

**STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

**Re: ABC Regulation Concerning Prohibition of Any Lewdness or Immoral Activity
Report of**

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May 16, 2005

I have been asked to express an opinion based upon my expertise in the anthropological study of nonverbal communication as to specific issues the various types of performance that come under the Alcoholic Beverage Control regulation N.J.A.C.13:2-23.6 (a) (1): various types of performance, the role of self-touch in performance, the role of bodily exposure, and "lewd or immoral activity" that is considered to take place where "the predominant object and natural effect upon the observers-patrons of one portion of the performance was erotic excitation."

SUMMARY OPINION

In summary, it is my professional opinion that the ABC Regulation [N.J.A.C.13:2-23.6 (a) (1)] encompasses most forms of theatrical performance, including performances that could be staged in restaurants, taverns or dinner theaters. It bans a broad spectrum of theatrical sexual expression, live or on film, by prohibiting (1) nudity, and even the partial nudity of topless dance exposing the breast, areola and nipple, (2) simulated nudity, (3) self-touch, clothed or unclothed and (4) movements that could be associated with movements in sex and simulated sexual gesture. Moreover, the N.J.A.C.13:2-23.6 (a) (1) regulation creates a chilling effect on performer expression, because what erotically excites one person may not excite another and what is lewd and immoral is in the eyes of the beholder. Many artists would be forced to present a limited form of expression; out of fear of prosecution they forfeit their constitutional right to choice of artistic expression. In live adult entertainment exotic dance, the performance is not seen by non-consenting individuals; rather patrons voluntarily choose to enter a cabaret and to leave.

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This report will present (1) qualifications on which this opinion is based, (2) the issue of consistency in applying the ABC regulation, N.J.A.C.13:2-23.6 (a) (1), (3) the concepts of lewd, immoral, lascivious, sexual or erotic excitation, (4) the purpose of theater, (5) examples of non-married heterosexual sex, (6) the

meaning of nudity in performance, (7) examples of nudity in theater, opera, dance, performance art and film, (8) nudity being the defining feature in the exotic dance form of theater art dance (following topless dancing that was pervasive by 1932 and continues as a form of semi-nudity in adult entertainment, preceded by G-strings and pasties of the 1920s with the revealing of the buttock and breast except the areola and nipple), (9) the meaning of self-touch and (10) 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 bachelor's degree in political science from the University of California at Los Angeles in 1958, a master's degree in political science from Michigan State University in 1962, a master's degree in anthropology from Columbia University in 1975, and 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 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; 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 is a curriculum vitae.

II. ISSUE OF CONSISTENCY IN APPLICATION OF REGULATION.

In contested ABC regulation cases that I have reviewed, reference is made to standards which have been consistently applied by the courts from the 1950s to the 1980s. This reference suggests the regulations' breadth covers historical and contemporary dances. Throughout history new dances are introduced by the younger generation and often found to be "sexually exciting" by the older generation. Such dances often become part of theatre, dinner theater and adult cabaret dance performances that could potentially be considered lewd and immoral. For example, the waltz was the first time women were held in embrace in public, eliciting public outcry of lewd and immoral. 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).

The ABC regulation, N.J.A.C.13:2-23.6 (a) (1), could encompass the 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 lewd and immoral by some observers.

Types of dance that could run afoul of the broad N.J.A.C.13:2-23.6 (a) (1) regulation also include the social and theatrical flamenco dance that expresses personal emotions of longing, love, passion and pride. The concept of *duende* refers to a spirit or energy taking a dancer into a kind of ecstatic state. Some people perceive, and are sexually excited, by the flamenco’s 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, in addition to the accompanying music and song.

The tango, born in Argentina, was rejected by respectable people there and in the United States as being scandalously lewd and immoral. The public display of a couple in tight embrace performing intricate footwork has the effect of sexually arousing some observers.

III. CONCEPT OF “LEWD AND IMMORAL”

The concept of “lewd or immoral activity” as occurring when “the predominant object and natural effect upon the observers-patrons of one portion of the performance was erotic excitation” is so broad as to encompass virtually any human performing art. Since the instrument of dance/acting/opera/performance art and sex are both the human body, any human performance could be interpreted as being sexually exciting.

