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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204011
Party	Plaintiff Richardson/Yale Property Trust
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Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Elliot S. Blair, Esq.
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Signature	/ESB/
Date	04/11/2012
Attachments	darkofthemoon.pdf ( 62 pages )(6197695 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 85140636  
For the mark "Dark of the Moon"  
Published in the Original Gazette on August 30, 2011.

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Richardson/Yale Property Trust	:	
	:	
Opposer,	:	
	:	
v.	:	Case No. 91204011
	:	Serial No. 85140636
HASBRO, INC.,	:	
	:	
Applicant	:	

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**OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISMISS<sup>1</sup>**

**I. INTRODUCTION**

**A. BACKGROUND**

On February 23, 2012, the Richardson/Yale Property Trust (Opposer) filed a Notice of Opposition to Applicants' federal trademark application (Serial No. 85140636) alleging that the literary work, Opposer's play and successful theatrical production, titled "Dark of the Moon," is well-known and established, and has continuously been used and exploited and remains in use. (Attached as Exhibit A is Opposer's Notice of Opposition with Exhibits 1, 2 and 3 annexed thereto. In furtherance thereof, additional Exhibits, set forth in Paragraph III.B. in this Memorandum, are annexed hereto.) Further, Opposer alleges that "Dark of the Moon", a well known play which has acquired secondary meaning through its longstanding

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<sup>1</sup> Applicant labeled their motion to dismiss (submitted on March 22, 2012) as "Opposer's Motion to Dismiss." This Response will refer to Applicant's motion to dismiss as "Applicant's Motion to Dismiss" and not as "Opposer's Motion to Dismiss."

continuous (in excess of sixty-five [65] years), use and exploitation. Additionally, Opposer alleges that the registration of Applicant's "Dark of the Moon" mark by Hasbro will cause dilution to Opposer's mark, will cause substantial confusion as to the source of Opposer's and Applicant's goods and/or services, and demonstrates a bad faith effort on the part of Applicant in using Opposer's mark in commerce. Applicant filed a motion to dismiss on March 22, 2012. This Memorandum is in Opposition to Applicant's Motion to Dismiss.

**B. STATED GROUNDS FOR APPLICANT'S MOTION TO DISMISS LACK MERIT**

Applicant moved to dismiss the Opposer's Opposition under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Applicant's Motion to Dismiss is based on the belief that Opposer's claims are limited to the issue that registration "will dilute or cause a likelihood of consumer confusion". Applicant in its Motion to Dismiss, Introduction continues, "...no trademark rights adhere to the title of a play. *Id.* Opposer therefore has no priority over Hasbro and no basis for asserting harm from Hasbro's registration of trademark rights in 'Dark of the Moon'" *Id.* The Applicant's restatement of the facts and uses, as presented by the Opposer, are distorted and glaringly abbreviated - Applicant's recitation has greatly and significantly reduced and diminished the myriad of facts and uses appearing in the Opposer's Notice of Opposition and the Exhibits attached thereto; in addition, Applicant's reliance of case law is inaccurate and distinguishable.

Applicant's comments stating the facts are extremely brief and fail to recite or include the history, the genesis and prior use of "Dark of the Moon" which are incorporated in the Notice of Opposition and the Exhibits attached thereto (and supplemented by Exhibits listed

in ¶ III.B. herein). Opposer's "well-pleaded allegations must be accepted as true, and the complaint must be construed and in a light most favorable to" Opposer. Fiat Group Automobile S.p.A. v. ISM Inc., 94 USPQ2D 1111, 1112 (TTAB 2010), clearly states a claim for which relief may be granted, pursuant to the Federal Rules of Civil Procedure and the facts asserted by Opposer in Opposer's Notice of Opposition plainly reveal Opposer's utilization of "Dark of the Moon," a mark made famous through its continuous exploitation throughout the United States and in foreign countries and venues and that the title "Dark of the Moon" has established secondary meaning, which allows the mark to acquire senior user status regardless of federal registration. Opposer's mark has been used in commerce in the United States since about 1945 when the theatrical stage production - produced by Messrs. Shubert (probably one of or the most prominent and prolific theatrical stage producers in the United States), initially opened on Broadway and performed for ten (10) months (Notice of Opposition ¶ 7). However, Applicant's abbreviation of the facts create a false impression, including that Applicant asserts the belief that the initial Broadway theatrical stage production opened in 1945 and ran for a period of ten (10) weeks and not the actual ten (10) months. (Applicant's Motion to Dismiss, ¶ II, Facts Alleged).

Exhibit 3, attached to Opposer's Notice of Opposition, states "...the following, among others, reflect uses, exploitations, prior versions, adaptations and publication of the work..." (emphasis added), and proceeds to list five (5) pages of items which showcase the Opposer's significant continuous prior use of its mark - the listed items were intended to be only a small sampling of the vast continuous and prior uses of the mark, which aids in establishing a significantly strong secondary meaning and distinctiveness. Further, reputable members of



the industry, including cast, directors, publishing, and licensing companies, including Samuel French and Theatre Arts Books, have critically acclaimed Opposer's theatrical production, and expressly indicated that "**Dark of the Moon**" has taken on secondary meaning. (Letters from Samuel French and Theatre Arts Books are attached hereto as Exhibits B, C, D and E.). "Dark of the Moon," the mark utilized by Opposer, based upon the submitted proofs, has a secondary meaning, which establishes senior user rights and priority over any junior user, and as there is a showing by Opposer of a direct commercial interest, which satisfies the "real interest" test, the Opposer has standing. Herbko .Id at 1161, citing Cunningham v. Laser Golf Corp. 222 F.3d 943,945,55 USPQ 2d 1842, 1844 (Fed. Cir. 2000).

The facts show Applicant's registration of their applied-for mark would dilute the market and would cause a likelihood of confusion. Notwithstanding, Applicant's assertion that no trademark rights adhere to the title of a play, the law is sufficiently clear that "the title of a play is subject to ownership, and right in it is established by proof of use, advertising under the title, although it is not registered as a trade-mark and is not a trade-name." Johnston v. Twentieth Century-Fox Film Corp., 187 P.2d 474, 483 (Cal. Ct. App. 1947) (emphasis added).

## II. OPPOSER'S COMPLAINT SUFFICIENTLY STATES A CLAIM FOR RELIEF

Pursuant to Applicant's assertions in its Motion to Dismiss, Opposer "...need only allege such facts as would, if proved, establish that (1) the plaintiff has standing to maintain the proceedings, and (2) a valid ground exists for opposing the mark" [opposing Hasbro's application for registration]. Applicant's Motion to Dismiss, Argument, Standards for Determining a Motion to Dismiss (§ III.A.) (quoting Fiat Group Automobiles S.p.A. v. ISM, Inc., 94 USPQ2d 1111, 1112 (TTAB 2010)). Using Fiat and taking the facts as true, and not with

Applicant's selective inclusions of the actual facts and uses, Opposer has crafted a well and sufficient pleading establishing standing and a valid ground for opposing Applicant's application for registration.

Applicant appears to continually rely upon *In Re Cooper*, 254 F. 2d 611 (CCPA 1958), *Herbko Intern., Inc. v. Kappa Books, Inc.*, 308 F. 3d 1156 (Fed. Cir. 2002) and *In Re Posthuma*, 45 USPQ 2d. 2011 (TTAB 1998), to establish that even upon a showing of secondary meaning, Opposer cannot register the title of a play on the Principal or Supplemental Registry. Applicant, however, seems to disregard the fact that a search of the USPTO.gov TESS Database reveals that theatrical production titles which, under Applicant's interpretation are single works, including WICKED (Reg. No. 3095638) and Disney Presents The Lion King The Broadway Musical (Reg. No. 2436121), have received federal trademark registration and protection. Applicant relying upon *In re Posthuma*, which cites *In re Cooper*, appears to seek safe harbor in the concept that the non-registrability of a book title is equally applicable to the title of a live theatrical production. *In Re Posthuma*, 45 U.S.P.Q.2d 2011, 2013 (Trademark Tr. & App. Bd. 1998). It is not disputed that the Opposer has not registered "Dark of the Moon," which circumstance is distinguishable from the issues raised in *Posthuma* and *Cooper* and cited by Applicant.

In addition, Applicant, in its Motion to Dismiss (at ¶ III.B., page3), relies upon *Herbko* that "(title of single work 'is not registrable on either the Principal Register or Supplemental Register)", but which are distinguishable and not dispositive in the instant matter. Opposer's claim is based on the second meaning doctrine and whether the title is registrable does not,

in any case cited by the Applicant, negate the prior rights in a title which has achieved a secondary meaning.

The principles set forth in Johnston v. Twentieth Century-Fox Film Corp. 187 P.2d 474, 483 (Cal. Ct. App. 1947) express the doctrine of secondary meaning, which extends to catch phrases and slogans. The court in Johnston asserted that “the title of a play is subject to ownership, and right in it is established by proof of use, advertising under the title, although it is not registered as a trade-mark and is not a trade-name.” *Id.* The rights of Opposer and the gravamen of its claims is that Opposer does not seek to register its mark and whether its mark is capable of being registered is not the issue. Contrariwise the Opposer’s Opposition is based upon the doctrine of secondary meaning, which is and should not be distorted or diminished by an issue involving registrability.

Although the circumstances and relief are distinguishable from the current matter, in Klaw v General Film Co., 154 NYS 988 (1915) the court prominently stated at page 989: “The plaintiffs have established and acquired an exclusive proprietary right as a trade-name and trade-mark in the words ‘A Food There Was’ as a title in connection with their play, and they are entitled to permanent injunction restraining the defendant from the continuance of the infringement and impairment of their right in and to such trade-mark or trade-name.”

The Applicant in its Motion to Dismiss (¶ III.B. at page 3) (citing Fiat, 94 USPQ2d at 1114), asserts that the Opposer “(for dilution claim, Opposer must have ‘a mark in use in the United States, or for which there is an intent to use the mark in the United States coupled with an application for registration’)” - this comment relied upon by Applicant in the Fiat decision is incorporated in a sentence which seeks to craft an understanding of the term “famous mark”

and identifies that term within the context of the statutory definition. Thus, in Fiat (at [\*11]), it is stated, “a ‘famous mark’ is a reference to a mark in use in the United States, or for which there is an intent to use the mark in the United States coupled with an application for registration”. As constructed, the sentence clearly reflects two (2) different phrases setting forth two (2) different circumstances. The phrases are separated by a comma and the word “or” between the different events, (a) a mark in use in the United States, and (b) an intent to use the mark in the United States coupled with an application for registration.

In the current matter there is an adequate showing that “Dark of the Moon”, the mark used by the Opposer, was in actual and continued use and in conformity of the initial phrase - e.g. a mark was in use in the United States - and thus no need to reflect upon the phrase which comments upon an intent [in the future] to use coupled with an application.

Further, in Fiat, (at [\*12]), it is stated, “[definition reflects that marks can exist at common law or in strictly intrastate use).” (emphasis added), and (at [\*12]), citing Giersch v. Scripps Networks, Inc., 90 USPQ20, 1022 (TTAB2009),” (party may establish its own prior proprietary rights in a mark through ownership of a prior registration, actual use or through use analogous to trademark use. ... which create a public awareness of the designation as a trademark identifying the party as a source).”

To be overly exacting, the Opposer, in this matter, is not attempting to register its mark. Assuming arguendo, the Applicant’s argument, relying on Posthuma and Cooper have traction, the facts here reflect that Opposer’s mark has, pursuant to common law use, achieved secondary meaning and that it has been continually used and exploited. And arguendo, any

contest created by the Applicant, in connection with the Opposer's use of the title as having acquired secondary meaning, at best, is an issue of fact. Johnston, at 814.

The Applicant, by its claims, would have us believe that, the owner of a title, which is not registrable, will not be afforded protection of his property rights. But, this logic is faulty. The court in Johnston established the principal that a title, even to a play, can attain and achieve secondary meaning, which can be evidenced by proper proof regardless of the registerability of the title as a trade-mark or trade-name even if the title was not registered. Id at 483.

### **III. In General:**

#### **A. Pleadings**

In pleading the facts in the Notice of Opposition the Opposer established, inter alia, that it was the first to use the mark "**Dark of the Moon**" in commerce. Opposer's initial use was in the 1940's, significantly long before Applicant developed its use for the mark which was derived from the title "Terminator: Dark of the Moon" a motion picture produced and distributed by Paramount Pictures from whom, upon information and belief, Applicant acquired rights. Opposer also established that the mark has been used in commerce since the 1940's throughout the United States, as well territories outside the United States, including, Canada, Australia, England, Ireland, Scotland, South Africa and Scandinavia. "**Dark of the Moon**" received numerous and significant writeups in magazines and papers. It has been optioned for various subsidiary rights uses, including, without limitation, motion picture rights

(including, by various independent producers and motion picture studios [i.e., Paramount Pictures]).

It appears that Applicant's main assertions are (1) Opposer has pleaded no fact that would give rise to a trademark right to the play "Dark of the Moon" (Applicant's Motion to Dismiss, ¶ III.A.), and that Opposer had not pleaded ownership of any trademark (at ¶ III.B.).

Applicant has inaccurately characterized and, in a cavalier manner, presented the uses appearing in the Opposer's Notice of Opposition and the Exhibits attached thereto. Applicant fails to proffer any evidence contrary to Opposer assertions regarding "Dark of the Moon" and its long history and use, but a review of the Opposer's Notice of Opposition, the Exhibits attached thereto (together with the additional Exhibits annexed hereto), when deciphered in the most favorable light clearly evidence and it must be recognized that "**Dark of the Moon**" (the title of the play written by Howard Richardson and William Berney) has attained secondary meaning. As a result of the foregoing, the Opposer's rights should be accorded protection consistent with the rights of any owner of a title of a play although the title is not registered Johnston, Id. All reasonable inferences being drawn in favor of the Opposer the Opposer's proffer of evidence leads to the conclusion that "Dark of the Moon" has met all required standards. Advanced Cardiovascular Systems v. Scimed Life Systems, Inc., 988F.2d 1157, 1160; Fed.R.Civ.P 12 (b)(6). If arguendo Applicant's disputations have created factual issues, such facts, including, among others, the question of whether title has acquired a secondary meaning, is a question of fact. Johnston, Id. The Opposer's Notice of Opposition, in its entirety, including the attachments thereto (as well as the Exhibits annexed hereto) demonstrate that Opposer likely acquired secondary meaning in the mark "Dark of the Moon"

and the resultant thereof is that the Opposer has senior use rights in its mark and has standing to oppose Applicant's registration. Further, Opposer has established a valid ground for opposing the mark as allowing such registration would impinge upon Opposer's pecuniary rights to use its mark.

