

BEFORE THE CONTEMPT JUDGE
SPECIAL TRIBUNAL FOR LEBANON

Case No: STL-14-05/T/CJ

Before: Judge Nicola Lettieri, Contempt Judge

Registrar: Mr Daryl Mundis

Date: 16 June 2015

Filing Party: *Amicus Curiae* Prosecutor

Original language: English

Classification: Public

IN THE CASE AGAINST
AL JADEED [CO.] S.A.L. / NEW T.V. S.A.L. (N.T.V.)
KARMA MOHAMED TAHSIN AL KHAYAT

**REDACTED VERSION OF “CORRECTED VERSION OF ‘*AMICUS* FINAL TRIAL
BRIEF’ DATED 8 JUNE 2015” OF 10 JUNE 2015**

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Mr Kenneth Scott

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Ms Karma Khayat:**
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The *Amicus Curiae* Prosecutor respectfully submits this final trial brief:

A. THE LAW AND FREE SPEECH

1. It is beyond controversy that free speech is not entirely free -- it comes with responsibility and limits. As this Court wrote last year, in its decision on jurisdiction:

[T]his is also the law as applied in Lebanon, as well as elsewhere. For instance, Lebanese courts -- and actually a specially constituted Court of Publications -- routinely try cases of publication of confidential court filings or of the content of ongoing investigations to protect their secrecy, safety and efficiency. As recently as 14-July-2014, that Court, for instance, found that a general plea of freedom of expression does not justify slander. Thus, in Lebanon, just like in any other jurisdiction, freedom of expression finds its limits in the legitimate protection of other societal interests.¹

2. Defence witness A.Mahfouz, President of Lebanon's media council, recognized the law's limits on free speech:

[Q.:] And my question to you, sir, is, and pardon my use of the word, but these are not foreign concepts in Lebanon. The fact that we have a court order that says that certain information is confidential, that certain information is to be protected, that certain persons, their identities are to be protected, those same concepts exist in Lebanese law; correct? [Mahfouz:] You are asking, sir, questions that are very basic questions. This is natural in all legislations. Nobody disagrees with that.²

[Mahfouz:] . . . Preserv[ing] the confidentiality of investigations is vital . . .³

3. Indeed, Mahfouz himself, around this same time, sent a letter to the Lebanese Prime-Minister stating:

In this context, it is worth noting that the audiovisual media, the press and the electronic media have [gone] too far in the breach of confidentiality of judicial investigations, especially in the last few years, and the Council ha[s] previously warned about the danger of these continuous infractions committed to date, in its reports, appeals, statements and declarations, and through directly contacting the media.⁴

¹ F0054, Para.37.

² T7/116.

³ T7/117.

⁴ P00062/2.

When asked what dangers he was concerned about in writing the letter, Mahfouz stated:

In these reports we were relying on what the judiciary had asked, what the judiciary considered to be a leaking of confidential information related to the investigation. This is why we were warning media outlet to be careful and not to publish anything that might prejudice the security or undermine the security or reputation of some individuals.⁵

4. Al-Jadeed itself is more than familiar with the law's limits on free speech, as set out in a recent judgement of the Court of Cassation confirming Al-Jadeed's conviction for slander and defamation:

The ruling justified this outcome based on the fact that everybody has the right to express his opinion both in speech and writing within the limits of the law . . . within the scope of general laws and the provisions of the publications law," and that "The press has the right to enlighten and raise the awareness of public opinion with respect for seriousness, accuracy, and honesty, and avoiding the abuse of others," . . . as the fourth estate, the press is not entitled to violate the principle of separation, balance, and coordination of powers or to infringe on the powers of the judiciary.⁶

B. AGREED FACTS AND UNCONTRADICTED EVIDENCE

5. In addition to the parties' Agreed Facts, *Amicus* submits that additional facts are supported by the only evidence in the record, uncontradicted, as follows (hereafter "Table"):⁷

1	[A] At all times relevant to the Order in Lieu of an Indictment [. . .] ("Order in Lieu"), Al Jadeed S.A.L., registered before the Beirut Commercial Court on 13-December-1990, registration number 57693 (Beirut(B)/public/1990/57693), was licensed to own, manage and operate Al Jadeed TV, a television/establishment of category A as per provision of Lebanese law no. 382 dated 4/11/1994 (together and hereafter "Al-Jadeed TV [or "Al-Jadeed]"). [AF-1]
2	[A] At all times relevant to the Order in Lieu, Al-Jadeed was a television or media business broadcasting general interest programmes, including news bulletins. [AF-2]

⁵ T7/120.

