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January, 2010 Volume 84, No. 1

Books

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Enemy of the State: The Trial and Execution of Saddam Hussein

By Martin A. Newton and Michael P. Scharf

Reviewed by Richard B. Davis, Jr.

Those of us who practice trial law on a regular basis have had, on occasion, an unappreciative client. Ironically, it is usually the unappreciative client for whom we obtain more justice than they may have desired. Still, it is extremely unlikely that any of us (with the possible exception of the defense attorney for former Governor Blagojevich) have ever been labeled an “enemy of the state” for doing our best for a client.

But that happened in Baghdad, Iraq, near the end of Saddam Hussein’s trial. Hussein’s court-appointed defense counsel, considered by some to be the “bravest” and “most principled” member of the bar involved in the trial, stood to deliver the closing argument that Hussein’s paid attorneys should have delivered.

It was Hussein’s plan to generate world opinion against the trial and, even if he lost, to make himself a martyr to the Arab cause. To have effective assistance of counsel at the all-important summing up was seen by him as detrimental. “If you present the argument, I will consider you my personal enemy and an enemy of the state,” he told his court-appointed attorney.

This and many more curious, difficult, and unique situations and circumstances were overcome to bring justice to Iraq for those Iraqis murdered at the behest of Saddam Hussein and his regime.

This fascinating story of Hussein’s trial and execution is told by two guys on the inside, law professors Mike Newton of Vanderbilt University Law School and Michael Scharf of Case Western Reserve University Law School. These two experts are, I should point out, both in-depth academics in the theory of international crimes and tribunals, and as Dizzy Dean once said, they have also “done it” in the real world. From Rwanda to Sierra Leone, from the Balkans to Iraq, these two advocates and communicators have taken justice around the world as contractors for the Department of Justice in the name of the U.S.

Both authors are quite objective in describing the victories and the errors and resulting consequences of the Iraqi High Tribunal. Their “warts and all” comparison of the Dujail trial to the Nuremberg trials after World War II is academically disciplined and well thought out. The book is both historically and legally instructive. Judge advocates will enjoy it from both an academic and a military justice and operations standpoint.

The only omission from the book that this reader would have liked to review is the text of the English translation of the trial court’s written opinion and the appellate order. It is a minor omission given the depth and objectivity of the insight provided.

For many of us who have spent the better part of our professional lives trying to improve the delivery of justice in Florida, and especially for those of us in the Judge Advocate General's Corps, trying to improve the delivery of justice wherever we are sent, this book may exemplify why we have done what we have done for as long as we have.

This book demonstrates how in this one historic instance, the basic U.S. and JAG values of due process, rules of evidence and procedure that provide a fair (but not necessarily perfect) trial, and the importance of international law training and Western emphasis on justice have now played out on a world stage. It is, for the old or young JAG, a very fulfilling read. The only thing that would make it more fulfilling for most of us would be if we had served in this capacity as well.

Enemy of the State is a must read for JAGs, U.S. citizens, and especially Western lawyers who need to realize that the world does justice in many sorts of ways, and we need not think it must be the way in which we practice and have been schooled. What is important is justice based on due process and accountability for criminal acts. It's a shame that the news agencies and the human rights organizations who scoffed at the trial have not retracted their disparaging comments. The trial was more than Hussein expected, and it was a lot more than the world thought occurred. The JAG Corps: helping to bring justice to one tyrant at a time.

Richard B. Davis, Jr., is a Florida Bar member living in Jasper.

Privacy: The Lost Right

By Jon L. Mills

While government, mass media, and technology threaten individual privacy rights, the law struggles to keep up with the rapid changes taking place. Jon Mills' book *Privacy: The Lost Right* considers the role of the right to privacy in today's intrusive world.

Taking a scholarly approach, Mills reviews the history of privacy protections, the general loss of privacy, and the inadequacy of current legal remedies, especially in light of more recent privacy concerns, such as identity theft, government surveillance, tabloid journalism, and video surveillance in public places.

A member of The Florida Bar, Mills is dean emeritus and professor of law at the University of Florida, where he is also the founding director of the university's Center for Governmental Responsibility. Mills has served in many policy positions, including a 10-year stint in the Florida House of Representatives.

Privacy: The Lost Right (391 pages) is published by Oxford University Press, www.oup.com, and costs \$65.

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[Revised: 12-29-2009]

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