of nude dancing is *de minimis*," because Erie allowed dancers to perform wearing only pasties and G-strings.[1403] It may follow that "requiring dancers to wear pasties and G-strings may not greatly reduce . . . secondary effects, but *O'Brien* requires only that the regulation further the interest of combating such effects," not that it further it to a particular extent.[1404] The plurality opinion did not address the question of whether statutes prohibiting public nudity could be applied to serious theater, but its reliance on secondary effects suggests that they could not.

Speech Plus—The Constitutional Law of Leafleting, Picketing, and Demonstrating

Communication of political, economic, social, and other views is not accomplished solely by face-to-face speech, broadcast speech, or writing in newspapers, periodicals, and pamphlets. There is also "expressive conduct," which includes picketing and marching, distribution of leaflets and pamphlets, addresses to publicly assembled audiences, door-to-door solicitation, and sit-ins. There is also a class of conduct, now only vaguely defined, that has been denominated "symbolic conduct," which includes such actions as flag desecration and draft-card burnings. Because all these ways of expressing oneself involve conduct rather than mere speech, they are all much more subject to regulation and restriction than is simple speech. Some of them may be forbidden altogether. But, to the degree that these actions are intended to communicate a point of view, the First Amendment is relevant and protects some of them to a great extent. Sorting out the conflicting lines of principle and doctrine is the point of this section.

The Public Forum.—In 1895, while on the highest court of Massachusetts, future Justice Oliver Wendell Holmes rejected a contention that public property was by right open to the public as a place where the right of speech could be recognized,[1405] and on review

---

[1403] 529 U.S. at 301. The plurality said that, though nude dancing is "expressive conduct," we think that it falls "only within the outer ambit of the First Amendment's protection." Id. at 289. The opinion also quotes Justice Stevens to the same effect with regard to erotic materials generally. Id. at 294. In United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 826 (2000), however, the Court wrote that it "cannot be influenced . . . by the perception that the regulation in question is not a major one because the speech ['signal bleed' of sexually oriented cable programming] is not very important."

[1404] 529 U.S. at 301.

[1405] Commonwealth v. Davis, 162 Mass. 510, 511 (1895). "For the Legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of rights of a member of the public than for the owner of a private house to forbid it in the house."