IV

As the Court observes at the outset of its opinion, there is reason to believe that respondent participated in an especially brutal murder of an American law enforcement agent. That fact, if true, may explain the Executive's intense interest in punishing respondent in our courts. [48] Such an explanation, however, provides no justification for disregarding the Rule of Law that this Court has a duty to uphold. [49] That the Executive may wish to reinterpret [50] the Treaty to allow for an action
that the Treaty in no way authorizes should not influence this Court's interpretation. [51] Indeed, the desire for revenge exerts "a kind of hydraulic pressure . . . before which even well settled principles of law will bend," Northern Securities Co. v. United States, 193 U. S. 197, 401 (1904) (Holmes, J., dissenting), but it is precisely at such moments that we should remember and be guided by our duty "to render judgment evenly and dispassionately according to law, as each is given understanding to ascertain and apply it." United States v. Mine Workers, 330 U.S. 258, 342 (1947) (Rutledge, J., dissenting). The way that we perform that duty in a case of this kind sets an example that other tribunals in other countries are sure to emulate.

The significance of this Court's precedents is illustrated by a recent decision of the Court of Appeal of the Republic of South Africa. Based largely on its understanding of the import of this Court's cases-including our decision in Ker v. Illinois-that court held that the prosecution of a defendant kidnaped by agents of South Africa in another country must be dismissed. S v. Ebrahim, S. Afr. L. Rep. (Apr.-June 1991).52 The Court of Appeal of South Africa-indeed, I suspect most courts throughout the civilized world-will be deeply disturbed by the "monstrous" decision the Court announces today. For every Nation that has an interest in preserving the Rule of Law is affected, directly or indirectly, by a decision of this character. [53] As Thomas Paine warned, an "avidity to punish is always dangerous to liberty" because it leads a Nation "to stretch, to misinterpret, and to misapply even the best of laws." [54] To counter that tendency, he reminds us:

"He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself." [55]

I respectfully dissent.

NOTES:

1 Respondent is charged in a sixth superseding indictment with: conspiracy to commit violent acts in furtherance of racketeering activity (in violation of 18 U. S. C. 371, 1959); committing violent acts in furtherance of racketeering
activity (in violation of 18 U.S.C. 1959 (a)(2)); conspiracy to kidnap a federal agent (in violation of 18 U.S. C. 1201(a)(5), 1201(c)); kidnap of a federal agent (in violation of 18 U. S. C. 1201(a)(5)); and felony murder of a federal agent (in violation of 18 U. S. C. 1111(a), 1114). App. 12-32.

2 Apparently, DEA officials had attempted to gain respondent's presence in the United States through informal negotiations with Mexican officials, but were unsuccessful. DEA officials

then, through a contact in Mexico, offered to pay a reward and expenses in return for the delivery of respondent to the United States. United States v. Caro-Quintero, 745 F. Supp. 599, 602-604 (CD Cal. 1990).

3 Rene Martin Verdugo-Urquidez was also indicted for the murder of agent Camarena. In an earlier decision, we held that the Fourth Amendment did not apply to a search by United States agents of Verdugo-Urquidez' home in Mexico. United States v. Verdugo-Urquidez, 494 U. S. 259 (1990).

4 The Court of Appeals remanded for an evidentiary hearing as to whether Verdugo's abduction had been authorized by authorities in the United States. United States v. Verdugo-Urquidez, 939 F. 2d 1341, 1362 (CA9 1991).

5 Justice Gray, concurring, would have rested the decision on the basis of these acts of Congress alone. Rauscher, 119 U. S., at 433. Chief Justice Waite dissented, concluding that the treaty did not forbid trial on a charge other than that on which

6 Although the opinion does not explain why the messenger failed to present the warrant to the proper authorities, commentators have suggested that the seizure of Ker in the aftermath of a revolution in Peru provided the messenger with no "proper authorities" to whom the warrant could be presented. See Kester, Some Myths of United States Extradition Law, 76 Geo. L. J.1441, 1451 (1988).