#### **B. ADDITIONAL AND SUPPLEMENTAL BACKGROUND**

Opposer in its Notice of Opposition discloses, in Exhibit 3, among other things, various uses and exploitation of the play and prior versions, adaptation and translations. The following reflects and is intended to provide, additional data samples only and to Supplement Exhibit 3:

1. Exhibit B: Letter Samuel French, June 26, 1985 (cited herein in paragraph I.B.)
2. Exhibit C: Letter Samuel French, July 1, 1985 (cited herein in paragraph I.B.)
3. Exhibit D: Letter Samuel French, March 29, 2012 (cited herein in paragraph I.B.)
4. Exhibit E: Letter Theatre Arts Books, July 15, 1985 (cited herein in paragraph I.B.)
5. Exhibit F: Best Plays 1944-45, from Burns Mantel including page 13 of Burns Mantel referring to "Dark of the Moon".
6. Exhibit G: List of Plays of the Year, 1949 by J.C. Trewin
7. Exhibit H: New York Times Article, 1945
8. Exhibit I: New York Times critique, March 14, 1945.
9. Exhibits J-1 and J-2 respectively: New York Times critique June 28, 1970 and critique for an off-Broadway revival.
10. Exhibit K: Article Chicago Reader October 1993.
11. Exhibit L: Article Pittsburgh post-Gazette, August 2005.

12. Exhibit M: Book Cover and short commentary of various newspaper critiques.
13. Exhibit N: List of Notable Actors and directors who acted in and directed "Dark of the Moon.
14. Exhibit O: Materials related to New Jersey Shakespear Festival, 1991 (it is a great honor to be included in a Shakespeare Festival. The Festival presented three (3) Shakespearian plays and two (2) non-Shakespearian plays "Dark of the Moon" and "The Skin of your Teeth" by Thornton Wilder.)
15. Exhibits P-1 through P-8: Sample correspondences regarding "Dark of the Moon", the Play from various well-known industry persons:
  - a. Exhibit P-1: Alexander Cohen to Trinity Theatre September 12, 1980
  - b. Exhibit P-2: Alexander Cohen to Vivian Beaumont Theatre, September 12, 1980.
  - c. Exhibit P-3: Jerome Robbins, February 23, 1983 to Howard Richardson.
  - d. Exhibit P-4: Jerome Robbins, November 29, 1989 to Howard Richardson.
  - e. Exhibit P-5: Brian Hutton, November 21, 1972 to Howard Richardson.
  - f. Exhibit P-6: Opera National, October 25, 1971 to Howard Richardson.
  - g. Exhibit P-7: North Carolina State University June 14, 1993 to Elliot S. Blair.
  - h. Exhibit P-8: John Bettis, December 13, 1996 to Elliot S. Blair, on behalf of John Bettis, Steve Dorff and Rick Hawkins (resumes attached).

Assuming the facts to be true, the registration of Applicant's mark would result in a dilution of the market with the name "Dark of the Moon" to a point that would render Opposer's use in its mark unrecognizable as to identify the source of the mark. The registration of Applicants' mark would also cause substantial confusion as to the source of the



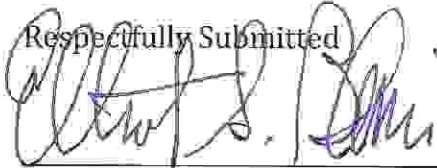
mark as the names are identical. Furthermore, the goods and services Applicant is seeking registration for are in the likely zone of expansion for Plaintiffs' mark.

McCarthy in his treatise states, "If the senior user cannot prove actual sales penetration into the contested area, and cannot prove that the reputation of its mark extends into that area, it may still make a claim that the junior user is located in an area which falls within the senior user's "zone of natural expansion." That is, as of the date of the junior user's first adoption and use, the contested area was one in which the senior user should be granted room to expand. 5 McCarthy on Trademarks and Unfair Competition § 26:20 (4th ed.). Opposer has shown every indication that it may expand into, and has expanded into, the field of trademark Applicant seek protection. Therefore, Opposer has a distinct financial interest in the outcome of the matter as it would affect its current and future use in the mark within the United States and throughout the world. Opposer has satisfied the necessary requirements to oppose the Motion to Dismiss.

#### IV. CONCLUSION

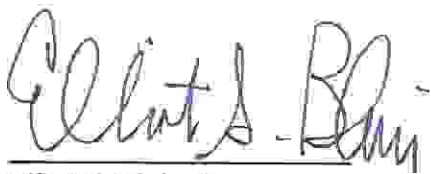
Accordingly, Plaintiff has stated a well-pleaded claim for which relief may be granted. As such, Plaintiff respectfully asks this court to deny Defendants' Motion to Dismiss, and to proceed with the current opposition.

Dated: April 11, 2012

Respectfully Submitted  


Elliot S. Blair, Esq.  
600 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022

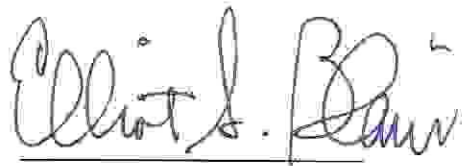
I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISCUSS** has been served on Kim J. Landsman, Esq. by mailing said copy on April 11, 2012, and via email to: [ejaffe@golenbock.com](mailto:ejaffe@golenbock.com); [klandsman@golenbock.com](mailto:klandsman@golenbock.com), and [pvanasse@hasbro.com](mailto:pvanasse@hasbro.com)



Elliot S. Blair, Esq.  
Attorney for Opposer

#### **Certificate of Transmission**

I hereby certify that this correspondence is being transmitted electronically via the United States Patent and Trademark offices' ESTTA-Web System on April 11, 2012.



Elliot S. Blair, Esq.  
Attorney for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 85140636  
For the mark "Dark of the Moon"  
Published in the Official Gazette on August 30, 2011.  
Extension to file opposition granted until December 28, 2011

Richardson/Yale Property Trust c/o Eliot S. Blair, Esq., Administrator  
Opposer,

v.

Hasbro, Inc.,  
Applicant.

**NOTICE OF OPPOSITION**

State opposer's name, address, and entity information as follows:

Richardson/Yale Property Trust  
c/o Eliot S. Blair, Esq.  
600 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

**FACTS**

1. Applicant Hasbro, Inc.'s (Hasbro) trademark application Serial No. 85140636, filed in the United States Patent and Trademark Office ("PTO") on September 29, 2010 for the mark "Dark of the Moon". The mark is a standard character mark. The application was published for opposition on August 30, 2011.
2. Opposer filed a timely application for an extension of time to oppose the Applicant's registration application. Opposer was granted an extension of time to oppose until December 28, 2011.
3. Hasbro's application is for use in connection with International Class 028: US 022 023 038 050, G & S; Toys, games and playthings, namely, toy vehicles and accessories for use therewith; toy action figures and accessories for use therewith; toy playsets for use in connection with toy action figures and toy vehicles; toy vehicles and toy robots convertible into other visual

toy forms, toy robots, dolls, doll clothing and doll accessories, electronic action toys, electronic learning toys, children's and infant's multiple activity toys, bath toys, bathtub toys, drawing toys, plush toys, stuffed toys, plastic and vinyl toy characters and toy animals, toy figures, ride-on toys, push toys, pull toys, squeeze toys, stacking toys, radio-controlled toy vehicles, mechanical toys, toy construction sets, building toys, wind-up toys, water squirting toys, musical toys, toy modeling compounds, toy molds and toy extruders for use with toy modeling compounds, toy bakeware, toy cookware, toy cooking utensils, toy balls, namely toy footballs and baseballs, toy baseball bats, toy swords and toy shields and accessories for use therewith, toy projectile shooters and toy projectiles for use therewith, jigsaw puzzles, board games, parlor games, action skill games, card game, role-playing games, trading card games, hand-held units for playing electronic games other than those adapted for use with an external display screen or monitor, target games, dice games.

4. The Applicant's registration application was filed by Hasbro on September 29, 2010 ("Applicant's Filing Date") and was based on the intent to use the "Dark of the Moon" mark in connection with Applicant's goods and services.

5. Opposer is the Owner of a dramatic play entitled "Dark of the Moon" written by Howard Richardson and William Berney.

6. The Barnes & Noble retailer's website uses the following synopsis to describe the play: "As the tale unfolds, a witch boy tarries in a mountain community in love with a beautiful girl named Barbara Allen. The superstitious townspeople resent their happiness and their subsequent meddling ends in violence and tragedy. This play was proclaimed a Broadway hit."

7. The play "Dark of the Moon" had a ten (10) month run on Broadway in New York City in 1945. Subsequently, numerous colleges and high schools have used the play to put on local productions

8. Opposer's play "Dark of the Moon" has been established as a well-known and successful play that continues to be used in various high school and college productions.

9. Opposer believes the dramatic play "Dark of the Moon" has acquired a secondary meaning through its long-standing production history and reputation as a dramatic play.

10. Opposer believes the registration of Applicant's mark will cause dilution of the mark in the marketplace. The Applicant's registration application seeks to use the same exact wording of Opposer's long established play.

11. Opposer believes the registration of Applicant's mark will cause substantial confusion to the public. "Dark of the Moon" has been used in connection with the Opposer's play for many years prior to the date of Applicant's intent to use application.

12. Moreover, Opposer believes the types of goods and services that Applicant has attempted to claim are in the domain of expansion for goods and services the Opposer may expand into in the future.

13. Additionally, the predecessor of the Opposer and Paramount Pictures Corporation ("Paramount") entered into a rights and other related agreements with respect to, among other things, the dramatic play (with music) entitled "Dark of the Moon" (the "Play"), by Howard Richardson and William Berney (the grant in and to the Play is called "Grant of Rights"). Paramount is the Producer of the recently produced and released motion picture entitled "Transformers 3, Dark of the Moon" (the "Motion Picture"). Certain rights in and to the Motion Picture, including, among other things, allied and subsidiary rights (i.e., merchandising and licensing), are currently being used and exploited by Applicant, upon information and belief, based upon and as a result of a grant, license or other type of disposition (collectively "License"), from Paramount, as the licensor, to Applicant. In furtherance of the License the Applicant seeks a mark for Dark of the Moon.

The Opposer posits and asserts that Exhibits 1, 2 and 3 materially evidences that the Applicant and its licensor, Paramount, knew or should have known of the Grant of Rights previously made by the predecessor of the Opposer to Paramount and the uses and exploitation of the Grant of Rights by Paramount all of which were made part of a subsequent Quitclaim from Paramount and forwarded by Paramount, with cover letter, to counsel on behalf of Opposer, dated July 19, 1988 and July 28, 1988 respectively.

Exhibits Attached:

Exhibit 1 - Agreement between Paramount Pictures Corporation and predecessor of Opposer (Standard Terms and Schedules attached to the Agreement are not attached to Exhibit 1).

Exhibit 2 - Quitclaim Agreement and cover letter with Exhibit A reflecting various documents situate in the United States Library of Congress Copyright Office.

Exhibit 3 - Background - showing extensive and continuous use

For the foregoing reasons, Opposer requests the Applicants' registration for the mark "Dark of the Moon" be denied.

By \_\_\_\_\_ Date December 13, 2011  
Attorney for Opposer  
Elliot S. Blair, Esq., Administrator  
600 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10022



AGREEMENT DATED as of November 21, 1978 between Howard Dixon Richardson\* and Frances Goforth (collectively called "Owner") and Paramount Pictures Corporation ("Purchaser").

I. Assignment of rights: Owner hereby conveys, grants and assigns to Purchaser the sole and exclusive motion picture and other rights, all as set forth in the Standard Terms attached, in and to the following material:

(i) The play written by Howard Dixon Richardson entitled "BARBARA ALLEN"; Howard Dixon Richardson is the author and sole owner of said play.

(ii) The play written by Howard Dixon Richardson\*\* and William Clairbourne Berney\*\* entitled "DARK OF THE MOON"; Howard Dixon Richardson is the co-author and owner of a one-half undivided interest in said play, and legatee under the will of William Clairbourne Berney and owner of the other one-half undivided interest in said play.

(iii) The dramatico-musical play written by Howard Dixon Richardson entitled "DARK OF THE MOON" (musical version); Howard Dixon Richardson is the author and sole owner of said dramatico-musical play, except for certain songs contained therein which are in the public domain.

(iv) The first draft screenplay written by Howard Dixon Richardson and Frances Goforth entitled "DARK OF THE MOON"; Howard Dixon Richardson is co-author of said first draft screenplay and owner of a one-half undivided interest therein, and Frances Goforth is co-author of said first draft screenplay and owner of the other one-half undivided interest therein.

(Which material, referred to in subparagraphs (i), (ii), (iii) and (iv) above, as defined in said Standard Terms is hereinafter collectively referred to as the "Work").

II. Consideration: Purchaser agrees to pay and Owner agrees to accept as full consideration for the rights herein granted and for Owner's warranties and agreements herein contained:

A. Basic Consideration:

(a) For the option period(s) hereinafter provided, the following sums:

(i) \$5,000 upon the execution by Owner, Elliot Blair, Esq. and Paul Mason of Purchaser's short form deal memorandum and upon the execution by Owner of short form assignments respecting the Work. Purchaser hereby acknowledges receipt of fully executed copies of each of said documents and Owner hereby acknowledges receipt of said sum of \$5,000. Upon such payment the rights granted hereunder shall be for a period ("initial option period") expiring November 5, 1979.

