
Trying Times

Why Bush and his cohorts have a vested interest in preventing Saddam Hussein from incriminating his one-time American allies at his trial.

PETER DREIER AND SAUL LANDAU | *January 20, 2004* | web only

The capture of Saddam Hussein may have implications beyond giving President George W. Bush a modest ratings boost. It raises questions about whether the U.S. government can guarantee (or even wants to give) a fair trial to a one-time collaborator. As was true with former Chilean dictator Augusto Pinochet, Ferdinand Marcos of the Philippines, Suharto of Indonesia and a score of others, Hussein used state power to commit criminal acts. And like his fellow dictators, Saddam Hussein, the human-rights abuser, enjoyed decisive support from Washington -- while he was useful.

For Bush, a nightmarish scenario looms: Hussein on the stand before the November elections, spilling the proverbial beans about his 1980s relations with current Defense Secretary Donald Rumsfeld. As President Ronald Reagan's emissary to Iraq, Rumsfeld, according to declassified documents, helped Hussein acquire material for his weapons of mass destruction.

A now-ubiquitous photo shows Rumsfeld shaking Hussein's hand. Documents reveal that the Reagan administration wanted Rumsfeld to inform Hussein that a U.S. priority was to prevent an Iranian victory in the Iran-Iraq war. Although the United States knew of Hussein's use of chemical weapons, Rumsfeld nevertheless opened the door for the Iraqi dictator to U.S. military intelligence personnel to locate Iranian targets. Rumsfeld now piously admonishes Hussein for utilizing the very chemical weapons we helped him acquire, which Hussein used against both Iranians and some of his own Kurdish minority.

Rumsfeld was sent to Iraq by Reagan's secretary of state, George Schultz, the former president of U.S. construction giant Bechtel who again serves on its board and is now an adviser to the current Bush administration. The documents also show that Bechtel had planned to evade 1988 sanctions on Iraq by supplying Hussein with war materials. Bechtel, a major donor to the Bush campaign, now enjoys the largest U.S. Agency for International Development (USAID) contract for reconstructing Iraq.

Until Hussein's capture, Bush showed scant concern for legal fine points or facts in regard to Iraq. Recently, however, White House rhetoric has begun to stress the promotion of democracy and the rule of law. Thus, Bush now says he wants Hussein to go to trial.

The president raised some eyebrows at his Dec. 16 news conference by announcing that his legal advisers would work with the 25-member U.S.-appointed Iraqi Governing Council to bring Hussein to the kind of trial "that will stand up to international scrutiny." In December 2003, the U.S.-controlled Iraqi Governing Council approved a statute establishing the Iraqi Special Tribunal. Not by accident, this newly created court has limited its jurisdiction to Iraqi nationals and residents -- and cannot try Americans.

But Bush did not need to invent a new Iraqi court: A United Nations-established International Criminal Tribunal at The Hague would meet all legal standards. Indeed, Washington approved such a UN Security Council-backed tribunal, which is currently trying former Yugoslavian President Slobodan Milosevic for war crimes and genocide. Bush's search for a proper legal venue should have gone no farther than The Hague.

Indeed, the fair-trial issue goes beyond questions of Hussein's incrimination of U.S. officials. A hastily created, Washington-controlled Iraqi judicial system lacks all credibility. Ed Villmoare, a professor at the University of the Pacific's McGeorge School of Law, told Reuters, "It will be difficult for many to believe that those [Iraqis] appointed to the tribunal can be truly free from bias."

Where and how Hussein gets tried will cast its shadow on future human-rights litigation. After World War II, the United States established an important precedent by insisting that German and Japanese heads of state and their underlings be tried for crimes against humanity. To create credibility for the international legal community, U.S. Supreme Court Justice Robert Jackson served as the U.S. representative to the International Conference on Military Trials. On Aug. 12, 1945, Jackson explained the basic tenets for the war-crimes tribunal in Nuremberg:

"We must make clear to the Germans that the wrong for which their fallen leaders are on trial is not that they lost the war but that they started it. And we must not allow ourselves to be drawn into a trial of the causes of the war, for our position is that no grievances or policies will justify resort to aggressive war. It is utterly renounced and condemned as an instrument of policy."

Under Jackson's guidelines, Hussein in the dock might compare his invasion of Kuwait to Bush's "aggressive war" against Iraq. Indeed, Nuremberg outlawed the "preemptive war" that Bush invoked in various prewar speeches. For *casus belli*, an act that provokes or can be used to justify war, the Bush administration substituted what *New York Times* columnist Maureen Dowd called "casuistry belli," specious reasoning intended to mislead.

In August 2002, Vice President Dick Cheney said, "There is no doubt that Saddam Hussein now has weapons of mass destruction ... to use against our friends, against our allies and against us."

Before ordering the invasion of Iraq, on March 17, 2003, Bush said, "Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised. . . . The terrorists could fulfill their stated ambitions and kill

thousands or hundreds of thousands of innocent people in our country or any other."

Today overwhelming doubt exists about these claims. After more than a year of intense searching by UN and U.S. inspectors, no such weapons or links to terrorists have materialized. Having lost the argument on the factual basis for going to war, Bush now asks, in effect, "Well, aren't you glad that he's gone?"

Yes, Saddam Hussein was a monster who merits trial for his crimes. But justice must extend beyond the "losers." Just as Hussein's invasion of Kuwait and gassing of his enemies constitutes a clear violation of law, so, too, does waging an aggressive war without just cause merit a trial.

An indictment of Bush could argue that, by dissembling to Congress about Hussein's weapons and terrorist links, the president gained the power to make a war that cost thousands of lives. Just as a fair trial would establish Hussein's guilt, it might also implicate leading U.S. government officials and Bush campaign donors. This is surely why the president is pushing to have Hussein tried in Iraq rather than in a prestigious neutral court where international human-rights law and proper procedure would prevail.

Indeed, Bush and Rumsfeld's worst nightmare may be Hussein taking the stand, right hand on the Koran, pledging, "I solemnly swear to tell the whole truth"

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