Performances are frequently sexually exciting when they depart from an observer’s idiosyncratic expectations. These expectations include, for example, who dances (character portrayed), who dances in a fantasy sexual/gender or ethnic/racial relationship with whom, who is dominant and who is subordinate, what body parts are revealed and touched, what kind of energy or presence is projected, what movements are used and how, what stories are told or concepts conveyed, how the body is covered and what is the

accompaniment and costume. In the dance "Mutations" (1972) a nude man and woman simulated sex.

Symbolism is inherent in nonverbal communication on stage as it is in verbal language (see, e.g., Hanna, *To Dance Is Human: A Theory of Nonverbal Communication*, University of Chicago Press, 1987, *Dance, Sex, and Gender: Dominance Defiance and Desire*, University of Chicago Press, 1988; Jane C. Desmond, ed., *Dancing Desires: Choreographing Sexualities On and Off the Stage*, University of Wisconsin Press, 2001). In ballet, for example, the extended leg in a pointed toe shoe is a phallic symbol that may be erotically exciting. Penises bulge through tights, splay-legged actions show crotches and nipples poke through flesh-colored leotards that simulate nudity, erotically exciting for some observers. In *The Relativity of Icarus* (1974), two male leads represent the mythic airborne figures of Daedalus and Icarus. They touch each other in a cantilevered duet. Some viewed the dancers as father and son, which they are in the story, while others saw implicit erotically exciting homosexuality (Graham Jackson, *Dance as Dance: Selected Reviews and Essays*, Catalyst, 1978, p. 47).

In addition to performance content, context and costume, the accompanying music and song text and stage lighting may affect whether a particular person becomes sexually excited. For example, the exact same dance set to two different types of music may generate widely varying responses in an individual.

In our multicultural society, "lewd" applies to any uncovered hair among many Muslims. Psychologist/marriage counselor Dr. Marty Klein pointed out that studies conducted by Alfred Kinsey, John Mooney and Charles Moser found respondents were sexually aroused by a wide range of images, present or imagined: gloves, hands, shoes, fat women, bald women, shape of buttocks, breasts, racy lingerie, skin color, boy-like figures, and so on. Moreover, the *Diagnostic Statistical Manual of Mental Disorders*, IV, published by the American Psychiatric Association, lists sexual paraphilia or erotic attachments.

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."

IV. PURPOSE OF THEATRICAL PERFORMANCE: TO EXCITE THE AUDIENCE

Theater, defined in *Webster's New World College Dictionary*, Third Edition, at 1386 (1996) is "a place where plays, operas, films, etc. are presented." Audiences usually pay for entertainment – fantasy -- that is exciting if successful. Actors and the audience, in the present moment for a direct exchange, experience an immediacy and aliveness that parallel certain human truths and realities, including erotic excitement. See the basic undergraduate theater arts text by Milly S. Barranger, *Theatre: A Way of Seeing* (4th ed. Belmont, CA: Wadsworth, 1995) on how theatre engages.

Note that theatrical presentations in theaters, cabarets or dinner theaters are not imposed upon the public. To the contrary, people voluntarily attend performances and pay to enter.

In the theater, “lewd and immoral” activity is often presented to make a point, sometimes that a particular activity is wrong and has serious consequences. For example, many theatres produce the plays of America's Tennessee Williams. In his *Streetcar Named Desire*, Blanche, a former prostitute lies about it and puts on airs while she is living in her sister's house. She is raped by her brother-in-law and eventually goes crazy and is sent to an institution.

But theatrical performance is not sex per se but sexual fantasy, albeit for erotic excitation. Nobel Laureate Octavio Paz (*The Double Flame: Love and Eroticism*, Harcourt Brace & Company, 1995) explains

that eroticism is a representation that diverts or denies sex in action. Eroticism is sexuality transfigured, a metaphor, a kind of simulation and counterfeit intimacy. For example, a dancer may create a sexual poem through moving contours of the body to send messages of sensuality, sexuality, intimacy, desire, allure, promise of ecstasy, the illusion of a potential family relationship, coyness, helplessness and the beauty or ugliness of the body. Dance movements usually have multiple meanings. Exotic dance movements highlight hands, hair, eyes, breasts, buttocks, hips and legs in culturally-specific rhythms of sexual activity to create fantasy. In an individual patron-focused dance, both the performer and patron may create symbolic romance and intimacy, that is, fantasy.

