

Re: Russo v. Romankow

Superior Court of New Jersey, Union County, Docket No. UNN-L-3740-04

Report of

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May 30, 2005

I have been asked to express an opinion based upon my expertise in the anthropological study of nonverbal communication and knowledge as a dance critic as to whether there are instances in which a nude dance performance does not demonstrate simulated masturbation, simulated sexual intercourse or simulated deviant sexual intercourse.

SUMMARY OPINION

In summary, it is my professional opinion that nude dance performance conveys numerous messages other than simulated masturbation, simulated sexual intercourse or simulated deviant sexual intercourse.

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This report will present (1) qualifications on which this opinion is based, (2) the vagueness of the term "simulated" sex and "deviant" sexual intercourse, (3) the many meanings of nudity in dance, (4) examples of nudity in dance, (5) nudity being the defining feature in the exotic dance form of theater art dance, and (6) conclusion.

I. QUALIFICATIONS

A. I am a cultural anthropologist, Senior Research Scholar in the Department of Dance at the University of Maryland, College Park, Maryland, educator, writer and dance critic.

B. I earned a doctoral degree in anthropology from Columbia University in 1976. Anthropology comprises four separate but related disciplines: physical anthropology, cultural anthropology, linguistic anthropology and archeology. Anthropologists most often specialize in one area, but have training in all four. I have specialized in cultural anthropology focusing on the arts and society, interrelationship of the arts and nonverbal communication in everyday life and dance. My doctoral dissertation was on dance as nonverbal

communication.

C. I have training in the arts (for example, ballet, modern, jazz, hip-hop, street jam, flamenco, belly dance, swing, folk/ethnic). In addition, I have taught dance, as well courses on arts and society, at Michigan State University in 1965, Fordham University during 1970-1973 and the University of Texas at Dallas in 1976, and for teacher workshops and youngsters at summer camps. I have served as a consultant in arts education for New York University; African-American Institute; Peace Corps; New York City Board of Education; School District of Philadelphia; Black Studies Department, City College, City University of New York; Gill/St. Bernard's High School, Bernardsville, NJ; West Dallas Community Center; Disney World; National Geographic Society; Montgomery County, MD, Public Schools; Dance Place, Washington, D.C.; National Endowment for the Arts; The Arts Education Partnership (National Endowment for the Arts, U.S. Department of Education and arts organizations); D.C. Commission on the Arts Dance Advisory Panel; National Dance Association; National Dance Education Organization; MSNBC; British Broadcasting Corporation; Radio Netherlands; and for the publications *Dance Teacher*, *American Journal of Dance Therapy*, *Dance Research Journal*, *Dancer* and numerous encyclopedia.

D. I have been a dance critic for *Dance Magazine*, *Dance Teacher*, *Dance Spirit*, *Dance International/Canada*, and *Dancer* and a judge in dance competitions for grants and awards given by the National Endowment for the Arts, D.C. Commission on the Arts and Burlesque Museum Hall of Fame Annual Striptease Reunion and Miss Exotic World Contest.

E. Organizations that have recognized my arts research include the National Endowment for the Humanities-funded public lectures and American Council for Learned Societies, Wenner-Gren Foundation, National Science Foundation, American Sociological Association, American Psychological Association, International Research and Exchanges Board, and Biomusicology Academy awards. I have given invited keynote addresses, and I received the W.G. Anderson award for significant publications. I have been an invited speaker at the annual meetings and special symposia of various academic disciplines in the United States, Canada, Europe and the Caribbean, as well as at the First Amendment Lawyers Association. I organized and chaired a peer-reviewed panel for the 1997 annual meeting of the American Anthropology Association on "Exotic Dance: Fiction, Fantasy, and Fact" and also presented a paper at this meeting.

F. I have conducted fieldwork in the United States and Africa studying the performing arts and society. I have examined how dance movement in time, space and effort, like verbal language and American Sign Language, is able to convey messages from the dancer to the viewer. I have also studied what messages performers try to send, how they send them, and what the audience perceives in such communication. In one study, I asked performers what feelings, emotions and ideas they were trying to convey and how they thought these were communicated. I also surveyed the audience to determine what they saw and what were the significant cues they identified to receive the messages. The coincidence of performers' communication intentions and audience perceptions was a measure of successful communication. In several studies, I ascertained various groups' notions of aesthetic value and the artist's exercise of aesthetic control.

