THE DEPOSITION OF RICHARD PRINCE
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IN THE CASE OF
CARIOU V. PRINCE ET AL

Edited by Greg Allen

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Richard Prince has always been known for making art from and about the images and culture he finds around him.

In the early 1980s, when he was working as a lackey in the bowels of Time Life, his raw materials were magazine ads: fashion models and Marlboro Men.

In 2005, though his context had materially improved, his M.O. remained the same. Wintering on St. Barth, where his soon-to-be dealer Larry Gagosian owns a villa, he used the source material at hand: lush coffee table photography books that peppered the small boutiques in St. Jean.

It was in one such shop, perhaps Calypso, the St. Barth/Hamptons/SoHo retail mini-empire founded by Christiane Celle, where Prince purchased his first copy of *Yes Rasta*, a collection of exotic black & white pictures celebrating the deep spirituality and humble lifestyles of practitioners of Rastafarianism, by the French fashion photographer Patrick Cariou.

Prince had already expressed an affinity for Rasta culture. When the rare Rasta would appear on the largely white St. Barth’s party scene, the famously shy artist imagined himself as a black man, sporting dreadlocks, and possessed of a
laid-back, reggae-inflected coolness.

Meanwhile, Cariou’s photos of the dense, tropical Jamaican landscape reminded Prince of his early childhood in the Canal Zone, a place which, through far-flung geopolitical machinations, subsequently ceased to exist. In 2005 or 2006, the artist visited his childhood home, now part of Panama, for the first time in many decades.

Beginning almost immediately and for three Christmas & New Year’s after that, Prince sketched, painted, and wrote in his copy of *Yes Rasta*. Ruminating on the end of the world, and how the hedge fund managers, corporate titans, and socialites who surrounded him would fare if the Rastafarians’ primitive, impoverished existence were suddenly thrust upon them by a global apocalypse.

This simmering narrative first surfaced in Prince’s art as a movie pitch, which inspired a series of paintings and a collage, in 2006—07. Titled *Eden Rock* after the St. Barth’s hotel where they were first exhibited, the paintings depict a tribe of bankers- and moguls-turned-mercenaries who hole up in the luxury resort after a globally devastating nuclear war. In a reference, perhaps, to Prince’s famous *Nurse* series, which were highlights of the artist’s 2007 retrospective at the Guggenheim Museum, the *Eden Rock* paintings contain imagery reminiscent of the cover illustrations of vintage pulp fiction novels.

The lone collage in the show depicted another of the tribes of survivors: Rastas, escaped, Prince imagined, from a marooned cruise ship in Gustavía harbor. For this work, Prince removed 36 over-painted pages from *Yes Rasta*, and arranged them in a grid on a sheet of particleboard. He titled the piece *The Canal Zone*.

At the same time, Prince used the same book-altering technique to engage with one of the greatest painters of the modern age: Willem de Kooning. Prince drew, painted, and collaged figures and faces into catalogues of de Kooning’s iconic *Women* paintings. But then he took the next, ambitious step: he made large-scale paintings from his own book-sized assemblages, transferring them to canvas via inkjet, which he continued to collage and overpaint.

For any artist to take a virtuosic painter like de Kooning head on is daunting. For Prince, who gained fame first as a photographer, and whose complete lack of painting technique is surpassed only by his inability to operate a camera, it seemed completely nuts.

But Prince has been a passionate believer in the creative power of inability throughout his career. He credits the punk movement of the 1970s and early 80s as an inspiration for his foundational early work with rephotography, when he deliberately used commercial equipment he didn’t understand and photolabs he didn’t control to produce his ad-based images. As Prince tells it, a punk rock guitarist can pick up a guitar, and a couple of days later, he’s on stage performing. It’s actually the musician’s limitations that can make great art and let the inability shine through.

Needing a break from de Kooning’s *Women* but still feeling his desire to somehow add his own great paintings to the culture, and still think-
ing the big thoughts—of women and men, the Garden of Eden, the end of the world—Prince turned to the Rastas.

