall alimony award was inadequate. At the time of divorce the husband was making over $96,000 per year, and the wife was working part time, and the husband's earning capacity substantially exceeded that of the wife. The Appellate Court stated that, although "[e]ight years is not a particularly long marrage .... [t]he disparity of gross income, however, is large, and the chancellor made specific note of that fact." *Driste* at 767. The *Driste* court specifically noted:

> Applying the *Armstrong* factors for determining alimony, we are especially concerned about the great disparity in income and earning capacity of the parties, the standard of living and resulting expenses that Mrs. Driste had acquired, and the general equity owed to both parties in a divorce. *Armstrong*, 618 So.2d at 1280. Considering all these factors, the chancellor's award of $20,000 in lump sum alimony, $750 for 18 months in rehabilitative alimony, and no periodic alimony is grossly inadequate. Jeanne Driste's total alimony award comes to only $33,500, paid over 22 months. During that period Mr. Driste is projected to have earned a gross income of close to $200,000. That income will continue well past 22 months, while the contribution to Mrs. Driste ends.... We find this inadequate substitution for meaningful support of Mrs. Driste and reverse all the alimony determinations for further proceedings.

Driste at 768.

In the instant case, Nevada wrongfully ended this marriage through adultery, Richard was earning nothing at the time of the divorce and Nevada was earning an exceptional amount of money. An award of a reasonable amount of alimony to Richard would have had negligible impact on Nevada but the failure to award it has placed Richard in financial jeopardy.

ATTORNEY FEES

V. The Chancellor was manifestly wrong and clearly erroneous in refusing to award attorney fees, with much additional expense incurred because of Nevada's perjury and discovery violations.

Richard should have been awarded attorney fees. An award of attorney's fees in a divorce case is generally within the discretion of the chancellor. *Holleman v. Holleman,* 527 So.2d 90 (Miss. 1988); *Carpenter v. Carpenter,* 519 So.2d 891, 895 (Miss.1988); *Devereaux v. Devereaux,* 493 So.2d 1310 (Miss.1986); *McKee v. McKee,* 418 So.2d 764, 767 (Miss.1982). In determining whether to award attorney fees the Chancellor should consider the factors outlined in *McKee v. McKee:*

> In determining an appropriate amount of attorney's fees, a sum sufficient to secure one competent attorney is the criterion by which we are directed. *Rees v. Rees,* 188 Miss. 256, 194 So. 750 (1940). **The fee depends on consideration of, in addition to the relative financial ability of the parties, the skill and standing of the attorney employed, the nature of the case and novelty and difficulty of the questions at issue, as well as the degree of responsibility involved in the management of the cause, the time and labor required, the usual and customary charge in the community, and the preclusion of other employment by the attorney due to the acceptance of the case.**

McKee v. McKee, 418 So.2d 764, 767 (Miss.1982)(emphasis added).

Richard presented his attorney fee bill and testified that he does not have the ability to pay the fees. (Ex. 6, Tr. 99). The criteria for awarding fees is clearly present. Moreover, Nevada was guilty of wrongdoing in committing perjury and destroying evidence. Under such circumstances and award of fees was appropriate.

CONCLUSION

"They say judgment awaits us all"

Nevada Barr, Seeking Enlightenment, 39

This Court must take a stand in this case for two concepts which are essential to our system of justice;

1. Perjury cannot be permitted, and, in fact, should be punished so severely that parties and lawyers not dare participate in it; and

2. Gender discrimination cannot be permitted.

Richard Jones respectfully requests to the Court to find Nevada Barr guilty of perjury and strike her defense and award Richard the amount he requested plus alimony. In addition, the Court should award sanctions and attorneys fees and forward this matter to the District Attorney of Hinds County for prosecution.

Respectfully Submitted,
Richard Broderick Jones

By: _____
Mark A. Chinn, MSB [redacted]

CERTIFICATE OF SERVICE

I, Mark A. Chinn, one of the Attorneys for Appellant, Richard Broderick Jones, hereby certify that I have this day caused to be served by first class mail, postage prepaid a true and correct copy of the above foregoing instrument on the following persons:

Mike Malouf, Esq.
Malouf and Malouf
501 East Capitol Street
Jackson, Mississippi 39201
Fax: 601-948-4328

Judge Stuart Robinson
5th District, Chancery Court
Post Office Box 686
Jackson, Mississippi 39205

SO CERTIFIED, this the 21st day of November, 2006.

Mark A. Chinn