G. Over the years my writings have been frequently published in the United States as well as in fourteen other countries: Belgium, Brazil, Canada, France, Germany, Ghana, Italy, Jamaica, Netherlands, Poland, Santo Domingo, Sweden and United Kingdom. I have written six substantial books on the arts and more than one hundred and fifty (150) articles in peer-reviewed scholarly journals, thirty-three (33) reviews and commentaries and one hundred (100) popular articles. My books include: *To Dance Is Human: A Theory of Nonverbal Communication*, University of Chicago Press, 1987 (original 1979); *Dance, Sex and Gender: Signs of Identity, Dominance, Defiance, and Desire*, University of Chicago Press, 1988 (translated *Dança, Sexo e Gênero: Signos de Identidade, Dominação, Desafio e Desejo*, Rio de Janeiro, Brazil. Editora Rocco Ltda., 1999); *The Performer-Audience Connection: Emotion To Metaphor in Dance and Society*, University of Texas Press, 1983; *Dance-Stress Connections* (forthcoming, Alta Mira Press; original, *Dance and Stress: Resistance, Reduction, and Euphoria*, AMS Press, 1988); *Partnering Dance and Education: Intelligent Moves for Changing Times*, Human Kinetics Press, 1999; and *Nigeria's Ubakala Igbo Dance*, revision of doctoral dissertation in preparation.

H. Attached are curriculum vitae.

II. VAGUENESS OF THE TERMS "SIMULATED" SEX AND "DEVIANT" SEXUAL INTERCOURSE

The term "simulated" with reference to sex is a vague. Because the instrument of dance and sex are one and the same, namely the human body, any movement of the body, clothed or nude, could be interpreted as "simulated sex." "Simulated sex" is in the eyes of the beholder. Throughout history new

dances are introduced by the younger generation and often found to be “simulated sex” by the older generation. Such dances often become part of theatre, film, television and adult cabaret dance performances. For example, the waltz was the first time women were held in embrace in public, eliciting public outcry of simulated sex. Since the 1910s, America has been known as the land of 1,000 sexy social dances, including fox trot, turkey trot, bunny hug, duck waddle, camel walk, kangaroo hop, grizzly bear, monkey glide, chicken scratch, kangaroo dip, bull frog hop, buzz, Texas Tommy, Charleston, Lindy hop twist, frug, skate, pony, swim monkey, mashed potato, pony, hully gully, line dances and dances with instructions such as ballin' the jack. These dances include "simulated" sexual gestures such as hip swinging, pelvic rotations and thrusts, torso undulations and shoulder shimmying. Thrilled to partake of a sense of “illicit” sexuality, some whites frequented Harlem nightclubs where many of these dances first publicly appeared (Marshall and Jean Stearns, *Jazz Dance: the Story of American Vernacular Dance*, Macmillan, 1968).

Pelvic action is also integral to the dances of Latinos. These include the rumba, cha-cha and mambo from Cuba, bolero from Puerto Rico, samba from Brazil and meringue from Haiti and Dominican Republic. Mexicans dance the banda with the quebradita, little break in which the man straddles his partner and leans her back parallel to the ground. The 1989 Brazilian forward and backward hugging bodies and intertwined legs characterize the lambada dance.

With its pelvic rotations and thrusts (forward, backward and diagonally), snake hip rolls, buttocks vibrations large and small, shoulder-breast shimmy, camel walk (breasts thrust forward followed by abdominals contracting to push the buttocks outward), the Middle Eastern “belly dance” could be considered to be "simulated sex" by some observers.

The social and theatrical flamenco dance expresses personal emotions of longing, love, passion, pride and *duende*, a spirit or energy taking a dancer into a kind of ecstatic state. Some people perceive "simulated" sex in the passionate body tension and release, facial concentration, hard-hitting foot stamping and staccato striking of heels on the floor, curvaceous fast movement and knife-sharp pivots.

The tango, born in Argentina, was rejected by respectable people there and in the United States as "simulated sex." The public display of a couple in tight embrace performing intricate footwork is suggestive.

An example of people’s different perceptions -- multiple readings -- of the same dance comes from

my study, *The Performer Audience Connection: Emotion to Metaphor in Dance and Society* (University of Texas Press, 1983). In an audience with members of ordinary intelligence, 46 percent of the survey respondents saw no emotion in a duet involving a male and female dancer, whereas 55 percent of the respondents observed eroticism. A male engineer perceived sexuality in the duet, and he said it made him feel "horny." Another person viewed the dancing as "x-rated." A male lawyer saw ecstasy as the dancers were "lying as if spent," and he felt "excited." And yet, by contrast, some people described the movement style or the duet as mechanical, stilted, robot-like and computerized. "It made me feel like I was watching androids or mechanical mannequins," said a respondent. If two dancers are on stage, the audience will create all sorts of narratives to account for their movements. Personal and cultural experiences determine a viewer's perception of sexuality in dance -- regardless of the choreographer's or performer's intention.