In the Summer of 2008, he began transforming his Canal Zone collage pages into giant paintings, building up the inkjet canvases with Rastas, guitars, vintage pin-up girls, and squeegee paint. He worked quickly, finishing a painting in a day, or even half a day, so as to avoid overthinking and to preserve the works’ rawness.

Prince produced a complete body of Canal Zone work—around 28 paintings—in preparation for his debut solo show at Gagosian Gallery in New York. The exhibition would be on 24th Street in Chelsea, down the block from Barbara Gladstone, Prince’s longtime dealer who had sold so many of the Nurse paintings. Canal Zone ran from early November to mid-December, while the world’s financial markets seized up. Though several paintings sold for seven-figure prices, the show generated little critical attention and received no major reviews.

Meanwhile, downtown, Christiane Celle, who had sold Calypso in 2007, was readying a new chain of interior design gallery/bookstores. She contacted Patrick Cariou to obtain copies of his out-of-print photobooks. And she floated the idea to him of opening her Manhattan location with an exhibition of Cariou’s photos from Yes Rasta in the Spring of 2009. They met briefly in New York, and for coffee in Paris in the fall. But Cariou, who had never sold prints except to a friend, never replied to Celle’s emails about a show. Instead of Cariou’s black & white portraits of Rastafarians, Celle would eventually open her shop with black & white portraits of African tribesmen by Lyle Owerko.

Such is the revealing and deeply personal story of the creation of the Canal Zone paintings that emerges from the contentious, seven-hour deposition Richard Prince was compelled to sit for when Patrick Cariou sued him for copyright infringement in 2009.

Prince, whose preferred mode of discussion was to be left alone, and if that was infeasible, to play the unaccountable provocateur, was subjected, under oath, to extensive, confrontation-al questioning by Cariou’s attorney Dan Brooks. He had to explain and defend his art, his career, and his decades-long practice of appropriating images made by others while one such maker, Cariou, sat silently across the table.

And he did an amazing job.

When I saw Canal Zone, I assumed the giant, porny, slapdash paintings were Prince’s cynical stunt tied to his switching galleries, from Gladstone to the Gagosian juggernaut, an attempt to prove that Larry could get the overhyped market to buy literally anything Prince cranked out, even the world’s shittiest paintings. Soon after the lawsuit was filed, I argued with a Cariou partisan on my blog that, sorry, love them or hate them, good, bad or positively awful, Prince’s techniques, transformations, and critical smackdown of Yes Rasta’s shallow, fashionista aestheticization of blackness added up to a fair use slam dunk.

And then in March 2011, Judge Deborah Batts delivered a sweeping and scathing judgment against Prince and his dealer, finding that
every one of the *Canal Zone* paintings infringed Cariou’s copyrights, and were made in bad faith, and were illegal to be shown, and should all be destroyed.

And it was only in trying to make sense of the verdict that I discovered the deposition. Where it turns out Prince had made this very persuasive case for his work and practice. It offered remarkable insights into his history and biography, details he, for once, was not making up. It provided a solid and unambiguous legal justification for the *Canal Zone* series as truly transformative in scale, medium, content, and context. It also supported the paintings as commentary and criticism of Cariou’s work and the coffee table culture that spawned it. And for some reason that still eludes me, his lawyers avoided making any reference to this defense at every possible opportunity.

Instead, the attorneys of Cariou presented Prince’s diffident refusals to claim a specific “message” for his art as evidence that the artist was indifferent to copyright and only interested in money. Cariou’s claims of losing a lucrative show because of Prince’s appropriation went unquestioned. And a misleadingly scaled, side-by-side comparison of photocopies of Cariou’s images and Prince’s paintings skewed the visual evidence the judge considered; repeated invitations for the court to view the actual paintings were rejected.

Prince and Gagosian immediately appealed the court decision, but even the artist’s new, high-powered lawyers asked the judges to ignore what the artist said about his own work, and to base their decision about fair use instead on the different audiences and markets, and on the myriad interpretations art historians and the public might someday apply to the *Canal Zone* paintings.