7 In the words of Justice Miller, the "treaty was not called into operation, was not relied upon, was not made the pretext of arrest, and the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretence of authority under the treaty or from the government of the United States." Ker v. Illinois, 119 U. S. 430, at 443 (1886). Two cases decided during the Prohibition Era in this country have dealt with seizures claimed to have been in violation of a treaty entered into between the United States and Great Britain to assist the United States in off-shore enforcement of its prohibition laws, and to allow British passenger ships to carry liquor while in the waters of the United States. 43 Stat. 1761 (1924). The history of the negotiations leading to the treaty is set forth in Cook v. United States, 288 U. S. 102, 111-118 (1933). In that case we held that the treaty provision for seizure of British vessels operating beyond the three-mile limit was intended to be exclusive, and that therefore liquor seized from a British vessel in violation of the treaty could not form the basis of a conviction.

8 We have applied Ker to numerous cases where the presence of the defendant was obtained by an interstate abduction. See, e.g., Mahon v. Justice, 127 U. S. 700 (1888); Cook v. Hart, 146 U.S. 183 (1892); Pettibone v. Nichols, 203 U. S. 192, 215-216 (1906).

9 Ker also was not a national of Peru, whereas respondent is a national of the country from which he was abducted. Respondent finds this difference to be immaterial. Tr. of Oral Arg. 26

10 This interpretation is supported by the second clause of Article 22 which provides that ``[r]equests for extradition that are under process on the date of the entry into force of this Treaty, shall be resolved in accordance with the provisions of the Treaty of 22 February, 1899, . . ." Extradition Treaty, May 4, 1978, [1979] United States-United Mexican States, 31 U. S. T. 5059,

5074, T.I.A.S. No. 9656.

11 In correspondence between the United States and Mexico
growing out of the 1905 Martinez incident, in which a Mexican national was abducted from Mexico and brought to the United States for trial, the Mexican charg wrote to the Secretary of State protesting that as Martinez' arrest was made outside of the procedures established in the extradition treaty, "the action pending against the man can not rest [on] any legal foundation." Letter of Balbino Davalos to Secretary of State reprinted in Papers Relating to the Foreign Relations of the United States, H.R. Doc. No. 1, 59th Cong., 2d Sess., pt. 2, p.1121 (1906). The Secretary of State responded that the exact issue raised by the Martinez incident had been decided by Ker, and that the remedy open to the Mexican government, namely a request to the United States for extradition of Martinez' abductor had been granted by the United States. Letter of Robert Bacon to Mexican Charge, reprinted in Papers Relating to the Foreign Relations of the United States, H.R. Doc. No. 1, 59th Cong., 2d Sess., pt. 2, at 1121-1122 (1906).

Respondent and the Court of Appeals stress a statement made in 1881 by Secretary of State James Blaine to the governor of Texas to the effect that the extradition treaty in its form at that time did not authorize unconsented to abductions from Mexico. Verdugo, 939 F. 2d, at 1354; Brief for Respondent 14. This misses the mark, however, for the Government's argument is not that the Treaty authorizes the abduction of respondent; but that the Treaty does not prohibit the abduction.

12 The parties did expressly include the doctrine of specialty in Article 17 of the Treaty, notwithstanding the judicial recognition of it in Rauscher. 31 U. S. T., at 5071-5072.

13 In Article 16 of the Draft Convention on Jurisdiction with Respect to Crime, the Advisory Committee of the Research in International Law proposed:

"In exercising jurisdiction under this Convention, no State shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the consent of the State or States whose rights have been violated by such measures." Harvard Research in International Law, 29 Am. J. Int'l L. 442 (Supp. 1935).

14 Similarly, the Court of Appeals in Verdugo reasoned that international abductions violate the "purpose" of the Treaty, stating that "[t]he requirements extradition treaties impose constitute a means of safeguarding the sovereignty of the signatory nations, as well as ensuring the fair treatment of individuals." 939 F. 2d, at 1350. The ambitious purpose ascribed to the Treaty by the Court of Appeals, we believe, places a greater burden on its language and history than they can logically bear. In a broad sense, most international agreements have the common purpose of safeguarding the sovereignty of signatory nations, in that they seek to further peaceful relations between nations. This, however, does not mean that the violation of any principle of international law constitutes a violation of this particular treaty.

