■ LETTERS

Distorted portrait of Scout values

JEFFREY S. Trachtman used the bully pulpit provided by *The National Law Journal* to make a one-sided attack on the traditional values held by the Boy Scouts of America (BSA). While Mr. Trachtman was correct when he said that the decision by the U.S. District Court for the Southern District of Florida in *Boy Scouts of America v. Till* was "a good day for free speech and also for civil rights," he spends most of the article distorting the values BSA stands for and denigrating the beliefs of the millions of Americans who support Scouting values.

Contrary to Mr. Trachtman's claims that Scouts are "bigot[s]," the Boy Scout Law calls upon a Scout to be helpful, friendly, courteous and kind to all and to respect those whose beliefs may be different from his own. BSA expects its leaders, whether youth or adult, to be role models of these and the other values of the Scout Oath and Law.

Mr. Trachtman says that "many" want nothing to do with Boy Scout views on other matters. Nonetheless, Boy Scouts are taught to treat all persons with dignity, even those individuals who hold values with which they may disagree.

Alas, Mr. Trachtman does not seem to hold high respect for those with values different than his own.

J. CAREY KEANE
IRVING, TEXAS

The author is national director of marketing for the Boy Scouts.

Ugly portrayal of Scouts as Klan

THE FEATURE of a young Boy Scout with an American flag side by side with what has traditionally been regarded as a Ku Klux Klanner shows intolerance and prejudice. Further, the writer totally ignores Scout policy regarding homosexuals and makes up by innuendo what he believes to be the policy without regard to the truth.

In Scouting there is no litmus test for homosexuals, nor are any questions asked of either Scouts or leaders regarding homosexual activities when they join. Scouting does refuse to be a sounding board for a person's sexual preference (hetero- or homo-) as that has nothing to do with the program.

Bickel & Brewer talks back

AS A PARTNER at the law firm of Bickel & Brewer, I am compelled to respond to your article "Lawyer, ex-firm clash in court," [NLJ, April 30, Page A4], addressing a lawsuit filed by one of our former partners, Robert P. Cummins.

Mr. Cummins' lawsuit does not arise out of any effort by this firm to prevent him from representing any client, as your story suggests. The litigation revolves around only one issue—whether Mr. Cummins is entitled to "retirement" benefits under this firm's partnership agreement, having voluntarily resigned to pursue the active practice of law elsewhere. We believe that question cannot be answered until the court considers the language of the contract in light of the evidence regarding the parties' intentions. Suffice it to say that we are confident of our position in that regard.

This firm has never attempted to block any of its former partners or employees from undertaking the representation of any firm client. Indeed, our partnership agreement expressly states that, "any Partner who has withdrawn from the

CIVIL LIBERTIES

By Harvey A. Silverglate

Courts let FBI run amok

IT'S BEEN SAID that outgoing FBI Director Louis Freeh is the ultimate Teflon Man, having presided over more high-profile scandals and screw-ups than any other top G-man since the bureau's creation. There was the aftermath of the Waco assault (which occurred before his tenure), the Wen Ho Lee atomic-secrets fiasco, the Robert Hanssen spy scandal and a series of cases in Boston in which the withholding of evidence to protect valued informants led to the conviction of innocent men in murder cases. Now we have the missing Timothy McVeigh files.

But the Teflon that has coated FBI leaders and the bureau itself is nothing when compared to that of an organization that has made it possible for agents to hide exculpatory evidence and to fake and flub forensic lab tests in the scandal-ridden FBI Crime Lab. They can spin and fabricate statements and "confessions," which conveniently are almost never tape-recorded

federal trial judges."

The *McNabb* doctrine began to be whittled down as early as the mid-1970s, when the Supreme Court expressed concern about judges' imposing their own "notions of good policy" on governmental officials. Exaggerated concerns about separation of powers led the court to deem law enforcement tactics more of a legislative and executive than a judicial matter. And when the "harmless error" doctrine asserted itself, the supervisory-powers doctrine became utterly irrelevant.

Shrinking protection

In the 1988 case *Bank of Nova Scotia v. United States*, No. 487 U.S. 250, for example, the court held that the doctrine could not be used to censure and redress government misconduct unless the defendant was actually prejudiced by it. The threshold for demonstrating prejudice became higher and higher, and today it is nigh impossible to obtain even an

homosexual conduct. Yet, BSA's view that homosexual conduct is inconsistent with its requirement in the Scout Oath to keep oneself morally straight is shared by religious groups to which a majority of Americans belong.

BSA knows that in our diverse and pluralistic society, we cannot expect everyone to agree with every Scouting policy regarding sexual behavior, religious belief or

The author's statement that Scouting vilifies and expels members based on their personal status is the author's opinion only and is not the policy of Scouting. I would hope that in the future your contributing writers will strive more for objectivity and accuracy rather than sensationalism based on incomplete and inaccurate information.

