

1 Special Tribunal for Lebanon  
2 In the Case against Al Jadeed [CO.] S.A.L./New T.V. S.A.L. (N.T.V.) and  
3 Ms. Karma Mohamed Tahsin Al Khayat  
4 Case number STL-14-05  
5 Presiding Judge Nicola Lettieri - [Contempt Judge]  
6 Friday, 19 June 2015 - [Closing Arguments]  
7 [Open Session]  
8 --- Upon commencing at 10.00 a.m.

9 JUDGE LETTIERI: Good morning to everyone. The Registrar, please  
10 call the case.

11 THE REGISTRAR: The Special Tribunal for Lebanon is sitting in an  
12 open session in the case against Al Jadeed S.A.L./New T.V. S.A.L. and  
13 Ms. Karma Mohamed Tahsin Al Khayat, case number STL-14-05.

14 JUDGE LETTIERI: The word to the Amicus Prosecutor, 30 minutes  
15 for rebuttal and rejoinder -- rebuttal.

16 MR. SCOTT: Thank you, Your Honour, for this additional time to  
17 speak with you this morning at the close of this case.

18 I must say briefly that I regret and I reject entirely the  
19 personal attacks made against me by Mr. Khan. Mr. Khan simply says  
20 whatever he wants to say, no matter what the facts are, and constantly  
21 overstates and overdramatizes everything that he says. The Amicus case  
22 has not changed and it is not in, and has never been, in disarray. We  
23 took Judge Baragwanath's Order in Lieu and our case has been the same  
24 throughout. What I said in opening statement is what I said yesterday.

25 We are not required to prove or respond to every assertion made

1 by Mr. Khan but to prove the elements of our case, and there is and has  
2 been no shifting of the burden of proof to the Defence. Of course the  
3 Defence is not required to put on a case. However, when the Defence  
4 chooses to do so or when the Defence makes factual assertions, says that  
5 this happened or that happened or this didn't happen, the Defence has to  
6 put admitted evidence into the record. It is not true, it is not put in  
7 issue simply because Mr. Khan says so.

8 Again, as we discussed yesterday, Your Honour, what the lawyers  
9 say is not evidence, and I respectfully urge the Court and your staff to  
10 very carefully - very carefully - distinguish between what Mr. Khan says  
11 and what is actually in evidence.

12 Now, Mr. Khan complains because we have often used the term  
13 "purported" or "alleged" witnesses. That is for a number of reasons  
14 including the different use of the word "witness" and whether that means  
15 someone or anyone that the International Investigation Commission or the  
16 STL has contacted in the course of investigations, which appears to be  
17 the definition, at least at times, that Al Jadeed has used - did the  
18 investigators talk to you - or does it mean -- is it limited to those  
19 persons who are expected or will actually testify as witnesses in court.  
20 We include both groups.

21 But we use "purported" or "alleged" so as not to make a  
22 distinction and for other reasons I will not say in public session and I  
23 will not take the time to go into private session, but the Court will  
24 understand the reasons -- other reasons why that language is used.

25 We further state our position that in order to be confidential,

1 it is not required that a particular person at a particular time has to  
2 be covered by a particular or specific protective measure or similar  
3 order. Until such time as a witness is announced or appears in open  
4 court, that information, the person's identity and his or her status as a  
5 witness, is nonpublic. And disclosure to the Defence during pre-trial  
6 preparation, for example, does not put that information into the public  
7 domain. It is disclosed to the Defence solely for the purpose of  
8 preparing the case. Until that witness is announced or comes in open  
9 court, it is nonpublic information. It is confidential information.

10 The Office of the Prosecutor's investigative material, witness  
11 information, remains confidential until it is publicly used. The same  
12 for the indictment. It remains confidential until it is publicly  
13 unsealed. Information and material in supporting material remains  
14 confidential until it is used in open court, subject to whatever specific  
15 protective measures may be ordered.

16 I return to the topic, and again it came up in Mr. Khan's speech  
17 yesterday, Mr. Khan continues to claim that Al Jadeed complied with and  
18 was a model of good journalistic practice. The Defence claim that  
19 approaching people under false pretext and filming and/or recording them  
20 without their knowledge and permission are accepted journalistic  
21 practices. Not true, Your Honour. Not true in the situation here.

22 Their own witness, Ms. Sabbagh, was very, very clear that such  
23 practices are only permissible as an exception to the rule, in very  
24 specific circumstances, such as filming the wrong-doing of a culprit or  
25 gathering information on what are otherwise out of bound areas. None of

1 those situations apply here.

2 Even Al Jadeed, so far as I know, has never described the persons  
3 featured in the Tribunal broadcast as "culprits" or accused them of  
4 wrong-doing. And there is nothing, Your Honour, nothing that would have  
5 prevented Al Jadeed from simply approaching these persons in a completely  
6 straight-forward manner.

7 I also remind the Court that as Ms. Sabbagh testified, Al Jadeed  
8 did not partner with Arab reporters for investigative journalism in  
9 connection with the Tribunal reports, and Arab reporters for  
10 investigative journalism had no participation or knowledge of the  
11 Tribunal reports. They can be pointed to in no way as having endorsed  
12 these reports.

13 Now, there is a reference to the fact that in some instances a  
14 computer-generated silhouette was used to portray or represent a couple  
15 of the persons featured. The only reason that was done, Your Honour, and  
16 it was very clear, and Ms. Khayat herself testified, Exhibit P00173 at  
17 page 70, the only reason that was done was that it was where Al Jadeed  
18 did not have and could not find an image of that person.

19 And I ask Your Honour to contrast that situation with one of the  
20 situations during one of the broadcasts when the Al Jadeed news reader  
21 said: Well, Mr. So-and-so did not want to be shown, but don't worry, we  
22 found a picture of him anyway.

23 I want to go back to the service of the 10 August order. We  
24 learned last night the Defence has obtained a new translation of part of  
25 Ms. Habli's 9 August 2012 letter that, among other things, instead of

1 saying Ms. El-Bassam is the director of the company, now says that she is  
2 "the manager in charge of the company according to Lebanese law." Your  
3 Honour, our position in response is that doesn't change anything, and for  
4 all the reasons we've already stated, it was perfectly right and  
5 appropriate for the order to be served on Ms. El-Bassam.

6 We also submit, Your Honour, that the prosecutor-general of  
7 Lebanon and Officer Rahal know far more about the service of orders and  
8 judicial documents pursuant to accepted Lebanese practice than the  
9 Defence does.

10 I want to the come to the 11 August 2012 e-mail from Mr. Lodge to  
11 Ms. Khayat. In doing that, let me refer Your Honour, please, to the  
12 Margetic judgment, 7 February 2007, at paragraphs 54 and 55:

13 "The Trial Chamber is satisfied beyond a reasonable doubt that  
14 the Prosecution sent a notification of confidentiality to the accused  
15 both through the post and electronically ... an electronic version of the  
16 letter was sent to the accused's personal e-mail address on 3 April 2006.

17 "The Trial Chamber does not accept the accused's argument that he  
18 did not receive the e-mail, given 'the evidence adduced by the  
19 Prosecution confirming that the e-mail was sent to the accused's personal  
20 e-mail address.'"

21 And the evidence cited by the Court included the -- excused me,  
22 the evidence cited by the Court included evidence demonstrating the  
23 accused's personal use of that e-mail address.

24 Your Honour, that exact same situation applies in this case.  
25 Part of the evidence that the Prosecution tendered was a compilation of

1 e-mails between Ms. Khayat and the STL, both before and after the e-mail  
2 on the 11th of August. These were done on a regular basis. And,  
3 Your Honour, the evidence is uncontradicted and undisputed that Mr. Lodge  
4 e-mailed a copy of the 10 August order to Ms. Khayat on 11 August 2012  
5 using the same e-mail address that Ms. Khayat had repeatedly used to  
6 correspond with the STL and the same address which she had previously  
7 received over and over again e-mail from the STL. That evidence is not  
8 disputed. It was her address. There is no dispute about that.

9 Now consider the situation: Al Jadeed and its management are a  
10 media company who live and breathe on the basis of 24/7 information and  
11 communication. That is their lifeblood. That's what they do or purport  
12 to do. Al Jadeed follows the Tribunal closely, even daily. Al Jadeed  
13 receives press releases from the STL and reports about the STL on a  
14 regular basis.

15 Both before and after Mr. Lodge's e-mail, Karma Khayat sent  
16 e-mails to the STL using the same e-mail address and the STL sent e-mails  
17 to Ms. Khayat to the same e-mail address with no evidence in the record -  
18 no evidence in the record - of any difficulty or problem in its  
19 transmission or receipt. And in this particular situation, Mr. Lodge  
20 also testified that the e-mail did not bounce back to him.

21 But then we get the unproven Defence assertion that miraculously  
22 this is the one e-mail - this is the one e-mail - that didn't come  
23 through, the e-mail that attached the 10 August 2012 order. That must be  
24 one of the great coincidences of all time. How convenient is that? How  
25 believable is that?