15 In the same category are the examples cited by respondent in which, after a forcible international abduction, the offended nation protested the abduction, and the abducting nation then returned the individual to the protesting nation. Brief for Respondent 18, citing, inter alia, 1

Bassiouni, International Extradition: United States Law and Practice, 5.4, pp. 235-237 (2d rev. ed. 1987). These may show the practice of nations under customary international law, but they are of little aid in construing the terms of an extradition treaty, or the authority of a court to later try an individual who has been so abducted. More to the point for our purposes are cases such as The Ship Richmond, 9 Cranch 102 (1815), and The Merino, 9 Wheat. 391 (1824), both of which hold that a seizure of a vessel in violation of international law does not affect the jurisdiction of a United States court to adjudicate rights in connection with the vessel. These cases are discussed, and distinguished, in
Cook v. United States, 288 U. S., at 122.

16 The Mexican government has also requested from the United States the extradition of two individuals it suspects of having abducted respondent in Mexico, on charges of kidnapping. App. 39-66.

The advantage of the diplomatic approach to the resolution of difficulties between two sovereign nations, as opposed to unilateral action by the courts of one nation, is illustrated by the history of the negotiations leading to the treaty discussed in Cook v. United States, supra. The United States was interested in being able to search British vessels which hovered beyond the 3-mile limit and served as supply ships for motor launches which took intoxicating liquor from them into ports for further distribution in violation of prohibition laws. The United States initially proposed that both nations agree to searches of the other's vessels beyond the 3-mile limit; Great Britain rejected such an approach, since it had no prohibition laws and therefore no problem with United States vessels hovering just beyond its territorial waters. The parties appeared to be at loggerheads; then this Court decided Cunard Steamship Co. v. Mellon, 262 U. S. 100 (1923), holding that our prohibition laws applied to foreign merchant vessels as well as domestic within the territorial waters of the United States, and that therefore the carrying of intoxicating liquors by foreign passenger ships
violated those laws. A treaty was then successfully negotiated giving the United States the right to seizure beyond the 3-mile limit (which it desired), and giving British passenger ships the right to bring liquor into United States waters so long as the liquor supply was sealed while in those waters (which Great Britain desired). Cook v. United States, supra.

17 The abduction of respondent occurred on April 2, 1990. United States v. Caro-Quintero, 745 F. Supp. 599, 603 (CD Cal. 1990). Mexico responded quickly and unequivocally. Tr. of Oral Arg. 33; Brief for Respondent 3. On April 18, 1990, Mexico requested an official report on the role of the United States in the abduction, and on May 16, 1990 and July 19, 1990, it sent diplomatic notes of protest from the Embassy of Mexico to the United States Department of State. See Brief for United Mexican States as Amicus Curiae (Mexican Amicus) 5-6; App. to Mexican Amicus 1a-24a. In the May 16th note, Mexico said that it believed that the abduction was "carried out with the knowledge of persons working for the U. S. government, in violation of the procedure established in the extradition treaty in force between the two countries," App. to Mexican Amicus 5a, and in the July 19th note, it requested the provisional arrest and extradition of the law enforcement agents allegedly involved in the abduction.Id., at 9a-15a.

18 Mexico has already tried a number of members involved in the conspiracy that resulted in the murder of the DEA agent. For example, Rafael Caro-Quintero, a co-conspirator of Alvarez-Machain in this case, has already been imprisoned in Mexico on a 40-year sentence. See Brief

for Lawyers Committee for Human Rights as Amicus Curiae 4.

19 App. 72-87.

20 Id., at 72. In construing a treaty, the Court has the "responsibility to give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties." Air France v. Saks, 470 U. S. 392, 399 (1985). It is difficult to see how an interpretation that encourages unilateral action could foster cooperation and mutual assistance-the stated goals of the Treaty. See also Presidential Letter of Transmittal attached to Senate Advice and Consent 3 (Treaty would "make a significant contribution to international cooperation in law enforcement").