⁶ D00135; D00136 and D00134 are two other judgements against Al-Jadeed and M.Al-Bassam.

⁷ A table of abbreviations and authorities is provided as Annex A.

3	[A] Ms. Karma Mohamed Tahsin al Khayat [K.Khayat] was born in 1983, in Saida, Lebanon). [AF-3]
4	[A] At all times relevant to the Order in Lieu, K.Khayat was a shareholder of Al-Jadeed. [AF-4]
5	[A] At all times relevant to the Order in Lieu, through at least the end of 2013, K.Khayat was Deputy Head of News and Political Programs at Al-Jadeed. [AF-5]
6	[U] [K.Khayat]: "Any report or investigative report falls under my direct responsibilities." [P00173/28-29] [K.Khayat]: "I take the decision regarding reports and investigative reports." [P00173/39-40] [K.Khayat]: "I am responsible for the general outcome of the report . . . [and] for the direct coordination with the investigative reporter on [the] ground. . . . the final output of the report is my part." [P00173/54] [R.Al-Amin]: "[K.Khayat] is responsible for reporting, meaning anything related to investigative or non-investigative reporting, by hierarchy. She is responsible for that . . ." [P00126/30] [R.Al-Amin]: ". . . Everything is related to our sole reference at [Al-Jadeed], namely Karma Khayat. She has the last word on the documentaries before they are aired." [P00126/31-32] "[W]ho was your boss at the time at [Al-Jadeed]? [F.Hatoum]: "Karma Khayat, . . . she has the post of following up and asking the journalists to do reports especially when it comes to . . . field reports . . . she's the main person in charge for such things." [P00137/T1/7]
7	[A] At all times relevant to the Order in Lieu, Ms. Mariam Al Bassam was Head of News and Political Programs at Al-Jadeed. [AF-6]
8	[U] [K.Khayat]: "I am responsible for the general outcome of the report. I am responsible for the direct coordination with the investigative reporter on ground. And as for [M.Al-Bassam], she knows that this story will be reported in this day regarding this issue, and but the final output of the report is my part." [P00173/54] INV3: "Ok, like content wise she had no decision? It was all you and Rami? [K.Khayat]: During that time, it was in the pre-production and production phases. . . she had no decision at that point. [P00173/70]
9	[U] [R.Al-Amin]: "[M.Al-Bassam] is the news director. She supervises the bulletin in general. She writes the introduction. . . ." [P00126/32] [R.Al-Amin]: ". . . Mrs Mariam has nothing to do with investigative reports in particular." [P00126/31-32] [F.Hatoum]: "[M.Al-Bassam] is the Editor-in-Chief, . . . she concentrates more on writing the opening of the bulletin, . . . so usually she concentrates on this, it takes her around 2 or maybe 3 hours every time in the afternoon to write this small speech so mainly the person who follows anything related to doing the reports on field or any other thing is Karma. [P00137/T1/10-11]