\*(occasionally "Howard Dixon Richardson" herein)

\*\* (sometimes collectively herein "Author")

Exhibit "1"

3 pages

- (ii) \$10,000 upon the expiration hereof, receipt of which is hereby acknowledged.
- (iii) If Purchaser in its sole discretion elects to extend the initial option period, \$10,000 together with written notice of such election on or before the expiration of the initial option period. Upon such payment and notices the rights granted hereunder shall be for a further period ("second option period") expiring November 5, 1980.

If Purchaser elects not to extend or exercise its said option, then the rights granted hereunder in and to the Work shall expire automatically at the end of the final day of the applicable option period.

- (b) If Purchaser, in its sole discretion, elects to exercise its exclusive option:

\$150,000 (less the sum(s) paid pursuant to subdivisions (i), (ii) and (iii) of subparagraph (a) above), together with written notice of such election. Upon such payment and notice, the rights granted hereunder shall subsist forever in accordance with the terms of this agreement.

B. Contingent Consideration, if any, provided for in Schedule 1 attached.

### III. Special provisions:

(a) If Purchaser shall have exercised one or more of its option(s) set forth in Paragraphs SECOND (c) and/or (d) of that Agreement dated concurrently herewith between Purchaser and Howard Dixen Richardson and Frances Goforth for writing services with respect to the picture \* (sometimes "Writer's Agreement" herein), and if Purchaser shall have exercised its right of "Delay" pursuant to subdivision (ii) of Paragraph SECOND (e) of said Writer's Agreement, then the expiration date of any option period(s) hereunder shall be extended for a period of time equivalent to the period of any such Delay.

(b) Notwithstanding anything to the contrary set forth hereinabove, if, after the expiration of seven (7) years from the date of exercise of the option hereunder, the Picture shall not have been produced by Purchaser, and if at such time Purchaser shall not be engaged in active development (as defined hereinbelow) of the Picture, then all rights granted to Purchaser hereunder in and to the Work shall terminate and shall revert to Owner subject to a lien in favor of Purchaser for all sums/expended by Purchaser with respect to the Picture, plus accrued interest at the annual rate of One Hundred Twenty Five percent (125%) of the prime interest rate charged by the Chemical Bank of New York, computed from the time of expenditures by Purchaser to the time of repayment by Owner. All amounts subject to the aforesaid lien shall be repaid to Purchaser not later than the

\*The first theatrical motion picture photoplay produced hereunder based upon the Work is sometimes referred to as the "Picture" herein.

the production (or any adaptation or merit thereon, e. g., for writing services) of a motion picture photograph based upon or related to the Work. It is understood that the exercise of such rights hereunder, if applicable, affects not only the Work acquired hereunder under subdivisions (i), (ii), (iii) and (iv) of Paragraph 1 above, but also shall include any "new" screenplay material which may be written by Owner and/or any other third party pursuant to an agreement with Purchaser for the rendering of such writing services for the Picture. ~~It is agreed that any such "new" screenplay material shall be owned in perpetuity by Purchaser.~~ "Active Development", as referred to above, shall mean either (i) a writer is, at such time, working on the Picture or (ii) there is, at such time an outstanding bona fide offer by Purchaser to engage a writer, director, principal member of the cast or other major element for the production of the Picture. Any reverted rights in the Work hereunder shall revert to Howard Dixon Richardson and/or Francis Goforth (or their successors) in exactly the same shares as Howard Dixon Richardson and/or Francis Goforth are granting rights to Purchaser in the Work as set forth in subdivisions (i), (ii), (iii) and (iv) of Paragraph 1 above.

\* (c) Purchaser and Owner mutually acknowledge that: (i) in the event Purchaser shall elect to exploit its rights hereunder, Purchaser intends, but does not guarantee in any manner whatsoever, that the initial exploitation shall be in connection with the production and/or exploitation of a theatrical motion picture; (ii) however, Purchaser shall have no obligation to exploit any of its rights hereunder or to exploit them in any particular manner or order; and (iii) Owner acknowledges that they are not relying, in any manner whatsoever, on Purchaser's said statement of intention in (i) above in entering into this Agreement, nor is initial theatrical release of a motion picture hereunder a condition or the grant of rights to Purchaser hereunder.

IV. The terms and conditions of this agreement are those set forth hereinabove and in the Standard Terms, Schedule(s) and Exhibit(s) attached hereto, which by reference are incorporated into and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the day and year first above written.

(Owner) *Howard Dixon Richardson*  
 HOWARD DIXON RICHARDSON

(Owner) *Francis Goforth*  
 FRANCIS GOFORTH

(Purchaser) PARAMOUNT PICTURES CORPORATION

By *[Signature]*  
 RICHARD ZIMBERT  
 SENIOR VICE PRESIDENT



# Paramount Pictures Corporation

DANIEL I. FURIE  
Senior Attorney

MOTION PICTURE GROUP

July 28, 1988

Ellen Kritchman  
Kramer & Birnbaum  
708 Third Avenue  
New York, New York 10017

Re: "DARK OF THE MOON"

Dear Ellen:

As discussed, enclosed is a Quitclaim relating to the above-captioned property in the form we discussed which has been signed on behalf of Paramount.

Sincerely yours,

  
Daniel Furie

DF/sb



QUITCLAIM

Reference is made to the Agreement dated as of November 21, 1978 between Paramount Pictures Corporation ("Purchaser") and Howard Dixon Richardson and Frances Goforth (collectively "Owner") pursuant to which Owner granted and assigned to Purchaser certain rights in and to the following material:

- (i) The play written by Howard Dixon Richardson entitled "Barbara Allen";
- (ii) The play written by Howard Dixon Richardson and William Clairbourne Berney entitled "Dark of the Moon";
- (iii) The dramatico-musical play written by Howard Dixon Richardson entitled "Dark of the Moon" (musical version); and
- (iv) The first draft screenplay written by Howard Dixon Richardson and Frances Goforth entitled "Dark of the Moon" dated July 18, 1978

for a period expiring November 5, 1980 with the option to acquire said rights in perpetuity.

This will confirm that Purchaser did not exercise said option. Accordingly, Purchaser hereby quitclaims to Owner and its successors and assigns all right, title and interest which Purchaser may have acquired in and to the foregoing material pursuant to said Agreement including, but not limited to, the documents recorded in the Copyright Office listed on Exhibit "A" attached hereto.

Dated as of July 19, 1988

PARAMOUNT PICTURES CORPORATION

  
By \_\_\_\_\_  
ROBERT B. COHEN  
Vice-President

## BACKGROUND

### "DARK OF THE MOON"

To best knowledge the Richardson/Yale Property Trust, Elliot S. Blair, Administrator (the "Trustee"), the following disclosure, among others, reflects uses, exploitations, prior versions, adaptations and/or translations and publication of the Work, infringements and, to the extent available, dates related thereto, approximate or otherwise:

1. March 1945 - Select Operation Corporation produced the play "DARK OF THE MOON" on Broadway in New York (initially opened at the Schubert Theatre), pursuant to Minimum Basic Production Agreement.
2. 1946 - NBC-TV broadcast of the play "DARK OF THE MOON", as adapted by William C. Berney and Howard D. Richardson.
3. 1947 - NBC-TV broadcast two additional versions ("CIRCLE THEATER" and "MATINEE THEATER") each of which version was "adapted" for broadcasting by William C. Berney and Howard D. Richardson.
4. 1948 - NBC-Radio broadcast a radio version of the play "DARK OF THE MOON" which was adapted by a third party with the consent of William C. Berney and Howard D. Richardson.
5. 1949 - Production presented in England by H. M. Tennent, Ltd. at the Globe Theatre transferred to Ambassador Theatre.
6. 1956 - Television production by Rediffusion.
7. 1957 - Broadcast BBC Scottish Home Service.
8. 1958 (Repeated 1972) - Broadcast by South Africa Broadcasting Corporation in Afrikaans.
9. 1968 - Production in New Zealand, Mercury Theatre, Auckland.
10. 1969 - BBC and CBC-TV broadcast the play "DARK OF THE MOON" in versions not adapted by William C. Berney or Howard D. Richardson.
11. 1969 - Off Broadway production of the play "DARK OF THE MOON" was performed at the Mercer Street Playhouse in New York City and produced by Hans Pederson and/or Colby Films or parties affiliated with them. This version was adapted by Howard D. Richardson.

12. 1985 (License for Scandinavian countries) - production presented at the National Theatre, Oslo, Norway.

13. Numerous performances of "Dark of The Moon", equity, stock, and amateur, have been produced from more than fifty years; over the past decade the following are merely examples:

- a. 1990: The Company produced the play at the Pearl Street Theatre, New York.
- b. 1991: Chelsea Repertory Company Ensemble produced by The Acting Studio, Inc. in New York
- c. 1991: The New Jersey Shakespear Festival.
- d. 1993: The Manhattan College Players produced the play in New York.
- e. 1994: Loyola Merrymont University produced the play in Los Angeles.
- f. 1994: Drama Workshop Production produced the play at the Henry Street Theatre in New York.
- g. 1996: The Neighborhood Playhouse School of the Theatre produced the play in New York.
- h. 1998: The Schreiber Studio produced the play in New York.
- i. 1998: The Santa Monica Theatre Club produced the play in Santa Monica, Ca.
- j. 2000: The State Theatre Company produced the play in Austin, Texas.

14. The following screenplay versions of the initial Work were prepared and options for underlying rights were granted:

a. Certain of these versions were optioned by various parties, however, at no time were said options exercised or any of said screenplay material produced.

b. Approximately 1964 - Elliott Kastner (with Commonwealth United) negotiated an option for the rights and on a screenplay version of "DARK OF THE MOON", written by Howard D. Richardson and/or William C. Berney. An option agreement was prepared and executed by Howard D. Richardson, however, the agreement was never executed by the Licensee — the transaction was never fully consummated.

c. Approximately 1969 - Kevin Casselman secured an option for the rights and for a screenplay version of the Play "DARK OF THE MOON" which was written by Howard D. Richardson; the Option was not Exercised.

d. At various times, several versions of the Play "DARK OF THE MOON" have been adapted by Howard D. Richardson, solely and/or in collaboration with third parties

e. Approximately 1974 - Option to Albert S. Ruddy for the rights and for a screenplay; the Option was not Exercised.

f. Approximately 1977 - Option for rights and screen-play to Paul Mason; the Option was not Exercised.

g. Approximately 1978 - Option to Paramount Pictures Corp. (LeMond/Zetter) for the rights to the Play. Approximately 1978, together with an Option Agreement, Paramount Pictures Corp. entered into a Writer's Flat-Deal Employment Agreement with Howard Dixon, Richardson and Frances Goforth to render their services in writing a second draft screenplay based upon a first draft screenplay by Richardson and Goforth; the Option was not Exercised. Letter July 28, 1988 with Quitclaim; July 19, 1988 from Paramount Pictures to Richardson and Goforth.

h. Approximately 1984 - Option for underlying rights to Zivian, Inc., the Option was not Exercised.

15. In May, 1989 an option was granted for Film rights to North American Development Company and assigned to Paul Mason. The Option was not Exercised.

16. Rights for a Musical Stage Production were granted in March, 1990 (amended in October, 1991), to Jan Tyler Andrus; the rights have not yet been Exercised. If there is no musical stage production by January 31, 1995 rights will terminate and revert to Grantor. The title "DARK OF THE MOON" cannot be utilized for the production. Purchaser had the right, upon merger, to have a film version of the Musical produced (however, provision for a sequel/remake in a contract for a film version the Musical would exclude a Film version of the Play - the Grantor having reserved the right to make a separate grant for a film version of the Play). In the event Purchaser fails to produce and rights terminate, Purchaser may exploit songs written in connection with the grant of rights. Rights were not exercised.

17. Foreign translations rights have been granted to third parties which have been sublicensed. At various times, the play "DARK OF THE MOON" was translated into various languages, including, among others, French, Russian, Hebrew and Spanish. The French, Hebrew and Spanish versions were authorized, the Russian version was not authorized, but was produced at the Moscow Art Theater and the Leningrad Art Theater.

18. **Publishing:** Publishing rights in the play "DARK OF THE MOON" and all related versions were granted to William Heinemann, Ltd., in London, England which were sublicensed in the United States by Theater Arts Books, whose successors in interest were Methuen, Inc. and thereafter Routledge, Chapman and Hall, Inc. ("RCH") and then Routledge and presently Taylor & Francis Group, LLC. The publishing rights originally granted to Heinemann were relinquished and terminated in 1988 and similar rights were granted directly to Routledge as of 1994 and now Taylor & Francis Group, LLC. Samuel French, Inc. maintains secondary amateur and stock rights and numerous amateur and stock production rights are licensed each year and are performed in the United States and throughout the world.

19. Opera: In 1978, certain rights were granted to Timothy C. Lloyd and David T. Lloyd to create an operatic adaptation of the Property and to cause a production thereof. After 1980, the operatic rights granted to the Lloyds became non-exclusive. An operatic composition has been created, but no professional production has been mounted, except a production of the opera was performed (4 performances) at New York University in June 1991 using the title "Witchboy" - the Opera Agreement precludes use of the title "**DARK OF THE MOON**". The Opera Agreement was amended as a result written letters dated December 20, 1983, January 6, 1984 and August 24, 1984.

## 20. Infringements

a. During the early 1970's, the National Ballet of Washington (the "NBW") produced an unauthorized version of the play "DARK OF THE MOON"; said unauthorized Ballet version, by Jack Carter, was entitled "Witchboy". Proceedings were initiated against the National Ballet of Washington by Howard D. Richardson and a settlement reached with the NBW (all named defendants were not party to the Settlement), the agreement required that the unauthorized use by NBW would be terminated.

b. In January, 1993 the London City Ballet ("LCB"), performed "The Witchboy", by John Carter, at the Sadler's Wells Theatre in London. The Trust advised the LCB and those related to the performance that such production was a violation and infringement of the rights and interests of the Trust. After numerous correspondence, answers and replies and before any resolution LCB advised the Trust that it was "folding on Saturday, July 3, 1993". No other action was taken and the Trust is unaware of any subsequent performances by related parties.

c. In 1994 there were allegations made to the Trust and the Trust was advised that Elliott Kastner was preparing a motion picture "The Ballad of Barbara Allan" which, after written correspondence from the Trust, was denied by Mr. Kastner.

d. A Literary Work by Janice Daugharty entitled "Dark Of The Moon" was published in 1994 by Baskerville Publishers, of Dallas, Texas.

e. From time to time other literary works (fiction) were published utilizing the title "Dark Of The Moon".

f. Use of the title "Dark Of The Moon" in connection with a television film to be broadcast on CBS was discontinued (1989) after correspondence from Elliot S. Blair, Esq.