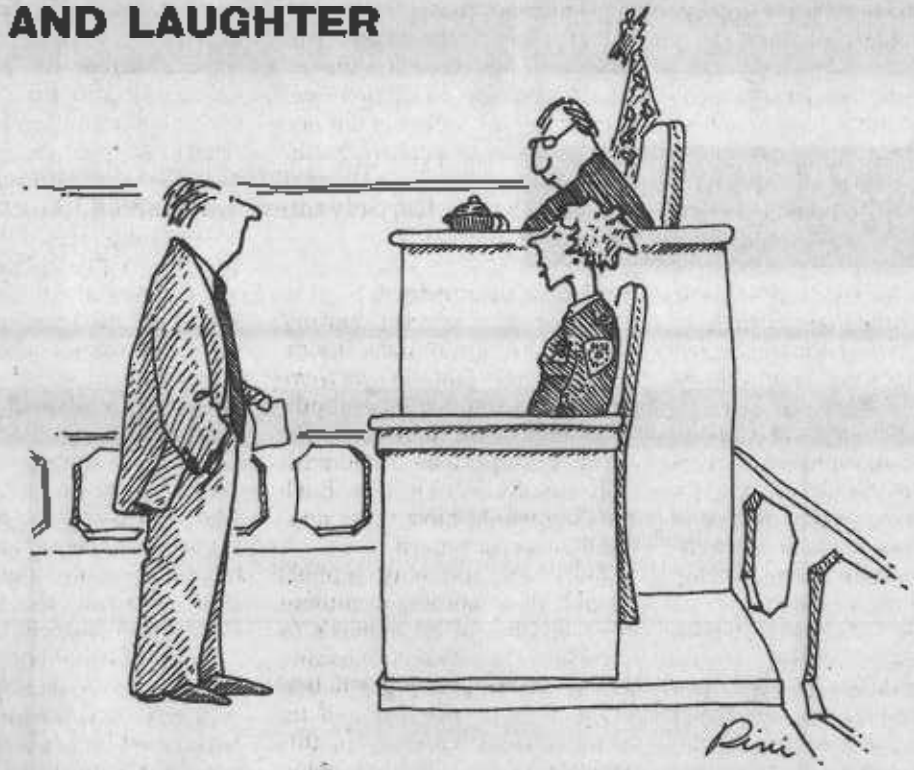
THOMAS W. BROWN
LAKE CITY, FLA.

Partnership may thereafter represent any client."

We are resisting Mr. Cummins' monetary demands because we believe that the contractual conditions to the payment of "retirement" benefits under that agreement have not been fulfilled: that retirement benefits under our partnership agreement are payable only to partners who retire from the practice of law.

JAMES S. RENARD
DALLAS, TEXAS

LAW AND LAUGHTER



"The thermal scan showed the suspect did not have a gun in his pocket, but was glad to see me, so I detained him."

and they make secret deals with informants that would make jurors' hair stand up if by chance they were to learn of them. The organization that makes all of this sleaze possible is the U.S. judiciary.

Protective doctrine

In 1943 the Supreme Court decided *McNabb v. United States*, No. 318 U.S. 332, establishing the doctrine that the federal judiciary had "supervisory power" over the administration of federal criminal justice. This doctrine sprang, many scholars believe, from the searing dissents of Justice Louis Brandeis in the 1920s entrapment cases.

In *McNabb*, Justice Felix Frankfurter noted for the court that while the federal judiciary's review of state convictions was limited to enforcement of constitutional rights, its review of federal convictions was not so narrowly confined.

"Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence... [which] are not satisfied merely by observance of those minimal historic [constitutional] safeguards." The resulting rule entrusted supervision of federal investigatory tactics and policies to "the learning, good sense, fairness and courage of

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evidentiary hearing—and subpoena power to delve into hidden government files—unless the defendant can prove his case before obtaining such a hearing.

A Catch-22 seems to have replaced the supervisory-powers doctrine—you must prove government misconduct, and show that you would have been acquitted but for the conduct, before you can get a hearing and force open the government's secret files. If the FBI is arrogant, it is because it has been allowed to be so by the courts.

Today, federal courts overlook an enormous range of government misconduct. Unless Timothy McVeigh's lawyers find some smoking gun amid the papers, they might find a judge who will lament the FBI's failure to turn over the documents in a timely fashion, but they will almost certainly fail to persuade the courts that the the error is anything but harmless.

Federal judges have found suppression of evidence of enormous potential exculpatory significance to be "harmless beyond a reasonable doubt," and so it is virtually impossible that any of the belatedly discovered McVeigh documents would be sufficient to upset the conviction of a man who, after trial, confessed to an infamous crime.

Mr. McVeigh may not have suffered prejudice from the FBI's lapse, but the federal system of justice will not recover until the courts re-establish supervisory control over the federal investigatory behemoth. NLJ