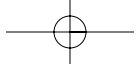
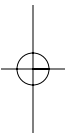
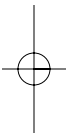


SADDAM ON TRIAL



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Understanding and Debating the Iraqi High Tribunal

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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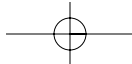
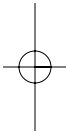
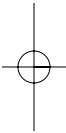
10 Digit ISBN 1-59460-304-9
13 Digit ISBN 978-1-59460-304-4

LCCN 2006933161

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

Dedicated to the memory of award winning Boston Globe journalist Elizabeth Neuffer, a dear friend who gave her life covering the story of justice in Iraq and U.S. Army soldiers Captain Christopher Seifert and Specialist Armer Burkhart who gave their lives so others could be free.



It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.

President Theodore Roosevelt¹

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PREFACE

Saddam Hussein. Derided as “the Butcher of Baghdad,” the Iraqi leader was toppled from power by a U.S. military invasion in 2003, charged with the most serious crimes known to mankind, and then brought to justice before a novel war crimes court known as the Iraqi High Tribunal (IHT).

From October 2005 through July 2006, Saddam and seven of his henchmen engaged in a legal battle of epic proportions, with their lives literally in the balance. The first of several planned trials before the Iraqi High Tribunal, this proceeding focused on the destruction of the town of Dujail and the torture and murder of its inhabitants in retaliation for a 1982 failed assassination attempt. Billed by the international media as “the real trial of the century,” the televised proceedings were punctuated by gripping testimony of atrocities, controversial judicial rulings, assassination of defense counsel, the resignation of judges, scathing outburst by the defendants, allegations of mistreatment, hunger strikes, and even underwear appearances.

Was it a mistake to try Saddam in Baghdad before a panel of Iraqi judges rather than before an international tribunal? Was the Iraqi High Tribunal a legitimate judicial institution? Were the proceedings fundamentally fair? Did the judges react properly to the defendants’ attempts to derail the proceedings? Did the Prosecution prove its case? Did Saddam have any valid defenses? What precedents did this extraordinary trial set?

We wanted to answer these questions. At the outset of the IHT’s first trial, we sought to do something unique—bring together a select group of the world’s leading experts on international criminal law, engage them in an ongoing scholarly debate regarding these issues and the unfolding developments in the trial of Saddam Hussein, and publicize that debate in real time for the world to view over the world-wide web. Our hope was that by posting such expert commentary on the internet, we could entice the public to tune in to the trial, and to think about the bigger issues, not just the sound bites and headlines. And it worked!

During the trial, our website, “Grotian Moment: The Saddam Hussein Trial Blog” logged over 100,000 visits. Named for Hugo Grotius, the father of the field of international law, a “Grotian moment” is a legal development that is

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so significant that it radically transforms the content of customary international law or the interpretation of treaty-based law. The website was linked to by the Library of Congress, the Department of Defense, and most major newspapers, radio, and television news outlets. The work of our experts earned a “Web Winner” award from The Philadelphia Inquirer newspaper, the “Blog of the Month” award by Catholic University of America, the “Website of the Month” award by New York Law School, and the “Blog of the Week” award by University of Washington Law School. In addition, the IHT, itself, began to post its trial exhibits, indictments, and other documents on our Website, which soon established itself as the number one site on the internet for information about the trial of Saddam Hussein.

The content on the website quickly grew to thousands of pages—far too much for the casual reader to digest. And since websites are inherently temporary, we realized that there was a need to publish the material in a more digestible and permanent form. This book thus reproduces the best of the expert essays, and includes English translations of the most important documents related to the trial. It also includes a psychological profile of Saddam Hussein written by a former CIA profiler, a glossary of key legal terms, a timeline of the trial, a summary of the evidence and testimony, and recommendations for future trials.

This book is written in a style intended to appeal to the general reader, as well as to law students, undergraduates, academics and journalists. At the same time, we hope policy makers and jurists will benefit from our critiques and recommendations related to the future of international war crimes trials.

As with any endeavor of this nature, we owe a debt of appreciation to those who assisted us. In particular we recognize the outstanding efforts of Brianne Draffin and Carl Roloff, without whom this book would not be possible. We also thank our expert contributors, whose bios appear at the back of the book.

Michael P. Scharf & Gregory S. McNeal
Cleveland, Ohio, July 2006