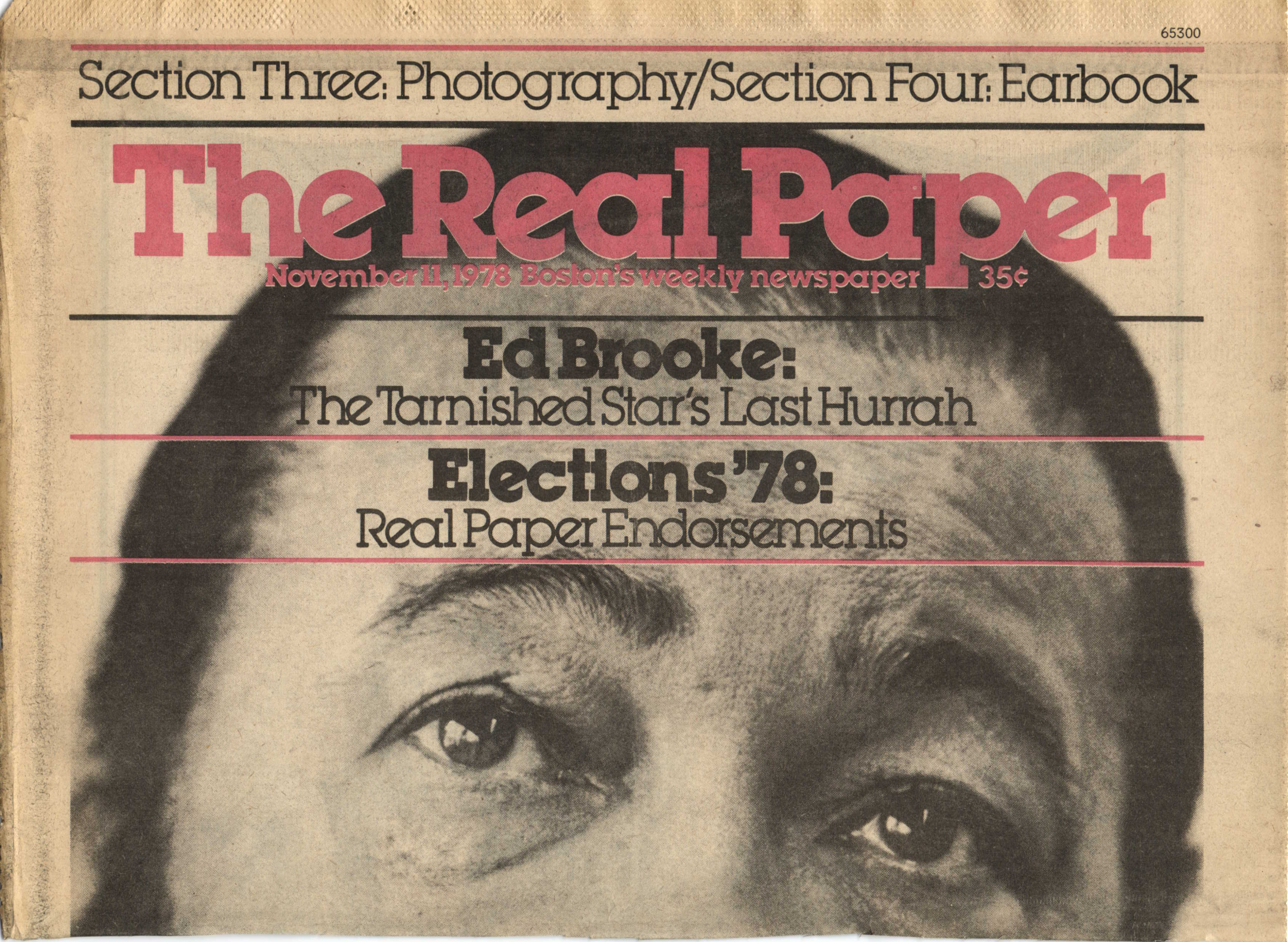
Section Three: Photography/Section Four: Earbook