21. The following paragraphs, to the best knowledge of the Trust, sets forth additional provisions regarding chain of title:

a. Howard D. Richardson and William C. Berney are the sole authors of the underlying dramatic material - no claim is made or intended by the Trust with respect to the musical compositions, including, music and lyrics.

b. William C. Berney died November 24, 1961, leaving no spouse and/or issue and the sole legatees of his estate were Howard D. Richardson, as life tenant, and Yale University, as remainderman.

c. Howard D. Richardson died December 30, 1984 leaving, at the time of death, no spouse and/or issue. On June 20, 1985, Letters Testamentary were issued by the Surrogate's Court, New York County and Elliot S. Blair, Esq. was appointed Executor of the Estate of Howard Richardson. A Trust was established under the Last Will and Testament of Howard Richardson, and among other properties set forth in Richardson's Last Will and Testament, "DARK OF THE MOON" formed the basis of a Trust. The sole legatees having an interest in the Trust are Craig Palmer ("Palmer") and Frank Gauthier ("Gauthier"). Elliot S. Blair, Esq., in January, 1987, was issued Letters of Trusteeship by the Surrogate's Court, New York County. Pursuant to agreement with Palmer and Gauthier, the Howard Richardson Literary Property Trust was formed. Elliot S. Blair, Esq. is the Trustee of the Howard Richardson Literary Property Trust.

Additionally, in November 1987, the Richardson/Yale Property Trust was formed pursuant to an agreement among (a) Yale University, as the remainderman of the Berney Estate, (b) the Estate of Howard Richardson by Elliot S. Blair, Executor and (c) the Richardson Literary Property Trust, Elliot S. Blair, Trustee (collectively "RLPT"). The Richardson/Yale Property Trust, includes "DARK OF THE MOON", among other Properties, and is administered by The Richardson Literary Property Trust, Elliot S. Blair, Trustee. Letters of Trusteeship to Elliot S. Blair have not been rescinded and currently exist.

d. The Property consists of the play, "Barbara Allen", a legend of the Smokey Mountains, and the revised version of the play entitled "DARK OF THE MOON". (The music [music and lyrics] contained in the Play is either Public Domain and/or composed by third parties).

"DARK OF THE MOON", a dramatic play (a revised version of "Barbara Allen" in nine scenes) by Howard Dixon Richardson and William Clairborne Berney, was copyrighted in the names of Howard D. Richardson and William C. Berney on September 22, 1944, as Entry No. DU 90535, which copyright was timely renewed on January 10, 1972, Entry No. R.519244. A prior version entitled "Barbara Allen" by Howard Richardson was copyrighted on June 20, 1942, as Entry No. DU 80592, which copyright was timely renewed on September 22, 1969, as entry No. R.469043. A musical version of the play "DARK OF THE MOON" (a work in two acts with music) by Howard Dixon Richardson, following publication, was copyrighted Entry No. DP 8488, December 20, 1966, and timely renewed by Elliot S. Blair, Executor of the Estate of Howard Richardson, on March 28, 1994, as No. RE 641-539.



# SAMUEL FRENCH, Inc.

FOUNDED 1830

PLAY PUBLISHERS AND AUTHORS REPRESENTATIVES

INCORPORATED 1890

45 WEST 25th STREET  
NEW YORK, N.Y. 10010

CABLE ADDRESS THEATRICAL, NEW YORK

AREA CODE (212) 206-8990

M. ABBOTT VAN NOSTRAND  
PRESIDENT

June 26, 1985

Elliot S. Blair, Esq.  
660 Madison Avenue  
Suite 406  
New York, NY 10021

RE: DARK OF THE MOON

Dear Mr. Blair:

I have gone over production records for the past two and a half years, and have come up with an average of 300 performances of the play per year, and this has been going on at the same extraordinary number of performances from amateurs alone for the past 40 years.

If you estimated that 350 people saw each performance, that would mean approximately 100,000 people per year have seen and been exposed to the play DARK OF THE MOON.

I trust that this is the information you required.

With best wishes,

Sincerely,



M. Abbott Van Nostrand

P.S. I am enclosing proof of the above from our records.

MAV:PC

Encl.



FOUNDED 1830

HOLLYWOOD  
T. 08. 08. 70

# SAMUEL FRENCH, Inc.

PLAY PUBLISHERS AND AUTHORS' REPRESENTATIVES

INCORPORATED 1899

45 WEST 25th STREET  
NEW YORK, N.Y. 10010

CABLE ADDRESS: THEATRICAL, NEW YORK

AREA CODE (212) 206-8990

M. ABBOTT VAN NOSTRAND  
PRESIDENT

July 1, 1985

Elliot S. Blair, Esq.  
660 Madison Avenue  
Suite 406  
New York, NY 10021

RE: DARK OF THE MOON

Dear Elliot:

As further evidence of the great popularity of DARK OF THE MOON, in addition to my very conservative mention of the number of performances for Amateurs alone, I would not hesitate to place this property in the top twenty produced plays of the past twenty to thirty years.

It is in the company of such plays of Neil Simon, Thornton Wilder and Agatha Christie, who are in the very top produced playwrights in our market.

With best wishes,

Sincerely,



M. Abbott Van Nostrand

MAYN:pg

March 29, 2012

Elliot S. Blair, Esq.  
600 Madison Avenue - 22<sup>nd</sup> Floor  
New York, NY 10022

Dear Mr. Blair,

Samuel French was founded in 1830 and has operated in a continuous fashion for almost two centuries. Samuel French is a licensing and publishing agent having offices in New York, Los Angeles and London and currently represents over 4,000 musicals and plays written by over 6,000 authors. Samuel French has represented the Literary Property DARK OF THE MOON since 1955. I reviewed the letters dated June 26, 1985 and July 1, 1985 written to Mr. Blair by M. Abbott Van Nostrand, the then President of Samuel French, and confirm the calculations and comments therein by Mr. Van Nostrand. In addition, the play DARK OF THE MOON, since Mr. Van Nostrand's letters in 1985, has continued to be widely popular as it is translated into several languages and has been produced and performed in the United States and, on many occasions, internationally. Over the past 10 years, there have been in excess of 350 amateur and professional licenses issued for theatrical productions of DARK OF THE MOON. It should be considered, that each license results in many performances which means the play has been viewed by over 300 thousand audience members, during that 10-year period alone.

The play is not only popular, but it is also a great work of literature which enriches and expands the minds of readers and audience members by addressing social and cultural issues such as tolerance. In my opinion, DARK OF THE MOON has taken on a secondary meaning and I concur with the comments written by Mr. George Zournas in his letter to Mr. Blair dated July 15, 1985 stating that "the words 'dark of the moon' have become identified with and have acquired the secondary meaning of 'Dark of the Moon', the Play by Howard Richardson and William Berney". Further, I feel Mr. Zournas was accurate when he also stated "To present anything else to the English-speaking public as DARK OF THE MOON would be a misrepresentation of the lowest order."

Please let me know if there is any other way that we can help preserve this title and its impact on American culture.

Sincerely,



Nathan Collins, President  
Samuel French

THEATRE ARTS BOOKS

135 WAVERLY PLACE, NEW YORK, N. Y. 10014

PHONE 5-1815

15 July 1985

Mr. Elliot S. Blair  
Counsellor at Law  
660 Madison Avenue  
New York, New York  
10021

DARK OF THE MOON  
by Howard Richardson &  
William Berney

Dear Mr. Blair:

I was extremely disturbed to learn from your letter of June 25th, 1985, that a television movie, not by Howard Richardson and William Berney, is being produced using the title DARK OF THE MOON.

Since its first production, DARK OF THE MOON by Howard Richardson and William Berney, has made an indelible impression on the mind of every person who has seen a production of or read the text of the play. It has become not only one of the great "underground" favourites of the American theatre but "above ground" it is one of the most widely produced plays in the English repertory. Any High School Thespian in the United States could probably give an accurate synopsis of the Richardson/Berney play if asked. We first published the play in 1956 and since then have sold over eighty-six thousand copies of it. This is in the United States alone; it does not include copies sold by the British publisher, Heinemann Educational Books.

There is no doubt that in the English-speaking world the words "dark of the moon" have become identified with and have acquired the secondary meaning of "DARK OF THE MOON, the play by Howard Richardson and William Berney". To present anything else to the English-speaking public as DARK OF THE MOON would be a misrepresentation of the lowest order.

DARK OF THE MOON by Howard Richardson and William Berney is a play of the first rank, a play of extraordinary beauty and poignancy that has a cherished place in the memories of the tens of thousands of people who have read and seen productions of it here and abroad. It would be a terrible injustice if an imposter were allowed to usurp that place.

Cordially,  
THEATRE ARTS BOOKS

*George Lounnas*  
George Lounnas

GZ/je

Exhibit E

1 page



# PLAYS OF THE YEAR

CHOSEN BY  
J. C. TREWIN

*DARK OF THE MOON*

*Howard Richardson and William Berney*

*BLACK CHIFFON*

*Lesley Storm*

*ANN VERONICA*

*Adapted by Ronald Gow from the  
novel by H. G. Wells*

*THE KING OF FRIDAY'S MEN*

*Michael J. Molloy*

*THE LATE EDWINA BLACK*

*William Dinner and William Morum*

*BEFORE THE PARTY*

*A play by Rodney Ackland based on a  
short story by W. Somerset Maugham*

1949

London PAUL ELEK New York

THE BEST PLAYS  
OF 1944-45

AND THE  
YEAR BOOK OF THE DRAMA  
IN AMERICA

EDITED BY  
BURNS MANTLE

*With Illustrations*



ROED, MEAD AND COMPANY  
NEW YORK 1945

plots and philosophies submitted by the playwrights. "Hope for the Best" was an obvious but earnestly written comedy about a newspaper columnist who wanted to trade his popularity as a folksy writer for a reputation as a political prophet and guide. The chief parts were played by Franchot Tone, a popular young man on both stage and screen, and Jane Wyatt, an actress of social background whose personal charm is potent. William McCleery, newspaperman, was the author, convinced that he had at least a minor message for honest folk. Mr. Tone put his heart and a part of his income into "Hope for the Best," and, with Miss Wyatt's appeal, kept the comedy going for 117 performances, thus making many more playgoers happy than the critics dreamed possible.

"One-Man Show" was less fortunate, though the more important play of the two. Written by Ruth Goodman and Augustus Coetz with impressive earnestness, "One-Man Show" posed the problem of a father and daughter ruled by so strong an admiration and appeal for each other that the girl's interest in other men was minimized. The father's impulse was to encourage her in that detachment. He broke up a couple of potential matings, but along came an understanding young politician who, falling in love with the girl, was able to break the father's influence. The triangle was intelligently represented by Frank Conroy as the father, Constance Cummings as the daughter and John Archer the politician, but "One-Man Show" was withdrawn after 36 performances.

Another comedy temporarily kept from the storehouse by the attractions of its players was "The Overtons," written by Vincent Lawrence. Mr. Lawrence might truthfully be described as the most promising of American playwrights, inasmuch as he has been most promising the longest of any. He misses scoring hits by the narrowest of margins. Again the idea around which "The Overtons" was written offered possibilities. The Overtons had happily trusted each other in marriage for eight years. Then a shapely charmer was observed undressing in Mr. O.'s boathouse and Mrs. O. was ready to rush off to Reno. Mr. O., his pride hurt and his interest in the disrobing lady being nothing to speak of, refused to explain—at least until after the final curtain, when it was promised that he would. Arlene Francis, who had done so well with the role of the Soviet sniper in "The Doughgirls," and Jack Whiting, one of the bounciest and most likable of musical comedy juveniles, assisted by Glenda Farrell (she contributed the title), these three kept "The Overtons" going for 151 performances, which was long after several better plays had closed.

The last third of the season was variously enlivened. It was in March that Tallulah Bankhead arrived with Philip Barry's "Foolish Notion." This one, as frequently happens with the Barry output ("Tomorrow and Tomorrow," "The Animal Kingdom," "Here Come the Clowns," etc.), presented a novel idea in plot and was intelligently treated in the writing and staging—virtues which are more fully discussed in other pages of this yearbook.

It was in March, too, that a poetic and in many respects a fascinating fantasy, "Dark of the Moon," arrived. Written by two gifted young Southerners, Howard Richardson and William Berney, elaborately and generously cast by the Messrs. Shubert, who produced it, "Dark of the Moon" found an appreciative public. Fred Stone's youngest daughter, Carol, played the legendary heroine, Barbara Allen. Her opposite in the role of a witch boy was Richard Hart, a promising juvenile discovered when the play was first done in Summer stock. With the aid of a Conjur Woman, the witch boy became human long enough to woo and wed Barbara, on the promise that if she were untrue to her vows within a year he would return to the witch tribe and never again forsake his kind. Barbara's Christian kin, working upon her emotions at a religious revival, prevailed upon her to forget her marriage vows in the cause of breaking the witch spell. Thus she loses her husband and later her life.

George Kelly ("The Show-off," "Craig's Wife," etc.) came back to Broadway after many too many seasons and brought a new play, "The Deep Mrs. Sykes," with him. It was voted a superior play by most of its critics, and found a determinedly loyal public. But it was never quite strong enough to support the burden of its somewhat heavy treatment of its theme—"There are egotist women, and they say they're much deadlier than the male; because their egotism usually passes for mere feminine jealousy." Mrs. Sykes' intuition told her that her husband was having an affair with a pianist, but she was wrong. It was her married son. Mrs. Sykes' suspicions caused a lot of trouble.

