

# Perspectives



## A FAIR TRIAL FOR SADDAM

BY DONNA ARZT

The capture and detention of Saddam Hussein last December brought a sense of relief to many people, both inside and outside Iraq. For the legitimacy of the Iraqi transition to civilian government and for the sake of international justice, it is imperative that Saddam and his top henchmen be put on trial in a fair, independent, impartial, and competent tribunal. While some would like to see Saddam and the others simply killed, that would only serve the purposes of those insurgents who are resisting in his name. History provides us with a superior model.

In 1945, Soviet Premier Joseph Stalin and British Prime Minister Winston Churchill wanted to summarily execute the Nazi leaders held in custody by the Allies. After initially agreeing with them, President Franklin Roosevelt insisted instead on establishing the Nuremberg Tribunal as a way of not only revealing what had happened under the Nazi regime, but of demonstrating to the German population how a system of justice operates. In the words of Robert Jackson, chief U.S. prosecutor at Nuremberg, "That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of law is one of the most significant tributes that Power has paid to Reason."

Of the various types of trials suggested for Saddam Hussein, only one, in my estimation, satisfies the necessary conditions for viability and legitimacy: an Iraqi court consisting of mixed panels of Iraqi and international judges, and a similarly mixed prosecution team. Clearly, the Iraqi people are the most appropriate sponsors of a trial concerning crimes committed against them by their own leaders, and Baghdad is the appropriate venue. However, due to the relative lack of suitably trained Iraqi judicial personnel and the understandable temptation to use the legal process to serve retaliatory motives, it would be best if international judges and prosecutors worked alongside Iraqis in conducting the cases. Similar "hybrid" tribunals have been created in Kosovo, East Timor, Sierra Leone, and Cambodia. The latter may provide the best model. In those

proceedings, Cambodians outnumbered international personnel, and the war crimes court was considered part of the municipal legal system (rather than an international institution).

International law has evolved since the time of Nuremberg to require that these principles be followed:

- **Fairness:** This would include the presumption of innocence, the right to counsel (with adequate time and facilities to prepare a defense), the right to present witnesses and to confront the prosecution's witnesses, and the right to appeal to a higher tribunal.
- **Independence and impartiality:** These two standards are usually linked, though the former refers to the court's autonomy from outside political influence, while the latter requires freedom from personal bias on the part of the presiding judges.
- **Competence:** Beyond appropriately trained and experienced court personnel, this factor means that the court has the proper jurisdiction over the defendant and over the crimes that have been charged. (A related issue for this particular court is whether the death penalty—which has not been used in international law since the 1940s and is banned in most Western countries—should be among the options in sentencing.)

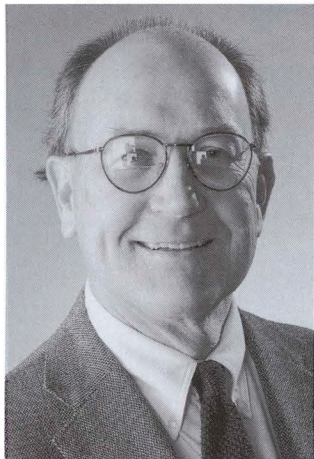
What defenses would Saddam Hussein likely claim, assuming he is found mentally and physically competent to stand trial? If the forensic and eyewitness evidence is too overwhelming to deny, he might argue, as former Serbian leader Slobodon Milosevic did at his trial in The Hague, that the crimes were committed by underlings who disobeyed his commands. To counter that defense, the prosecution might have to offer immunity to some of his top lieutenants.

More than likely, Saddam Hussein would follow Milosevic's playbook and challenge the very legitimacy of the court. That is why the manner and basis for establishing the tribunal must be carefully thought out. But imagine the global, local, and historical effect of a final judgment that would uphold the rule of law and also hold him accountable for having defiled it.

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## ARE TEACHERS TO BLAME?

BY GERALD GRANT

**W**hat makes a good school? That's what the National Institute of Education wanted to know when they asked me to write a report for the U.S. Congress. The short version of my answer: good teachers and a balanced mix of students.

By "good," I mean teachers who understand the nature of their intellectual and moral authority and exercise it well. They derive their intellectual authority from the quality of their own training and knowledge of the subjects they teach. Their moral authority comes not only from teaching well, but also from the kinds of personal virtues they exhibit: big things like honesty, fairness, good judgment, courage, and valuing diversity, as well as more mundane tasks like grading papers carefully and returning them on time.

At the heart of the question is whether teachers are to blame for the poor scores reported almost daily in the mass media. First, let us note that until quite recently, historically speaking, we never knew or read about school scores. Parents knew their children's grades in each subject and often little more. Until the mid-20th century, less than half of American children graduated from high school. The function of schools as sorting and selecting machines was widely accepted. It was children who were being passed or failed, not schools.

Now all children are expected to reach higher levels of competence and nearly all are expected to graduate from high school. Newspapers everywhere publish test scores of every school in local school districts. As readers see rising numbers of poorly performing schools, they are inclined to believe that teachers—and schools of education that train them—are at fault.

What this deluge of data often masks, however, is that we have two school systems in America: one for winners, mostly suburban and private schools; and another for losers, mainly composed of urban public school systems. The average achievement scores of children in the urban systems have grown worse (with a few exceptions) as greater concentrations of poverty have become more common in urban areas. The terrible truth is that the American promise of equal educa-

tional opportunity is more myth than reality for children in urban schools. Just as stepping on the scales more often does not ensure that you lose weight, more frequent testing is not the remedy for children trapped in these schools. However, I am not opposed to testing per se. In fact, I have supported school-level assessment, hoping it would expose the gap between urban and suburban schools and provide leverage for adjusting the balance. I am less sanguine now about that happening than I was a decade ago. More than 700 teachers and staff were cut in Buffalo in the last year, and nearly 200 in Syracuse. The budget realities in urban schools have made a mockery of the "no child left behind" rhetoric.

The losing urban schools neither have their fair share of good teachers, nor the balances of gifted and average, and poor and middle-class pupils that all good schools need. Along with the increasing concentrations of poverty, one must also consider the numbers of children in urban schools who have disabilities, are from single-parent homes, are undernourished, or are ill. Recent research reported by the Public Policy Institute of California shows that average reading achievement of 10th-graders in high-poverty schools is about the same as the reading level of fifth-graders in the most affluent schools. The California studies also show that low family income is strongly related to low attendance, minimal participation in after-school activities, and to a "conspicuous lack of mental health assistance."

It is also sadly true that urban schools have disproportionate levels of uncertified and poorly trained teachers. Many dedicated and able teachers remain committed to teaching in urban schools. But many also leave for higher pay and better teaching conditions in the suburbs. A report about Philadelphia area schools in 2003 is not atypical: About 1 percent of teachers in the city of Philadelphia make more than \$70,000 a year. In Delaware County, 28 percent do; in Montgomery, 36 percent; and in Bucks County, 47 percent earn more than that.

Many readers may recall stories of successful poverty-stricken schools. I have visited more than a dozen of them, including some Catholic schools, in New York, Chicago, Los Angeles, and other cities. They are almost always anomalies in that they have charismatic leaders and a strong, positive ethos that act as magnets to draw together the most stable, healthy, and highly motivated inner-city parents. But these constitute only a small percentage of impoverished families in urban areas. We are wrong to believe that these "lighthouse" schools can be broadly replicated within existing urban systems while maintaining the imbalances of financial and social capital characterizing today's urban and suburban schools.

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