1           The Margetic case rejected that argument, Your Honour, and we ask  
2           that you reject it as well.

3           And I add, Your Honour, that proof is not required that someone  
4           actually read a document or communication served on them. Think of it.  
5           If that was the law, if that was the requirement, every service in every  
6           case in every court system in the world could be defeated simply by the  
7           person saying: Well, I didn't read it. Some police officer showed up,  
8           handed me a document. I didn't read that. Nope. I don't want to look  
9           at it. I'm not going to read it. Every service could be: Well, you  
10          didn't prove that I read it. The document was served, they were on  
11          notice.

12          Two brief points concerning Mr. Mahfouz. First, it's almost sad  
13          to say, Your Honour, but the opinion expressed by Mr. Mahfouz was  
14          something, well, very close to a joke. Your Honour will recall the clear  
15          evidence that Mariam El-Bassam and Maya Habli simply told Mr. Mahfouz  
16          what they wanted him to hear and he didn't question it. He simply took  
17          what Al Jadeed said at face value and did nothing, did nothing to confirm  
18          or investigate it. And as shown by the evidence in this case, any  
19          opinion that Mr. Mahfouz expressed on that basis was based on false,  
20          incomplete, and unverified information. In fact, it's not unreasonable  
21          to say that this was yet another false statement by Al Jadeed to the  
22          authorities of the government of Lebanon. False statements about what  
23          they'd actually done.

24          Second, in an attempt to find something in the record - something  
25          in the record - that says that Al Jadeed or Ms. Khayat relied on the fact

1 that other media organizations had published confidential information in  
2 the past without being prosecuted, they claim that Mr. Mahfouz testified  
3 that Al Jadeed told him that they had so relied. Again, Your Honour, not  
4 true.

5 Mr. Mahfouz said on -- in the trial transcript, day 7, pages 19  
6 to 20, he said that he himself, in looking at some of these matters, had  
7 considered and allegedly taken that into consideration. He did not say  
8 and it is not his evidence that Al Jadeed or Ms. Khayat had indicated or  
9 claimed that to him.

10 The Defence claim that there were not any problems -- couldn't  
11 have been any problems because no one complained. No one complained,  
12 they said, to the OTP, no one complained to the Victims and Witnesses  
13 Unit, no one sued Al Jadeed. [Redacted]

14 [Redacted]

15 [Redacted]

16 [Redacted].

17 In terms of Mr. Mahfouz again, he only testified that no one had  
18 complained to his agency as of the 8th of August, 2012. Well, the  
19 broadcasts weren't even finished yet. That was like the second or third  
20 day. All he said was as of that time no one had complained.

21 Some of the alleged confidential witnesses indicated that there  
22 was no point in filing a lawsuit against someone as big and powerful as  
23 Al Jadeed. What use would it be? It would only keep them under more  
24 attention, under more of a focus, under more of a spotlight, and there  
25 was little chance that anything would be done.



1           And Ms. de Brouwer reported and testified witness concerns are  
2           often underreported; her report, Exhibit 1 -- P1, footnote 5, and her  
3           testimony on trial day 5, page 25.

4           If I may go into private session very briefly, Your Honour.

5    [Private session]

6           [Redacted]

7           [Redacted]

8           [Redacted]

9           [Redacted]

10          [Redacted]

11          [Redacted]

12          [Redacted]

13          [Redacted]

14          [Redacted]

15          [Redacted]

16          [Redacted]

17          [Redacted]

18          [Redacted]

19          [Redacted]

20          [Redacted]

21          [Redacted]

22          [Redacted]

23          [Redacted]

24          [Redacted]

25          [Redacted]

1 [Open session]

2 THE REGISTRAR: We're in open session, Your Honour.

3 MR. SCOTT: [Redacted]

4 [Redacted]

5 [Redacted] Your Honour, we submit again that in keeping with an efficient  
6 trial process involving limited time, a fully sufficient mix of both  
7 direct and secondary evidence was presented to the Court to demonstrate  
8 the type of concerns and issues expressed.

9 Mens rea, Your Honour, concerning count 1. It's our position  
10 that the accused engaged in deliberate conduct which created a real risk  
11 of interference with the administration of justice and that is the  
12 mens rea that has been proven here: Deliberate conduct which created a  
13 real risk of interference with the administration of justice.

14 Your Honour, it is a standard principle, a person intends the  
15 foreseeable effects of his behaviour. You can't drive 80 miles an hour  
16 down a sidewalk and then say, well, I didn't intend to hurt anyone.  
17 Amicus also disagrees with the Defence that such principles or concepts  
18 as knew or should have known and wilful ignorance or blind indifference  
19 are limited to command responsibility cases. We believe those principles  
20 and concepts are a general application and applicable here.

21 Your Honour, Mr. Khan has been entirely unfair to Ms. de Brouwer.  
22 While it is true, and was never said otherwise, that she has never been  
23 to Lebanon and it was never represented that she had, she is very plainly  
24 an expert in victims and witness issues including as to confidentiality  
25 and protection and witness concerns and fears, especially in conflict and

1 post-conflict situations like those in Lebanon. And the Court so found  
2 in accepting her as an expert. She provided a framework and factors,  
3 concerns and experience common to the situation, which clearly applies to  
4 the situation in Lebanon. I am confident, Your Honour, that she did not  
5 have to connect all the dots for Your Honour's analysis and application  
6 of those factors to the Lebanese situation, and I'm sure that you and  
7 your staff are quite capable of doing that.

8 I don't have time to go through various parts of Ms. de Brouwer's  
9 report or testimony, but simply as a very few examples I refer to Court  
10 to her report, Exhibit P1, page 1; Exhibit 1, pages 14 to 15; and her  
11 testimony at trial day 5, page 28.

12 The Defence claim that the Witness Samra somehow was -- endorsed,  
13 if I can put it that way, the fact that Ms. El-Bassam was genuinely  
14 surprised when she saw her signature on the report of service. Now, of  
15 course, Your Honour, he could testify to how she appeared, he can testify  
16 to how she acted, but not whether her position was genuine or not. There  
17 is no way he could know. And Mr. Samra was clear that once Mariam  
18 El-Bassam admitted that it was, in fact, her signature, his work was  
19 done. It came up several times. The Defence followed-up with several  
20 questions and he said -- he continually said: You know, once I knew that  
21 it was her signature, my job was done. I didn't make any other  
22 inquiries. I didn't look into anything else. It did not matter to him  
23 whether El-Bassam appeared to be surprised or not.

24 Now, Your Honour, the Defence have repeatedly tried to make  
25 something sinister of the fact that Mr. Bourgon did not provide Ms. Habli

1 with a copy of the 14 August 2012 report of service when they requested  
2 it in early October 2013.

3 The facts in evidence are these: Mr. Bourgon explained to  
4 Ms. Habli that he had to speak with the Registrar to see if a copy of the  
5 document could be provided to another party. That is not an unusual  
6 situation at this court and other international tribunals. Third-party  
7 providers, government providers provide documents under conditions.  
8 Mr. Bourgon did not know whether he was able to provide the document to  
9 another party and said he would have to check with the Registrar.

10 While that process was going on, by three weeks later,  
11 Ms. El-Bassam, excuse me, and Ms. Habli, had gone to the court and  
12 admitted that, in fact, they had seen the document and admitted that it  
13 was Ms. El-Bassam's signature. At that point it was an entirely moot  
14 point. They had seen the report. They could have gone -- and by the  
15 way, they could have gone any time to the court and checked out the  
16 report of service. But by that time they had seen it, they had it, and  
17 it was a moot point.

18 And I would just add to that, Your Honour, wouldn't it have been  
19 more proper and far more responsible if Ms. El-Bassam had made an effort  
20 to go to the courthouse and look at the document and verify her signature  
21 before she filed a completely unfounded forgery complaint?

22 Now think of it, Your Honour, think of it, someone on behalf of  
23 Al Jadeed, presumably Ms. Habli, but someone had the time, had the time  
24 to go to court and file a forgery complaint, but, figuratively speaking,  
25 apparently didn't have the time to walk across the hall and check out the

1 court copy of the report of service. Shoot first, ask questions later.  
2 I'll file a forgery complaint. I'm not going to bother checking the  
3 report of service first.

4 The dates on which the Al Jadeed reports were still online.

5 Your Honour, the Defence says, Mr. Khan says, without foundation,  
6 that the table showing the dates to which the Tribunal reports were still  
7 available on various public platforms, Exhibit P00159, is somehow  
8 unreliable. Far from it.

9 Mr. Comeau plainly explained how the monitoring was done and how  
10 the document was prepared using an assigned Arabic-speaking person who  
11 reported or responded to Mr. Comeau. Your Honour, that's exactly how you  
12 would expect this to be done. You would assign someone to look at what's  
13 online, an Arabic speaker in this situation, and make a record of it, and  
14 this person was acting under Mr. Comeau's supervision.