One of the better of the lighter comedies based on the Second World War was Luther Davis's "Kiss Them for Me." Three pals in the crew of an airplane carrier in the South Pacific find themselves in San Francisco on a four-day leave. They hire a hotel suite and announce their intention of devoting the four days to liquor, women and a juke box. Complications begin developing almost immediately. At the end of three acts the boys are awfully glad to start back for the comparatively peaceful life of fighting men. Two of the flyers were played by Dennis King,



## A COUPLE OF SOUTHERN COUSINS

By WILLIAM DU BOIS

**T**HE fact that Howard Richardson and William Berney (the co-authors of "Dark of the Moon") are cousins will surprise no one who understands the ramification of a Southern family tree. The fact that their folk-play won the Maxwell Anderson award back in 1942 seems natural too—for "Dark of the Moon," despite the foregone conclusion of its plot and the tenuous hortcomings of its genre, is also a eerie experiment that deserves more than a nod of recognition. But the fact that "Dark of the Moon" has been given a Broadway production by a pair of veteran managers who have seldom been known as innovators, and the fact that a mixed cast of old hands and raw hatters are playing it with obvious enjoyment of their jobs, is something else again. Why, when the folk-play has so often died unborn in New York, should "Dark of the Moon" venture into Forty-sixth Street this season? And why, of all people, should the Messrs. Shubert be listed as its sponsors?

Seeking out the authors to discuss the matter further, this observer found two astoundingly young, but thoroughly realistic, playwrights—still a bit groggy after a grueling road tour and the hangover of a New York premiere, but eager to discuss their over-all purpose. Both of them were firm in insisting that their story took the form of a folk-play only by

### Of 'Dark of the Moon' And Its Related Collaborators

accident. True enough, it uses a regional technique—from the last, sad-sweet twang of Uncle Sme-lique's guitar to the callipygian flirting of the witch-girls, the last glory-roll at the revival meeting. But the authors used a familiar mountain legend (and mountain music to accent it) simply because this was part of their own back-grounds.

#### Points of View

To Howard Richardson (27, instructor in drama at the University of Iowa, and a recent member of the AAF) the play makes its bid to its audience on universal terms. The same story, as he points out, was played for comedy in "One Touch of Venus," and "Dracula" is a familiar daemonic example. To William Berney (23, poet and painter as well as dramatist, and fresh from a stint at Boeing Aircraft) the play is simply the story of the god on earth, rejected by mankind and banished—by mankind's hatred and suspicions—to his mountain-top again.

Mr. Richardson hails from the hill country near Asheville, N. C., and has studied at Chapel Hill with Paul Green and the late Frederick Koch. Mr. Berney is a University of Alabama alumnus and a pupil of Hudson Strode's course

in the drama. The collaboration began back in 1940, when both writers were doing graduate work at the University of Iowa—the first version of the play was tried out at the campus theatre there. The usual revising followed, and the tryout of the present play took place last August at the Cambridge, Mass., Summer Theatre. The first real impetus toward Broadway came that sweltering summer's night, when Mike Kavanagh (who manages the Shubert theatres in Boston) put in a long-distance call and advised his New York office to take an immediate option. Mr. Kavanagh's interest in "Dark of the Moon" was anything but altruistic. He thought the play would make money for the Shuberts and told them so.

Within the fortnight, the authors had bids from such assorted maestros as Billy Rose, Eddie Dowling and Michael Todd; but the Shubert offer gave them control of their casting and their physical production, so the two playwrights came under Shuberts' wing. Carol Stone (who had been their ideal Barbara Allen from the first tryout plans) stayed in the cast. So did Richard Hart, whose portrayal of the hag-ridden witch-boy was precisely what his writers wanted. Robert Perry, who had directed at Cambridge, went on the road to get the play in shape for Broadway; so did John Huntington, head man at the summer theatre, who now acted as general supervisor of production.

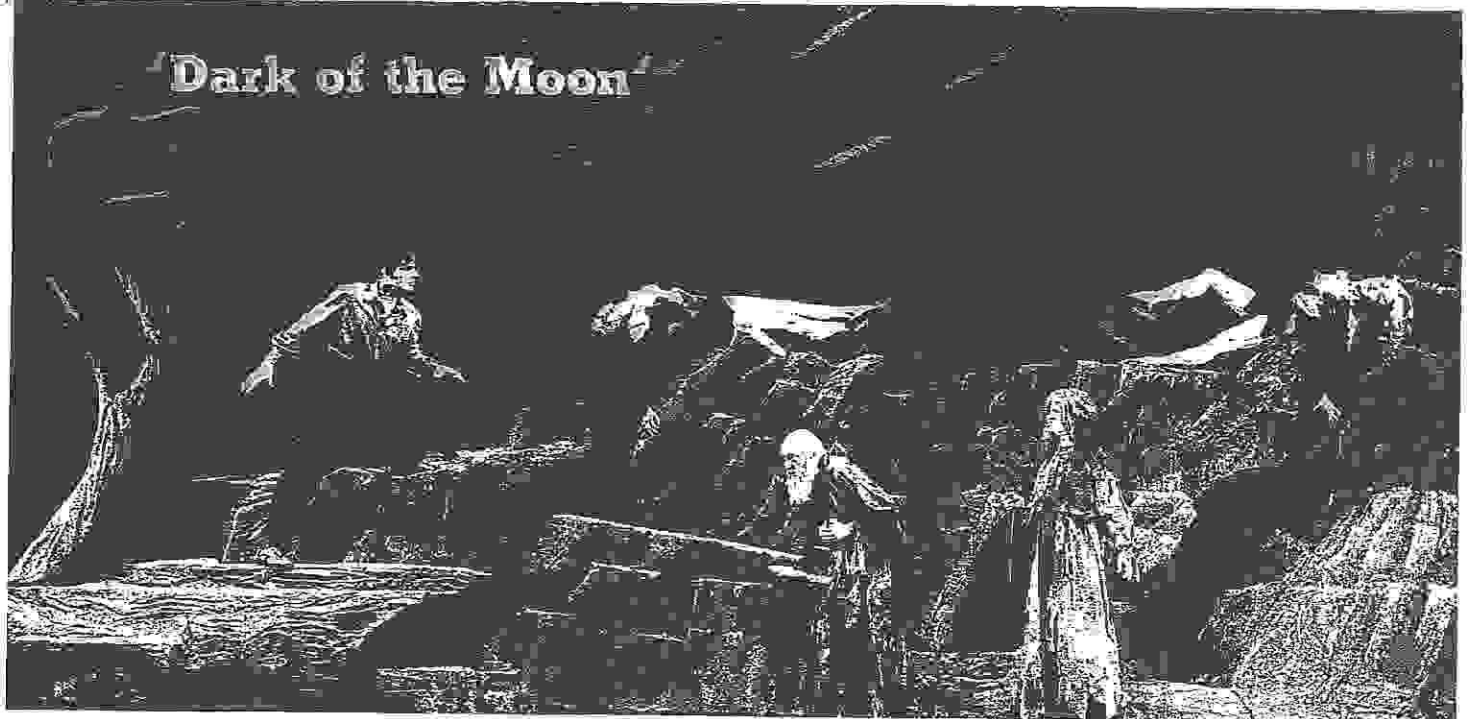
#### Trouble in Boston

The witch-girls grew from two to six on the road tour. (Incidentally, Marjorie Belle, who plays the Fair Witch, once posed as the original for Disney's "Snow White," which shows how time flies.) Both authors feel that their witches, as acted, strike the note they intended: a leggy, lazy-siren note with pure evil in their heart; a note that is best expressed by the Dark Witch's remark that she has nothing against Barbara, but would "jes' as soon have her daid." (That, says Mr. Berney, is, "just like a Southern girl. I like it.")

Speaking of lines, the authors insist that their script reached New York in its original form.

Boston insisted on word-changes in the revival scene—which both playwrights consider a model of understatement as they present it. They are puzzled by the complaints from the fundamentalist press—and by at least one assault on Mr. Berney by a lady armed with an umbrella and holy invective. A realistic portrayal of the way people get religion in the Smokies, they add, would probably bring a ukase from Mr. Moss tomorrow.

But Barbara Allen's story has reached the New York stage as the authors conceived it; the presentation, they say, merely redirects its dramatic meaning—fitting the scenes to George Jenkins' open-work sets, furnishing the allegory against Esther Junger's choreography, highlighting the story with Walter Hendl's brooding score, which serves the true purposes of melodrama. Few new authors have had their brain child brought to man's estate by more expert hands, and the present authors are more than grateful. They are grateful, too, at the way their audiences make "Dark of the Moon" a part of their experience from the first fog-wrapped moment on Old Baldy—even if most of a given audience has never been farther south than the Oranges. Perhaps it all goes to prove that far apart after all—an encouraging thought to mull over in this Broadway springtime of content.

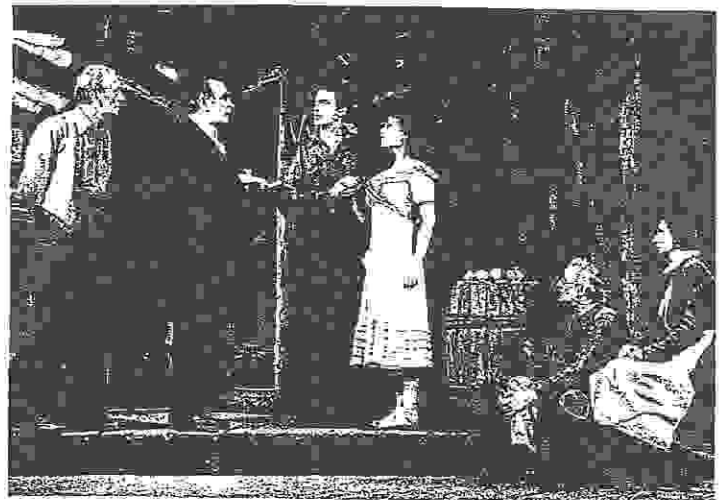


The opening this week of "Dark of the Moon" focuses Broadway's current interest in Americana on the Great Smoky Mountains of North Carolina. The play recounts the hill country version of the "Ballad of Barbara Allen"

in which John, a witch boy (Richard Hart), becomes a human so he can marry Barbara. This fantasy won for its young authors, Howard Richardson and William Berney, the Maxwell Anderson award for American drama in verse.



John and Barbara (Carol Stone, right) leading a Saturday night square dance.



The village general store is the setting for the wedding of Barbara and John.



The folk story reaches its climax in a revival meeting in the village church. The play ends with Barbara's death and John's return to the mountain witches.



## DARK OF THE MOON, MARCH 14, 1945

A legend with music by Howard Richardson and William Berney; the music by Walter Hendl. Produced by the Shuberts for a beyond the season's run in the 46th Street Theatre.

## PROGRAM

JOHN	Richard Hart	MR. BERGEN	Allan Tower
CONJUR MAN	Ross Matthew	MRS. SUMMEY	Stanley Nelson
THE DARK WITCH	Iris Whitney	MARVIN HUDGENS	John Gifford
THE FAIR WITCH	Marjorie Belle	BARBARA ALLEN	Carol Stone
CONJUR WOMAN	Georgla Simmons	FLOYD ALLEN	Conrad Janis
HANE GUDGER	John Gerstad	MRS. ALLEN	Maidel Turner
MISS METCALF	Frances Gosarth	MR. ALLEN	Sherod Collins
MR. JENKINS	Gar Moore	PREACHER HAGGLER	Winfield Hoeny
UNCLE SMELIQUE	Roy Fant	GREENY GORMAN	Dorothy I. Lambert
MRS. SUMMEY	Kathryn Cameron		Marguerite de Anguera
MR. ATENS	James Lanphier	DANCING	Ilia Heffelfinger
MRS. BERGEN	Agnes Scott Yost	WITCHES	Peggy Ann Holmes
EDNA SUMMEY	Millicent Coleman		Lil Landre
BURT DINWILLY	Robert Fryor		
HATTIE HEFFNER	Peggy Ann Holmes		

SYNOPSIS: Act I. Scene 1. The peak of a ridge in the Smoky Mountains. Scene 2. The central square of Buck Creek. Scene 3. The Allen cabin on Chunky Gal Mountain. Scene 4. The general store of Buck Creek. Act II. Scene 1. A clearing in the woods near Barbara and John's cabin. Scene 2. Barbara and John's cabin. Scene 3. Same as Scene 1, Act I. Scene 4. The Church of God, Buck Creek. Scene 5. Same as Scene 1, Act I.

HERE IS A meritorious contribution to the native drama made to seem largely the opposite by a defective stage production. Though the authors, both still in their twenties, are new to playwriting, they have composed a paraphrastic treatment of the derivative Barbara Allen Carolina hillbilly legend which, for all its occasional lapses and let-downs, manages a combination of eerie fantasy and earthy humor that is frequently impressive and that, in its better portions, achieves a degree of real eloquence.

The story is of a witch-boy of the Great Smokies who craves the love of the human Barbara, who strikes a devil's bargain with a Conjur Woman that in exchange for being himself made human his beloved must remain faithful to him, for a year else he return to his original state and she forfeit her life, and who is betrayed through the instrumentality of the superstitious and religious Baptist mountain folk, with the threatened consequences. What any such play calls for is, obviously, adroit staging, shrewd casting, and expert direction. It received none of these. As a result, the inner worth of the script was little perceived by both the lay audiences and a number of the professional critics. Nor were they, considering the obfuscating botch the producers had made of it, overmuch to be blamed.

These are only a few of the things that befell the script. George Jenkins' commendable settings were manipulated in such wise by the careless stagehands that the audience spell was vitiated not only by unscreened guide-lights during what should have been complete darkness while the scene shifting was going on, but by the disconcerting presence of a laggardly stagehand or two on the stage after the lights had gone up on a set. Robert Perry's direction failed to orchestrate the song and ballet numbers with the dramatic text, giving them the aspect of excrescences rather than of an integral part of the play. It also permitted Richard Hart, in the role of the witch-boy, so to shout his lines in the early portions of the fantasy that he had nothing left when it came to his succeeding scenes. The yelling further contrived to make the early scenes seem less part of a fantasy than of the football episodes in George Ade's *The College Widow*. And, even at such points as the director managed relatively better, an amateur note, doubtless as in certain other past instances calculated to impress an audience with the exhibit's naturalness and simplicity (both in quotation marks), was allowed to hover over the whole, with the play taking on the appearance of a liqueur served in a paper cup.

