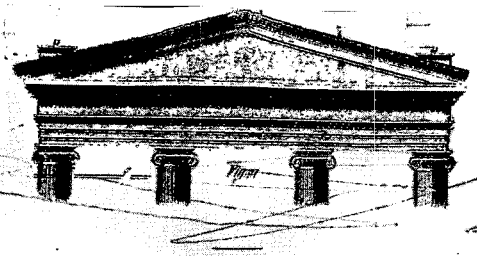


Justice is supposed to be blind. But judges are winking at criminals with trendy politics.

Bias on the Bench

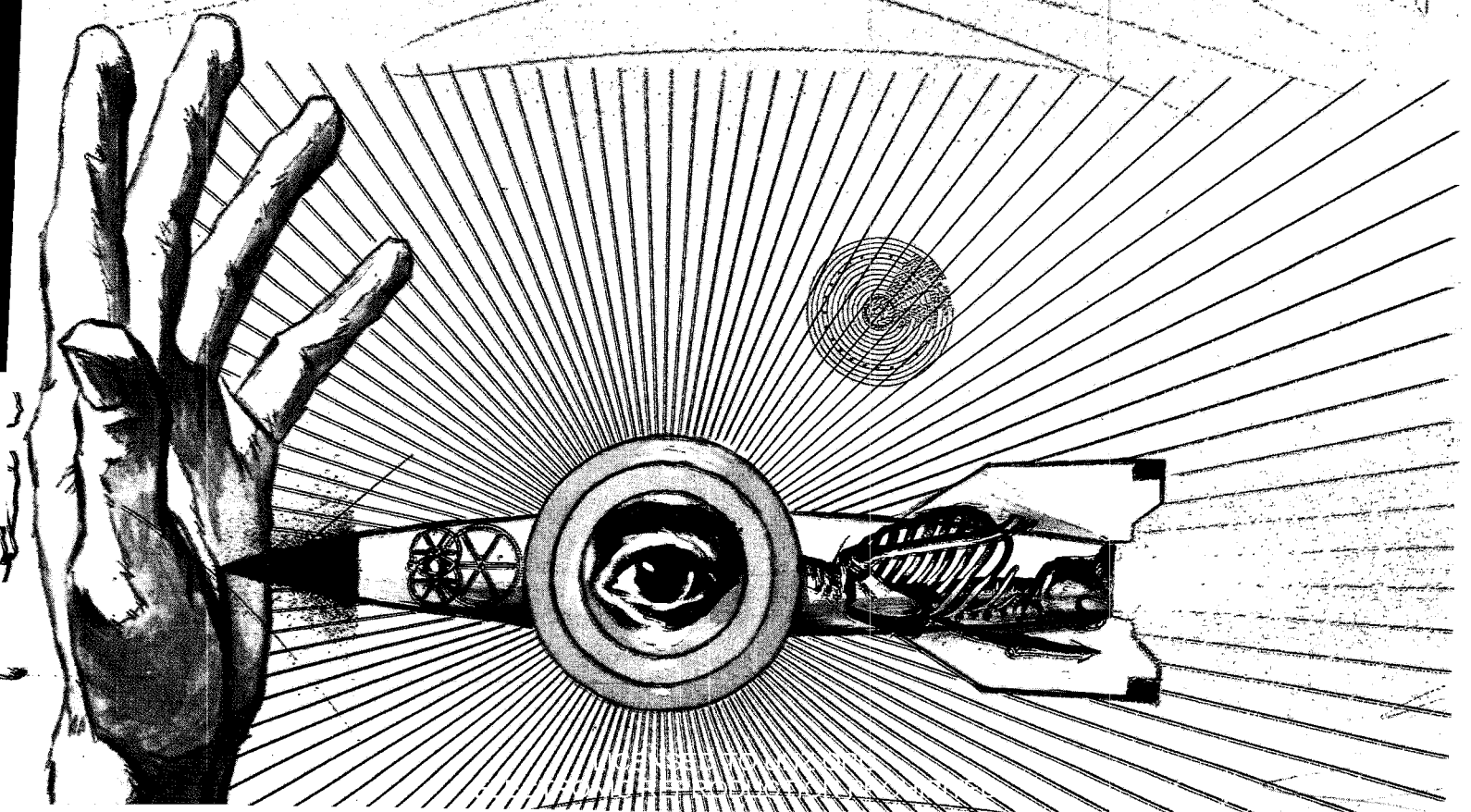
by *Elliot Rothenberg*

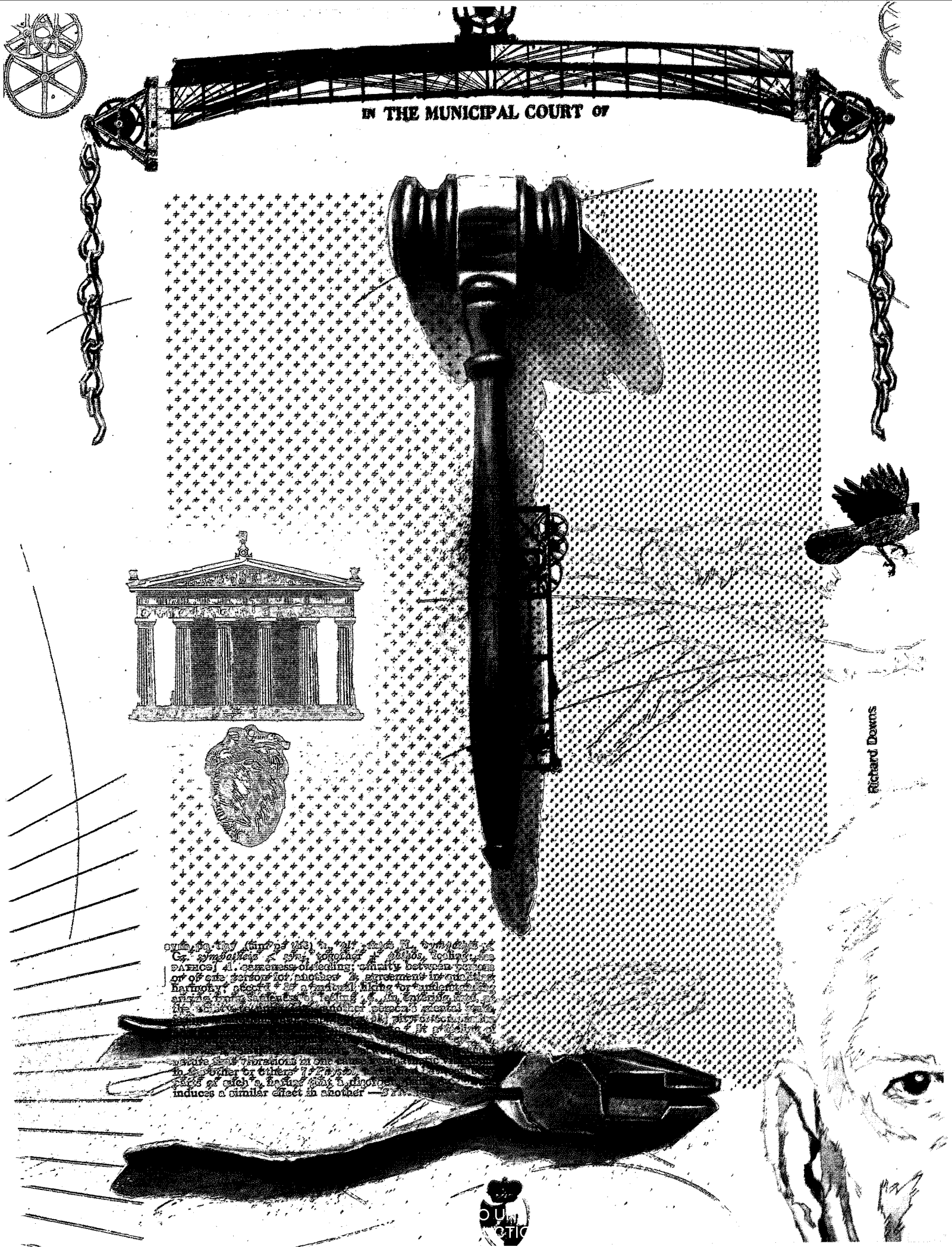
In what may be the most famous criminal case in American history, Nicola Sacco and Bartolomeo Vanzetti were executed in Massachusetts in 1927, six years and several appeals after their convictions for murdering two employees of a shoe factory. To many, Sacco and Vanzetti were punished not because they committed criminal acts but because of their trial judge's alleged prejudice against their anarchist politics. If there is a lesson to be drawn from the Sacco and Vanzetti case, it is that political ideology should have no role in determining one's guilt or innocence in a criminal case.

