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ANCHORS: RENEE MONTAGNE

BODY:

RENEE MONTAGNE, host:

And in Baghdad, the trial of Saddam Hussein resumes on Monday. Witnesses are scheduled to appear in court for the first time, heavily guarded. Defense lawyers also are expected to be present. Earlier this month, they had threatened to boycott the trial after two defense lawyers were shot dead. Now US officials say lawyers for Saddam Hussein and his seven co-defendants have been offered the, quote, "most robust security possible," and that the Iraqi tribunal expects at least one attorney for each defendant to appear at Monday's session.

To review the case and this next phase of testimony, we reached Mike Newton who teaches law at Vanderbilt University. He was also a senior adviser to the US ambassador at large for war crimes issues. I asked him to remind us of what Saddam Hussein is accused of.

Professor MIKE NEWTON (Vanderbilt University Law Teacher): The underlying case comes from a 1982 incident in a place called Aldijeel(ph), which is on the main road between Baghdad and Tikrit. There was an assassination attempt on Saddam. In retaliation for that, hundreds of villagers were imprisoned. Hundreds of other villagers were killed. Hundred thousand acres of prime orchards were bulldozed. The town was bulldozed. And so those are under the general rubric of crimes against humanity.

MONTAGNE: Well, even given the terrible crime that was committed, is there a direct line of unbroken evidence leading to Saddam Hussein?

Prof. NEWTON: We will see as the trial develops. You, of course, may find specific orders and specific evidence. The other basis is, of course, command responsibility, either of a military leader or of a civilian leader, who exercised a position of effective control and authority over subordinates, even if they didn't directly order those crimes, if he knew they were happening. So the key elements of a command responsibility theory would be to tie the effective control over the forces who perpetrated those acts to Saddam personally and we'll simply see how the evidence unfolds.

MONTAGNE: How much does this issue of security affect the probability of getting a fair trial in this case?

Prof. NEWTON: There's been a big debate about whether the trial should be moved or not. I fall on the side that say there's a large number of procedural provisions in place to help provide protection, to secure witnesses, to ensure that the process is as far as it can possibly be. There's also been a corollary debate as to whether these trials should be televised. And, again, I fall on the side of saying that it's a good thing to have an open and transparent process, both for Iraqi civilians and for the wider regional audience. That's what it really means to re-establish the rule of law.

MONTAGNE: Well, that does get us, though, to an ongoing argument. Saddam's lawyers have questioned the court's legitimacy given that it was set up, basically, under American occupation. I mean, you helped set this up. What do you say when someone argues that?

Prof. NEWTON: That's been a larger debate in the international law community as a whole. The underlying occupation law is that the occupier has the legal duty to preserve the order of public life. If, in fact, a part of that process is establishing procedural processes and judicial functions, then that process would have been permitted even under occupation law. If the CPA had acted on their own authority, the Coalition Provisional Authority, they had legal authority to establish this process. That's not what happened. What happened was that from the very first time Iraqis had a voice, they began to demand and push for an accountability mechanism and this process was developed by Iraqis with coalition assistance, and, to this day, the process is an Iraqi process, based on an Iraqi law. And the legitimacy is clearly established by the fact that every single chance that Iraqi domestic authorities have had to validate this statute and the existence of this court and the work of this court, they have done so.

MONTAGNE: Professor Newton, thanks very much for talking with us.

Prof. NEWTON: Thank you.

MONTAGNE: Mike Newton teaches law at Vanderbilt University Law School and he was a senior adviser to the United States ambassador at large for war crimes issues.

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