Matters were made worse by the producers' fear of License Commissioner Moss' possible censorship and their ex-

cision from the script of the all-important scene wherein, during a revival meeting, Barbara is seduced by the lowland bully, thus returning her witch-boy lover to the eagles and the moon and guaranteeing her own death. The deletion robbed the play of its climactic moment and killed the effect of what came after. The authors, additionally, at the last moment not only were persuaded to alter a number of their original lines, to the weakening of the scenes in which they figured, but of their own volition changed the original ending of their play, depriving both the final curtain and the play of the evening's most tender and significant moment. As first written, the witch-boy upon being exorcised from humanity glances casually at the dead Barbara lying on a mountain rock and, no longer recognizing her, gropes his way slowly upward wondering who she is. Probably nervous lest someone accuse them of having paralleled the curtain in a play by Jean Giraudoux (*Undine*), they saw fit to eliminate it and to substitute for the casual glance a fixed gaze and for the witch-boy's wonder the line, "Barbara, if only you hadn't been human!" which made the conclusion of their play not a little silly. And, as a final production touch, the witches, properly designed by the authors as not of the broomstick variety but as the personable temptresses out of classic imagination, were disclosed as being considerably more suited to the stage of a musical revue than to the exhibit in immediate question.

An intrinsically often valuable play was thus, among other ways, sacrificed to inexpedient theatrical governorship. Although Hart indicates potentialities as an actor, the casting of him in the leading part was ill-advised, since he lacks experience and declaimed the role instead of acting it. Carol Stone, though serviceable in one or two passages, was also unequal to the part of Barbara, which might more sagaciously have been cast against itself, as the theatrical term has it, with an actress pictorially less imitative of a combination Tallulah Bankhead and Mae West. And while some of the minor roles were both aptly cast and played, others seemed to have been filled with actors of the summer theatre genre for the purpose of saving money.

In conclusion and to repeat, what might in original script have been developed into an impressive stage offering was deprived of its due by its susceptible authors and their cicerones. That script remains by and large, however, the single critically creditable one that has emerged in recent years from either the college or the summer playhouses.



# Stage: 'Dark of the Moon'

Drama on Witchcraft at the Mercer-Shaw

By HOWARD THOMPSON  
 "DARK OF THE MOON," the drama-fantasy of mountain witchcraft that started a long Broadway run back in 1945, still wears well. It does so, in its revival at the new downtown Mercer-Shaw Arena Theater, even with an omnipresent cluster of male and female witches, who wear nothing at all, and a hero who symbolically pitches in and peels down. For once, nude streamlining actually enhances a text and performance.

The Howard Richardson-William Berney play, as seen at the final preview, is essentially unchanged in depicting the passionate alliance of a restless witch-boy and a lovely, lusty earthling who are crushed by hill superstition and the pull of his shadowy origin. On Broadway—and there was a brief, non-arena revival in midtown in 1958—it shimmered hauntingly and expensively.

Minus the trappings, the new version is admirably forthright, hewing to the story line and moving with crisp sensibility under the director-designer Kent Broadhurst, who avoids gauzy wrappings (same as his witch crew) and soulful pauses. And what a temptation! Briskly, purposefully, his 21 players take over the sparse props of the arena, a tree at each corner with footholds for the slithering, crouching witches (good climbers all). The story builds feverishly as it should, flavored with the colorful ring of the twisty mountain vernacular. But Mr. Broadhurst would do well to tone down a few overly feverish performances and some early scenes, veering on Dogpatch

## The Cast

DARK OF THE MOON, a play by Howard Richardson and William Berney, script supervision by Mr. Richardson. Directed and designed by Kent Broadhurst. Lighting by Molly Friedel; additional music by Didi Fayreau; sound by Gary Harris; production stage manager, Charles Royden. Presented by Herbert Niles and Dvořák Productions, Inc. At the Mercer-Shaw Arena Theater, 240 Mercer Street.

Barbara Allen	Margaret Howell
John	Chandler Hill
Dark witch	Christine Cooper
Fair witch-boy	George Worag
Dark witch-boy	Bill Hall
Red witch	Lisa Tracy
Fair witch-girl	Carole Lockwood
Mr. Bergen	Thomas Craft
Uncle Smellicus	Carlo Grasso
Hank Gudger	Charles Beard
Floyd Allen	Patrick Cook
Alex Bergen	Jean David
Burl Bergen	Robert Brown
Edna Summey	Susan Slavin
Miss Melcalt	Marcia Wallace
Mrs. Summey	Elizabeth Brown
Mr. Summey	Robert Baines
Marvin Hudkins	Earl Hindman
Mrs. Allen	Rue McClanahan
Mr. Allen	Peter De Maio
Preacher Hoovier	Joseph Daly

and Minsky. These are close calls.

Steadying the whole evening like a rock, and keying the climactic revival scene (a rousing pip), is a fine, cadenced portrayal of the preacher by Joseph Daly. Susan Slavin and Elizabeth Brown stand out briefly among the others. And a word should be said for the restraint of the atmospheric sounds, credited to Gary Harris, ranging from animal and bird calls to Ravel and the film theme from "To Kill a Mockingbird," with additional music by Didi Fayreau. In close quarters, Molly Friedel's lighting is honest and direct.

And so are the two youngsters who make the witch-boy and the tormented girl come alive. These are Margaret Howell, with her searching, burning eyes, and, in the toughest role of all, Chandler Hill, who balances the appearance of a baby-faced Greek statue with manly, unmannered simplicity that extends to the last, memorable line of the play. South of Broadway, 25 years later, "Dark of the Moon" still coasts across the stage provocatively, with some new gleam.

# The New York Times

Section **2**

ARTS AND LEISURE

Sunday, June 28, 1970

D

## Clothes for 'Oh! Calcutta!'?

By FRANK GIORDANO

"NUDE streamlining actually enhances text and performance," was the sizzling verdict of Howard Thompson in *The New York Times*.

Thompson was referring to the recent Off Broadway revival of "Dark of the Moon," a play which enjoyed a successful, if fully-clad, run on Broadway in 1945. Other reviewers agreed that the addition of nudity and a vividly depicted rape scene actually increased the play's effectiveness. As a result, many Broadway producers have announced revivals of past hits which will be presented in new, updated and sexually enlightened productions. Among the more intriguing:

"Mame," which will charm the critics right out of the trees with a slightly rewritten book, making it the first sadomasochist musical. In this new production — retitled "Maim" — the leading man breaks the heroine's heart in

the first act and her hip in the second.

A nude version of "The Most Happy Fella," Frank Loesser's famous musical about Napa Valley grape pickers, is also being planned. It will be called "Make Love, Not Lasagna" and has a big production number where the entire cast wears nothing but grape stains on their feet.

Two Neil Simon plays — "Barefoot in the Park" and "The Odd Couple" — will be updated. The former is to be retitled "Bare It in the Park" and is about a newlywed couple who are arrested in Central Park for doing just what the title implies. The latter plans to place more emphasis on the oddness of the couple.

Tennessee Williams's "Suddenly Last Summer," considered very daring in 1959 because it dealt with cannibalism and homosexuality, will be made even more explicit

in the seventies. The heroine will now be a waitress on a Caribbean island who fears for her cousin's life when one day she receives 28 orders for Sebastian sandwiches, heavy on the mayo.

"My Fair Lady" is being revived with the emphasis now placed on Henry Higgins's sexual attraction to Eliza Doolittle, who is portrayed as a flower-selling prostitute. In this version, Higgins is a sexually perverted vocal coach who operates on Eliza's vocal chords and turns her into Marni Nixon. Fans are looking forward to a new hit song in the slightly revised "On the Street Where You Walk."

"Fiddler on the Roof" will also be done in the buff, though minor corrective surgery will be required by twelve male Gentile cast members.

"Gypsy," the hit musical about backstage life in a burlesque house, is due for an undraping, and Ethel Mer-

man will re-create her starring role of Gypsy's mother. The producers promise that the climactic scene will be a showstopper. The actress playing the late Gypsy Rose Lee appears in an outfit made completely of glass beads and when Miss Merman hits a high C, she shatters the entire costume.

"Brigadoon" has been changed only in that no one in the cast will wear anything under his kilts and the choreographer has announced a great deal of skirt twirling. "John Brown's Body" will be revived and exposed.

But of all the streamlined productions that have been announced the one that has created the greatest stir is the revamped "Oh! Calcutta!" The show will now be done entirely in maxi-skirts, turtle-neck sweaters, long johns and galoshes. Producers are convinced that "clothing will actually enhance the text and performance."



# Dark of the Moon

By Josefa Smith

DARK OF THE MOON

Chi-Town Revelers

at Pusz Studios

Though *Dark of the Moon*, written by Howard Richardson and William Berney, won the Maxwell Anderson Award in its 1942 premiere, Richardson struggled for years before he could find a Broadway producer. The Theatre Guild considered it briefly but chose instead a musical adapted from a play called *Away We Go*. As Richardson recalls in his 1966 introduction to *Dark of the Moon*, "I would like to think that they had made a tragic mistake, but in the light of history such a judgment would be hard to substantiate." The name of the musical they chose was *Oklahoma!*

Though it's likely the Theatre Guild never regretted its choice, *Dark of the Moon* did open in New York in 1945 and enjoyed its own success: an extended Broadway run and a long life later as a favorite with amateur and college theaters. This production by Chi-Town Revelers is more amateur than Broadway, and wildly uneven. The first act makes you wonder why the play was ever produced, but in the second the many merits of this delightful folktale come through.

Based on the mountaineer version of the popular ballad "Barbara Allen," the play tells the story of John, a witch-boy. The Conjur Woman consents to turn him into a human for one year so that he can court and marry the beautiful Barbara Allen, but if she's unfaithful to him in that year, John must return to being a witch forever.

Ironically, *Dark of the Moon* holds up a devilish mirror to the folksy romance that made it to Broadway first. In *Oklahoma!* we're charmed by a simple people. Love blossoms on the prairie, and the only hint of darkness comes from an isolated bad seed, a lecherous farmhand. Richardson and Berney's story leads us to believe that the foothills are populated by similarly decent, God-fearing people, but what makes *Dark of the Moon* so juicy is the truth behind the facade. While the lovers in *Oklahoma!* overcome

**Exhibit K**  
**3 pages**



the farmhand's interference with the support of their nurturing neighbors, John and Barbara's marriage is opposed by her entire hometown, who fear John and want to destroy their union.

The climactic revival scene shows the town at the height of its frenzy, satirizing the search for salvation through public confession. The crowd thrills when two timid people get up separately to confess their sins, and their voyeuristic joy doubles when the couple describe in a sensual rhythm their union in the barn: one begins, "We was in the barn a-shuckin' dry corn," and the other answers, "Cawn shucks soft, cawn shucks warm." Choruslike, the congregation punctuates the confession with "Lord, they pleased tharselves in the barn."

Vibrating with singing and bodies shaking, the revival scene is by far the best in this production, directed by Brad Waters. Here the large cast sings spirituals like "The Old Religion," "Never Alone," and "Lonesome Valley" with conviction. But unfortunately this is the only setting in which the supporting cast seems comfortable. Hopelessly ill at ease in earlier choruses, they're unable to recreate the spontaneity of friends singing at a party or of a band practicing together. Ad-libs consist of wide eyes, dropped jaws, and pointing at the main characters--reducing the townspeople to hokey caricatures. And until the revival scene, they just can't catch the syncopated rhythms of the more poetic passages.

As the ill-fated lovers, Michael Hargrove and Rebekah Smith certainly convince us of their undying love. Even when the story becomes a struggle between good and evil, between the church and a witch, we still root wholeheartedly for the witch. They exude so much wholesomeness, however, that they seem better suited to the Oklahoma! lovers than to the witch-boy and his wife. Smith, a perky blond with a sweet voice, lacks the fierce sexuality of a woman who has "pleasured herself" freely and conceived a child before marriage. Hargrove, long-legged and gangly, is all boy and very little witch. John says, "Sometimes being human's more'n I kin stand. . . . sometimes I feel I jes' got to git away." And yet Hargrove does not show that restlessness, or the way John feels tempted to fly with his eagle again or return to the three sultry witches who were once his playmates.

This production creates little fanfare for the witches--no ominous music or drastic lighting changes--and overall there are only slight differences between the natural and supernatural worlds. Costume designer Beth Ensey outfits the netherworld in rags and torn furs and the poor rural community in worn dresses and overalls. Melissa A. Gaspar's fixed set reinforces the sense

that the two worlds are nearly one: dingy tarps draped over platforms represent both the witches' mountain lair and the town below, suggesting a common dreariness. By downplaying the differences between the witches and the humans, the Chi-Town Revelers wisely downplay the witches' power over the humans. As the play implies, we're able to inflict pain on one another without supernatural help.

*Art accompanying story in printed newspaper (not available in this archive); photo/Michael Hargrove.*

[Performing Arts Review archives »](#)

## Mysteries of the 'Moon'

Thursday, August 04, 2005  
 By Anna Rosenblatt

"Dark of the Moon," by Howard Richardson and William Berney, is a 60-year-old perennial favorite among community, high school and university theaters. So what's the appeal for Quantum Theatre, so often the purveyor of new and/or alternative work?

Maybe first and foremost it's the subject matter, which lends itself to probing exploration and continued contemplation. At its heart, "Dark of the Moon" is a love story. Based loosely on a 17th-century folk song, one of the many versions of "The Ballad of Barbara Allen," it tells of a witch boy in love with a human. Through a world of magic, he's able to become human, but at what sacrifice?

Like "Romeo and Juliet," "Dark of the Moon" looks at what happens when two worlds, intolerant of each other, are brought together through the love of one couple. Like "The Crucible," it looks at people's fear of the other and the ways one town can hide behind religion in response to that fear.

Set in the Great Smoky Mountains of North Carolina, it's the perfect vehicle for a summer production staged outdoors and peppered with lively bluegrass music, including some original pre-show compositions.

According to author Richardson in his 1966 foreword to the edition of the play that is still in print, he wrote "Dark of the Moon," then called "Night Song," during his 1941 Christmas vacation for a writing class he was taking at the University of Iowa. In 1942 it was staged at the university and won the Maxwell Anderson Award given by Stanford University for the year's best verse drama.