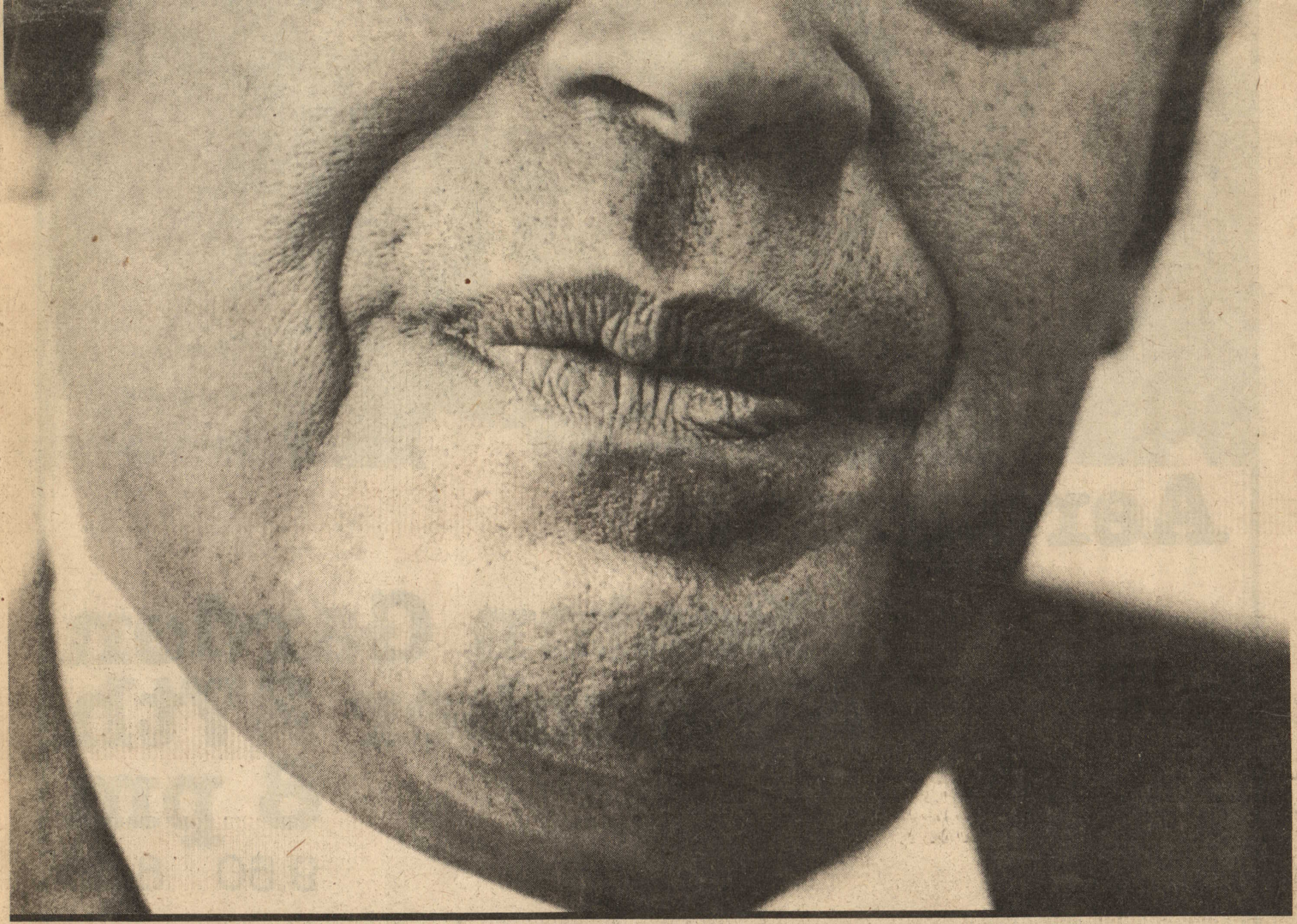
The Real Paper

November 11, 1978 Boston's weekly newspaper 35¢

Ed Brooke:
The Tarnished Star's Last Hurrah

Elections '78:
Real Paper Endorsements





Martha Stewart

Silverglate on Bellotti / The Arts: Interview with Kurosawa

T.R.P.

News and Opinion

Did the Mob Kill JFK?

By Harvey Z. Yazijian

"I thought I was helping the US government," claimed Santos Trafficante before the House Select Committee on Assassinations (HSCA). He had just been asked about his involvement in the Mafia/CIA plots to kill Fidel Castro, and, to listen to him, you'd think this fragile old man was just another patriotic Joe doing his duty. Yet his grandfatherly appearance didn't deceive anyone, for Trafficante is the organized crime boss of southern Florida and a key conspirator in a network of mobsters that worked with the CIA to assassinate Castro. More important, HSCA has confirmed that this network had direct ties to both Lee Harvey Oswald, the alleged assassin of John Kennedy, and his assailant, Jack Ruby.

