

VICTORY ENTERTAINMENT, INC. V. BOROUGH OF SAYREVILLE, NEW JERSEY

Docket No. MID-L-1364-05

Report of

JUDITH LYNNE HANNA, Ph.D.

March 23, 2005

I have been asked to express an opinion based upon my expertise as a dance scholar and dance critic (see curriculum vitae) as to the impact of the Borough of Sayreville, New Jersey, Chapter V Police Regulations on Public Indecency, Prohibited Acts 5-26.1. (c) any person who "appears in a state of nudity" and (d) any person who "fondles the genitals of ...herself."

SUMMARY OPINION

It is my professional opinion that the Public Indecency Regulation 5-26.1 encompasses most forms of theatrical performance. It bans a broad spectrum of theatrical expression, live or on film, even that which a playwright is condemning. It bans a broad range of expression by prohibiting (c) nudity, and even the partial nudity of topless dance exposing the breast, areola and nipple, and, perhaps, simulated nudity, and (d) self-touch, clothed or unclothed. 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.

CONTENTS

This report will present (1) qualifications on which this opinion is based; (2) the meaning and existence of nudity in the performing arts: (A) theater, (B) opera, (C) dance theater, (D) exotic dance theater (adult entertainment), (E) performance art and (F) film; (3) the meaning of and existence of self-touch and (4) 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, in addition to the interrelationship of the arts and nonverbal communication in everyday life and the arts. 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*, *Stagebill* 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 about 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 and Stress Revisited* (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. MEANING AND EXISTENCE OF NUDITY IN THE PERFORMING ARTS

Nudity has been part of American performing arts since 1842 and is integral to them.

Nudity is a change and form of costume through which performing artists communicate a variety of messages. The meaning of nudity is multifaceted. Part of established tradition in theater (plays and musicals), opera, dance theater (ballet, modern, jazz, etc.), exotic dance theater (adult entertainment), performance art and film, 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.

Illustrative of how our conception of nudity has changed, in the 1820s, public debates over nudity focused on the length of ballet dancers' costumes. At that time, a leg was called a limb, and it was covered, even for sunbathing and swimming. In 1827, citizens railed against the French ballet dancer, Madame Francisque Hutin, for the "public exposure of a naked female." She wore a long silk skirt covering loose trousers fastened at the ankle. A glimpse of a loose trouser-clad thigh when the dancer pirouetted and her skirt flew up was conflated with total nudity -- yet not an inch of flesh beneath the waist showed; the costume was not translucent.

"Nudity" has foregrounded sexuality and the body in the face of some people's reticence to acknowledge sexuality at all. In the 19th century, "the 'nudity' of the burlesque performer challenged the authority of bourgeois culture to define her as sexually invisible.... At the same time, she aroused instinctual, irrational urges in her male spectators by encouraging them to 'see' her for what she was, thus producing a double social transgression," said historian Robert C. Allen (*Horrible Prettiness: Burlesque and American Culture*, University of North Carolina, 1991, p. 147).

Full nudity actually appeared in the 1840's theatrical *tableaux vivants*. Performers posed as "classical nudes" on revolving turntable stages that allowed "more revealing" views. The "living statues" only slightly changed positions. Moving nude dancers in popular art appeared from 1912-1929 in Florenz Ziegfeld's revues in New York City. Flirting with naughtiness, the revues presented feminine nudity veiled. In 1923 Carrie Finnell, a vaudeville tap dancer, took off articles of clothing to keep the audience's attention. Unembellished nudity was still taboo at this time; dancers used gimmicks to give the illusion of nudity, such as a g-string with glued pubic hair, or they delivered quick intimate glimpses of body parts in flashes. In the 1930s,

Sally Rand covered and fleetingly exposed her nudity with two huge ostrich fans. A consequence of her influence was the transformation of burlesque in the late 1940s from a focus on slapstick and satiric comedy to a preoccupation with bare female flesh. Famous strippers included Lili St. Cyr, who had studied ballet, Blaze Starr, Tempest Storm and Gypsy Rose Lee, the first star performer at Minsky's Republic Theater in 1931. Topless dancers were on the scene by 1945. Full nudity in exotic dance became popular after World War II and has come to define adult entertainment exotic dance for about 50 years.

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 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). Religious importance attaches to body image, for the body is embodied religion (R. Marie Griffith, *Born Again Bodies: Flesh and Spirit in American Christianity*, Berkeley, University of California Press, 2004). "Why represent Jesus to others without looking confident, put together, and beautifully appealing -- inside and out?" (Cynthia Culp Allen and Charity Allen Winters, *The Beautiful Balance for Body and Soul*, Grand Rapids, Fleming H. Revell, 2003). 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.