V. EXAMPLES OF NON-MARRIED HETEROSEXUAL SEX

Numerous productions, including in dinner theaters, show dramatic sexual relations between unmarried men and women that could come under the ABC regulation, N.J.A.C.13:2-23.6 (a) (1). For example, *Streetcar Named Desire*, mentioned above and the Claude-Michel Schonberg, Richard Maltby, Jr. and Alain Boubilat musical, *Miss Saigon*, portray adultery. George Bizet's opera *Carmen* and Giacomo Puccini's *Madame Butterfly* also portray illicit love. George Balanchine's dance, *Prodigal Son*, portrays a siren seducing a young boy making him touch her breast and crouch. Onstage a father is seen committing incest with his daughter in Paul Taylor's dance *Big Bertha*.

VI. MEANING OF NUDITY

Nudity can run afoul of the broad ABC regulation N.J.A.C.13:2-23.6 (a) (1), although 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, musicals, plays, opera and performance art, nudity 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 is sometimes controversial in the areas of religion and morality, feminism and liberation and censorship. The award winning philosopher Leszek Kolakowski ponders in "An Epistemology of the Striptease," *TriQuarterly*, No. 22, Fall 1971: "In heaven will be we clothed or naked? I wonder whether any of the doctors of the Church have ever taken up this question when discussing the conditions surrounding the

resurrection of Bodies.”

Nudity may be used to for erotic excitation through communicating messages of sexuality, temptation and allurements, pretense of sexual availability and longing. But nudity may also mean humiliation, moral decay, shame, oppression of women and crime. Among the Ibibio of Nigeria’s Niger Delta, showing nudity, especially for older women, is a weapon of last resort. It is an act of shame and a great curse directed at men.

Nudity may refer to divine manifestation, affirmation of life and sexuality intertwined with spirituality: Many Christians and members of other religions consider the body is 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.

Performing artists 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, exotic 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. Nudity may be selected for artistic purposes to convey the fragility, vulnerability, ugliness, disease and mortality common to all humans.

VII. EXAMPLES OF NUDITY IN THEATER, OPERA, DANCE AND FILM

In New Jersey, there are a number of theatres that serve alcoholic beverages, e.g., Paper Mill Playhouse, Millburn; Count Basie Theatre, Red Bank; the Community Theater, Morristown; Union County

Arts Center, Rahway; McCarter Theater, Princeton; George Street Playhouse and State Theatre, New Brunswick, and New Jersey Performing Arts Center, Newark. There are about twenty-three dinner theaters (23) listed in various directories that are located in Atlantic City, Atlantic Highland, Aston, Beach Haven, Burlington, Cape May, Hopewell, Hampton, Lawrenceville, Long Branch, Madison, Meadowlands, Millstone Township, Oaklyn, Perryville, Princeton, Riverton, Secaucus, Somerdale, Somerset, South Hackensack, Toms River and Williamstown. Some of the theatres have productions for adults in which nudity may be an integral part of a creative work. Offering food, beverages and entertainment Lighthouse, doing business as Lace, can be classified as a dinner theater. The following are but a few of such productions given in large and small localities across the U.S.

A. Theater

“Frauline Else,” a production of the McCarter Theatre, Princeton, New Jersey, could have run afoul of the ABC regulation, N.J.A.C.13:2-23.6 (a) (1). The play focuses on a 19-year-old placed in a morally repugnant situation by her father's needs for money within 48 hours to avoid financial ruin and imprisonment. Her parents suggest she use her feminine charm to obtain money from a former client, the elderly, lecherous von Dorsday. In return for his money, he demands that Else stand naked before him for fifteen minutes. She stands naked on stage and finds her complete physical submission to be inherent in his demand.