15 And in fact, again, there is no attack on the information itself.  
16 There is no suggestion that the dates aren't correct. There is no  
17 allegation that Mr. Comeau somehow altered the document or reported  
18 different information. None of that. He testified on the first day of  
19 trial, page 44:

20 "... any continued -- an Arabic language assistant was assigned  
21 to do that and that assistant was to respond directly to me."

22 Trial day 1, line 48:

23 "As I had previously stated when the OTP made a decision to  
24 monitor these publications by Al Jadeed TV, a language assistant was  
25 assigned to do that monitoring, who in turn responded to me. And that

1 language assistant in turn prepared annex A."

2 There is no mystery, Your Honour.

3 Consider the situation if a number of people had involved --  
4 let's just say different language -- different Arabic speaker had  
5 monitored and entered that information on different days. Mr. Khan's  
6 apparent position is: Every one of those persons would have to come in  
7 and testify. That's not the case, Your Honour. And that's not how it's  
8 done.

9 On corporate criminal liability, Your Honour, the Tadic Chamber  
10 judgment makes it quite clear that international law often looks to  
11 national law but that does not mean that it has "to deal with contempt or  
12 conduct interfering with administration in every situation the same as  
13 those possessed by domestic courts, because international courts -- its  
14 jurisdiction as an international court must take into account its  
15 different setting within the basic structure of the international  
16 community."

17 This Tribunal can and has departed from Lebanese law when it has  
18 found it's necessary or appropriate to do so. This was case with the  
19 definition of terrorism under Lebanese law. The STL Appeals Chamber  
20 found that there were some differences between the domestic and various  
21 international definitions of terrorism. They then "concluded that one  
22 element of the Lebanese domestic crime of terrorism - namely, the  
23 objective element of the means used to perpetrate the terrorist act -  
24 should be interpreted by this Tribunal in a way that reflects the legal  
25 developments in the 68 years since the Lebanese Criminal Code was

1           adopted." And that is in the Interlocutory Decision on the Applicable  
2           Law: Terrorism, conspiracy, homicide, perpetration, et cetera, on the  
3           16th of February, 2011, paragraph 145. The Appeals Chamber decided to  
4           take a broader interpretation than the Lebanese courts in light of  
5           international law binding on Lebanon.

6                     I'd just mentioned in terms of the elements of the corporate  
7           liability Judge Baragwanath set out the elements in his 31 January 2014  
8           decision. Concerning count 1, those are at paragraph 40; and concerning  
9           count 2, they are at paragraph 48.

10                    My last couple of comments, Your Honour. Mr. Khan took pains to  
11           talk yesterday how anxious Al Jadeed was to cooperate with the Tribunal  
12           and facilitate the Tribunal's work. Your Honour, if Al Jadeed was so  
13           anxious and interested in cooperating, why did it totally dismiss the  
14           Tribunal's Notice of Cease and Desist, stating that the Tribunal's  
15           decisions - the Tribunal's decisions - "are not legally binding for  
16           Lebanese media and that the sole reference for them is Lebanese law."

17                    If they were so interested in cooperating, why didn't they obtain  
18           a copy of the 25 May 2012 order specifically cited along with other  
19           orders in the Notice of Cease and Desist which they clearly did receive.  
20           There is no dispute about that. If I was served -- well, forget that,  
21           most people, if they were served with a legal document referring to other  
22           court orders, one would have expected Ms. Habli to make sure that she got  
23           those referenced court orders, but, at least as far as we know, that  
24           didn't happen.

25                    If they were so interested in cooperating, Your Honour, why did

1           they not, at least after October 2013, take the Tribunal broadcast off of  
2           their YouTube channel? Even after October, even after the 23rd of  
3           October. They were still on there until at least January 2014. If they  
4           were so interested in cooperating, why didn't they take them off then?

5           Your Honour, I would suggest to Your Honour that the prevailing  
6           problem, the prevailing theme that runs through this case and runs  
7           through Al Jadeed's conduct and Ms. Khayat's conduct is this: When asked  
8           by the Amicus during her interview if she thought about the potential  
9           impact of the broadcast on witnesses, she was asked about that: Well,  
10          what do you think, Ms. Khayat, did you consider the potential impact on  
11          witnesses? She said at Exhibit P00173 at page 94: This is the problem  
12          with the Tribunal, there are leaks inside the Tribunal of names, she  
13          asserts, regarding witnesses. This is not our problem. This is not our  
14          problem.

15          It's not our problem if we broadcast to the world unsupported  
16          claims such as that confidential witness information was leaked from  
17          inside the Tribunal. It's not our problem if the people who we talk to  
18          don't assume that what they say will be broadcast to the world. It's not  
19          our problem if the people we talk to can't figure out that they are being  
20          filmed or recorded. It's not our problem if you trusted us. Shame on  
21          you. You were foolish to do so. And if you got hurt by trusting us,  
22          that's your problem. It's not our problem. It's not our problem if we  
23          expose confidential witnesses and put them at risk.

24          It's not our problem if important legal documents and court  
25          orders are delivered to us and we ignore them and can't be bothered to



1 deal with them. It's not our problem if we don't obtain and review court  
2 orders expressly brought to our attention such as the 25 May 2012 order  
3 in the Ayyash case. It's not our problem if when we went to the court  
4 house to file our unfounded forgery complaint, we didn't bother in the  
5 courthouse to first look at the report of service and check the  
6 signature. It's not our problem if we shoot first, ask questions later.  
7 It's not our problem that even after the 23rd of October, 2013, we did  
8 not remove the Tribunal broadcasts from our YouTube channel.

9 That, Your Honour, is the theme that runs through this case and  
10 the conduct: It's not our problem. Well, Your Honour, the Amicus  
11 submits that it was and is their problem. Thank you.

12 MR. KHAN: Well, Your Honour --

13 JUDGE LETTIERI: Just a moment. Why 23 October 2013?

14 MR. SCOTT: Your Honour, that is the date -- we don't concede  
15 that was the first notice, but clearly even by the Defence case, they  
16 knew of the 10 August 2012 order on that date. They have seen the  
17 service that's signed by Ms. Habli -- I mean Ms. El-Bassam.

18 JUDGE LETTIERI: The interview was 2 October.

19 MR. SCOTT: The interview was on the 2nd of October.

20 JUDGE LETTIERI: 2nd of October.

21 MR. SCOTT: You're absolutely right, Your Honour. Actually that  
22 was the first time, on 2nd of October, 2013 --

23 JUDGE LETTIERI: Yes, I didn't understand the 23 of October.

24 MR. SCOTT: You're absolutely right, Your Honour. Thank you.

25 JUDGE LETTIERI: Thank you.

1 MR. KHAN: Your Honour, there is also much the Defence doesn't  
2 understand in the Prosecution's case and not for want of trying, but  
3 because it doesn't add up.

4 Your Honour, I should say at the outset that as counsel we have a  
5 job to do, and I have no personal grudge or animosity to my learned  
6 friend Mr. Kenneth Scott, who I have had the pleasure of working with in  
7 the Yugoslav Tribunal. But, of course, we all have a job to do. And our  
8 job as officers of the court, our job on this side is to help cast light  
9 on what we say is a very weak and ill-considered case.

10 And, Your Honour, my learned friend, very decent man though he  
11 is, has been appointed the Amicus Prosecutor in this case, and it is his  
12 responsibility to have properly investigated the case and to have  
13 properly prosecuted it, and we take issue with the manner of  
14 investigation and the scanty quality of the evidence that he presents in  
15 what we have described as his bid to prove the case beyond reasonable  
16 doubt.

17 Your Honour, my learned friend ended with a litany of comments.  
18 It's not a problem this, it's not a problem that. I think the record  
19 should show that this was not a quotation taken from Ms. Karma Khayat,  
20 but it is a dramatic device, we say, dramatic licence that my learned  
21 friend has adopted to press home a point. Your Honour, whether the point  
22 was one worth pressing home is a matter for Your Honour to consider.

23 Your Honour, my learned friend stated at the outset that there  
24 was no attempt at reversing the burden of proof, and, Your Honour, we've  
25 put what is in our final brief, we rely upon that. But just one example,

1 the testimony of his own witness Mr. Lodge was that he had no idea - this  
2 is not a rhetorical flourish, this is the quote of Mr. Lodge, his  
3 witness, the Amicus's witness - he had no idea if the e-mail that he sent  
4 into cyberspace was received by Ms. Karma Khayat. And instead of  
5 addressing that issue in the written submissions, the Prosecutor in his  
6 written filing states that the Defence have not proved it was not  
7 received. That language, "the Defence has not proved it was not  
8 received" is a reversal of the burden of proof. And every fact, we made  
9 it clear in writing when we agreed many, many facts, every fact except  
10 those that are explicitly agreed to in writing by the Defence are to be  
11 proved by the Prosecutor beyond reasonable doubt. And we gave him notice  
12 of that and we say he has failed to discharge that burden.