The startling revelations of organized crime's shadowy connections to Dealy Plaza in 1963 came in the last week of HSCA's month-long public hearings into the Kennedy assassination. The carefully orchestrated hearings, conducted in September, displayed a galaxy of politicians, technocrats, feds, cops, spooks, and kooks; fifty-seven witnesses testified and more than 500 exhibits were displayed.

HSCA will not parrot the Warren Commission's lone-assassin conclusions in its final report due in early 1979. HSCA's most significant finding may be that Jack Ruby

Stephen J. Sherman

Briefcases

Wide World Photos

Santos Trafficante

was up to his fedora in suspicious underworld connections that link directly to Lee Harvey Oswald, and it will recommend that the Justice Department further examine this Mob/Dealy Plaza matrix for a possible conspiracy. HSCA is also expected to cautiously claim that Lee Harvey Oswald *seems* to have shot the president by himself, although it may concede other alternatives can't be excluded. Said HSCA's chief counsel Robert Blakey: "The question of organized crime involvement is still an open one. Nothing that has been uncovered excludes it."

Critics of the lone-assassin theory were disappointed with much of the hearings, citing examples such as the questionable analysis of the medical evidence upon which HSCA constructed much of its case for a

(Continued on page 8)

Frank Bellotti: Election-Year Prosecutions

By Harvey Silverglate

Two recent celebrated cases pursued by the office of Attorney General Francis X. Bellotti raise serious and disturbing questions as to the judgment of high officials in his office, and perhaps as to the judgment of Bellotti himself during a period when he is engaged in a spirited reelection campaign. Bellotti is being challenged by Republican William Weld, who has made irresponsible and absurd charges that Bellotti is soft on organized and white-collar crime.

This past spring, Bellotti indicted Charlestown District Court Judge Richard C. Woods for allegedly demanding and receiving a $15,000 bribe from the father of an applicant for an assistant court clerk's position.

And in mid-September Bellotti brought a civil suit seeking to deny the Sambo's chain of fast-food restaurants the right to use the trade name "Sambo's" within the Commonwealth of Massachusetts, on the ground that the name was an insult to blacks.

In both the Woods and Sambo's cases, Bellotti uncharacteristically disregarded well-established and widely accepted professional standards of conduct. Heretofore, Bellotti has taken the responsible, at times even the courageous, path. For example, in the face of near-unanimous opposition by the generally reactionary district attorneys, Bellotti supported efforts to reform the state's unfair and antiquated grand jury procedures.

The Woods case appears to be a classic instance of overzealous prosecution and abuse of discretion.

Joseph P. Manley of Nahant, the owner of J. J. McCarthy's & Co., Inc., a Charlestown bar, claimed that he made a $15,000 payoff to Charlestown District Court officer John T. "Jackie" Sullivan on June 13, 1975, in order to obtain for his son, Edward W. Manley, a position in the clerk's office. Sullivan, confronted with Joseph Manley's allegation against him, testified that he (Sullivan) turned the cash bribe over to Judge Woods, who had ordered him to demand and pick up the bribe money. The damning testimony against the judge came in exchange for a letter from Bellotti's office promising that Sullivan would not be prosecuted.

Woods was acquitted after the jury deliberated for an unusually brief period, indicating a shared belief among the jurors that Sullivan was not worthy of belief, and certainly not worthy of belief "beyond a reasonable doubt."

Observers of the Woods trial did not have to await the jury's verdict in order to question the attorney general's judgment in even seeking the indictment. What shocked many lawyers who followed the case was that Bellotti chose to believe Sullivan's word over the vehement denials of Judge Woods, without the kind of corroborating evidence that a responsible prosecutor insists on having before accepting the word of one witness over the word of another person, a potential defendant, who is in every respect equally worthy of belief as the witness against him. On the basis of the essentially uncorroborated word of a court officer who found himself holding the bag and was seeking a way out of a potential prison sentence, the attorney general indicted a sitting judge and, despite the acquittal, inflicted irreparable damage on Woods' career and reputation.