Nudity appears in Franco Fefferelli's staging of Shakespeare's *Romeo and Juliet*, New York Shakespeare Festival's *Hair*, Kenneth Tynan and Jacques Levy's *Oh! Calcutta*, Peter Shaffer's *Equus*, Peter Cattaneo's *The Full Monty*, Paul Foster's *Tom Paine*, Michael McClure's *The Beard*, Tom Eyan's *The Dirtiest Show in Town*, Tom Stoppard's *Travesties*, Terrence McNally's *Love! Valour! Compassion!* and *Lisbon Traviata*, David Edgar's *Pentecost*, Sam Shepard's *Curse of the Starving Class*, Shakespeare's *Measure for Measure*, *Othello* and *Macbeth*, Norman Allen's *Nijinsky's Last Dance*, Ovid's *Metamorphoses*, Zimmerman's *S/M*, David Kershar's *The Naked King*, Bruce Norris's *Vanishing Twin*, David Rage's *Hurly Burly* and *In the Boom Boom Room*, David Hare's *The Blue Room*, Tracy Letts's *Killer Joe*, David Hare's *Judas Kiss*, David Dillon's *Party*, Robert Schrock's *Naked Boys Singing*, B. Corbett's *The Big Slam*, Anita Gabroesek's *Disengaged*, Heiner Muller's *Hamletmachine*, Charles L. Moe's *Big Love*, Martha Clarke's *The Garden of Earthly Delights* and *Vers la Flamme*, Caryl Churchill's *Mad Forest* and *Cloud Nine*, Elizabeth Eglhoff's *The*

Swan, John Guare's *Six Degrees of Separation*. Doug Wright's *Quills*, Craig Lucas's *Missing Persons*, David Edgar's *Pentecost*, Christopher Kyle's *The Monogamist*, Jules Feiffer's *Carnal Knowledge*, Lorraine Hansberry's *Les Blanc*, David Storey's *The Changing Room*, Richard Adler's *Damn Yankees*, Fred Ebb's *Cabaret*, Tennessee William's *A Streetcar Named Desire* and *Orpheus Descending*.

In Simon Morley's *Puppetry of the Penis*, nude men play with their genital organs on stage with their activity projected on a large screen so the audience won't miss any origami. Non-erotic nudity illustrates the ravages of disease and the characters' physical and emotional vulnerability in Tony Kushner's *Angels in America: Parts 1 and 2*. A body suit, simulating nudity is in Kushner's *Hydriotaphia*. In Margaret Edson's *Wit*, the lead succumbs to cancer by shedding her clothes as physical deterioration and fragility are put aside and the spirit is released in freedom.

Musicals such as Stephen Sondheim and James Lapine's *Passion*, John Kander's, Fred Ebb's and Terrence McNally's *Kiss of the Spiderwoman* and R.R. Gurney's *Sweet Sue* have nudity.

B. Nudity in Opera

Examples include Richard Strauss's *Salomé*, Sergey Prokofiev's *The Fiery Angel*, Camille Erlanger's *Aphrodite*, Carlisle Floyd's *Susannah*, Hugu Weisgall's *Esther*, Giuseppe Verdi's *Rigoletto*, Richard Wagner's *Die Walküre*, Arrigo Boito's *Mefistofele*, Jules Massenet's *Hérodiade* and Henry Purcell's *The Indian Queen*.

C. 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 disrobed, 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 and extremely close couples and group body contact. (5) The 1970 classical ballet "Mutations," by Glen Tetley and Hans van Manen, revealed a nude man dance a slow celebratory solo, a nude couple perform an entwining duet, and three nude henchmen move about. (6) American choreographer Mark Morris's "Striptease," with its "down to the buff" commentary on the anti-eroticism and loneliness of burlesque, created an uproar in Belgium in 1988. Director of Dance at the Theatre Royale de la Monnaie, a place where the queen sometimes occupies a box, Morris performed nude. "Artified" is what Morris disparagingly calls forms of dance that traffic in sexual teasing disguised as beautiful, virtuosic dancing. He thinks that the milliskin-unitary, simulated-sex pas de deux in ballet and modern dance is a great deal more "pornographic" than his "Striptease." 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).

In addition to nudity, simulated nudity has been widespread in "high art" ballet, modern dance and jazz. Skin-tight leotards and body suits reveal nipples, genital bulges and genital and anal clefs. New York City Ballet choreographer George Balanchine's use of close-fitting sheaths approximated the flesh. Faux nudity appears in dance performances in high schools, colleges and community centers. The Education Department of the John F. Kennedy Center for the Performing Arts, Washington, D.C. Cuesheet designed to help students understand and enjoy American Ballet Theatre's working rehearsal, February 3, 2004, states: "In "Without Words," the women wear flesh-colored leotards and the men wear flesh-colored shorts. The simple costumes emphasize the shapes created by the dancers' bodies."