13 So, Your Honour, whilst there may be considerable rhetoric in  
14 this case, Your Honour will not be swayed by it but will be anxious to  
15 consider the substance of the arguments presented.

16 My learned friend in his brief and in his submissions, we say,  
17 mischaracterizes repeatedly, and he did so today, we say, regarding Rana  
18 Sabbagh. Now, Rana Sabbagh did not state, contrary to the Amicus  
19 submissions, that hidden cameras may only be used to prove a culprit's  
20 wrong-doing and that a journalist must obtain the permission of the  
21 source to use a recording. Indeed, Ms. Sabbagh, in response to questions  
22 put by my learned friend Mr. Dixon, explained that it is sometimes  
23 necessary to use cameras, even hidden cameras, to prove that you have  
24 indeed spoken to certain individuals for data verification purposes.  
25 That's transcript 11, page 27, lines 15 to 19.

1           And, Your Honour, none of the citations provided by the Amicus  
2           today in his submissions or in the filing support the contention that  
3           permission must be used to use hidden-camera film, and certainly not in  
4           circumstances where the individual's name is not used and features are  
5           pixilated.

6           Standing back for a moment, on every street corner in Western  
7           Europe at the moment we see CCTV cameras, and there has been  
8           jurisprudence from the European Court of Human Rights about photography  
9           in public places. None of these state that somehow permission is needed.  
10          And, Your Honour, in any event, you will, no doubt, in due course look at  
11          the videos. Indeed, in one memorable extract, the individual spoken to  
12          is looking directly at the camera phone.

13          But, Your Honour, be that as it may, Al Jadeed is not on trial  
14          for an award. It's not contesting an award at the Cannes Film Festival.  
15          Whether it's best practice, whether Mr. Scott would have done things  
16          differently is really tangential to the main issue whether or not there  
17          was criminal intent on the part of Ms. Karma Khayat and Al Jadeed. But  
18          we say that that has not been shown.

19          Your Honour, my learned friend today for the first time refers to  
20          the Margetic judgment and states that on that case there was an order  
21          that a decision be given by post and by e-mail, and it was -- the  
22          Tribunal in that case said it had been properly delivered. Well, Your  
23          Honour, everything depends upon the facts. There is no legal principle  
24          that can be discerned from a factual case. Of course, this was not the  
25          personal e-mail of Karma Khayat, this is the Al Jadeed corporate e-mail.

1           There was nothing sent by post.

2                   And really the difficulty -- and I tried my best to allude to  
3 this. Part of the difficulty of this, not only does Mr. Lodge concede he  
4 has no idea whether or not it was received and how on earth the Amicus  
5 Prosecutor, despite his witness who sent the e-mail conceding he had no  
6 idea if it was received, how they can maintain it was delivered, the  
7 learned Single Judge, Judge Fransen, in his order of the 10th of August  
8 stated in paragraph 14, indeed he required, that the principals,  
9 employees, agents, affiliates of Al Jadeed TV be informed of this order  
10 and its annex. And at page 4 there was an order to the Registry to order  
11 the Registrar to take measures necessary to ensure their implementation.

12                   Well, Your Honour, it's an important order. I mean, it's so  
13 important -- it's not a circular that's sent in the post for  
14 informational purposes. It's not an outreach activity. It's a court  
15 order upon which the Amicus says criminal responsibility rests. Why  
16 wasn't the order of the learned Judge given proper effect to? You send  
17 it into cyberspace with no idea, in their words, as to receipt. Why not  
18 serve it properly, either by proper channels, we say, through the  
19 assistance of the Lebanese authorities, or even - for the reasons we've  
20 described in our final brief - improperly, direct service by a court  
21 member of staff. And we do, for the reasons detailed in our brief, say  
22 that's improper because the whole statutory regime that we have before us  
23 doesn't directly empower the Registrar to effect personal service, but  
24 the whole operation and apparatus of the STL Rules of Procedure, of  
25 Evidence, is predicated upon cooperation with the Lebanese authorities.

1                   Now, Your Honour, in the interview with Stephane Bourgon, the  
2                   Amicus investigator present said the e-mail hadn't been sent. Again,  
3                   that's skirted over by the Prosecution as what we say is an inconvenient  
4                   truth that gets in the way of a good story and prejudices the Defence.

5                   Now, Your Honour, my learned friend has stated the Defence  
6                   witness, a senior gentleman in years and in standing, Mr. Mahfouz, is a  
7                   joke. His evidence was a joke. Your Honour, that's my learned friend's  
8                   characterization. We're not so thin-skinned to take it personally. But  
9                   Your Honour must assess what weight to give this individual, being aware  
10                  of the fact that we're not some colonial court sitting away, looking down  
11                  on the natives, as happened in the dark periods of colonial history. But  
12                  this individual, Mr. Mahfouz, was appointed by the Lebanese Parliament.

13                  So my learned friend, foreign to Lebanon, may cast this  
14                  individual as a joke, but he's a state official sufficiently senior that  
15                  even in this present case the prime minister is directly communicating  
16                  with him and his National Audio-Video Media Council.

17                  Your Honour, my learned friend said yesterday, and it's one of  
18                  his trends, that somehow Al Jadeed was after a scoop, as if "scoop" is a  
19                  dirty word. Your Honour, it's not a dirty word. Bob Woodward and Carl  
20                  Bernstein had perhaps the biggest scoop of the last century when they  
21                  exposed the Watergate scandal. A journalist that uncovered the truth.  
22                  That's why the European Court of Human Rights, and International, gives  
23                  them a margin of difference as watchdogs of democracy.

24                  And, Your Honour, I started by speaking truth to power. But,  
25                  [Redacted]

1 [Redacted]. Your Honour, again,  
2 skirting over the fact nobody complained, uncontroverted, to the National  
3 Audio-Video Media Council. Nobody spontaneously contacted -- no subject  
4 of the broadcasts, no members of the wider public of Lebanon contacted  
5 the Victims and Witness Unit, the Office of the Prosecutor, the public  
6 prosecutor, silence, until the OTP were contacting the individuals.

7 But, Your Honour, Mr. Comeau is singularly unreliable. He  
8 couldn't remember the names. [Redacted]

9 [Redacted]

10 [Redacted]

11 [Redacted]

12 [Redacted]

13 [Redacted].

14 But, Your Honour, there is also independent evidence before the  
15 Court as to how unreliable he is, because nothing should really focus the  
16 mind more, and this is a police officer of 30 years standing in Canada  
17 who had worked in the IIIC and the STL, under oath, so the highest  
18 standard one would expect of accuracy and diligence - and he stated over  
19 a stream of questions that he had spoken the night before with the  
20 facilitation of the Prosecution to Stephane Bourgon. And indeed, Your  
21 Honour, he said: I spoke to Stephane. We had a break. It wasn't a  
22 momentary slip, and it's important, it wasn't a momentary slip. We can  
23 all make a momentary slip. We had a break. One wonders if there was tea  
24 or coffee in the break. Certainly the Defence took the opportunity to  
25 have a sip of tea. He came back. And again he stated actually when the

1 phone was rung, he said: Hello, Stephane. He said: Goodbye, Stephane.  
2 And only when I confronted him directly, that Mr. Ken Scott has just told  
3 us in your absence the conversation was not with Stephane but with  
4 Bernard Gagnon, did he have a volte-face.

5 Your Honour, a singularly unreliable witness.

6 Your Honour, Ms. de Brouwer. We were not unkind. And this  
7 courtroom is about getting to the truth and testing evidence, and it was  
8 a witness that the Prosecutor was on notice that we stated we had  
9 concerns about. We stated she didn't qualify as an expert. And despite  
10 that, he insisted on calling this individual to prove his case. Little  
11 wonder, then, that the Defence tested the evidence. That's what we're  
12 here to do.

13 But, Your Honour, unreliable. Leaving aside for the moment the  
14 fact she never went to Lebanon, knew nothing about the case, even her  
15 academic analysis was really terrible. She got the facts of the Kenya  
16 case wrong that she cited. We cross-examined her on that. She got the  
17 facts of the Limaj case wrong. She got the facts of the Haradinaj case  
18 wrong. She wasn't aware of the Appeals Chamber jurisprudence of the  
19 Haradinaj case, which is years old now, well known, that controverted her  
20 claim in her report. She clung rigidly to that report that she must have  
21 so meticulously prepared because it was, after all, the first time any  
22 court of law had accepted her as an expert. And who is she?

23 Your Honour, she wrote a book -- and her expertise really is  
24 about sexual violence, and that's what her CV discloses, but, Your Honour  
25 she wrote a book, "Men who killed me," in which she showed photographs of



1 a rape victims of a genocide in Rwanda. That is a crime of universal  
2 jurisdiction for which a statute of limitations does not apply and in  
3 which those perpetrators remain liable under customary international law  
4 and the Genocide Convention.