As Judge Diarmuid F. O'Scannlain, writing for the 9th U.S. Circuit Court of Appeals, 2004, in overturning an unconstitutional ban on simulated sex put it: "If Elvis' gyrating hips can fairly be understood to constitute a simulated sex act, one can fully appreciate the potential scope of the restrictions [prohibiting simulated sex] placed on erotic dancers in Maricopa County....One is left to speculate as to what movements, precisely, a dancer may incorporate in a performance without running afoul of...[the ordinance] and yet still effectively convey an essentially adult, erotic message to the audience."

What constitutes "deviant sexual intercourse" is vague. Sexual behavior is subject to personal, cultural or religious interpretation. The notion of deviancy changes over time as well.

III. THE MANY MEANINGS OF NUDITY IN DANCE

Nudity is a change and form of costume through which performing artists communicate a variety of messages. Part of established tradition in ballet and other forms of dance, both reflects and configures a society's attitudes toward the body and its presentation. The meaning of nudity comes from people's traditional and changing ideas and behavior, nudity in mainstream everyday and theatrical life, as well as an individual's experience and perception. Consequently, the meaning of nudity is multifaceted.

Nudity may be used to communicate messages of temptation and allurements and pretense of sexual availability and longing. But nudity may also mean humiliation, moral decay, shame, oppression of women and crime. Nudity may be selected for artistic purposes to convey the fragility, vulnerability, ugliness, disease and

mortality common to all humans.

Nudity may refer to divine manifestation, affirmation of life and sexuality intertwined with spirituality: Many Christians and members of other religions consider the body, clothed or nude, moving or still, to be the beneficent gift of the Creator and worthy of the attentive gaze. Indeed, bodies are considered temples of the Holy Spirit and thus people should glorify God in their bodies as well as spirits (1 Corinthians 6:19-20; see Doug Adams and Diane Apostolos-Cappadona, eds., *Dance as Religious Studies*, New York: Crossroad Publishing Company, 1990). Not all humans are bestowed with the potential for a naturally beautiful or cultivated (for example, through diet, exercise and grooming) persona. God is therefore embodied in a performer's pulchritude. Created by God in his image, and valuable in God's sight, nude performance is thus divine.

Dancers often choose nudity to communicate messages of freedom, independence, acceptance of the body, modernity, historical tension between how the body was revealed in the past and is revealed now, empowerment, a break with social norms and challenge to the status quo of gender roles and politics. Through nudity performers may communicate messages of self-love and esteem, glamour, youth, being unashamed and what it is to be human: vulnerable and strong.

Through nudity, dancers communicate yet other messages, such as nature, nurturance, birth, harmony, honesty, devoid of disguise, simplicity, innocence, reality to satisfy curiosity and fecundity. After the ancestral human figure lost most body hair and was naked for some time, it acquired clothes, along with the dirty human body louse (evolved from the human head louse) that lives only in clothing; thus nudity can convey cleanliness, health and wholesomeness.

IV. EXAMPLES OF NUDITY IN DANCE

In the first three decades of the 20th century, the famous American modern dancer Isadora Duncan established nudity or near-nudity as important to her art: a projection of modern, liberated, natural humanity in an age of mechanical production. There were nine later landmarks in mainstream theater. (1) Yvonne Rainer's "Trio A," performed in 1966 in New York City, showed nude dancers with American flags hanging from their necks in protest against repression and censorship. (2) California-based Anna Halprin's New York City debut in April, 1967, of "Parades and Changes," in which modern dancers disobeyed, led to a warrant for her arrest. She