D. Performance Art

Performance art, an outgrowth of Dadaist theatricals early in the 20th century, developed in New York from the late 1970's on as an art of hip monologues, then also dialogues in which men and women told stories about themselves, or stories that responded to social and political issues of the day, through words, movement, song and costume, including nudity. Examples include Rachel Rosenthal's *Timepiece* and numerous works by Karen Finley and Tim Miller.

E. Film

Nudity, semi-nudity and sexual activities are common in film, and may in fact be shown in motion picture theaters to minors with parental consent. Examples of such films include Bob Fosse's "All that Jazz," "American Pie," "Troy," "Swimming Pool," "Something's Gotta Give," "Monster" and "In America."

VIII. NUDITY IN THE EXOTIC DANCE FORM OF THEATER ART DANCE

In addition to the range of meanings of nudity that have been mentioned, 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.

Topless dancing (bare breast, areola and nipple) that followed G-strings and pasties of adult entertainment in the 1920s, was common by 1932. This semi-nudity has persisted as a precursor to the contemporary nude dancing that began to spread nationwide in the 1950s.

The 1940s style striptease dancers are making a comeback and bringing along young dancers. Proud of the glamorous costumes and props, they distinguish themselves from contemporary adult entertainment exotic dance with nudity. Shaila K. Dewan, "(Not) for His Eyes Only," *New York Times Magazine*, October 5, 2003, p. 35-36, discusses the revival in New York for men and women the burlesque of pasties and G-strings, regarded as "innocence embodied."

Time Magazine, September 8, 2003, reported professional trend spotter Irma Zandl's survey of 3,000 young people about "what's cool": "Strippers are really setting the trends right now." Moreover, Americans now can get a sensual stripper workout at gyms from Los Angeles and San Francisco to New York and Miami and obtain instructional striptease videos (*The New York Times Magazine*, April 28, 2002, pages 82-82). Crunch Fitness in New York and Boston has been offering cardio striptease classes since October 2001, with mirrors, stripper moves, including sliding clothes back and forth between legs and pole work.

Jill Radsken reports, "Bare essentials; Classes, pros help everyday women stage stripteases at home," *Boston Herald*; Feb 6, 2003, p 51). Wives and girlfriends are flocking to stripping classes and purchasing videos that will help them use the art of striptease to spice up their relationships. The Learning Center in Malvern, Pennsylvania, offers a class in "The Art of Exotic Dancing for Everyday Women." In a companion 86-minute instructional video, an exotic dancer for 23 years takes students, from different backgrounds and ages (20s to 50s) on an adventurous journey to get in touch with their femininity and denied sexuality through striptease dance. Women's Institute of Learning has produced a video entitled "For His Eyes Alone" with step-by-step instruction in a dance to perform at home. Sheila Kelley ("L.A. Law," "ER") was so taken with stripping after preparing for a role in the movie "Dancing at the Blue Iguana" that she opened her own studio and published *Strip Workouts for Every Woman* (New York: Workman 2004).

Feared as a precursor to apocalypse by some members of the Religious Right, exotic dance with its bump 'n' grind, self touch, rotate and thrust of the pelvis, finger in the mouth and other racy moves, was taught at Mount Holyoke College. Of course, striptease has appeared on Broadway in revues and in an

entire production focused on striptease, e.g., "Gypsy."

In exotic dance, nudity 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.

From beauty contests, plastic surgery, cosmetics and pin ups, we see American culture worships pulchritude, and exotic dance is part of the culture. Performers may enhance or parody the "ideal" body with surgically enhanced breasts, liposuction, tattoos and piercings. The ubiquitous six-inch heels (often stiletto platform shoes), which necessitate the dancer taking short steps and leaning back, emphasize the leg, breast and derriere.

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.