5 She must by any -- those individuals whose photographs are in  
6 Assistant Professor de Brouwer's book -- she is by any stretch of the  
7 imagination a potential witness to part of a genocide case. And yet she  
8 comes as an expert for the Prosecution, and Al Jadeed who pixilates  
9 faces, doesn't give their names, is an accused. And their expert, of  
10 course, not only puts the picture of the rape victims of a terrible  
11 genocide but states that they live in very close proximity to the  
12 perpetrators. Almost a roadmap, one would think, to those who would want  
13 to cause those brave women, survivors of the genocide, harm.

14 So, Your Honour, not joined up. The dots are not joined up by  
15 the Prosecution. There is simply a massive question mark with a dot on  
16 the bottom and that is symptomatic of the Prosecution's case.

17 Your Honour, Judge Samra is an experienced judge. The  
18 Prosecution, of course, in a bid to denigrate the Defence evidence,  
19 states that little reliance should be given upon this individual. But,  
20 Your Honours, judges - it's commonly accepted, and there is case law to  
21 support it - do have a capacity and a duty to assess demeanour of  
22 witnesses. And this judge stated that it was his belief that Mariam  
23 El-Bassam and Ms. Habli were honest when they expressed surprise.

24 And contrary to what my learned friend states, they never said  
25 they had seen the 10th of August order. Now, that's made up. That's

1 injected. It's a convenient little gap that's filled by rhetoric. What  
2 they stated is -- she stated she had signed the notice of service, which  
3 had not been left with her but taken away by the officer. And that  
4 confusion is not -- is unfair, really, if one is being objective, to put  
5 that at the feet of Al Jadeed when the Lebanese law that we have cited  
6 states that the notice of service should have been left with the people  
7 served, not taken away as if it's something to be hidden and all the rest  
8 of it.

9 Your Honour, I'm not going to go into this annex A to  
10 Mr. Comeau's statement, Prosecution Exhibit 59. It speaks for itself.  
11 The Prosecution did not produce the person who prepared it. They knew it  
12 was a fact in issue. Your Honour had alerted the Prosecution from the  
13 Amicus bar table motion that further explanation at trial by a person who  
14 can speak to the document's content is appropriate to inform my decision  
15 on their reliability and avoid potentially unfair prejudice in your 9th  
16 of April decision.

17 And, Your Honour, this general issue of documents being online  
18 was a fact in issue for the Prosecution to prove. We don't know and we  
19 hadn't been disclosed the circumstances upon which that document had been  
20 prepared. We were not told the identity of the individual who prepared  
21 it until a response to Your Honour's question. We didn't know if it's  
22 direct evidence from her, if it was on a computer, if she heard it from a  
23 third party. We are not able to test it because none of that was  
24 disclosed, and yet somehow it's wrong of us to say, well, you haven't  
25 proved, you haven't discharged your burden - not ours, your burden - of

1 proving beyond reasonable doubt when various items were on the internet  
2 and when they were not.

3 Now, Your Honour, that's really unfair.

4 No comment, of course, about why the STL didn't take down or  
5 complain to YouTube and all the rest for these items to be taken down if  
6 they were really genuinely viewed as being so harmful.

7 Your Honour, the Amicus Prosecutor opened this trial with the  
8 words that this case, and I quote, "poses no threat to free speech," free  
9 speech, page 15 of my learned friend's opening of the 16th of April,  
10 2015. Your Honour, yesterday for the first time you heard what my  
11 learned friend proposes for sentence. And not only does he ask Your  
12 Honour to incarcerate this young lady to my left, 29 years of age at the  
13 time, of unblemished character, to 12 --

14 JUDGE LETTIERI: I think that the Prosecutor mistook, because  
15 that was not the proper stage.

16 MR. KHAN: Indeed. It's not the proper stage, Your Honour.

17 JUDGE LETTIERI: So it's like there is a different stage. Only  
18 in case of conviction, there is a hearing dedicated to that --

19 MR. KHAN: Indeed. Indeed, Your Honour.

20 JUDGE LETTIERI: -- so don't take into account what was said  
21 about yesterday.

22 MR. KHAN: I'm grateful, Your Honour, but I do, with your leave,  
23 wish to put this point for Your Honour's attention. My learned friend  
24 has said we shoot and ask questions later. The Prosecution shoot too  
25 early to hit the innocent targets. Because, Your Honour, leaving aside

1 the fact that there is no mention of any this in the final brief, leaving  
2 aside that there is no analysis of case law in the final brief or in the  
3 submissions as to why a 200.000 euros fine for Ms. -- Al Jadeed is  
4 appropriate, leaving aside the provisions of Article 60 bis(J) and the  
5 maximum of 100.000 euros, where on earth did the Prosecutor find the  
6 gall, we say, to find the legal basis to assert that a 6 million euro  
7 sentence should be appropriate? Absolutely disproportionate and  
8 perverse, and it's symptomatic, really -- even though it's not the right  
9 stage, it's symptomatic of a bid, come hell or high water, to get a  
10 conviction and to be exceptionally harsh and what we say is unfair to  
11 Ms. Karma Khayat and Al Jadeed.

12 Because, Your Honour, there has been no attempt to make a request  
13 for cooperation with the Lebanese authorities as to the financial means  
14 of Al Jadeed. What was the Prosecutor thinking, that in the peaceful,  
15 stable, prosperous land of Lebanon that is straddled by those well-known  
16 and booming economies of Syria and Iraq, that Al Jadeed would be turning  
17 away business and its coffers would be filled? I said in my opening  
18 Al Jadeed is not a cash cow. Did he make those inquiries in the  
19 interviews he had with staff members? Has he been following the press  
20 reports in Lebanon that Al Jadeed has been laying off staff since this  
21 case started?

22 He makes an assessment somehow because it's Lebanese and Arab,  
23 maybe their coffers are full. It's an absolutely preposterous and unfair  
24 and very unfortunate state of affairs, we say.

25 Your Honour, Al Jadeed and the closing of Al Jadeed, bringing it

1 to financial ruin, should not be in -- the feather in a cap of any  
2 prosecutor. It is really like deliberately sinking a life raft in an  
3 ocean full of sharks and expecting those onboard to swim, survive the  
4 shark attacks, survive the waves, survive the weather, and swim to safe  
5 land.

6 In a part of the world where freedom of the speech is the  
7 exception and not the norm, a TV station which, on the evidence before  
8 you, does attempt, sincerely, to question authority for the good of the  
9 public and expose stories in the public interest, to be closed down in  
10 this 6 million euro nonsense, we say, is absolutely perverse.

11 Your Honour, I'm not going to deal just yet with corporate  
12 liability because we do note that after the break Your Honour has certain  
13 questions, and my learned friend Mr. Dixon will address you on that  
14 important aspect, so we don't need to address issues twice.

15 Just one matter, if I may, before we close. My learned friend  
16 has sought to draw, what we say, is a false distinction between the CBC  
17 and Figaro leaks and Haqiqa leaks and the Al Jadeed broadcast as subject  
18 to the present case. And, Your Honour, we do say that it is relevant to  
19 an assessment of mens rea because what was done by Al Jadeed in these  
20 broadcasts is really nothing different to what was done in its Akiki  
21 Leaks broadcast, without the threat of Article 60 bis, or was done by  
22 CBC. And my learned friend says no, there is a difference in categories  
23 of confidential information; namely, witnesses and other material.

24 Well, Your Honour, that's not correct. In fact, in the CBC  
25 broadcast, they broadcast on TV, a network, confidential document from

1 the court, they said, in which phone numbers of people were displayed.  
2 And we do know -- I mean, what could be more identifiable than that? You  
3 can ring the numbers that are displayed and speak to the people. You can  
4 monitor the numbers. And yet there was no threat of -- never mind  
5 prosecution, I'm not talking about prosecution. There was no threat of  
6 criminal sanctions against Canadian Broadcasting Corporation, nor Der  
7 Spiegel, nor Figaro, nor Al Jadeed previously, and that is relevant to  
8 the assessment of mens rea in the case before you.

9 Your Honour, we do say, we end as we started, the best way of  
10 inspiring confidence in this Tribunal is to follow the law and to be --  
11 only convict if you are satisfied that you are sure that criminal intent  
12 existed and that the actus reus was committed. If there is any  
13 reasonable doubt, Ms. Karma Khayat and Al Jadeed deserve and are entitled  
14 to Your Honour's decision to acquit. And, Your Honour, perhaps, we say,  
15 no more eloquent testimony could be made for confidence in this Tribunal  
16 that people can walk in innocent and walk out.

17 Your Honour, my final point, my very last point really is the  
18 most important: Afif Chouaib, that one witness debunks and destroys the  
19 Prosecution's case. All facts are not equal before the law. Afif  
20 Chouaib is one of those 11 individuals who were subject to the broadcast,  
21 and Your Honour, Afif Chouaib gave evidence in public session. His face  
22 was shown, his voice was shown, his job was given, his personal details  
23 were given, and all of that in public. And Your Honour even granted the  
24 Prosecutor, if you'll remember, when Afif Chouaib was in court, whether  
25 or not he wished to reconsider, make an application for reconsideration

1 of Your Honour's previous decision, and the Prosecutor didn't.