Dogged by controversy, suspicion, and criticism throughout his career, Richard Prince’s deposition testimony reveals him to be a feisty, self-aware defender of his world view. Not a cynic, but a pessimist. He is also a deeply serious artist, very thoughtful about his practice, committed to his art even in the face of commercial and critical indifference, conceptually rigorous, passionately engaged with the great artists of the past, and eager to stake his claim in art history. And he’s apparently prepared to lose his paintings and face tens of millions of dollars in damages rather than admit to all that stuff in court.
THE DEPOSITION OF RICHARD PRINCE

October 6, 2009
10:00 a.m.

140 Broadway
New York, New York

Reported by Bryan Nilsen
The VideoGrapher: This is tape number 1 in the videotaped deposition of Richard Prince, in the matter of Cariou versus Richard Prince, being heard before the U.S. District Court, Southern District of New York. This deposition is being held at Schnader Harrison Segal. 140 Broadway, New York, New York, on October 6, 2009. The time is 10:15 a.m. My name is Peter Ledwith. I’m the videographer. The court reporter is Bryan Nilsen.

United States District Court Southern District of New York

Patrick Cariou, Plaintiff,

v.

Counsel, will you please introduce yourselves and who you represent.

MR. HAYES:
Steven Hayes, counsel for Richard Prince.

MS. BART:
Hollis Gonerka Bart, counsel for Larry Gagosian and Gagosian Gallery.

MR. SHERMAN:
John Sherman, counsel for Rizzoli International Publications.

MR. BROOKS:
Dan Brooks and Eric Boden for the plaintiff.

EXAMINATION BY MR. BROOKS:

Q. Good morning, Mr. Prince. My name is Daniel Brooks. I represent Patrick Cariou the plaintiff in this case. Can you tell us what your occupation is?
   A. I’m an artist.
   Q. I understand you were born in the Canal Zone --
   A. Yes.
   Q. -- is that correct? In 1949?
   A. Yes.
   Q. Did you attend school there?
   A. No, I didn’t.
   Q. Where did you attend primary school?
   A. Outside of Boston, a town called Braintree, Massachusetts.
   Q. Was it a boarding school or did you live there?
   A. What age are you talking about?
   Q. Okay, let me back up. How long did you live in the Canal Zone?
   A. We moved when I was about six years old.
   Q. To Massachusetts?
   A. Yes.
   Q. Did the six years you spent in the Canal Zone affect your later work in any way?
   MR. HAYES: As an artist you’re talking about?
   MR. BROOKS: Yes.
   A. Recently, yes.
   Q. How so?
   A. I paid a visit to what is now called Panama about three years ago, three or four
years ago. I’m not sure. And I started to think about -- I started to think about the place that I was born in.

Q. We’ll get to this later obviously, but did some of that thinking enter into your creation of the works of art that are in the Canal Zone book?

A. Yes, in the form of a pitch or a screenplay that I wrote, and then I subsequently sort of made up a story that I felt that could be described with the title Canal Zone. I very much liked the idea that the name of the place that I was born had disappeared, that they no longer called it the Canal Zone, they call it Panama.

Q. The pitch -- and again, we’ll get to this later, but the pitch that you say you wrote, was it originally called Eden Rock?

A. I think one of the working titles was Eden Rock, yes.

Q. And that is a hotel in St. Barth’s?

A. Yes, I believe so, yes.

MR. BROOKS: S-T, period, B-A-R-T-H, apostrophe S, that’s how we’ll spell it from now on.

BY MR. BROOKS:

Q. Do you have any education after high school?

A. You mean college education?

Q. Yes.

A. Yes, I did attend college.

Q. What was the name of the college?


Q. In Maine?

A. Yes.

Q. Was that a small liberal arts college?
I believe the title is called copy process, which was tearing up the various magazines that they published.

In those days, pretty primitive, precomputer, we would tear up the magazine and hand the editorial -- they were called hard copies -- to the people who wrote those stories.

Q. Tear sheets?
A. Tear sheets.
Q. And was this advertising or actual editorial -- non-advertising content?
A. What they wanted, what we would put in these tubes and send, what they wanted was the editorial copy.