10	[U] Maya Habli was Al-Jadeed's company lawyer, and also represented Al-Jadeed employees K.Khayat, R.Al-Amin, I.Dsouki and H.Bazzi. [P00074/1, P00127, P00133, P00157, P00175]
11	[U] [K.Khayat]: "The [series on Tribunal witnesses] . . . [was] part of my responsibilities. . . . Any report or investigative report falls under my direct responsibilities." [P00173/28-29] "For this documentary series that you did, the one we're talking about, that definitely was under, it came under your jurisdiction . . ." [K.Khayat]: "Yes." [P00173/39-40]
12	[A] Rami Al-Amin is the Al-Jadeed reporter credited for the 6-10 August 2012 series of reports titled "Witnesses of the International Tribunal" ["Tribunal Witnesses"] broadcast on Al-Jadeed. [AF-7]
13	[A] On 5-August-2012, Al-Jadeed announced that it would broadcast a series of reports titled "Tribunal Witnesses," to be broadcast starting the next day. [AF-8]
14	[A] On 6-August-2012, Al-Jadeed broadcast, during a news bulletin, the first report of the series of reports titled "Tribunal Witnesses." [AF-9]
15	[A] On 7-August-2012, Al-Jadeed broadcast, during a news bulletin, the second report of the series of reports titled "Tribunal Witnesses." [AF-10]
16	[A] On 7-August-2012, Al-Jadeed broadcast, during a news bulletin, the third report of the series of reports titled "Tribunal Witnesses." [AF-11]
17	[A] On 7-August-2012, M.Youssef sent an email, with an attached Arabic language letter from the Registrar dated 7-August-2012, entitled "بلا وقف إخطار" [P00057] to K.Khayat's email account "kkhayat@aljadeed.tv". [AF-12]
18	[U] K.Khayat and STL spokesperson M.Youssef exchanged emails with each other using K.Khayat's email address: kkhayat@aljadeed.tv. [P00173/80-81; P00042 (STL-Khayat emails)] On 7-August-2012, M.Youssef sent an email to K.Khayat stating: "Please find attached an URGENT letter from the STL Registrar" attaching the Registrar's letter entitled "بلا وقف إخطار" [P00173/80-81; P00057] K.Khayat : "Yes I told [M.Youssef] I was out of the country . . . the letter was supposed to [be] referred to me, and he asked at the moment who is in TV I think. I told him send it to [M.Al-Bassam] because I am not at the moment there, and then Mariam wasn't in TV at that time. . . . So I think then they sen[t] it to Mariam Al-Bassam's name, and he asked me, and then they just arrived to the TV and [I.Dsouki] was available, so I told him go down, talk to the people . . . see what they have." [P00173/80-81]

19	[U] The Head of the STL's Beirut Office, A.Lodge, was informed by the STL that M.Youssef and K.Khayat had made an arrangement for the Cease-and-Desist to be delivered to M.Al-Bassam. Lodge attempted to deliver the Notice to M.Al-Bassam on 7-August-2012, but on his arrival at Al-Jadeed, he was told that M.Al-Bassam was not there. [T3/5-8]
20	[U] On 8-August-2012, A.Lodge tasked V.Bernard to deliver the Cease-and-Desist to Al-Jadeed, by delivering the Notice to a woman with whom a prior arrangement had been made. When V.Bernard arrived at Al-Jadeed and this person was not there, she inquired whether someone else at Al-Jadeed could receive the documents. The receptionist telephoned I.Dsouki. I.Dsouki took V.Bernard to an upstairs office, where he spoke on the telephone with an Al-Jadeed manager who was vacationing in France, who authorized I.Dsouki to receive the Cease-and-Desist. [T2/91-97,109]
21	[U] "[D]id [I.Dsouki] at one point sign for documents for you . . . ? [K.Khayat]: Yes he did. This is normal to us in Lebanon. In Lebanon, this is a normal procedure . . . Because sometimes, for instance, we are not in the TV, and the judicial system in Lebanon sends something. So usually, if the guy that's on the desk downstairs could sign on our behalf or someone from the administration could sign . . . So, to us it's a normal procedure . . ." [P00173/73]
22	[A] On 8-August-2012, Al-Jadeed employee I.Dsouki received four copies of the Registrar's [Notice of Cease-and-Desist dated 7-August-2012] and four copies of the Registrar's Arabic language letter dated 7-August-2012 and entitled "إخطار والإلتزام بوقف", and signed four documents entitled "Acknowledgement of Receipt of Letter", stating on each document that he was signing for, respectively, Mr. Tahseen Khayat, K.Khayat, M.Al-Bassam and R.Al-Amin. [AF-14]
23	[A] On 8-August-2012, the Registrar's letter entitled "الإلتزام بوقف وإخطار" of 7-August-2012 was presented and read during the broadcast of an Al-Jadeed news bulletin. [AF-13]
24	[U] Al-Jadeed stated during the above broadcast that "the decisions of the International Tribunal are not legally binding for Lebanese media, and that the sole reference for them is Lebanese law." [P00067]
25	[A] [M.Habli], in her capacity as attorney for Al-Jadeed, sent to the STL a letter dated 9-August-2012 in response to the [Cease-and-Desist] of 7-August-2012. [AF-15]
26	[U] M.Habli's letter stated, <i>inter alia</i> , that "all the people" featured in the Tribunal Witnesses reports "knowingly and willfully gave their information to the journalists of [Al-Jadeed] without reservations or pressure," and advised the Tribunal "of our total dismissal of the text of your letter and of your illegal and