2 So, Your Honour, if there was a breach and a violation of the  
3 10th of August order, then we committed it in this very trial by  
4 broadcasting the testimony of Afif Chouaib. And if we were not  
5 committing such a criminal breach of the 10th of August letter -- order  
6 of Judge Fransen, neither was Al Jadeed.

7 And most importantly, Afif Chouaib, far from being interfered  
8 with, which is not charged, far from having confidence in the Tribunal  
9 undermined, he stated he'd even be willing to testify in the Ayyash case  
10 if that was required. And the Prosecutor has not given any unredacted  
11 list that was annexed to the 10th of August order or the original Trial  
12 Chamber's -- Single Judge's order showing that the 11 individuals subject  
13 to the broadcast were indeed subjects to a protective order. We could  
14 have been given a redacted list. We were not. Instead purported  
15 witnesses.

16 Your Honour, the Prosecutor has the burden of proving the case  
17 beyond a reasonable doubt. We say he has manifestly, on any fair  
18 assessment, failed to do that, and we ask Your Honour to most carefully  
19 consider the evidence. And after doing that, we are convinced that Your  
20 Honour will come to the right decision which we submit is an acquittal on  
21 both accounts for Al Jadeed and Ms. Karma Khayat.

22 Your Honour, that's all I have to say at this stage. Mr. Dixon  
23 will address corporate liability after the break with your leave. Thank  
24 you so much.

25 JUDGE LETTIERI: You can go on about corporate liability.

1 MR. KHAN: Your Honour, we can do it now or if you wish to have  
2 it as -- because Your Honour has given some questions and our  
3 understanding was --

4 JUDGE LETTIERI: Yes, but as you know I formulated 10  
5 questions --

6 MR. KHAN: Yes, indeed.

7 JUDGE LETTIERI: -- five days ago --

8 MR. KHAN: Yes, indeed.

9 JUDGE LETTIERI: -- both of you answered as best as you could so  
10 that I think it isn't necessary now to repeat these questions, because  
11 you -- or after the final briefs, both of you already addressed these  
12 questions in your closing argument --

13 MR. KHAN: Yes.

14 JUDGE LETTIERI: -- and now so that --

15 MR. KHAN: Well, Your Honour, I think that's very fair. In that  
16 case, with your leave, if Mr. Dixon can just have a few minutes, he will  
17 address the one area where I didn't go into detail, just so that you've  
18 got the answer to that. If we're not dealing with it after break, it's  
19 better we deal with it now, Your Honour.

20 JUDGE LETTIERI: We don't have a break because there are --

21 MR. KHAN: Okay, I misunderstood.

22 JUDGE LETTIERI: Because I hope to go on without a break  
23 because --

24 MR. KHAN: Right. Okay. So, Your Honour, if that's the case,  
25 with your leave, the questions could be answered now and then we end with



1 Ms. Karma Khayat's short address to Your Honour.

2 JUDGE LETTIERI: If I have understood, there is -- the corporate  
3 liability has not been covered by you, by your speech, and Mr. Dixon will  
4 deal with this matter just now.

5 About the question, I repeat that I already formulated 10  
6 questions --

7 MR. KHAN: Yes.

8 JUDGE LETTIERI: You answered in your closing argument and now in  
9 this hearing, so that it's useless to ...

10 MR. KHAN: Right. Your Honour, that's fair. I understand that  
11 now. My previous understanding was that there was going to be a separate  
12 stage in which the questions would be answered, but, Your Honour, I don't  
13 want to belabour the point. With your leave, if Mr. Dixon then can just  
14 deal with that. Is that all right? Thank you, Your Honour.

15 JUDGE LETTIERI: It would have been a separate stage if you  
16 didn't address these questions, but you already answered. If I'm not  
17 satisfied or not is another --

18 MR. KHAN: Indeed.

19 JUDGE LETTIERI: -- problem.

20 MR. DIXON: Thank you, Your Honour. And I will be brief, because  
21 we do rest on our brief, but I do wish to respond to one or two things  
22 Mr. Scott has said and hopefully satisfy Your Honour of the clarity of  
23 our answers.

24 Our main point, Your Honour, is that this is the first time that  
25 there will be a judgment on corporate liability. It's essential that we

1 get the law right. And with the greatest respect, no offence intended,  
2 Mr. Scott has today trampled all over international law on this point.

3 We say the only way Your Honour can determine the elements is by  
4 going to general principles of law. You can't do it, we say, under  
5 customary law, Your Honour, because you would have to look at state  
6 practice, not about what states were doing within their jurisdiction and  
7 how they applied their own laws but what they were saying about practice  
8 at the international level. That would require conferences that states  
9 have attended to show what their practice was about what should happen  
10 before an international court. There is no such practice.

11 So Your Honour has to fall back on general principles of law, a  
12 controversial area, one that's not very often used, but that's the only  
13 place to go. There is no, we say, international authority that Your  
14 Honour can rely upon. Mr. Scott mentioned yesterday that, well, elements  
15 can always be developed. He mentioned joint criminal enterprise, common  
16 purpose. He will know as well as anyone that those doctrines were all  
17 based on precedent from the Second World War trials. They were based on  
18 international precedent. They were not based on general principles of  
19 law drawing from the majority, if not all, national jurisdictions.

20 So it's not good enough, we say, as a matter of law to cite 14  
21 countries or a few more. You've got to, as Tadic said, as the  
22 International Court of Justice has said in cases in like the Corfu  
23 Channel case, you have to look at every single national jurisdiction and  
24 discern the national principle from that.

25 Now, irrespective -- Your Honour, we say irrespective of nullum

1           crimen, Mr. Scott hasn't established what the elements of the offence are  
2           as a general principle of law. You can't simply say: Oh, we can rely  
3           upon this, and then pay lip service to it. That is to disrespect the  
4           authority of the law. You have to do it properly, as they have done it  
5           in many ICJ cases, as they have done it before other international  
6           criminal courts.

7                     He says: Oh, well, in response to that, it's obvious. The  
8           elements are all there and no one would dispute that you have to have the  
9           authority to act on behalf of the company, for example. Well, once  
10          again, Your Honour, we say very firmly that that's simply not good  
11          enough. You can't just assert it as though he cited all of those  
12          national jurisdictions.

13                    But more importantly, he himself has said there are  
14          contradictions, and this is in Your Honour's question, there are  
15          contradictions between national jurisdictions, so how can you discern a  
16          national principle to the international stage when there are divergences.  
17          And there -- those divergences, in a number of areas, just very briefly:  
18          Do you have to identify a person who is guilty? That's one issue. How  
19          senior does the person need to be? Does the person need to have a  
20          specific proxy, especially if they're more junior? There is a whole  
21          other element which has been overlooked which appears in some  
22          jurisdictions of the organizational capacity of the corporation. Do you  
23          have to show a lack of due diligence; for example, in Italy that's one of  
24          the requirements which has to be proven. Those are just some of the  
25          examples.

1           He also refers to Judge Baragwanath's elements from his decision  
2           as a way of trying to say: Look, it's all been settled. But Your Honour  
3           will note if you go to those elements, element 6 of Judge Baragwanath's  
4           elements is that the Prosecution has to prove that there was an interest  
5           to the company. They were motivated by that interest. Compare that,  
6           Your Honour, to Mr. Scott's six elements, that element is not there.

7           So even in what he's saying should be relied on from Judge  
8           Baragwanath, there is a contradiction to what he says the elements are in  
9           this case. And that just shows how much of a mess this is and that it's  
10          impossible to find that the Prosecutor has proved the elements of the  
11          offence beyond reasonable doubt, let alone - we say - let alone that  
12          those elements existed at the time of the offence and were accessible and  
13          foreseeable. So that's a separate argument, the nullum crimen argument  
14          is a separate one. He has got to first establish what the elements --  
15          elements are as a matter of international law, which he hasn't done.  
16          It's not for Judge Baragwanath to say that when he issues the indictment,  
17          it's the Prosecution's onus. Judge Baragwanath was also acting as the  
18          Prosecutor as he accepted them.

19          But it's now for Mr. Scott to prove those elements to you. He's  
20          not done that. But he's certainly not established that at the time these  
21          offences were allegedly committed, that these elements were all  
22          absolutely clear. They were specific and clear and any person coming to  
23          the issue would have known what they are. There is no customary basis  
24          for that. It can only come from the general principles of law which we  
25          say has not even nearly been established.