Yet the wall separating politics from the judicial process has been breached again in several recent federal and state court cases. In contrast to Sacco and Vanzetti, these decisions allowed individuals to escape punishment for crimes of trespass, property damage, and even murder. As such they raise disturbing questions with respect to the role that the political prejudices of judges and juries can play in judicial proceedings.

None of these cases involved challenges of civil disobedience to laws infringing individual liberties. The defendants in these cases are not analagous to the courageous individuals who mounted the successful campaign against state and local "Jim Crow" laws in the 1950s by refusing to honor demarcations by race in, say, public transportation. None of the current offenders have claimed that the laws they have violated are unjust, unconstitutional, or invalid in any way. Nor did or could they dispute that laws prohibiting murder, property damage, and trespass serve to protect rights to life, liberty, and property.

In all of these cases, the persons on trial had not deliberately violated just laws and the rights of others in order to protest against these laws, as in the racial discrimination example. Instead, they had acted in order to dramatize (and to maximize media coverage of) their disagreement with policies adopted by




IN THE MUNICIPAL COURT OF
Richard Downs

democratic procedures or to physically harm those charged with administering these policies. What makes their conduct all the more reprehensible is the ready availability of legal methods to seek change in a constitutional democracy.

Minnesota has been the site of several ideologically tainted cases. Decisions by federal and state courts there have condoned organized acts of trespass and vandalism against the state's two largest defense contractors, Honeywell and Sperry. (It should be noted that the participants in these acts have not accused either company of manufacturing instruments of domestic repression or of involving themselves in any other way in the violation of citizens' rights.)

Since October 1982, masses of protesters have been staging periodic day-long blockades of Honeywell's Minneapolis headquarters, preventing employees and visitors from entering or leaving the building. In August 1984, two protesters forced their way into a Sperry plant in a St. Paul suburb, destroyed a computer designed under contract with the Defense Department, and poured blood over the premises.

The essential facts were not in contention when these cases came to trial. The only question before the courts was whether the protesters' opposition to US defense and foreign policy excused their violation of criminal law. Evidently it did; the courts gave paramount status to the political opinions of those tried.

At the many Honeywell blockade trials, which began in spring 1983, the arrested protesters have admitted that they trespassed on private property and harassed the company's employees. Yet they have insisted in court that their political opposition to US government policies provides moral justification for criminal acts against manufacturers of defense-related products for the US government.

Jurors in June 1983 acquitted 36 of the first Honeywell protesters tried. (Interestingly, 31 of their compatriots, who failed to use a political defense, were convicted.) Media interviews with the jurors suggest that the acquittals were based on sympathy for the defendants' political views. In response to a request by Minneapolis city prosecutors, a special three-judge court in October 1983 ordered that testimony regarding political beliefs be excluded as irrelevant to whether a crime had been committed. The panel ruled that constitutional rights to a fair trial do not "allow defendants to use the court as a forum to air their political, religious, and moral beliefs and appeal to the passions of the jury."

On August 3, 1984, however, the Minnesota supreme court, in the case of *State* v. *Brechon*, struck down the special court's order and gave the Honeywell protesters the right to invoke their political beliefs in defense of their actions. Although it appeared to acknowledge that the protesters' politics ought to have no bearing on the matter of their guilt or innocence, the state's high court nonetheless declared that a trial judge cannot exclude political testimony but can only advise jurors to "disregard defendants' subjective motives." At most, then, the judge is allowed to lock the door after the theft of the horse.