The exotic dancer's nude breast may communicate any of the above messages. Topless sunbathing is common in Europe. Although for many men in American society the female breast has an erotic charge, other societies lack such views. In some African and South Pacific groups, the nude female breast seen in public symbolizes fecundity and is regarded as a utilitarian appendage for suckling the young; men are sexually indifferent to the nude mammary gland.

In the evolution of exotic dance adult entertainment, pasties and G-strings were popular in the 1920s although dancers wore wraps that enabled them to flash. Topless dancing preceded full nudity, common to adult entertainment for the past half century.

IX. MEANING OF SELF-TOUCH

Meaningful communication, self-touch in the performing arts is a type of performance that would fall within the scope of the ABC regulation, N.J.A.C.13:2-23.6 (a) (1). *Touch*, with biological roots in the mother and child connection, is humankind's earliest form of communication (Shankar Vedantam, "Understanding that Loving Feeling: In a Study of the Brain, Special Nerves Registered the Emotional Context of a Pleasurable Touch," *Washington Post*, July 29, 2002, p. A2). An understanding of the meaning of self-touch comes from touch research beginning with S. M. Jourard's "An Exploratory Study of Body Accessibility," *British Journal of Social and Clinical Psychology*, 1966. "Artists and poets have sought to capture the power and grace of touch to express intense as well as subtle human emotions that transcend words, but only recently have behavioral scientists begun to analyze the role touch plays in human social interaction, physical health, and emotional well being," wrote Thayer ("Touch: Frontier of Intimacy," *Journal of Nonverbal Behavior* 10[1]:7-11, 1986, p. 7).

Sally Banes, in *Dancing Women: Female Bodies on Stage* (New York: Routledge, 1998) notes that in the 19th century romantic ballet, *La Sylphide*, Sylphide "touches herself both protectively and provocatively when James approaches her" (p. 20). Pioneer modern dancer Ruth St. Denis's choreography *Radha* during the first decade of the 20th century has a section called the Dance of Touch. "She strokes her arms with her palms and caresses her face with the backs of her hands. She traces the outlines of her breasts, torso, and hips, and leans forward to look at the audience, her hand to her mouth" (p. 86).

Sensual self-touch onstage is exemplified by popular singer/dancer Michael Jackson who touches his crotch in concert and on television (MTV). Singer/dancer Madonna touches her buttocks and breasts.

Performers in jazz and hip-hop slap their buttocks and sensuously run their hands down their hips, legs and front of the body. Albert Schefflen ("Quasi-Courtship Behavior in Psychotherapy," *Psychiatry*, 38:245-257, 1965) described self-touch in American courtship that presents the self in an attractive way, such as preening. Self-touch serves to capture a person's attention and participation in an interaction.

Through self-touch, performers delineate their gender identity and selves as independent, empowered and separate from others. They create boundaries between themselves and the audience. Self-touch directs audience attention during an overload of stimuli from the total body in action. Self-touch may be symbolic of sexuality, modesty, protective shielding and covering as a tease and calm. Self-touch is artistic ephemeral body decoration as the performer creates gestural designs on the body, sculpting lines and curves over the body and into space.

By touching one's own nude body, especially parts usually covered on an American public beach, a performer transgresses social mores of mainstream society. An observer can identify with a performer's self-touch, fantasize his/her hands as the performer's and be erotically excited.

X. CONCLUSION

The ABC regulation N.J.A.C.13:2-23.6 (a) (1) applies to a vast array of types of performance in theater, dinner theatre, opera, theater dance, cabaret theater art dance, performance art and film. This broad regulation restricts performing artists' choice of elements of a common repertory, including nudity, semi-nudity, simulated nudity, self-touch and "sexual" gestures, movements and depictions. Moreover, the ABC regulation goes even further by banning the adult entertainment exotic dance.

In sum, it is my professional opinion that the nudity, partial nudity, simulated nudity, self-touch and "sexual" gestures, movements and depictions the ABC regulation deems "lewd and immoral" are essential and integral expressive and communicative components of the artistic communicative toolkit of the performing arts and are not merely incidental conduct associated therewith nor merely the manner of performance. The ABC regulation N.J.A.C.13:2-23.6 (a) (1) deprives performers of artistic choice of communication, deters the performer-patron freedom of communication, chills the arts and harms performers' livelihoods in New Jersey.