1           Your Honour, the last point I want to make is that the reason why  
2           the elements are also important is not only for establishing what the  
3           Prosecution case is, but it's also so that the Defence know what defences  
4           they could bring. It's no use for Mr. Scott to start trying to build up  
5           the elements now at the end of it case. That should have been  
6           established right at the beginning through a preliminary hearing and a  
7           ruling from the Appeals Chamber, if necessary, so the Defence was on  
8           notice and would then know what defences to bring. If due diligence is a  
9           requirement, well, then it might well have been that that issue would  
10          have had to have been addressed. If motivation or interest was a  
11          requirement, it would have had to have been addressed during the case.

12           Mentioning the Appeals Chamber, it is essential, Your Honour,  
13          that the terrorism jurisprudential is distinguished. Mr. Scott can't  
14          rely upon that properly because that case had to do with the primary, not  
15          the incidental, the primary jurisdiction of this court where Lebanese law  
16          does apply and only if uncertain do you bring in international law.

17           As Your Honour has said in Your Honour's questions, this is a  
18          matter of international criminal law. So you can't start with Lebanon.  
19          You have to start with has it been established under international law,  
20          and Mr. Scott all along has claimed that. He has never, ever said that:  
21          I rely upon Lebanese law alone. He's said this is a matter of general  
22          principle. So the terrorism jurisprudence is totally irrelevant to Your  
23          Honour's assessment.

24           Those are our submissions on the law. We stress again, very  
25          important that the law is set out correctly.

1           But our further submission, as Your Honour knows, is that even on  
2           Mr. Scott's elements, as he puts them, muddled as they are, he has not  
3           proved his case beyond reasonable doubt. And knowing what the views of  
4           the Appeals Chamber are on this issue, we said that is an important  
5           matter to address as well, the factual elements as well as getting the  
6           law right.

7           Thank you, Your Honour, for the extra time to do that.

8           JUDGE LETTIERI: For the record, I read the questions that I  
9           formulated and that I sent to you five days ago.

10          With respect to count 1.

11          Why should the case law of the ICTY on the applicable actus reus  
12          in cases involving alleged interference with a witness or potential  
13          witness, namely that the Prosecution must prove "real risk of  
14          interference," be applied here, where the issue is not interference but  
15          rather "undermining the public confidence."

16          Is the Amicus required to prove that the public confidence was  
17          actually undermined?

18          How can harm suffered by individuals whose identities were  
19          allegedly disclosed by the accused demonstrate an "undermining of the  
20          public confidence"? Can a Judge find that public confidence was  
21          undermined by drawing inferences from harm to specific people whose  
22          identities were disclosed?

23          With respect to count 2.

24          Assuming that service of the Pre-Trial Judge's 10 August 2012  
25          order on the accused was legally improper, and assuming such service was

1 the only means by which the accused could become aware of the order, does  
2 it follow that the accused could not have the required mens rea? If so,  
3 what is the legal basis for this?

4 Finally, with respect to corporate liability.

5 The Appeals Panel decided that the Tribunal has jurisdiction over  
6 legal persons in contempt proceedings but did not articulate the legal  
7 elements of corporate liability. As these elements have never before  
8 been articulated as a matter of international criminal law - and the  
9 crime of contempt is a matter of international law - how can the Judge  
10 determine what they are?

11 What is the legal basis here for drawing the elements of  
12 corporate liability from national systems? If there is legal  
13 justification for relying on national systems, bearing in mind that the  
14 laws on corporate liability differ from country to country, which  
15 national law should be applied? And what are the elements of corporate  
16 liability to be applied?

17 These were the questions formulated by me. Do you think that you  
18 answered to these questions or something else remains?

19 MR. SCOTT: Thank you, Your Honour. And fairness would only  
20 require that the Amicus at least be allowed the same amount of time as  
21 was just allowed, quite graciously, to the Defence. But I'll only ask  
22 for one minute just to respond very briefly.

23 Your Honour, two points. Mr. Dixon has said that the sixth  
24 element that we cite or suggest is different than what Judge Baragwanath  
25 suggested. We disagree. He used the terminology "benefit," "for the

1 benefit of." We've looked at it and it was -- it's more broadly used --  
2 the terminology is more broadly used, "on behalf of," "benefit on behalf  
3 of." And it's our position, it's the Amicus position that our  
4 formulation is completely consistent, both with Judge Baragwanath's  
5 formulation and with what we believe the state of the law is.

6 Secondly, Your Honour, in terms of notice. I would just say at  
7 the very least, at the very least, we certainly raised those elements in  
8 our pre-trial brief, so it's not correct to say they've only been  
9 addressed here in the last few days.

10 And those are our two very brief responses to the points raised  
11 by Mr. Dixon. Thank you.

12 JUDGE LETTIERI: Did you --

13 MR. KHAN: No, Your Honour, I think, unless Your Honour wishes to  
14 put any further questions that we can try to assist on, we don't have  
15 anything further it to add in relation to those questions.

16 But, Your Honour, perhaps we can -- we can adjourn now and I'll  
17 consider the matter a little bit more. And if there is something to  
18 add - of course, the Defence has the right to the last word anyway -  
19 perhaps I can add it after Ms. Karma Khayat has finished her short  
20 address. But, Your Honour, let me think on that. But at the moment,  
21 nothing stands out.

22 JUDGE LETTIERI: These were my -- these were my questions. These  
23 were my requests of clarification. If I had something else, I risk  
24 disclosing my thoughts in advance. We can give the floor to Ms. Khayat.

25 MR. KHAN: I'm so grateful. Thank you, Your Honour.



1 MS. KHAYAT: Thank you. [Interpretation] Your Honour,  
2 acknowledging one's mistakes is a virtue. That's true. But also  
3 acknowledging other's successes is a duty, and I must -- I cannot but  
4 acknowledge the success of the opposing party.

5 Over the past one and a half years, they succeeded in obstructing  
6 our work. They succeeded in squandering millions of dollars from the  
7 pockets of the Lebanese people. To prosecute myself and Al Jadeed  
8 Channel without the approval of the Lebanese state, they squandered the  
9 public moneys in a trial that has nothing to do with the Prosecution and  
10 the case of Prime Minister Hariri.

11 THE INTERPRETER: We kindly ask the speaker to slow down.

12 MS. KHAYAT: [Interpretation] They also succeeded in squandering  
13 millions of dollars in prosecuting investigative journalism, and  
14 yesterday they are asking Al Jadeed to pay a fine of 6 million euros.  
15 They also succeeded in exhausting and furthering burdening His Honour who  
16 is already very busy in the main case, the case of assassination of Prime  
17 Minister Rafik Hariri. They also succeeded in proving the hegemony of  
18 the Tribunal over Lebanon's sovereignty and authority. However, they  
19 most certainly failed in proving the charges against us and their case is  
20 empty in the content and in the form.

21 In the form, you have abused the trust that was given to you and  
22 granted to you. You have wasted money, resources, time. You have  
23 undermined morally the reputation of this Tribunal under the pretext of  
24 your trial, this strange title, Amicus, and you think maybe you have  
25 divine powers. And the colleague, Scott, maybe thought that he had

1 concluded the case at the beginning by saying, and I quote here from what  
2 he said:

3 "Most of the journalists who have been accused of contempt and  
4 obstruction of justice over the past 20 years have been condemned."

5 If this is the case, if all of these people have been convicted,  
6 then this is a conviction of the good administration of justice. The  
7 Amicus maybe considered this to be an in-house justice, and this is why  
8 he concluded the case from the beginning and he considered himself and  
9 put himself in place of the Judge. Maybe you consider that there are  
10 limits to freedom of expression, but we did not cross these limits. But  
11 isn't there any limits for discretion and justice?

12 This discretion only does not fall on the shoulders of the  
13 Prosecution. In our country, we have vacuum as well, because vacuum  
14 leads to more vacuum. In my country there is a vacuum at the presidency  
15 of the republic. We don't have anymore presidents such as Fouad Chehab,  
16 who fought confessionalism, or occupation such as Kamal Jumblatt, or  
17 people like Maarouf Saad and Moussa El-Sadr, the imam. We cannot blame  
18 you because our country has no more statesmen and leaders, and if it had  
19 more statesmen, you wouldn't have embarked on such a dangerous adventure.  
20 This is regarding the form.

21 As for the content, I put the blame on the Prosecution and I  
22 would like to remind of their accusations.

23 First they accused Al Jadeed of undermining the witnesses' trust  
24 and confidence in the Tribunal. This is what you claim. But you cannot  
25 give us one example where we put one witness's life in danger. We did

1 not see one witness being threatened or beaten or killed or lose their  
2 jobs. None of them did backtrack in their testimonies because of our  
3 investigations. [Redacted]  
4 [Redacted].

5 Mr. Scott knew very well these details, and despite that, he  
6 distorted the truth in order to paint an imaginary picture. And in the  
7 opening statement and in his final statements also he said if these  
8 witnesses do not come to the Tribunal, do not appear before the Tribunal,  
9 this Tribunal is over. He claims something but he is forgetting many,  
10 many others. And it seems that he is not following the hearings in the  
11 Ayyash case because the witnesses are standing in line. They are  
12 queueing, from prime ministers to minor soldiers.