Since the Minnesota supreme court's decision, juries have acquitted many of those arrested at Honeywell. In several cases, prosecutors dropped the charges before trial, because, said one, they "did not think it wise to spend that much taxpayers' money to allow the defendants to get up and give their spiel about nuclear war."

Similar organized mass trespass continues against other Minnesota defense contractors. Applying the reasoning of the *Brechon* decision, a St. Paul judge allowed 31 protesters on trial for trespass against a Sperry plant to seek to excuse their behavior on the basis of their opposition to Sperry's production of missile-guidance systems for the government. Again, the actual trespass was admitted. Still, a jury in April 1985 acquitted all the defendants.

A few months earlier, in October 1984, Barb Katt and John LaForge, arrested in connection with the Sperry computer incident, were tried in US District Court on a charge of destroying property being manufactured for the US government. At their trial, the two did not deny that they had destroyed the computer. Instead, they used the same strategy as the Honeywell protesters. Over the prosecutor's objections that "appeals to passion and prejudice" do not belong in a criminal trial, US District Judge Miles Lord allowed them to present their political motives.

Ms. Katt and Mr. LaForge contended that "international law" justified their destruction of property that would be used for US defense efforts. This time, however, the jury did not accept the apologia and convicted the defendants of the crime charged, for which they could have been sentenced to 10 years in prison and a $10,000 fine.

The jury verdict notwithstanding, Judge Lord released the defendants with a six-month "suspended sentence." In a prepared statement read in his courtroom on November 8, 1984, explaining his decision, the judge expressed sympathy for the political objectives of the defendants, whom he called "friends of the people," and attacked the defense industry as "warmongers." Continuing, he lauded the "more sanctified endeavor" of the convicted pair, "who by their acts attempt to counsel moderation and mediation as an alternative method of settling international disputes."

Judge Lord then excoriated Sperry employees for having allegedly "stole[n] $3.6 million worth of property" by embezzlement from the US government and "wrongfully and feloniously juggling the books." No one at Sperry was ever convicted of or even prosecuted for such an offense. The failure to punish Sperry officials for this alleged crime, said the judge, gave him a "clear conscience" in freeing Katt and LaForge.

Sperry defendants Katt and LaForge have claimed inspiration from the thought and actions of noted antiwar activist Daniel Berrigan. Along with his brother, Philip, and several others, Berrigan was convicted of burglary and other crimes for illegally entering a General Electric plant near Philadelphia in 1981 and damaging hydrogen bomb components. Like the Minnesota protesters, the Berrigan group granted the pertinent facts but sought exoneration on the grounds of their disapproval of US defense policies. The trial judge allowed them to present their political views in court. On appeal, however, they claimed that they also should have been permitted to present the testimony of purported experts on the consequences of nuclear war. In February 1984, a Pennsylvania appellate court agreed and ordered a new trial.

While the Minnesota and Pennsylvania decisions condoned violations of property rights, nothing in their reasoning limits the types of crimes to which they would apply. If lawbreakers have what are deemed by judges or juries acceptable political motives for violating a private business's property rights, could not these same offenders or others commit violent crimes against the beleaguered firm's employees or executives? Some courts appear to have answered affirmatively.

Several courts in recent years have refused to extradite Irish Republican

Army (IRA) members charged with or convicted by British courts of violent crimes. In the most notorious of these cases, New York US District Judge John E. Sprizzo on December 12, 1984, rejected a request to order the return of IRA activist Joseph Patrick Thomas Doherty, who had escaped from prison and wound up in Manhattan after being convicted by a British court of murdering a British army captain.

Judge Sprizzo found the crime "political" and thus not subject to extradition under the relevant treaty with Great Britain. He ruled that the use of violence was not "in itself dispositive" of whether an act is political or criminal in nature.

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Further, "the Court is not persuaded by the fact that the current political administration in the US has strongly condemned terrorist acts." Judge Sprizzo held that the IRA was engaged in a "sporadic and informal mode of warfare" against the British and that the killing would not have been criminal if it had "occurred during the course of traditional hostilities." In addition, the IRA has the requisite "organization, discipline, and command structure" so that "the act of its members can constitute political conduct."