Bellotti can argue that it is not his job, but rather the jury's, to decide whether to believe Sullivan or Woods. But this would be true only in a case where there is sufficient

(Continued on next page)

Frank Bellotti: Election-Year Prosecutions

(Continued from previous page)
credible and corroborated evidence in the first place on which a responsible prosecutor can in good conscience seek an indictment.

judge and the court officer, without having the judge's version corroborated by another witness, namely his wife.

The circumstances seem sufficiently

Prosecutors see their duty as doing justice, rather than just obtaining headline-grabbing indictments and convictions of public officials around election time, are loath to seek an indictment where there is not sufficient corroboration to make the government's single witness significantly more worthy of belief than the potential defendant.

In addition to this general objection to the prosecutors' placing more confidence in Sullivan's credibility than in Woods', other signs emerged that cast additional doubt on Sullivan's story. First, it is common practice for the chief clerk of a court, rather than the presiding judge, to make decisions as to whom to hire in the clerk's office. Ordinarily, the judge is simply asked by the chief clerk to put his (the judge's) imprimatur on the clerk's own personnel decisions. This practice was borne out by Woods' own testimony at his trial. Second, Sullivan changed his testimony between the indictment and the trial. At the time Woods was indicted, Sullivan testified before the grand jury that he delivered the $15,000 cash to Judge Woods in the courthouse between 2:30 pm and 3:30 pm. However, Earldine Woods, the judge's wife, testified at the trial as an alibi witness that she called her husband at the courthouse at 2 that afternoon and asked that he pick up their son at school by 2:30 pm in Melrose. She said that she'd locked her keys in her car in Saugus, and she asked Woods to pick up an extra set at their home in Melrose. She said that he arrived in Saugus between 3:15 and 3:30 pm.

Obviously, Mrs. Woods' testimony as to timing was incompatible with Sullivan's grand jury testimony. But at trial Sullivan changed his earlier testimony, and said instead that he delivered the money to the judge between 1:30 and 2:30 pm.

By changing his testimony, Sullivan refrained from forcing the jury to have to weigh his word against that of Mrs. Woods. It was obviously in the prosecution's interest to have the credibility contest between the suspicious to have tipped off the prosecutors that perhaps Sullivan should not be believed. What did not affect the attorney general's judgment did affect the jury's opinion.

Third, the treatment of Sullivan by Bellotti's office was too cushy for comfort. They gave Sullivan too much incentive to induce him to testify against the judge.

Often, when someone like Sullivan is caught with his hand in the cookie jar, he seeks to avoid going to prison by offering to turn in a "bigger fish." Prosecutors will forgo prosecuting the lower level wrongdoer if such a move can assure that person's cooperation as a witness against someone higher up.

While often a sound strategy, making concessions to a lower level person in exchange for testimony against a higher-up has its dangers; and those dangers are exacerbated where, as in the Woods case, the higher level target is a high public official such as a sitting judge. The temptation by the prosecutor to seek an indictment that will make headlines can be very strong indeed, and can color the prosecutor's judgment as to whom to believe.

Besides, when the inducement to the witness becomes too rich, there is a danger of putting too much pressure on the witness to come up with a high-level figure on whom to cast the blame. Ordinarily, a witness such as Sullivan is prosecuted, and his testimony is elicited in return for a promise by the prosecutor to make his cooperation in the other, higher level case, made known to the sentencing judge in his own case. It is more rare, by far, for such a witness to be given *total immunity* from prosecution, as was done for Sullivan.

In addition, the immunity letter sent by Bellotti to Sullivan was worded in a way that put additional pressure on Sullivan to tell a story that would incriminate Woods. The attorney general expressed his intent not to prosecute Sullivan if he testified *"fully and*

Stephen J. Sherman

In both the Woods and the Sambo's cases, Bellotti uncharacteristically disregarded well-established and widely accepted standards of professional conduct.

honestly." Sullivan must have well understood what "fully and honestly" meant. He obviously felt obligated to testify at trial in conformity with his earlier claims that he turned the money over to Woods. If he suddenly chose to change his story at trial, and either accept full blame himself or name someone else to whom the money was given, his trial testimony would not have been viewed by the attorney general's office as being "fully and honestly" given. In such a situation, a prosecution of Sullivan almost surely would have followed, as he would have been considered to be in breach of the immunity agreement as expressed in the letter.