Full of hope, Richardson went to New York to get it produced. Remarkably, he found a well-connected agent, and then it was optioned by Jose Ferrer and wife Uta Hagen, the Lunt and Fontanne of their generation. A couple of rewrites later, Richardson says, he was called into active duty in the Army Air Force. So, "I turned the responsibility for any further work on the play over to my friend, William Berney, who had been at Iowa with me" when it was first staged.

Like the North Carolinian Richardson, Berney was also a Southerner, as well as "a poet with a keen ear for rural, folk, idiomatic speech, and a flair for the dramatic." Richardson credits him with some of the best lines in the play as well as its new title. But when Ferrer and Hagen dropped out, the script was rejected by every producer they approached, including the Theatre Guild, which was interested but decided to produce something called "Oklahoma!" instead.

In 1944, "Dark of the Moon" found a home at a summer theater in Cambridge, Mass. When it opened there with Richard Hart and Carol Stone as the witch boy and Barbara Allen, it got a photo spread in Life magazine — because some Life people owed Berney a favor. That stirred the famous Shubert brothers, who took it, along with newcomers Hart and Stone, to Broadway, where it ran a very successful nine months in 1945, then went on a 1946 cross-country tour.

The Broadway cast of 27 included Marjorie Belle (later Marge Champion) as the Fair Witch. After the tour, Hart, the father of Post-Gazette drama critic Christopher Rawson, was signed to an MGM contract and went off to Hollywood to star opposite Lana Turner, Donna Reed, Greer Garson and Barbara Stanwyck in a short career that ended when he died at 35.

In later revivals, including the 1951 inaugural production of Circle in the Square Theater, "Dark of the Moon" was a vehicle for such famous actors as Paul Newman, Shelly Berman and Betsy Palmer. Its 1949 London production helped launch the career of director Peter Brook. And Tim O'Toole, current head of the London subways, played the witch boy in 1972 at Pittsburgh's Central Catholic High School.

As interesting as its history is the mystery that surrounds "Dark of the Moon." It's said that one actor's death and another's heart attack on Broadway precipitated the cessation of the use of a Bible during the revival scene. But it was the night a

# DARK OF THE MOON



HOWARD RICHARDSON  
& WILLIAM BERNEY

DARK OF THE MOON

RICHARDSON & BERNEY

Routledge/Theatre Arts Box

An outstanding Broadway and London hit, *DARK OF THE MOON* is "a powerful fantasy in a setting of the Smoky Mountains. It achieves that rare combination of being spectacular and at the same time intimate and intense. It's 'hillbilly' dialect has the strangely moving poetic quality of a folk ballad."

—*Playboys Magazine*

As the tale unfolds, a witch boy tarries in a mountain community in love with a beautiful girl named Barbara Allen. The superstitious townspeople resent their happiness, and meddling ends in violence and tragedy.

"The kind of play the audience instantly likes."

—*N.Y. Times*.

"A show of magical appeal."

—*N.Y. Herald Tribune*

"Ardor and confession work up with hymns to a religious frenzy, cleverly preserving individual characters....The American authors give us an astonishing play, a fearsome legend."

—*London Daily Herald*

Notable actors and actresses who have appeared in *DARK OF THE MOON* include Paul Newman, James Earl Jones, George C. Scott, Diane Keaton, and Marsha Mason. John Houseman, Peter Brook, and Jose Quintero have directed this play.

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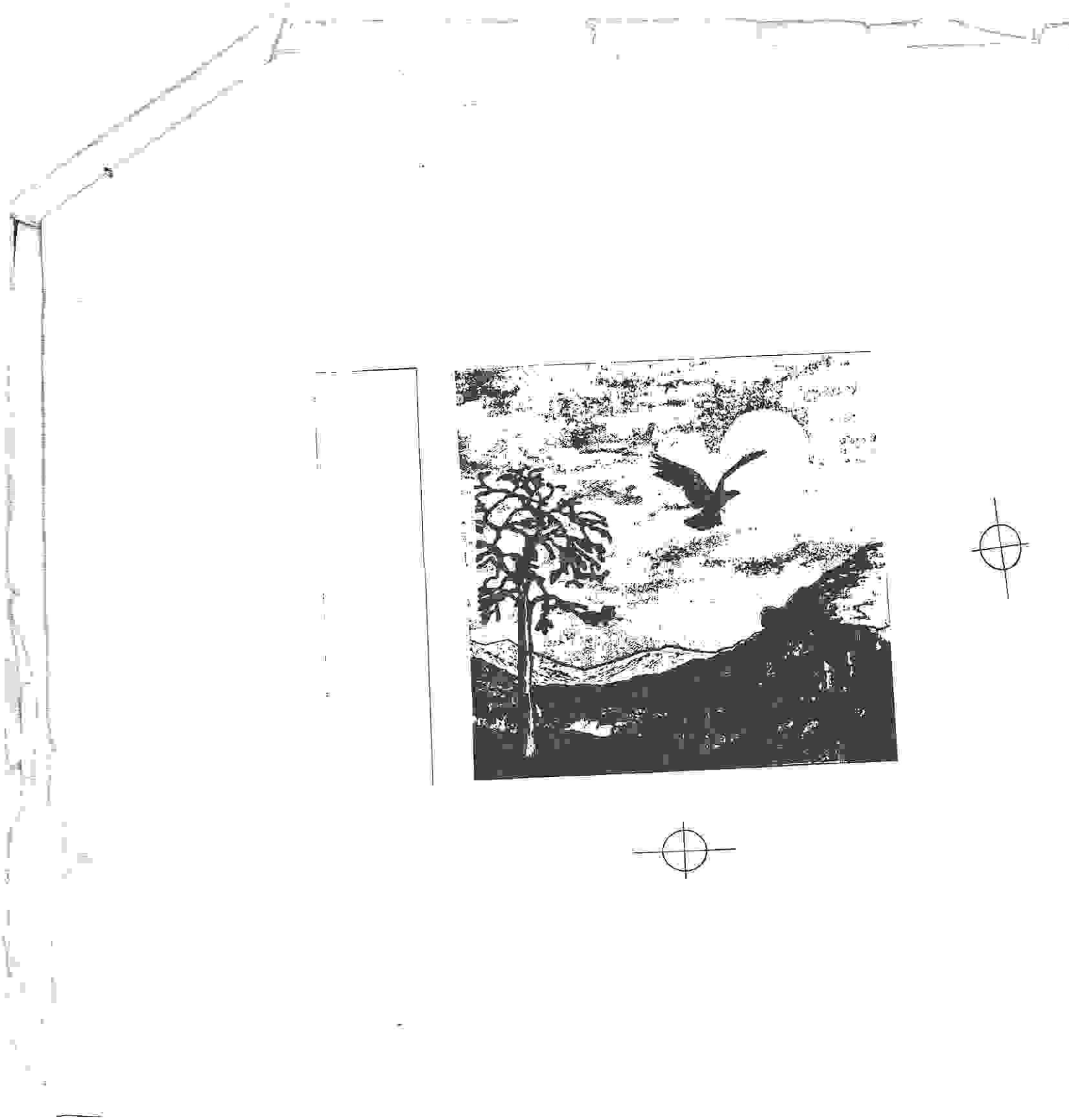
29 West 35 Street

New York, NY 10001

Exhibit M

3 pages





# DARK OF THE MOON

by  
HOWARD RICHARDSON

and  
WILLIAM BERNEY

*Revised Edition*

ROUTLEDGE/THEATRE ARTS BOOKS

NEW YORK

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MANUFACTURED IN THE UNITED STATES OF AMERICA

EXHIBIT B

DARK OF THE MOON

SOME OF THE ACTORS, ACTRESSES &  
DIRECTORS INVOLVED IN DARK OF THE MOON

Jack Palance  
Rosco Lee Brown  
Tom Tryon  
Eric Estrada  
James Earl Jones  
George C. Scott  
Andy Griffith  
Robert Duvall  
Paul Newman  
Bradford Dillman  
Alfred Drake  
Robert Vaughn  
Conrad Janis  
Pete Seeger  
George Grizzard  
Hurd Hatfield  
Shelley Berman  
Rod Taylor  
Ruth Buzzy  
Marge Champion  
Marsha Mason  
Cecily Tyson  
Betsy Palmer  
Diane Keaton  
Rue McClanahan  
Geraldine Page  
Ann Mearns  
Marsha Wallace

Directors:

Guthrie McClintock  
Peter Brook (London Production)  
Jose Quintero  
Vivian Matalon  
Vivette Carroll  
Ella Gerber  
John Housman



# BRAVE NEW WORLDS



## THE 1991 SEASON

# NEW JERSEY SHAKESPEARE FESTIVAL

Bonnie J. Monte  
Artistic Director

Michael Stotts  
General Manager

presents

## DARK OF THE MOON

by Howard Richardson & William Berney

directed by Jimmy Bohr

ROB ODORISIO  
Set Design

B. CHRISTINE McDOWELL  
Costume Design

BILL BERNER  
Lighting Design

ANDREW BELLWARE  
Sound Design

PATRICK SCULLY  
Production Manager

DANIEL BELLO  
Production Stage Manager

NICK PLAKIAS  
Musical Direction

JENI BREEN  
Choreography

\*\*\*\*\*

DARK OF THE MOON is produced in cooperation with THE RICHARDSON/YALE PROPERTY TRUST,  
Elliot S. Blair administrator.

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## A NOTE FROM THE DIRECTOR

I first heard the ballad of "Barbara Allen" as a lullabye when I was a child. My mother's melody and exact rendering of the tale I can't quite remember, but the story of a witch-boy, and the beautiful mountain girl he loved, haunted me for years. Only as a young man pursuing my theatrical career, far from my Kentucky roots, did I encounter Richardson's and Berney's play. I felt slightly possessive of my childhood mountain fantasy and approached the play with a certain trepidation. To my great surprise I found their telling of this century-old folk tale more compelling than even my childhood memory. For me it so powerfully captures the story-telling tradition of the Appalachian hearths and campfires that today's hyper-technic world has nearly forgotten. It is in that spirit, that of the country balladeer, that we very lovingly share this story of witches and mortals, and a love that is bigger and stronger than any Smokey Mountain.

- Jimmy Bohr



## PRODUCTION HISTORY

**DARK OF THE MOON** first opened on Broadway at the 46th Street Theatre on March 14, 1945 and ran for nine months before embarking on a national tour. Its first incarnation was as a verse play called **BARBARA ALLEN**, which was first presented at the University of Iowa in 1942. The play became something of a cult piece for theatre groups and college campuses. The play has had two Off-Broadway revivals, in 1958 and 1970, as well as productions in major theatres in London, Rome, Sydney, Johannesburg, and Leningrad. It also received three television productions. Due to its enormous size, the play is rarely produced professionally nowadays. Such actors as Paul Newman, Marge Champion, Joe Chaikin, Conrad Bain, Rue Mac Lanahan, Earl Hindman and Marcia Wallace have performed in professional productions.

## SUPERSTITION

The belief in witches is still very strong in American mountain communities, even among the younger generation. Stories speak of witches taking most often the form of old women, but sometimes men, cats and other animals. Some believe that a woman can become a witch simply by reciting the Lord's Prayer backward while firing silver bullets at the moon. It is also believed that a witch can be warded off by nailing a horseshoe over the door (the open end should be upward) or by wearing a necklace of dried burdock roots, and that witches hate salt and cannot speak the words "for God's sake."

## A MESSAGE FROM THE ARTISTIC DIRECTOR

"Brave new worlds"...a phrase resplendent in meaning, and rich in images. Three small words that conjure up so much. "Brave new worlds" is the theme of this very special 1991 season at NJSF, and it is those three words that Miranda exclaims in *THE TEMPEST* when she first sets eyes on men from a world wildly different from the one she has known all her life.

Being an audience member can make one feel the wonder that Miranda experienced...for when the curtain opens to reveal a new vista, we are transported to lands unknown, to "undiscovered countries". To our delight, we find that though the view is strange, the characters inhabiting it are not. Though they may look or speak differently than we do, they feel the same joys and pains, they face the same dilemmas, they have the same concerns, foibles, jealousies, kinships, loyalties, and passions. They are pieces of ourselves.

I have talked a great deal about "voyages" since my arrival here at NJSF seven short months ago. I have spoken of the new journey and direction we are taking as an organization. I have talked of how, through our work, we can transport audiences to these "brave new worlds", but I haven't voiced much about my private journey which has led me to the Shakespeare Festival. *THE TEMPEST* is in many ways the culmination of my own odyssey. It was one of the first plays I ever saw and it made a strong impact on the way I view the transforming and exhilarating power of theatre. It is also a play that holds deep personal meaning for me. Being able to direct this production is something I am deeply grateful for, and indeed, having the opportunity to help shape the future of this theatre is a great gift. There are so many people who have made all of this possible and who continue to help us achieve all that we are striving for - so many that it would be impossible to thank everyone on this single page. However, thanks are definitely in order, here and now, as we embark on the exciting events of the next three months.

First and foremost, kudos to our Board of Trustees, who have stuck with us through good days and bad, and who brought us here in the first place; to Drew University, our benevolent landlord and ally for many years now; to the wonderful and supportive theater community in New Jersey; to our generous and brave contributors who took a leap of faith and gave to NJSF this year, despite the fact that we were a whole new team making many changes; and to the loyal, committed, hard-working staff and volunteers of the Festival. They are a group of people so special and so dedicated that I marvel over them. A special note of thanks to my partner in this enterprise, Michael Stolls, NJSF's superb General Manager. Deep appreciation goes too, to the gifted and inspired artists who are bringing this season to life - the actors, directors, designers, technicians, crew and students who will create an array of characters and landscapes to take our breath away.

Most of all (and they know who they are), my love and thanks to many dear friends who have helped me down this path, to my great family, to the artists who helped shape my creative life, and to my mentors...especially to one small Greek man, Nikos Psacharopoulos, who taught me pretty much everything I needed to know about running a theatre. It is to his memory that I dedicate my work this season. He taught me to take risks, to take leaps and bounds, to take joy in the work. He taught me to attempt "big" things, to take daring voyages. Εφραριστο, Nikos.