	unfounded requests, considering that we only abide by decisions issued by the competent Lebanese authorities and by binding judicial decisions." [P00074] ⁸
27	[U] On 9-August-2012, K.Khayat, using her email address kkhayat@aljadeed.tv, sent M.Youssef an email stating: "Please find attached aljadeed's reply to the letter from the stl registrar." [P00075]
28	[A] On 9-August-2012, Al-Jadeed broadcast, during a news bulletin, the fourth report of the series of reports titled "Tribunal Witnesses." [AF-16]
29	[A] On 9-August-2012, a response to the Registrar's letter entitled "Notice of Cease and Desist" of 7-August-2012 was presented and read during a news bulletin broadcast by Al-Jadeed. [AF-17]
30	[A] On 10-August-2012, Al-Jadeed broadcast, during a news bulletin, the fifth report of the series of reports titled "Tribunal Witnesses." [AF-18]
31	[A] Pursuant to Al-Jadeed's standard operating procedure and business plan, Al-Jadeed uploaded and stored the "Tribunal Witnesses" reports on Al-Jadeed's YouTube channel (https://www.youtube.com/user/aljadeedonline), where they were available at certain times. [AF-20]
32	[A] At all times relevant to the Order in Lieu, YouTube's website address was 'www.youtube.com'. [AF-19]
33	[A] Pursuant to Al-Jadeed's standard operating procedure and business plan, Al-Jadeed made [the "Tribunal Witnesses" reports] available on its website (www.aljadeed.tv) at certain times [. . .] by embedding the videos from Al-Jadeed's YouTube channel. [AF-21]
34	[A] Pursuant to Al-Jadeed's standard operating procedure and business plan, the Facebook page on which [Al-Jadeed] posted, up to a certain time, the links to the "Tribunal Witnesses" [reports] [. . .] was AljadeedOnline (https://www.facebook.com/aljadeedonline). [AF-22]
35	[U] On 10-August-2012, the STL Pre-Trial Judge issued an "Order For Immediate Removal Of Disseminated Material And Cessation Of Dissemination," ordering [Al-Jadeed] . . . "immediately not to disseminate in any form any confidential material or material alleged to be related to purported witnesses before the Tribunal" and 'immediately to remove any confidential information or material

⁸ M.Habli's legal opinion supporting Al-Jadeed's behavior was apparently a foregone conclusion, as Al-Jadeed stated on 8-August-2012, prior to M.Habli's 9-August letter: "Al-Jadeed TV will therefore conduct a legal analysis of the issue and expects to subsequently continue airing the special reports about the Tribunal's witnesses." P00067.

	allegedly related to witnesses before the Tribunal from their websites and from any other resource accessible to the public." [P00079]
36	[U] On 10-August-2012, A.Lodge tasked V.Bernard with delivering the 10-August-2012 Order to Al-Jadeed. V.Bernard made logistical arrangement to deliver the Order the following day, on 11-August. When V.Bernard arrived at Al-Jadeed on 11-August, no one at Al-Jadeed would accept delivery of the Order and V.Bernard could not reach I.Dsouki. [T2/97-104; P00081]
37	[U] On 11-August-2012, A.Lodge sent an email to K.Khayat, to her email address kkhayat@aljadeed.tv, transmitting a copy of the Tribunal's 10-August-2012 Order. [T3/12-14; P00160]
38	[U] The Prosecutor General tasked Judicial Police Officer A.Rahal and his colleague, ÷ .Eid, with delivering the Tribunal's 10-August-2012 Order to Al-Jadeed and in particular, to M.Al-Bassam [who the company lawyer M.Habli described in her 9-August-2012 letter to the STL as "the director of the company according to the Lebanese laws." (P00074)]. A.Rahal telephoned M.Al-Bassam and made an appointment to meet her at Al-Jadeed's offices on 14-August-2012, at the time selected by M.Al-Bassam, between 14:30 and 15:00. A.Rahal and ÷ .Eid went to Al-Jadeed on 14-August 2012 and after waiting a few minutes in one of Al-Jadeed's upper floor offices, M.Al-Bassam came to the office. A.Rahal told her that the documents were from the STL and handed the documents to her. After looking at and reading the documents, M.Al-Bassam said: "The Tribunal [does] not want us to publish anything." The report of service, signed by M.Al-Bassam, describes the documents served on M.Al-Bassam as "the decision issued by the Pre-Trial Judge at the Special Tribunal for Lebanon . . . dated 10-August-2012 . . . , in addition to the content of Rule 60bis" The Order and a copy of Rule 60bis were left with M.Al-Bassam. [T2/117-23, 132-33, 137-39, 166; P0080; P00174] ⁹
39	[U] On 8-October-2013, M.Al-Bassam and attorney M.Habli filed a forgery complaint against the judicial officers, denying that M.Al-Bassam had signed the report of service. On 23-October-2013, M.Al-Bassam withdrew the complaint, admitting that it was in fact her signature. [T2/125-27; P00138, P00139]
40	[U] The Tribunal Witnesses reports were available on Al-Jadeed's Facebook page until at least 26-September-2012. [T1/51-52]
41	[U] The Al-Jadeed reports were available on Al-Jadeed's website until at least 25-April-2013. [T1/48-49]

