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***“Saddam: How Not to Try a Tyrant”***

Few people outside Saddam Hussein’s base among Iraqi Sunnis will mourn the bloody dictator’s passing. But Americans may come to regret our government’s complicity in putting him to death after a patently unfair trial. For some observers, we will have transformed a monster into a martyr. For many more, we will have shredded our already tattered human rights credibility. Our denunciations of show trials in countries like Cuba or China may now ring hollow and hypocritical.

Why bother to give a tyrant a fair trial? Quite simply, because that is what our country is supposed to stand for. The question might as well be turned around: Why *not* give him a fair trial? If he indeed committed manifold atrocities, a fair trial would find him guilty.

But that is not what Saddam got. After an eight-month trial, in November he was convicted and sentenced to death in the first of several cases brought against him: the killing of 148 men and boys from the Shiite town of Dujail in 1982. An appeals court upheld his death sentence on December 26 – only one month after defense lawyers received a copy of the trial judgment. The hangman executed Saddam only four days later.

President Bush publicly opined that Saddam got a “fair trial.”

Evidently the Commander in Chief did not read the extensive report published in November by Human Rights Watch, based on observation of the trial and interviews with judges, prosecutors and defense lawyers. (Disclosure: I am a member of the Chicago committee of Human Rights Watch.)

The following examples illustrate the unfairness of Saddam’s trial:

1. The court lacked independence. Three presiding judges quit or were fired during the trial. The first resigned after Iraqi parliamentarians complained that he was too lenient and demanded his resignation. The second was removed after a government body accused him of being a former member of Saddam’s political party (which all judges had to be under Saddam). The third was yanked by the government, after commenting in court that Saddam was “not a dictator.”

2. Iraqi Prime Minister Nouri al-Maliki publicly announced the result before the court did. In July he declared that Saddam's "execution for the crimes he committed will come soon, just after the court ruling." Not surprisingly, in this atmosphere of external pressure, the court complied with his prediction.
3. Three lawyers for the defendants, including one of Saddam's defense counsel, were killed during the trial. All defense lawyers filed a detailed motion for security with the court, but the court never ruled on their motion. The government offered police protection but failed to pay the policemen, who quit, leaving Saddam's lawyer unprotected. The lawyer was then killed.
4. The prosecution gave a file of evidence to the defense before trial, but a third of the file was illegible. It was also inexplicably missing several hundred pages, not turned over to the defense until three months after the trial began.
5. No detailed charges against Saddam were made available until seven months into the trial. And then the prosecution added two new charges, for enforced disappearance and "other inhumane acts."
6. The court read the statements of 23 prosecution witnesses into the record without making them available for cross examination. Thirteen of their statements were not in the evidence file given to the defense.
7. The prosecution relied on what Human Rights Watch calls "trial by ambush": incriminating documents were not disclosed to the defense until the day they were presented in court.
8. Private defense counsel boycotted the trial in protest. They were replaced by public defenders who, unlike the judges and prosecutors, received no training in international criminal law. Their closing statement at trial was written in English by a foreign adviser, a non-lawyer, and translated into Arabic so that they could read it.
9. Prosecutors had to prove that Saddam knew that his regime's trials of the Dujail victims were a sham. Yet according to Human Rights Watch, "no evidence was presented from which the intent and state of knowledge of Saddam Hussein could be discerned or inferred in relation" to those trials.
10. In June the presiding judge suddenly closed the defense case, with no prior notice, no explanation other than that he had heard enough, and no inquiry into the relevance and materiality of the remaining witnesses.

Americans cannot escape responsibility by blaming all this on the Iraqis. We wrote the court's statute. We trained its judges and prosecutors. We paid for it. Our Embassy in Baghdad, according to one judge, was in effect the executive office of the court. We held

Saddam in our prison on our military base, until we finally turned him over to the Iraqis for execution.

And our government may have had its own interests in an early execution. Iraq disclosed to the United Nations in 2002 that two United States firms provided precursors to chemical weapons to Iraq in the 1980's. The next trial of Saddam – indeed it had already begun – involved his using chemical weapons to kill thousands of Kurds. Defense lawyers had threatened to present evidence of US complicity in Saddam's chemical and biological weapons programs. Now that the dictator is dead, that evidence may become irrelevant.

The botched trial of Saddam cannot be undone. But other cases continue in Iraq. Our government should not be party to any further executions based on trials that fail to meet minimum international standards.

**Doug Cassel's commentaries are broadcast, usually on Wednesdays, during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.**