Extradition treaties prevent international conflict by providing agreed-upon standards so that the parties may cooperate and avoid retaliatory invasions of territorial sovereignty. According to one writer, before extradition treaties became common, European States often granted asylum to fugitives from other States, with the result that "a sovereign could enforce the return of fugitives only by force of arms . . . . Extradition as an inducement to peaceful relations and friendly cooperation between states remained of little practical significance until after World War I." M. Bassiouni, International Extradition and
World Public Order 6 (1974). This same writer explained that such treaties further the purpose of international law, which is "designed to protect the sovereignty and territorial integrity of states, and [to] restrict impermissible state conduct." 1 M. Bassiouni, International Extradition: United States Law and Practice Ch. 5, 2, p. 194 (2d rev. ed. 1987).

The object of reducing conflict by promoting cooperation explains why extradition treaties do not prohibit informal consensual delivery of fugitives, but why they do prohibit state- sponsored abductions. See Restatement (Third) of Foreign Relations (Restatement) 432, and Comments a-c (1987).

21 App. 72-74 (Articles 2 and 4).

22 Id., at 73, 75, 76-79 (Articles 3, 7, 10, 12, and 13).

23 Id., at 74-75 (Articles 5 and 8).

24 Id., at 83, 73.

25 Id., at 76.

26 The Court resorts to the same method of analysis as did the dissent in United States v. Rauscher, 119 U. S. 407 (1886). Chief Justice Waite would only recognize an explicit provision, and in the absence of one, he concluded that the Treaty did not require that a person be tried only for the offense for which he had been extradited: "The treaty requires a delivery up to justice, on demand, of those accused of certain crimes, but says nothing about what shall be done with them after the delivery has been made. It might have provided that they should not be tried for any other offences than those for which they were surrendered, but it has not." Id., at 434. That approach was rejected by the Court in Rauscher, and should also be rejected by the Court here.

27 To make the point more starkly, the Court has, in effect, written into Article 9 a new provision, which says: "Notwithstanding paragraphs 1 and 2 of this Article, either Contracting Party can, without the consent of the other, abduct nationals from the territory of one Party to be tried in the territory of the other."

28 It is ironic that the United States has attempted to justify its unilateral action based on the kidnaping, torture, and murder of a federal agent by authorizing the kidnaping of respondent, for which the American law enforcement agents who participated have now been charged by Mexico. See App. to Mexican Amicus 5a. This goes to my earlier point, see n. 4, supra, that extradition treaties promote harmonious relations by providing for the orderly surrender of a person by one State to
another, and without such treaties, resort to force often followed.

29 This Court has previously described a treaty as generally "in its nature a contract between two nations," Foster v. Neilson, 2 Pet. 253, 314 (1829); see Rauscher, 119 U. S., at 418; it is also in this country the law of the land. 2 Pet., at 314; 119 U. S., at 418-419.

30 Mexico's understanding is that "[t]he extradition treaty governs comprehensively the delivery of all persons for trial in the requesting state `for an offense committed outside the territory of the requesting Party.'" Brief for United Mexican States as Amicus Curiae, O.T. 1991, No. 91-670, p. 6. And Canada, with whom the United States also shares a large border and with whom the United States also has an extradition treaty, understands the treaty to be "the exclusive means for a request- ing government to obtain . . . a removal" of a person from its territory, unless a Nation otherwise gives its consent. Brief for Government of Canada as Amicus Curiae 4.

31 The United States has offered no evidence from the negotiating record, ratification process, or later communications with Mexico to support the suggestion that a different understanding with Mexico was reached. See M. Bassiouni, International Extradition: United States Law and Practice Ch. 2,
4.3, at p. 82 ("Negotiations, preparatory works, and diplomatic correspondence are an integral part of th[e] surrounding circumstances, and [are] often relied on by courts in ascertaining the intentions of the parties") (footnote omitted).

32 Article X of the Treaty provided:

"It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed: and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or

other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper Executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive." 8 Stat. 576.

33 The doctrine defined by the Court in Rauscher--that a person can be tried only for the crime for which he had been extradited-has come to be known as the "doctrine of specialty."

34 In its opinion, the Court suggests that the result in Rauscher was dictated by the fact that two federal statutes had imposed the doctrine of specialty upon extradition treaties. Ante, at 4. The two cited statutes, however, do not contain any language purporting to limit the jurisdiction of the Court; rather, they merely provide for protection of the accused pending trial.