This tactic of requiring "full and honest" testimony of an uncorroborated witness, and of letting the jury know that this is part of the government's bargain, gives the jury the impression that the government is placing its imprimatur on the credibility of the witness. The juror might think that since the witness will be prosecuted if he is not "full and honest" in his testimony, the witness must therefore be telling the truth.

A highly respected federal appellate judge, Henry Friendly of New York, recently referred to this technique as "offensive." Friendly said that in a situation such as the Woods case, where the witness is not believed by the jury, the prosecutor likely will *not* prosecute the witness. Jackie Sullivan is safe as long as the *prosecutor* claims to believe him — in other words, as long as he testified against Judge Woods. The *jury* might believe he lied, but that does not count.

Finally, while it is not clear that it was part of Sullivan's bargain with Bellotti, one cannot help noticing that at the time of his trial testimony against Woods, Sullivan, who admitted to taking $15,000 in cash from Manley, regardless of what he then did with the money, still retained his job as a court officer!

Sambo's

Bellotti's other startling legal maneuver in recent months concerns his efforts to force the Sambo's fast-food chain to cease and

Massachusetts. Bellotti's civil rights division claims that the name, deriving from or at least connoting the "Little Black Sambo" tales that put blacks into an unfavorable stereotype, "is understood by numerous residents of the Commonwealth of Massachusetts as offensive and demeaning to Black people. It is understood as a badge of slavery, and as a racial epithet." The complaint, filed in Superior Court, claims that the name "discourages and deters" blacks "from utilizing such places of public accommodation on account of their color or race."

Bellotti may, of course, be correct. The Sambo's name could certainly be seen as an insult to blacks, and they likely would hesitate patronizing a Sambo's restaurant. But Bellotti's conclusion and his request for an injunction against use of the name are highly questionable as a matter of good policy or constitutional law.

First, to deter blacks, or persons of any race who find the name offensive, from going into a restaurant merely by so naming the restaurant, rather than by actually barring them because of their race, is hardly the kind of public accommodations racial discrimination at which the civil rights laws are aimed. The attorney general's argument, if taken to its logical extension, would have prohibited antiwar coffee houses during the Vietnam War from using a name such as "Cong Coffee House" or "Ho Chi Minh Restaurant," because to do so would offend a segment of the population that would be deterred from patronizing the establishment. In fact, such antiwar coffee houses and restaurants were patronized largely by people who agreed ideologically with the proprietors, and not by those who were in favor of the war. Such diversity is the hallmark of a free and cosmopolitan society.

Second, Bellotti confuses a practice that may be undesirable from many people's point of view (such as naming a restaurant "Sambo's"), from other practices that might be *unlawful*. Since all Sambo's is doing is offending some people, the law hardly has a place. It is up to the people who are offended to organize a boycott or other action to try to marshal public pressure to persuade the chain to drop the offensive name. When enough people refuse to eat there, the name will change.

Bellotti must know that ultimately his effort must lose in the courts, not because his claim that the name is offensive would necessarily be disputed by judges, but rather because the Constitution is quite clear that it is not a function of government in a free society to tell people what they can and cannot call their restaurants.

The lawsuit is a silly one, even though a citizens' boycott of Sambo's would be far from silly.

The Woods prosecution and the Sambo's lawsuit appear to be efforts by Bellotti's office to show toughness (in the Woods case) and a sensitivity for minority citizens (in the Sambo's case). However, in the long run, toughness is dangerous when it is not tempered by fairness and by a recognition of how serious it is to charge anyone, including a judge, with a felony. Similarly, sensitivity for the feelings of any one group will not bring about greater racial justice if it takes the form of twisting or circumventing the Bill of Rights in order to limit one person's free speech rights to please another person or group. Had the First Amendment right of free speech not been alive and well in Selma, Alabama, some years ago, the civil rights movement would not likely have even gotten started or made the progress it did.

Bellotti should end up winning the election and losing both of these cases. One hopes that when the election dust has settled he will come back to his senses. ■

Stephen J. Sherman

honestly." Sullivan must have well understood what "fully and honestly" meant. He obviously felt obligated to testify at trial in conformity with his earlier claims that he turned the money over to Woods. If he suddenly chose to change his story at trial, and either accept full blame himself or name someone else to whom the money was given, his trial testimony would not have been viewed by the attorney general's office as being "fully and honestly" given. In such a situation, a prosecution of Sullivan almost surely would have followed, as he would have been considered to be in breach of the immunity agreement as expressed in the letter.