Q. Articles?
A. Articles, yes, for the various -- I believe at the time they published seven magazines.

Q. While you were employed by Time Life did you begin a practice of rephotographing images --
A. Yes.
Q. -- that you encountered there?
A. 1977 I made a breakthrough in terms of what I considered a breakthrough, and I started to rephotograph images that were essentially from magazines that Time Life published and also the New York Times magazine.

Q. Were the images advertisements?
A. Strictly advertisements, yes.
Q. In 1977 did you rephotograph four photos from the New York Times magazine section?
A. Yes.
Q. What was the nature of those photos?
A. They were images of living rooms, advertisements. I don’t recall who was the advertiser, but -- and I believe they appeared sequentially once -- once a week for four weeks I believe.

Q. And when you rephotographed those four images what, if anything, did you do with them? Did you exhibit them anywhere?
A. No, I didn’t.
Q. Did some controversy arise from your rephotographing those four images?
A. Not at the time, no.
Q. At a later time?
A. A controversy? I think -- no, I would more describe it as just people were very perplexed and didn’t particularly know what they were looking at, because of the nature of the transformation. It was a real photograph that I was showing, not an image that I had torn out of the magazine. Which is essentially when I first tore it, it was a collage. I collaged it onto paper. That’s the very first way I showed the images.

But I decided -- I mean that was the breakthrough, was taking the apparatus, the camera, and making a real photograph.

Q. A photograph of a photograph?
A. Well, it was a photograph of -- no, it wasn’t a photograph. It was a photograph of a page --
Q. From the magazine?
A. -- in the magazine.
Q. Did you have a solo exhibition at the Ellen Sragow Gallery?
A. Sragow, I believe.
Q. Sragow?
A. Yes.
Q. When was that?
A. It was a long time ago.
   MR. HAYES: If you recal. If you don’t recall, say so.
A. Well, ’76 maybe.
Q. And what was the content of the exhibition?
A. I guess you could describe the -- it’s hard -- I believe they were images with text. They would refer to it at the time as narrative art.
Q. Were the --
A. They were stories that I had made up about various locations which I had visited.
Q. And what medium were the images?
A. I think they were drawings. I think on one piece of paper it was drawing, and I believe the photographs -- text that was put out with a typewriter, and a lot of what was then called, white-out, which was a kind of liquid paint that you used to correct a typo.
Q. At some point did you begin rephotographing ads for Marlboro cigarettes?
A. I started that I believe in 1980 was the first one.
Q. And this has been known as the Marlboro Cowboy photographs?
A. I referred to them -- yes. I started titling them Untitled, parentheses, Cowboys.
Q. And you say you started in 1980?
A. Yes.
Q. How long did you continue engaging in that practice?
A. Until -- I believe the last ones were done in 1999.
Q. How did you obtain the images of the Marlboro cowboys?
A. They used to come out -- when I was working at Time Life they would come out -- we’d get the magazines on Monday, and they would appear in the magazine -- in the various magazines.
Q. Tobacco companies were still permitted to advertise at that time?
A. Yeah. Before the Marlboro I had made collages. I hadn’t yet rephotographed, but I believe I made collages when I was visiting Cologne of Camel cigarette ads, which I still have. But I pasted those -- I cut them out with an exacto knife and I pasted them on paper.

About two years later, when I was working at Time Life, I started to see the cowboys, and I started to -- I had already been rephotographing images for about three years, so I sort of knew how I could appropriate and sample these cowboys.

I could shoot around the actual advertising copy and -- I mean do you want me to go on or?
Q. Sure.
   MR. HAYES: Do you want to read back the question so the witness can determine whether he’s finished.
   (Record read.)

BY MR. BROOKS:
Q. One thing is you said Cologne. Is that in Germany?
A. Yes.
Q. Do you know how to spell that?
   MR. HAYES: C-O-L --
A. K-O-L-N.
Q. K-O-L --
A. Or C-O --

MR. HAYES: C-O-L-O-G-N-E.
A. I believe it's the same.
Q. In 1983 did you rephotograph a photo by a photographer named Garry, G-A-R-R-Y, Gross?
A. I didn’t rephotograph a photo by him. I rephotographed an image that appeared in a little advertising booklet that he had self-published.

MR. BROOKS: Can I hear that again?
(Record read.)