13 Second, they are saying that we are, in fact, in Al Jadeed,  
14 protecting witnesses, and that the court is uncovering their identities.  
15 We have been accused of putting the witnesses' lives in danger. This is  
16 the charges against us. [Redacted]  
17 [Redacted], His Honour refused,  
18 and then the witness appeared publicly, the Amicus team did not object to  
19 that. Although from the beginning, from the beginning of this trial he's  
20 been reminding us of the necessity of protecting witnesses, and he's been  
21 reminding us of the necessity of having private or closed sessions.  
22 Welcome, welcome to double-standards.

23 The decision of the Judge is a rightful one, but the Amicus team  
24 has lost a year and more on a case that is an unrightful one, an  
25 unfounded one.

1           Third, your witnesses are the ones obstructing justice. The  
2           Amicus team and the Prosecution witnesses, most of them came and said: I  
3           don't know, I don't remember. The person who is charge of coordinating  
4           and liaising with the witnesses forgot the names of the witnesses, forgot  
5           whether Wissam El-Hassan was a witness or not. The person in charge of  
6           serving the documents did not remember what were the necessary practices  
7           to adopt in Lebanon. The witness Veronique Bernard came without a  
8           previous appointment to Al Jadeed building in Beirut and was surprised  
9           because she did not find anyone in charge to notify and serve the  
10          documents on a public holiday, and suddenly she had to return quickly to  
11          her place of work for fear of Hezbollah. And it turned out later on that  
12          Al Jadeed is not even located in an area of influence of Hezbollah.

13          Fourth, an indictment that is built on false claims. The  
14          indictment says that Al Jadeed did not stop publishing these reports on  
15          its web site despite of the Pre-Trial Judge's decision. We were not only  
16          surprised during the interview with your predecessor, Mr. Stephane  
17          Bourgon, by seeing the 10 August decision, but we also tried to send  
18          several letters and asked him to give us a copy of that decision.

19          And the current Amicus Prosecution had access to these letters.

20          THE INTERPRETER: Interpreter's note: We kindly ask the speaker  
21          to slow down.

22          MS. KHAYAT: [Interpretation] Mr. Scott deliberately decided to  
23          hide some truth in order to mislead the administration of justice. As to  
24          Al Jadeed TV, we have never ran away. This is not one of our virtues.  
25          We believe in our right to defence and confrontation under the law, and

1 this is definitely what we did with the letter of the 7th of August and  
2 this is what we are doing here today.

3 Fifth, Prosecution and sexual harassment. Mr. Scott says, I  
4 quote:

5 "We, at Al Jadeed TV, want a scoop, and, God, we will do anything  
6 in order to get it."

7 I say to him, a law expert has no right to examine journalism.  
8 If you bring an expert in sexual harassment to give evidence about a  
9 journalistic TV feature regarding some evidence by witnesses in an  
10 international tribunal that has nothing to do with sexual crimes, he will  
11 not know or she will not know the meaning of a scoop, investigative  
12 journalism, feature, documentaries, et cetera. A scoop is not a shame.  
13 A scoop becomes a scoop when it is precise in unveiling a truth that is  
14 important for the public opinion. This is also equally applied to a  
15 lawyer when he is accurate in unveiling the truth. This is within the  
16 fictitious case of the Prosecutor. It is not proper to see a Tribunal  
17 that is implementing the highest standards of justice to accuse us  
18 unjustly and unfairly, whereas the Prosecutor is trying, time and again,  
19 to protect or to hide the mistakes of the Tribunal.

20 The Prosecutor did not prove that the leaks didn't come from the  
21 Tribunal. Despite that, he objected more than ten times whenever there  
22 was a question or whenever a witness spoke about the possibility of leaks  
23 from inside the Tribunal.

24 Your Honour, you told me at the beginning of this trial that I  
25 might be the right person to say something about the leaks. The

1 information that I gave in the opening statement regarding the leaks of  
2 reports and documents sealed by the STL is not a secret. Millions of  
3 people have seen such documents and reports on local and international  
4 news and media outlet, and we have never heard about an internal  
5 investigation inside this the STL.

6 I will give you an example. For instance, the confidential  
7 document that we saw on CBC and that was when Daniel Bellemare was  
8 Prosecutor, and that document said that Wissam Hassan might be considered  
9 an accused and not a witness. This is an official internal document that  
10 was written following a confidential investigation done by an  
11 investigator at the UNIIIC based on the request of his supervisor. An  
12 obvious question: An internal report from an employee to his supervisor,  
13 how can it be leaked to the press?

14 The justifications by Mr. Scott based on the electronic system  
15 might have been hacked or the document may have been stolen or "might" or  
16 "may," et cetera, this a proof that the Tribunal did not care about the  
17 good administration of justice and did not undertake an internal  
18 investigation.

19 You say, Your Honour, that the case against Al Jadeed was filed  
20 based on complaint from inside the STL. As to the other leaks, even  
21 though they have been accessible to the public opinion, you say, Your  
22 Honour, that you were not aware of them because no one ever complained.  
23 If you did not receive any complaint, this is a discretionary justice.  
24 We are complaining from the double-standards, and you now have been  
25 notified. In all cases, it is better to have justice achieved at a later

1 stage than not to have justice.

2 Power is with you. Justice is in front of you. Will your  
3 justice be implemented by force or imposed by justice?

4 Finally, justice has much more important issues to look at. In  
5 the past one year and a half, the administration of justice was not  
6 hampered in the Ayyash case, and listening to the witnesses is  
7 progressing. But the country is not progressing. In that same period of  
8 time, more than 100 Lebanese were martyred, between civilians and  
9 officers. More than 2.200 Palestinians were killed at the hands of the  
10 Israeli enemy terrorism. Our blood was shed in Syria, Iraq, and Egypt.  
11 We are back to the dark ages, al-Jahiliyya. Daesh and ISIS have  
12 declared their terrorist state and started decapitation. All this is  
13 happening in our countries, and the Prosecution is losing our time with  
14 empty file for a year and a half.

15 And in their closing argument, they said that they want me to be  
16 imprisoned. Instead of having all the experts, international experts, in  
17 this courtroom, instead of having them focusing on such a case, maybe it  
18 would have been better for the Security Council which established this  
19 Tribunal to make the best of your experience as lawyers and counsel in  
20 order to defend a loftier and more important justice, and that the  
21 6 million euros that Mr. Scott wants us to pay is better paid to defend  
22 the children, for instance, for 538 Palestinian children who were killed  
23 by the Israeli enemy and to defend the Lebanese soldiers who were  
24 decapitated by the enemies of God.

25 Finally, the Prosecution mentioned the freedom of expression.

1 Those who sacrificed their lives for the sake of truth and fighting  
2 corruption cannot be criminals in the eyes of the people or in the eyes  
3 of the Judges, regardless of the sentence. You fail to silence us. We  
4 are the friends of justice and you are the enemy of justice. We will not  
5 be silent. We will not step back. We will not be afraid of you. We  
6 will never - and we will never, I shall repeat it - stop undertaking our  
7 duties and unveiling your mistakes. You will never be above the rights  
8 of the Lebanese people. For the sake of the Lebanese people, in their  
9 decision we will be or we will not be, even if the price means that I  
10 will be behind the bars.

11 JUDGE LETTIERI: Thank you very much. I think that this can  
12 conclude our trial.

13 MR. KHAN: Indeed, Your Honour, we are most grateful for the  
14 patience and the courtesy shown by Your Honour. It's been a short trial  
15 but quite intense. So, Your Honour, on behalf of Ms. Karma Khayat and Al  
16 Jadeed Television, I am grateful for the manner in which Your Honour has  
17 listened quietly, carefully, and dispassionately to the evidence of the  
18 Prosecution and of course the Defence. Your Honour, we are grateful.  
19 And we leave the judgment, of course, in your hands.

20 JUDGE LETTIERI: Thank you. I will now adjourn to deliberate and  
21 will issue a scheduling order for the pronouncement of the written  
22 judgment in due course. I think that it will take more or less the next  
23 two months, taking into account that I sit in the main proceeding at the  
24 same time and there is the recess period of three weeks.

25 I think that it's better to come up with a written judgment



1 directly in order that everyone can read and verify the rightness or not  
2 of the grounds. While I will read all this, this big amount of exhibits,  
3 it seems that here we are in the opposite situation of the famous saying,  
4 not the mountains give birth to the mouse but is -- in an apparently  
5 simple and trivial case of contempt, gave birth to a big amount of  
6 exhibits, legal arguments, very complicated legal principle of law and  
7 et cetera, et cetera.

8 So I finally wish to thank the parties as well as the staff of  
9 the Registry for their assistance throughout the proceeding, for your  
10 patience. And thank you to everyone.

11 --- Whereupon the hearing adjourned at 11.37 a.m.

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