35 In fact, both parties noted in their respective briefs several authorities that had held that a person could be tried for an offense other than the one for which he had been extradited. See Brief for United States in United States v. Rauscher, O.T. 1885, No. 1249, pp. 6-10 (citing United States v. Caldwell, 8 Blatchford 131 (SDNY 1871); United States v. Lawrence, 13 Blatchford 295 (SDNY 1876); Adriance v. Lagrave, 59 N.Y. 110 (1874)); Brief for Respondent in United States v. Rauscher, O.T. 1885, No. 1249, pp. 8-16 (same).

36 This principle is embodied in Article 17 of the Charter of the Organization of American States, Apr. 30, 1948, 2 U. S.T. 2394, T.I.A.S. No. 2361, as amended by the Protocol of Buenos Aires, Feb. 27, 1967, 21 U. S.T. 607, T.I.A.S. No. 6847, as well as numerous provisions of the United Nations Charter, June 26, 1945, 59 Stat. 1031, T.S. No. 993 (to which both the United States and Mexico are signatories). See generally Mann, Reflections on the Prosecution of Persons Abducted in Breach of International Law, in International Law at a Time of Perplexity 407 (Y. Dinstein and M. Tabory eds. 1989).

37 When Abraham Sofaer, Legal Adviser of the State Department, was questioned at a congressional hearing, he resisted the notion that such seizures were acceptable: "`Can you imagine us going into Paris and seizing some person we regard as a terrorist . . .? [H]ow would we feel if some foreign nation-let us take the United Kingdom-came over here and seized some terrorist suspect in New York City, or Boston, or Philadelphia, . . . because we refused through the normal channels of international, legal communications, to extradite that individual?'" Bill To Authorize Prosecution of Terrorists and Others Who Attack U. S. Government Employees and Citizens Abroad: Hearing before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, 99th Cong., 1st Sess., 63 (1985).

38 Justice Story's opinion continued:
"The arrest of the offending vessel must, therefore, be restrained to places where our jurisdiction is complete, to our own waters, or to the ocean, the common highway of all nations. It is said, that there is a revenue jurisdiction, which is distinct from the ordinary maritime jurisdiction over waters within the range of a common shot from our shores. And the provisions in the Collection Act of 1799, which authorize a visitation of vessels within four leagues of our coasts, are referred to in proof of the assertion. But where is that right of visitation to be exercised? In a foreign

territory, in the exclusive jurisdiction of another sovereign? Certainly not; for the very terms of the act confine it to the ocean, where all nations have a common right, and exercise a common sovereignty. And over what vessels is this right of visitation to be exercised? By the very words of the act, over our own vessels, and over foreign vessels bound to our ports, and over no others. To have gone beyond this, would have been an usurpation of exclusive sovereignty on the ocean, and an exercise of an universal right of search, a right which has never yet been acknowledged by other nations, and would be resisted by none with more pertinacity than by the American." The Apollon, 9 Wheat., at 371-373.

39 See Restatement 432, Comment c ("If the unauthorized action includes abduction of a person, the state from which the person was abducted may demand return of the person, and international law requires that he be returned").

40 Henkin, A Decent Respect to the Opinions of Mankind, 25 John Marshall L. J. 215, 231 (1992) (footnote omitted).

41Thus, the Restatement of Foreign Relations states in part: "(2) A state's law enforcement officers may exercise their
functions in the territory of another state only with the consent of the other state, given by duly authorized officials of that state.
. . . . .
"c. Consequences of violation of territorial limits of law enforcement. If a state's law enforcement officials exercise their functions in the territory of another state without the latter's consent, that state is entitled to protest and, in appropriate cases, to receive reparation from the offending state. If the unauthorized action includes abduction of a person, the state from which the person was abducted may demand return of the person, and international law requires that he be returned. If the state from which the person was abducted does not demand his return, under the prevailing view the abducting state may proceed to prosecute him under its laws." Restatement 432, and Comment c.