BY MR. BROOKS:
Q. What was the nature of the image?
A. He apparently had taken an image of Brooke Shields that I believe when she was around 12 or -- years old. I don’t exactly know what the age was, but -- he was I believe wanting to publish those images.

I mean this was ten years later and she had already grown up. I guess he wanted -- he wanted to publish posters of the original shoot that he made that day.

Q. But getting back to my question, the image that you saw in his materials was a reproduction of that photo?
A. The image that I saw that day, that evening when I received the little booklet, I felt that my reaction to it is, oh, that’s what they’re talking about. Because these images were in the press at the time.

Q. But the image, was it a photograph, that’s all I’m asking?

A. In the booklet?
Q. Yes.
A. I didn’t know what the image was. All I saw was the reproduction.
Q. What was Brooke Shields wearing in the picture?
A. She wasn’t wearing anything at all.
Q. Did you make a photograph of that image?
A. I rephotographed the image, yes.
Q. And did you give it a title?
A. Yes, I did.
Q. What was the title?
A. Spiritual America.
Q. And you say you obtained the image that you rephotographed in the mail in some kind of advertising publication?

MR. HAYES: Objection. I don’t think he said that.

MR. BROOKS: Okay. I could be wrong.

BY MR. BROOKS:
Q. Tell us again how you --
A. I received the image because someone gave me, the little pamphlet or --
Q. Okay. You didn’t get it in the mail?
A. I didn’t get it in the mail.
Q. So you didn’t purchase the pamphlet, somebody gave it to you?
A. Someone gave it to me, yes.
Q. Did you obtain Mr. Gross’s permission to rephotograph the image?
A. No.
Q. Did you obtain his permission to sell your photograph of the image?
A. It wasn’t for sale.
Q. I’m going to hand you what I’d like marked as Plaintiff’s Exhibit 1, which is simply a copy of the amended complaint in this lawsuit. Mr. Prince, what I’ve placed in front of you is a copy of the amended complaint in this lawsuit. Have you ever seen it before?
   A. No.

Q. I’m going to ask you to turn to page 4, please. And I’m going to read you what paragraph 13 states. Quote, None of the defendants was ever authorized by Plaintiff to appropriate the photographs, comma, or to reproduce, comma, distribute or display the photographs, comma, or to adapt the photographs in order to create the paintings or any other derivative work based on the photographs, period. Defendant’s conduct was and continues to be a willful disregard of Plaintiff’s rights under the copyright act, unquote.

Just for your information, photographs are capitalized, initial capitalized in that paragraph, and the photographs they are being referred to are the photographs in this book in my hand Yes Rasta, which we’ll talk about. You’ve seen this book before, right?
   A. Yes.

MR. BROOKS: Let’s mark as Plaintiff’s Exhibit 2 Mr. Prince’s answer to the amended complaint.

Q. Mr. Prince, you’ll recall just a minute ago I read you an allegation in the complaint, paragraph 13. Now, I’d like you to turn to page 3 of the answer, which is Exhibit 2, and I will read page 3.

   MR. HAYES: Page 2.
   MR. BROOKS: Page 3.
   MR. HAYES: Page 3, sorry. And he’s asking you to look at --

Q. Paragraph 13, which appears to be the answer to the allegation I read before.

   And this is what it states. Prince denies the allegations in paragraph of 13 of the complaint, comma, except admits that any use of Plaintiff’s photographs by Prince was not specifically authorized by Plaintiff, comma, and states that such authorization was not required as Prince’s use of portions of the photographs in his artworks is proper artistic practice and appropriate under applicable law.

   First, I should ask you, have you ever seen this answer to the amended complaint, this document that you’re looking at now, before?

   MR. HAYES: If you recall.
   A. No. I don’t.
   Q. You don’t?
   A. No.
   Q. Are you sure you never saw it or you just don’t remember?
   A. No.
   Q. No which?
   A. No, I’ve never -- no, I’ve never seen this, no.

Q. Did you discuss -- without going getting into what you said, did you discuss the preparation of this answer with anyone?
   A. No.
   Q. All right. If you look at paragraph 13, which I just read to you, did you play any role