⁹ The Defence does not dispute that the 10-August Order was delivered to M.Al-Bassam on 14-August-2012 or that she signed the report of service. T2/127,134,147-48.

42	[U] The Tribunal Witnesses Al-Jadeed reports were available on Al-Jadeed's YouTube channel until 15-January-2014. [T1/49]
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C. AL-JADEED'S FALSE STATEMENTS AND MISCONDUCT

False Statement No. 1: The confidential witness information disclosed by Al-Jadeed was “leaked” from the Tribunal.

6. Al-Jadeed has repeatedly claimed, while providing no support whatsoever, that the alleged confidential witness information was “leaked” from inside the STL:

- a. "The Tribunal promised a cover of confidentiality to the witnesses but the leak has knocked on the doors of The Hague once again, and exclusively from Al-Jadeed."¹⁰
- b. "What we are looking for essentially relies on information leaked from inside the International Tribunal. We obtained a list containing the names of most of the witnesses who testified before the investigators."¹¹
- c. "[Given their importance as confidential witnesses,] why did the Tribunal dispense so easily with their confidential status?"¹²

7. In fact, there is not a single piece of evidence in the record that any of the information reported or disclosed by the Al-Jadeed broadcasts was “leaked” from the Tribunal:

- a. K.Khayat testified that she found a list of names in an envelope left at the entrance to Al-Jadeed's offices. Al-Jadeed did not, and does not know from whom or where the information came.¹³
- b. R.Al-Amin said that he only “assume[d]” that the information came from the Tribunal: “. . . [B]ut why did you say that it was information leak[ed] by the

¹⁰ P00052 (emphasis added).

¹¹ P00053 (emphasis added).

¹² P00049 (emphasis added).

¹³ P00173/60; P00173/91-92.

Tribunal? [R.Al-Amin]: . . . I mean, according to Karma Khayat, I mean, I don't know how she knew it . . .¹⁴

- c. R.Al-Amin testified that there was no logo or markings on the machine-printed list of names that indicated that the information came from the Tribunal: "Did the list . . . have any logo related to the tribunal? [R.Al-Amin]: No, they were just white sheets with names and additional information on addresses."¹⁵ K.Khayat said "[t]he information did not include any photos."¹⁶ Typed names on plain pieces of paper could have come from anywhere, or could have been simply made up.
- d. Another Al-Jadeed reporter who worked on the reports testified that he didn't know where the information came from: "Did Karma Khayat . . . tell you where she obtained the list of names . . . ?" [F.Hatoum]: "No, no, she didn't." "[D]id she mention at any time that this was information that had come from the Tribunal . . . ? [F.Hatoum]: "No, no, she didn't tell me." "And she didn't tell you how she got the names or nothing like that? [F.Hatoum]: "Not at all."¹⁷
- e. Al-Jadeed's attorney, M.Habli, said in her 9-August-2012 response to the Tribunal's Cease-and-Desist that no one at Al-Jadeed had access to the Tribunal's documents: "We would also like to confirm to the Tribunal that no one at Al-Jadeed has or had any relation or access to the Tribunal's documents, and therefore, the veracity of the list of witnesses which was received by the station cannot be confirmed . . ."

8. There is no evidence in the record -- not a single sentence of testimony or a single statement in an exhibit that the information reported and exposed by Al-Jadeed as part of its broadcasts was "leaked" from inside the Tribunal.¹⁸ Knowingly broadcasting such an unsupported claim to the public interferes with the administration of justice (by generally

¹⁴ P00126/62-64 (emphasis added).

¹⁵ P00126/64.

¹⁶ P00173/56-58.

¹⁷ P00137/T2/5-6.