42 Just as Rauscher had standing to raise the treaty violation issue, respondent may raise a comparable issue in this case. Certainly, if an individual who is not a party to an agreement between the United States and another country is permitted to assert the rights of that country in our courts, as is true in the specialty cases, then the same rule must apply to the individual who has been a victim of this country's breach of an extradition treaty and who wishes to assert the rights of that country in our courts after that country has already registered its protest.

43 "In the international legal order, treaties are concluded by states against a background of customary international law. Norms of customary international law specify the circumstances in which the failure of one party to fulfill its treaty obligations will permit the other to rescind the treaty, retaliate, or take other steps." V zquez, Treaty-Based Rights and Remedies of Individuals, 92 Colum. L. Rev. 301, 375 (1992).

4 5As the Illinois Supreme Court described the action:
"The arrest and detention of [Ker] was not by any authority of the general government, and no obligation is implied on the part of the Federal or any State government . . . . The invasion of the sovereignty of Peru, if any wrong was done, was by individuals, perhaps some of them owing no allegiance to the United States, and not by the Federal government." Ker v. Illinois, 110 Ill. 627,

643 (1884).

46 The Martinez incident discussed by the Court, see ante, at 9-10, n. 11, also involved an abduction by a private party; the reference to the Ker precedent was therefore appropriate in that case. On the other hand, the letter written by Secretary of State Blaine to the Governor of Texas in 1881 unequivocally disapproved of abductions by either party to an extradition treaty. In 1984, Secretary of State Schultz expressed the same opinion about an authorized kidnaping of a Canadian national. He remarked that, in view of the extradition treaty between the United States and Canada, it was understandable that Canada was "outraged" by the kidnaping and considered it to be "a violation of the treaty and of international law, as well as an affront to its sovereignty." See Leich, Contemporary Practice of the United States Relating to International Law, 78 Am. J. Int'l L. 200, 208 (1984).

47 Article 16 of the Draft provides:

"In exercising jurisdiction under this Convention, no State shall prosecute or punish any person who has been brought within its territory or a place subject to its authority by recourse to measures in violation of international law or international convention without first obtaining the consent of the State or States whose rights have been violated by such measures." Harvard Research in International Law, Draft Convention on Jurisdiction with Respect to Crime, 29 Am. J. Int'l L. 435, 623 (Supp. 1935).

48 See, e.g., Storm Arises Over Camarena; U. S. Wants Harder Line Adopted, Latin Am. Weekly Rep., Mar. 8, 1985, p. 10; U. S. Presses Mexico To Find Agent, Chicago Tribune, Feb. 20, 1985, p. 10.

49 As Justice Brandeis so wisely urged:
"In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administra- tion of the criminal law the end justifies the means-to declare that the Government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." Olmstead v. United States, 277 U. S. 438, 485 (1928) (Brandeis, J., dissenting).

50 Certainly, the Executive's view has changed over time. At one point, the Office of Legal Counsel advised the Administration that such seizures were contrary to international law because they compromised the territorial integrity of the other Nation and were only to be undertaken with the consent of that Nation. 4B Op. Off. Legal Counsel 549, 556 (1980). More recently, that opinion was revised and the new opinion concluded that the President did have the authority to override customary international law. Hearing before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 101st Cong., 1st Sess., 4-5 (1989) (statement of William P. Barr, Assistant Attorney General, Office of Legal Counsel, U. S. Department of Justice).

51Cf. Perkins v, Elg, 307 U. S. 325 (1939) (construing treaty in accordance with historical construction and refusing to defer to change in Executive policy); Johnson v. Browne, 205 U. S. 309 (1907) (rejecting Executive's interpretation).

52 The South African court agreed with appellant that an "abduction represents a violation of the applicable rules of international law, that these rules are part of [South African] law, and that this violation of the law deprives the Court . . . of its competence to hear [appellant's] case . . . ." S. Afr. L. Rep., at 8-9.

53 As Judge Mansfield presciently observed in a case not unlike the one before us today:
"Society is the ultimate loser
when, in order to convict the guilty, it uses methods that lead to decreased respect for the law."
United States v. Toscanino, 500 F. 2d 267, 274 (CA2 1974).

54 2 The Complete Writings of Thomas Paine 588 (P. Foner ed. 1945).

55 Ibid.