This tactic of requiring "full and honest" testimony of an uncorroborated witness, and of letting the jury know that this is part of the government's bargain, gives the jury the impression that the government is placing its imprimatur on the credibility of the witness. The juror might think that since the witness will be prosecuted if he is not "full and honest" in his testimony, the witness must therefore be telling the truth.

A highly respected federal appellate judge, Henry Friendly of New York, recently referred to this technique as "offensive." Friendly said that in a situation such as the Woods case, where the witness is not believed by the jury, the prosecutor likely will *not* prosecute the witness. Jackie Sullivan is safe as long as the *prosecutor* claims to believe him — in other words, as long as he testified against Judge Woods. The *jury* might believe he lied, but that does not count.

Finally, while it is not clear that it was part of Sullivan's bargain with Bellotti, one cannot help noticing that at the time of his trial testimony against Woods, Sullivan, who admitted to taking $15,000 in cash from Manley, regardless of what he then did with the money, still retained his job as a court officer!

Sambo's

Bellotti's other startling legal maneuver in recent months concerns his efforts to force the Sambo's fast-food chain to cease and desist from using the "Sambo's" name in

In both the Woods and the Sambo's cases, Bellotti uncharacteristically disregarded well-established and widely accepted standards of professional conduct.

Massachusetts. Bellotti's civil rights division claims that the name, deriving from or at least connoting the "Little Black Sambo" tales that put blacks into an unfavorable stereotype, "is understood by numerous residents of the Commonwealth of Massachusetts as offensive and demeaning to Black people. It is understood as a badge of slavery, and as a racial epithet." The complaint, filed in Superior Court, claims that the name "discourages and deters" blacks "from utilizing such places of public accommodation on account of their color or race."

Bellotti may, of course, be correct. The Sambo's name could certainly be seen as an insult to blacks, and they likely would hesitate patronizing a Sambo's restaurant. But Bellotti's conclusion and his request for an injunction against use of the name are highly questionable as a matter of good policy or constitutional law.

First, to deter blacks, or persons of any race who find the name offensive, from going into a restaurant merely by so naming the restaurant, rather than by actually barring them because of their race, is hardly the kind of public accommodations racial discrimination at which the civil rights laws are aimed. The attorney general's argument, if taken to its logical extension, would have prohibited antiwar coffee houses during the Vietnam War from using a name such as "Cong Coffee House" or "Ho Chi Minh Restaurant," because to do so would offend a segment of the population that would be deterred from patronizing the establishment. In fact, such antiwar coffee houses and restaurants were patronized largely by people who agreed ideologically with the proprietors, and not by those who were in favor of the war. Such diversity is the hallmark of a free and cosmopolitan society.

Second, Bellotti confuses a practice that may be undesirable from many people's point of view (such as naming a restaurant "Sambo's"), from other practices that might be *unlawful*. Since all Sambo's is doing is offending some people, the law hardly has a place. It is up to the people who are offended to organize a boycott or other action to try to marshal public pressure to persuade the chain to drop the offensive name. When enough people refuse to eat there, the name will change.

Bellotti must know that ultimately his effort must lose in the courts, not because his claim that the name is offensive would necessarily be disputed by judges, but rather because the Constitution is quite clear that it is not a function of government in a free society to tell people what they can and cannot call their restaurants.

The lawsuit is a silly one, even though a citizens' boycott of Sambo's would be far from silly.

The Woods prosecution and the Sambo's lawsuit appear to be efforts by Bellotti's office to show toughness (in the Woods case) and a sensitivity for minority citizens (in the Sambo's case). However, in the long run, toughness is dangerous when it is not tempered by fairness and by a recognition of how serious it is to charge anyone, including a judge, with a felony. Similarly, sensitivity for the feelings of any one group will not bring about greater racial justice if it takes the form of twisting or circumventing the Bill of Rights in order to limit one person's free speech rights to please another person or group. Had the First Amendment right of free speech not been alive and well in Selma, Alabama, some years ago, the civil rights movement would not likely have even gotten started or made the progress it did.

Bellotti should end up winning the election and losing both of these cases. One hopes that when the election dust has settled he will come back to his senses. ■