There are many exciting changes taking place this year - we are in the midst of a daring voyage. I hope this show will be the first of many that you share with us. I hope as an audience member you will also take leaps and bounds. As the darkness of the theatre envelops you, strain forward with us as we travel to magical places and meet strange and wonderful beings who can enlighten, move our hearts, inform and thrill. There are four more great classics to come after *THE TEMPEST*... Thornton Wilder's *THE SKIN OF OUR TEETH*, Shakespeare's *A MIDSUMMER NIGHT'S DREAM*, Howard Richardson and William Benney's *DARK OF THE MOON*, and then back to Shakespeare with *TWELFTH NIGHT*. All five plays this season deal with themes of fantasy, illusion and reality, and each is a celebration of life. Do join us, and please let us know how you feel about the work. If you can, help us continue by giving not only your moral support, but the support of your pocketbooks as well. Though much can be accomplished with sweat, hard work, talent, inspiration and imagination, we do depend on the "kindness of strangers".

And so...the journey begins.



Bonnie J. Monte  
Artistic Director



### BONNIE J. MONTE Artistic Director

Ms. Monte comes to New Jersey from the Manhattan Theatre Club, one of New York's largest and most prominent theatre companies. There, she was one of the casting directors, and functioned as Line-Producer for *DOWNTOWN/ UPTOWN*, a performance art festival. In spring of 1990, she also cast "Past Imperfect", a film by Tarquin Cardona. Previously, she spent over eight years at the acclaimed Williamstown Theatre Festival in Massachusetts, where she was Associate Artistic Director. Together with the late Nikos Psacharopoulos, Ms. Monte was responsible for the artistic and administrative operations of the company. Over the past 10 years, both at WTF and Manhattan Theatre Club, she has worked with many of the country's leading theatre artists. Through her work with Mr. Psacharopoulos, she has also been involved in joint ventures with other companies, including productions at the Long Wharf Theatre in New Haven, the Pasadena Playhouse, Circle-in-the-Square Theatre in New York, and the Royal Alexandra Theatre in Toronto. In 1982, she was one of the collaborators on *TENNESSEE WILLIAMS: A CELEBRATION* and worked with the playwright for five months on a 6-1/2 hour theatrical tribute to his entire body of work. While at Williamstown, she directed a number of productions with the young company of actors including the premiere of Charles Evers' *RUNNING FUNNY*. Ms. Monte is a graduate of Bethany College and the Hartman Conservatory, and in 1971, also studied at the University of Nairobi in Kenya for 3 months.

ALEXANDER H. COHEN  
SHUBERT THEATRE  
225 WEST 44TH STREET  
NEW YORK, N. Y. 10036  
(212) 757-1200

September 12, 1980

Ms. Wendy Merritt-Dustin  
Trinity Theatre  
Trinity Lutheran Church  
164 West 100th Street  
New York, N. Y., 10025

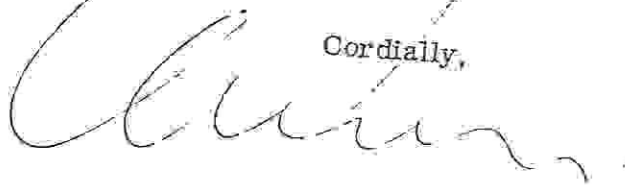
Dear Ms. Merritt-Dustin:

Hildy and I were surprised to be your guests last night at the beautiful performance of DARK OF THE MOON. We were both very impressed with the work you are doing.

DARK OF THE MOON certainly holds up well after all these years. The legend has a timely quality and it was beautifully staged.

Every good wish for continued success.

Cordially,



AHC/s



ALEXANDER H. COHEN  
SHUBERT THEATRE  
225 WEST 44TH STREET  
NEW YORK, N. Y. 10036  
(212) 757-1200

September 12, 1980

Mr. Richmond Crinkley  
Vivian Beaumont Theatre  
Lincoln Center for the Performing Arts  
140 West 65th Street  
New York, N. Y., 10023

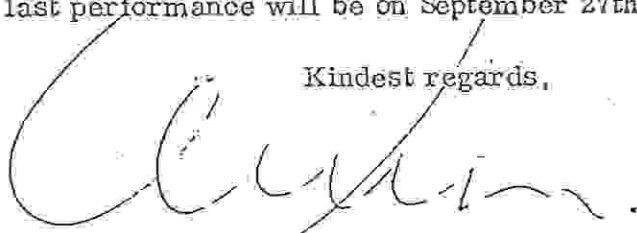
Dear Richmond:

Last night, at the Trinity Theatre in Trinity Lutheran Church at 164 West 100th Street, Hildy and I saw a lovely production of Howard Richardson's DARK OF THE MOON, which was beautifully staged.

I think this is the kind of play that you might well be interested in for the Beaumont. It is an American legend which was successfully produced at the 46th Street Theatre in 1945 and Peter Brook got his start in the West End with a beautiful production of the same play. It is literate and theatrical and I think it has a kind of eroticism in the staging which is intriguing to an audience.

I think you might see it. It plays Thursday, Friday and Saturday evenings at 8. The Artistic Director of the Trinity Theatre is Wendy Merritt-Dustin, and the phone number of the theatre is 222-6641. The last performance will be on September 27th.

Kindest regards,



AHC/s

ROBERT B. ROBBINS  
310 EAST 81ST STREET  
NEW YORK, N. Y. 10028

242-8757

February 23, 1983

Dr. Howard Richardson  
207 Columbus Ave.  
New York, N.Y. 10023

Dear Howard:

Thank you for your letter of February 15th. I understand your feelings completely as you expressed them.

I don't know if you are aware that Mr. Balanchine has been very ill and that pressures at the New York City Ballet have increased for me. I have had no time to consider your work or unfortunately to even look at your script, although I will try to in the next few weeks.

With our present schedule at the New York City Ballet, I can see that my commitments go continually through this next February with perhaps a few weeks in early summer for me to catch my breath. With this in mind, I can well understand that you may want to reconsider waiting for me, and I would be totally understanding if you chose to move elsewhere, even though I say this with much regret.

I am out of town until the second week of March in case you write an answer to me.

With all best wishes,

*Jerome*  
Jerome Robbins

JEROME ROBBINS  
117 EAST 61ST STREET  
NEW YORK, N.Y. 10028  
249-4757

November 29, 1989

Elliot S. Blair, Esq.  
708 Third Avenue  
20th Floor  
New York, New York 10017


Dear Mr. Blair:

Thank you for your letter of November 13th. I have been away for two months, thus the delay in my answering you.

Well, "Dark of the Moon" is still one of my favorite plays but at this point my commitments go to mid-1992 and unfortunately I can't stop to work on "Dark of the Moon." I will, however, keep it in mind if plans change or something comes up.

My very best wishes to you.

Sincerely,



Jerome Robbins

November 21, 1972

Mr. Howard Richardson  
10 Queens Gate Terrace  
London SW7, England

Dear Howard:

Received your letter of November 11. It came to me via London, so it was quite delayed in arriving. Anyway, have had a couple of meetings with Al Ruddy regarding DARK OF THE MOON, and he is already into it with his lawyers drawing up papers of one thing or another to submit to you. Unfortunately, he is still very busy with THE GODFATHER, and was in Australia, and Japan, for the opening of the picture a couple of weeks ago, so things are a little slow in getting together, but he continually assures me that it's all going ahead.

Sorry I won't be in London to meet you on your arrival. I left on November 11th, and I plan to be back on the weekend of December 2nd for a period of two weeks, then back out to Hollywood. I'm preparing a picture, but it's a very quick one, and I should be out of it by mid-April hopefully, to prepare DARK OF THE MOON. Perhaps you'll still be in London when I arrive, which will probably be on the 3rd. My telephone number there will be 727-9354. If we miss each other, I probably will pass through New York on the weekend of December 16th, and will give you a call then. Failing that, I am at MGM Studios, so call me collect from wherever you are.

Hope you enjoyed your ocean voyage, and London isn't too cold. Take care. Will speak or see you soon.

Best,



Brian Hutton

BH:pw



opéra national



*New York*  
théâtre royal de la monnaie  
rue léopold 4 - 1000 bruxelles tél. 17.22.11

25 October, 1971.

Mr. Howard RICHARDSON  
207 Columbus Avenue  
NEW YORK, N.Y. 10023

Dear Howard:

"DARK OF THE MOON"

I will be in New York between 23 and 25 November. I hope we can meet then.

I will stay at the Algonquin and would be delighted to see you.

May be you could give me a tape of Garry's music.

Amicalement à vous,

M. HUISMAN.





North Carolina State University  
Division of Student Affairs

University Student Center  
Thompson Theatre  
Box 7305  
Raleigh, N. C. 27695-7305

June 14, 1993

Mr. Elliot Blair  
330 W. 43 St., 32nd Floor  
New York, NY 10036

Dear Mr. Blair:

We are intered in mounting a production tour to Japan of Howard Richardson and William Berney's "Dark of the Moon." Should we be able to raise the money for this tour, it will take place in the latter part of May and the early part of June, 1994. All participants in the production will be students and staff of Thompson Theatre here at North Carolina State University. The play will be presented at six universities in Tokyo. The Japanese audiences will consist of students and teachers of whom no admission charge will be made, as this tour is intended to be a project of good will and education. The play will be presented, as written, in English.

In the attempt to receive permission for using "Dark of the Moon" for this tour, I have been corresponding with Peter La Beck at Samuel French. His last letter indicated that you would have to be contacted about this matter. If I can offer further information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Burton Russell".

Burton Russell



RIHGA ROYAL HOTEL  
NEW YORK

12/13/96

ELLIOT \_\_\_\_\_

WE FELT A BIT UNCOMFORTABLE HAVING THIS —  
 WE ARE EXTREMELY EXCITED ABOUT DATE OF THE MEET —  
 AT BREAKFAST WE SPoke OF LITTLE ELSE — HOWEVER, WE THOUGHT IT MIGHT BE PREMATURE TO HAVE ACCESS TO "A DIFFERENT WORK" BEFORE OUR OWN VISION HAD BECOME MORE FOCUSED.  
 WE ANTICIPATE OUR COLLABORATION ON THIS PROJECT WITH ENORMOUS ENTHUSIASM —  
 PLEASE, CONTACT US AT THE EARLIEST OPPORTUNITY — SO THAT WE CAN CONTINUE OUR MOMENTUM —

*[Signature]*  
 (615) 297-614  
 [Illegible]

151 WEST 54TH STREET, NEW YORK, NEW YORK 10019  
 (212) 307-5000 FAX (212) 765-6330 RESERVATIONS (800) 937-5454 TELEX (023) 210512 RIHGAR UR

# SAY GOODNIGHT

## THE CREATORS

**STEVE DORFF** (Composer) If you've been anywhere around a radio or television for the past fifteen years, you're already familiar with the distinctive music of NASI Songwriter of the Year, Steve Dorff. The veteran composer, winner of Billboard's Number One Song of the Year, "I Just Fall In Love Again," has lent his formidable talents to any number of conspicuously successful musical undertakings - from chart-topping hits for Whitney Houston, Anne Murray, Ringo Starr, Kenny Loggins, to a string of best selling soundtracks for motion pictures, including "Pure Country," "Bronco Billy," and "Rocky IV." Two time Grammy winner, Dorff is probably best known for his Kenny Rogers standard, "Through the Years," which has received BMI's Two Million Performance status. Winning both the People's Choice and American Movie Award for his film scores, Dorff has also been four time Emmy nominated for his television compositions. Many of Dorff's series themes have gone on to be popular hit songs, such as "As Long As We've Got Each Other" from "Growing Pains" and his theme for "Spenser For Hire."

**JOHN BETTIS** (Lyricist) John Bettis has written songs that have sold more than 180 million records, sung by some of the greatest recording artists of our time, including Michael Jackson, Madonna, Diana Ross, Whitney Houston, and Karen Carpenter. In 1967 Bettis was a founding member of The Carpenters and wrote thirty-eight songs recorded by them, including pop standards: "Top of the World," "Yesterday Once More," "Good-bye To Love," and "Only Yesterday." His lyrics span the range from country - "Only One Love In My Life" and "One of a Kind Pair of Fools" to pop - "Slow Hand" (Pointer Sisters), "Human Nature" (Michael Jackson), "Crazy For You" (Madonna), and "One Moment In Time" (Whitney Houston), which also won an Emmy as "Theme for the 1988 Olympics." Bettis' songs have been hits for such artists as Donna Summer, Juice Newton, Barry Manilow, Christopher Cross, Steve Perry, Jennifer Warnes, and Bill Medly, Peabo Bryson, George Strait, and New Kids On the Block. He was nominated for a Golden Globe and an Oscar for "Promise Me You'll Remember" from "The Godfather III." He has been recognized and awarded by The American Society of Composers, Authors and Publishers as well as the Nashville Songwriters Association. His first musical, "Svengali" opened April 3, 1991 at the Houston Alley Theatre and was awarded the prestigious D. Alton Jones Grant.

**RICK HAWKINS** (Librettist) Hawkins' first work for the theatre was a college adaptation of the popular novel "Bury My Heart At Wounded Knee," which won the Brooks J. Alexander Award for Theatrical Excellence. His first original stage play, "An Offering of Scorpions," staged at the Louisiana Theatre Festival, was awarded the Malcom Flournoy Award for Outstanding Southern Playwriting. Hawkins began his television career in 1976 as a writer on the original "Carol Burnett Show." His now classic sketch "Went With The Wind" won him his first Emmy Award in 1978. During the subsequent eighteen years, Hawkins has written and produced top ten situation comedies ("Welcome Back Kotter," "Dear John," "Major Dad"), award winning variety specials (Rodney Dangerfield, Steve Martin, Carol Burnett) and movies of the week, including the two hour pilot for the long running series, "The Love Boat." Nominated six times for the Emmy Award, Hawkins has twice won the prestigious Scott Newman Award for his work in television.

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"LUNCH," the first musical written by the Dorff, Bettis, Hawkins team, was produced by the Alliance of Musical Theatres in 1994 and enjoyed a six city, sell out national tour.