Genesis 3:8 recognizes that God created Adam and Eve in his own image, naked: "And God saw everything that he had made, and, behold, it was very good." It was not Adam's nakedness that was his sin, but disobedience to God -- eating the fruit that God forbade (Genesis 3:10, 3:11). A preacher from a fundamentalist Christian viewpoint, Robert Bahr wrote in the *Salisbury Daily Times (Nude & Natural* 24(2):11, 2004) that not once are we told that God disapproved of David dancing naked in the street after a battle victory, Isaiah walking naked from town to town prophesying, St. Francis of Assisi wandering the land naked, or Jesus being baptized naked. The Christian church has respected the nude human body: to wit the Vatican has thousands of sculptures and paintings of the nude human form.

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, performing artists may 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.

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.

A. NUDITY IN THEATER (plays and musicals)

Some theaters have productions in which nudity may be an integral part of a creative work. The

following are but a few such productions given in large and small localities across the U.S. *Frauline Else*, a production of the McCarter Theatre, Princeton, New Jersey, 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*, 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*, Simon Morley's *Puppetry of the Penis*, and *Orpheus Descending*.

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 of nudity in opera include Richard Strauss's *Salomé*, Sergey Prokofiev's *The Fiery Angel*, Camolle 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. NUDITY IN DANCE THEATER (including musicals with much 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 performs 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* performed in St. Mark's Church, in New York City, affirmed the body's beauty and vulnerability. (9) Robert Schrock's *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*, 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 clefts. 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. EXOTIC DANCE THEATER (adult entertainment)

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 contemporary artistic theatrical adult entertainment of 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 the evolution of nude dancing, G-strings and pasties, revealing the buttock and breast except the areola and nipple, were common the 1920s, although dancers also wore wraps that enabled them to flash nudity. Topless dancing, showing the bare breast, areola and nipple followed and was prevalent by 1932. This semi-nudity has persisted as a precursor to the contemporary nude dancing that began to spread nationwide in the 1950s.

The early 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 full 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, of *L.A. Law* and *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 many of the meanings mentioned above. Furthermore, nudity communicates 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 piercing. 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.

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.

E. NUDITY IN 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.

F. NUDITY IN 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 *All that Jazz*, *American Pie*, *Troy*, *Swimming Pool*, *Something's Gotta Give*, and *Monster and In America*.

III. SELF-TOUCH

The term "fondle" is defined as "to handle tenderly, lovingly or lingeringly," according to *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, 1999. Fondle in the sense of self-touch is part of the performing arts. In *Puppetry of the Penis*, for example, men humorously create shapes with the penis by manipulating it with their hands. While the nude men play with their genital organs on stage, their activity is projected on a large screen so the audience won't miss any "origami." By touching their genitals, performing artists delineate their gender identity and selves as independent, empowered and separate from others. Touching the crotch alludes to giving birth. Self-touch regulates 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. In addition, self-touch is artistic ephemeral body decoration as the dancer creates gestural

designs on the body, sculpting lines and curves over the body and into space.

In the 19th century romantic ballet, *La Sylphide*, Sylphide "touches herself both protectively and provocatively when James approaches her" (Sally Banes, *Dancing Women: Female Bodies on Stage* New York: Routledge, 1998, p. 20). In the 1910 classic ballet *The Firebird*, the Firebird's incessant self-touching in the form of preening is another marker of her sexual allure. Sensual self-touch in public is exemplified by popular singer/dancer Michael Jackson who touches his crotch in concert and on television (MTV).

By touching one's own genitals, body parts usually covered on an American public beach, an exotic dancer transgresses social mores of mainstream society, which defines exotic dance adult entertainment. An observer can identify with a performer's self-touch, fantasize his/her hands as the performer's.

V. CONCLUSION

In sum, it is my professional opinion that nudity and self-touch are integral expressive and communicative components of the artistic communicative repertoire of performing arts, and are not merely incidental conduct associated therewith or merely the manner of performance. The Borough of Sayreville, New Jersey, Chapter V Police Regulations on Public Indecency, Prohibited Acts 5-26.1. (c) any person who "appears in a state of nudity" and (d) any person who "fondles the genitals of ...herself" would

1. ban, mute or suppress the performing artist's artistic, expressive message,
2. deprive the performing artists of artistic choice of communication,
3. chill the arts as a whole because different forms influence each other,
4. harm the performing artist' livelihood as well as the livelihoods of others who work in the business, because patrons' unfulfilled expectations of receiving the messages of nudity and self-touch will deter performance attendance,
5. stigmatize nude performers as indecent and
6. deprive patrons of legal forms of artistic, expressive theatrical entertainment.