said, "We were forbidden to do the piece in the United States. I did not do the piece again until 1995, as part of my 75th birthday retrospective show. By then, full frontal nudity was old hat!" Subsequent milestones did not occasion police interference. (3) "Hair," a rock musical that opened October 29, 1967, brought nudity, including a glance at pubic hair, to a New York City Broadway theater. (4) The 1969 musical "Oh! Calcutta!" showed female and male frontal nudity. (5) The 1970 classical ballet "Mutations," by Glen Tetley and Hans van Manen, revealed a nude man dance a slow celebratory solo. (6) American choreographer Mark Morris's "Striptease" has "down to the buff" commentary on the anti-eroticism and loneliness of burlesque. Morris is interested in exposing the buttocks, innocent, hardworking motor of action, soft and round, seat of humility and vulnerable target that gets kicked. He also focuses on the crotch, giving birth, revealing something private inside being forced out (Joan Acocella, *Mark Morris*, New York: Farrar, Straus and Giroux, 1993). (7) Bill T. Jones's modern dance "Last Supper at Uncle Tom's Cabin/The Promised Land," first performed in 1990, featured nudity among an assemblage of up to 50 company and community members -- tall and short, fat and thin, black and white, old and young -- all devoid of disguise, vulnerable, and unashamed, pulling together against the disparate strains of conflict over race, sexual orientation, gender, poverty, and age. (8) The nudity of the all-male modern Creach/Koester Dance Company in its 1998 "Study for a Resurrection" in St. Mark's Church, in New York City, affirmed the body's beauty and vulnerability. (9) "Naked Boys Singing," a 1999 musical review presented at the Actor's Playhouse in Greenwich Village, New York City, pokes fun at social behavior.

In the 21st century, editor K.C. Patrick of the prestigious *Dance Magazine*, now in its 77th volume, wrote about the recent increase in performers appearing onstage sans clothing. "It is about dancers doing what artists do—making meaning." Nudity has gone beyond the 1970s streaking, which was done for its shock effect. The meaning may be "a paean to the grace and beauty of the arrangement of the human body itself," "tribute or insult to contemporary standards of beauty," movement possibilities that arise when the body is unimpeded by clothing, or "a subtext for the conveyance of straightforward honesty—the naked truth" (*Dance Magazine*, November 2003, p. 4).

V. NUDITY IN THE ADULT ENTERTAINMENT EXOTIC DANCE FORM OF THEATER ART DANCE

In addition to the range of meanings of nudity that have been mentioned in Section III, nudity in exotic dance conveys the defining message of the dance form: "this is the adult entertainment of contemporary artistic

theatrical exotic dance." Embedded in the culture of its time, exotic dance by definition must be "naughty" by revealing more of the body than is seen in public and by evoking fantasy. Otherwise it is not adult entertainment.

The revelation of nudity in a striptease is the "climax" of the erotic fantasy. Nudity is to exotic dance what a punch line is to a joke. Nudity is what distinguishes adult entertainment from other forms of dance such as old fashioned burlesque and two new transformations of exotic dance, namely, striptease aerobics and striptease therapy.

In exotic dance, nudity also communicates the meaning of the dancer as an art form in motion, a living sculpture and idealized beauty. A dancer has a body to experience, to master aesthetically and to communicate various messages. Some circular stages in exotic dance theaters allow the audience to move around to see various angles and perspectives of the dancer's presentation, much like museum-goers move to observe a statue, and just as countless faces look up at the promenading new Miss America.

Through nudity, dancers communicate the message of the beauty of their moving shapes with finely molded planes and rippling curvaceous surfaces, texture, defined musculature, flickering shadows and highlights, hints of the skeletal frame and vertebrae, and product of hard work in creating and maintaining a buff, sensual body.

Nudity in exotic dance may communicate a message of high status when the body is made beautiful at substantial financial expense or personal self-discipline. Nudity in exotic dance sends messages of preciousness because of its relative scarcity elsewhere.

Nudity in exotic dance communicates a message of parody, humor, as it pokes fun at as it pokes fun at the pretense of clothing (expensive, military or judicial, for example), the obsession with self, mocking the typical person's self-presentation and social class. The dancer removes clothing that often reflects conspicuous consumption and a person's inner self or aspirations. Some nudity conveys modesty through the dancer's slow and coy style of moving.

Given the tradition of nudity in mainstream theater, contemporary exotic dance is, therefore, an outgrowth of important 20th century artistic developments. The contemporary aesthetics of Western arts are to probe what has been deemed off-limits and find new objects to look at, or new ways to look at familiar ones. By stripping the body, the exotic dancer in an adult club confronts the artistic challenge.

VI. CONCLUSION

It is incorrect to assume that all nude dance performance demonstrates "simulated" -- whatever that means -- masturbation, sexual intercourse or "deviant" -- an egocentric, cultural or religious designation -- sexual intercourse. Nude dance demonstrates a multiplicity of meanings. Any bodily movement could be interpreted as sexual, because both dance and sex are kinetic. "Reading" a nude dance is in the eye and mind of the beholder.