Like Judge Lord, Judge Sprizzo cast blame upon the victim of the crime. "The death of Captain Westmacott, while a most tragic event, occurred in the context of an attempted ambush of a British army patrol. It was the British Army's response to that action that gave rise to Captain Westmacott's death." Indeed, any concern for the victims of the crimes is conspicuously absent from all these decisions. Individuals and businesses pursuing activities that were lawful but regarded as unacceptable by lawbreakers were in effect ruled unworthy of protection by the law.

The Doherty case demonstrates that even terrorists can successfully evade punishment by claiming a political objective for their acts. Is any crime, any brutality, perpetrated for a professed political end to be immune from legal penalties? Judge Sprizzo himself recoiled at the notion and decided that international law should determine those crimes, such as the Auschwitz atrocities and the My Lai killings, that should be proscribed.

Yet judges have no authority to elevate international law over federal and state constitutions and laws. Moreover, there is little agreement about what constitutes international law, and the vague standard it offers is an invitation to judicial license. For example, in freeing the Sperry defendants, Judge Lord saw a "plausible argument that international law prohibits what our country is doing by way of manufacturing mass weapons of destruction."

Despite the travesty in IRA activist Doherty's case, indiscriminate extradition should be anathema to anyone concerned with protecting individual liberties. Those convicted abroad of exercising what in the United States would be freedom of speech or religion should not be shipped off to criminal punishments. The US government and courts should also protect revolutionaries, like the Afghan mujaheddin, struggling against totalitarianism.

It is quite another matter, however, for courts to make the United States a sanctuary for terrorists convicted of violent crimes by courts of democratic states in accordance with due process of law. In June 1985, the United States and Great Britain signed an amended extradition treaty that would eliminate political immunity from extradition for persons committing violent crimes, hijacking, and hostage-taking. The Senate has failed thus far to ratify the treaty.

With courts permitting lawbreaking peace protesters and IRA terrorists to benefit from their political opinions, why shouldn't others have the same opportunity?

What do do, for example, about illegal activity against abortion clinics by persons opposed on religious and moral grounds to abortion? Fairness and the Fourteenth Amendment's equal-protection clause seem to require that they be extended the same rights granted the other lawbreakers.

This is not to argue that those ill-disposed toward abortion, any more than peace protesters or IRA terrorists, should be exempt from punishment for their offenses. The enforcement of the law and the protection of the rights of others should not depend upon the existence or nature of a given defendant's (or judge's or jury's) political ideology.

The judges who handed down these rulings have evinced contempt for the impartial administration of justice and callousness for the individual rights of crime victims. Even more, they sanctioned assaults, by those unable to prevail through democratic procedures, against the constitutional processes that are the basis of our political freedoms.

The judges all failed to acknowledge the many legal ways in democratic societies to bring about changes in government policies. In the United States (and in Great Britain as well), those advocating unilateral disarmament, changes in the status of Northern Ireland, or any other political position have ample opportunity to speak out, demonstrate lawfully, and influence the electoral process through financial contributions and political organizing. They have no need or excuse to commit murder or violate the rights of others in lesser ways in order to express their views.

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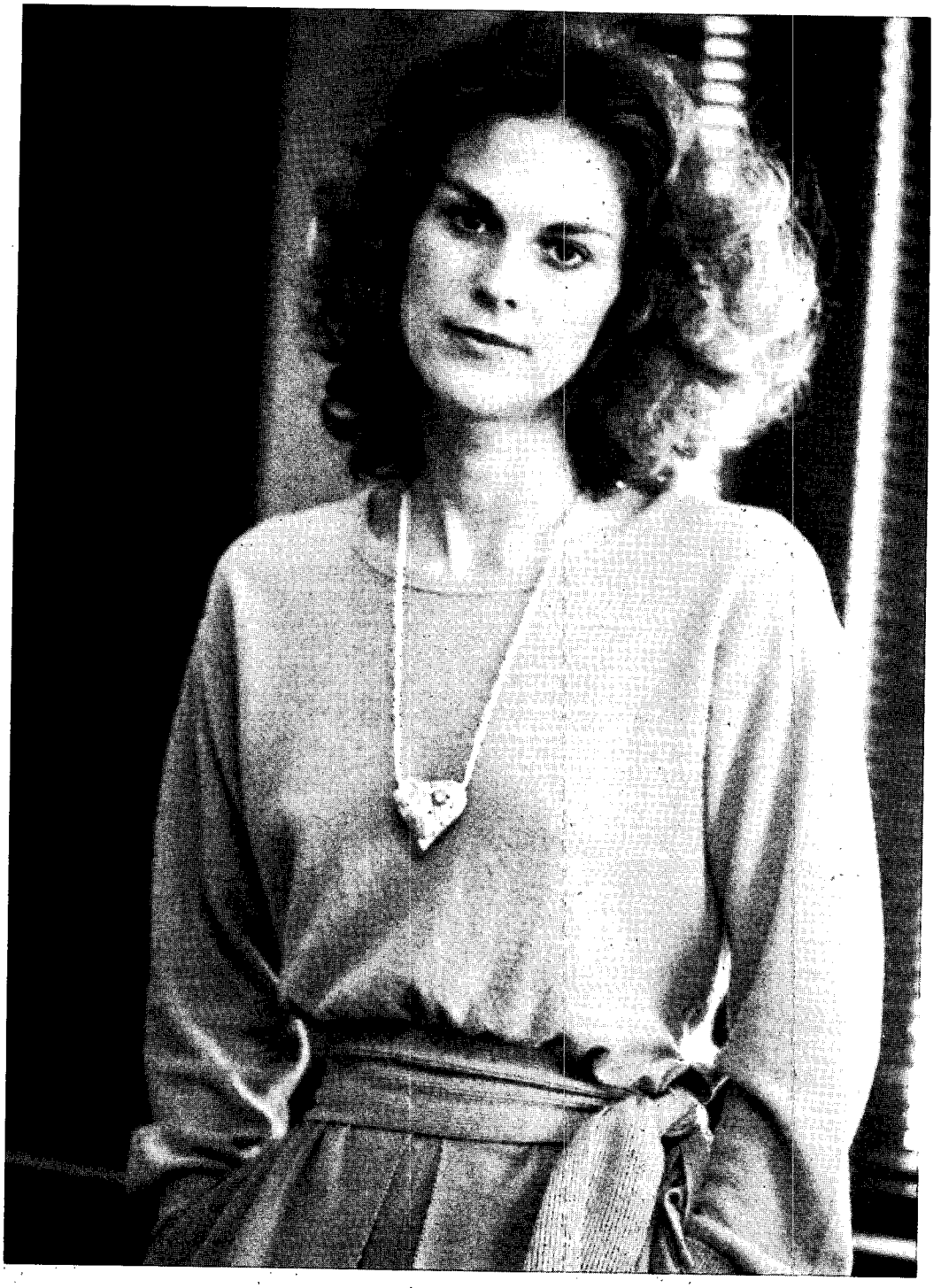
Indeed, an August 1984 decision of the 7th Circuit US Court of Appeals emphasized the availability of "reasonable, legal alternative[s] to violating the law" in rejecting an appeal by a group convicted of illegally entering military property to stage an antinuclear demonstration.

As was illustrated in the Sacco and Vanzetti case, allowing political ideology to infect the judicial process can be a double-edged sword. With more conservative judges filling federal-court vacancies, giving politics free rein in the courts could, in the future, lead to convictions of leftist activists in otherwise doubtful cases. Future opponents of US defense and foreign policies, rather than being lauded by judges for their political and moral motivations for breaking the law, could be placed in jeopardy because of their ideologies.

Some may find good sport in the prospect of hoisting the left with its own petard. Yet this would only compound the damage the judicial process has already suffered from rulings giving precedence to political ideology (and political prejudice) over the law. The cure for this damage is not a succession of new Sacco and Vanzetti cases but a restoration of the primacy of the rule of law. Politics should be banished from the courtroom. ◻

Elliot Rothenberg is president of the North Star Legal Foundation in Minneapolis. He has written for the Wall Street Journal *and the* Columbia Journalism Review, *among others.*



Photographs by Bill Hogan