¹⁸ The Defence questioned Comeau at length concerning alleged prior leaks of confidential STL information, none of which had anything to do with exposing protected confidential witnesses, with Comeau testifying that he was "not aware of any truly identified leaks from the Tribunal." [T2/31,76-77] In connection with a 31-October-2011 report broadcast by Al-Jadeed, K.Khayat indicated that she had assembled information from various "security, local, international and political sources" and said that "[t]he STL has nothing to do with articles published by foreign newspapers such as Der Spiegel and Le Monde. These newspapers did not get their information from OTP sources and fingers should be pointed at the ones benefiting from inflaming the situation in Lebanon." [P00004 (emphasis added).]

weakening the willingness of actual or potential witnesses to give their evidence) and undermines public confidence in the Tribunal.¹⁹

False Statement No. 2: All of the alleged confidential STL witnesses approached by Al-Jadeed and featured in the broadcasts were informed of the identity of the Al-Jadeed reporter and the purpose and nature of the contact.

9. Al-Jadeed and its representatives stated:

- a. "All the individuals who provided [Al-Jadeed] with information were aware of the identity of the requester, the journalist and his professional affiliation, and willfully provided the said information."²⁰
- b. M.Habli and M.Al-Bassam told a Lebanese Government regulatory body "that the persons interviewed in the Al-Jadeed reports were entirely aware that they were speaking with reporters from Al-Jadeed . . ."²¹
- c. [R. Al-Amin]: ". . . as I said earlier, we filmed [first] then phoned said witnesses and introduced ourselves clearly, saying we were from [Al-Jadeed], and asked them if they were part of the witnesses for the International Tribunal."²²

10. To the contrary:

¹⁹ The accused have repeatedly claimed that their conduct in connection with the Tribunal reports was consistent with journalistic standards and ethics. See P00074/2 (Al-Jadeed's behavior conformed to journalistic principles "by not revealing [the persons'] identities and distorting their faces," thereby "conform[ing] fully to the principle of freedom of speech"). While this criminal case is controlled primarily by international law and not by codes adopted by associations of journalists or standards promulgated by media organizations, such "codes" are noteworthy as they relate to Al-Jadeed's knowledge of various accepted or required practices and its repeated violation of such standards. Prior to and around the time of the conduct in this case, Al-Jadeed and various of its key employees participated in training by the organization Arab Reporters for Investigative Journalism ("ARIJ") [T6/23,52-53; D00044], in which various principles were taught, including the key requirement that journalists, like all other persons, must comply with the law. [T6/26,32,56,102-104,124,131-32; P00177/9-n.2.] (It should be noted that the ARIJ had no involvement in, or knowledge of, the reports and broadcasts which are the subject of this case.) [T6/125]

Journalists cannot tell an untrue story, and must keep within the limits of what they know is absolutely true. D00045/11-12,17-19,63,74; T6/31, 54; P00177/9-n.3,6-9. Journalists must undertake a line-by-line verification to make sure that there is evidence for every factual assertion. Unsupported assertions are unacceptable. D00045/76-77; T6/17,32,53-54,64,76,121. Here, there is not a single piece of evidence that the alleged confidential information was "leaked" from the Tribunal.

²⁰ P00074/2.

²¹ T7/121-24.

²² P00126/52-53.

- a. First, two of the eleven persons featured in the broadcast did not, in fact, confirm in any way that they had any contact with the Tribunal -- but that didn't stop Al-Jadeed from labeling them to the public as confidential STL witnesses. [REDACTED]
- b. Another one of the eleven denied any involvement with the Tribunal, and gave Al-Jadeed no information to the contrary: [REDACTED]

Al-Jadeed still

told the public that ^[REDA] was a confidential STL witness.²⁴

- c. Second, K.Khayat admitted that "the purpose of the taping was not told"²⁵ to the persons contacted.²⁶
11. There is no evidence that all of the eleven persons, after being told the true purpose and nature of the contact (if in fact they ever were), agreed to the subject interviews being broadcast or their information being exposed.²⁷

False Statement No. 3: None of the alleged confidential witnesses were approached under false pretenses and no fraudulent means or tricks were used.

12. These Al-Jadeed claims, such as those below, are patently false:
- a. All of the individuals featured in the broadcasts "knowingly and willfully gave their information to the journalists of [Al-Jadeed] without reservations or pressure."²⁸

²³ [REDACTED]

²⁴ P00054.

²⁵ P00173/68.

²⁶ Journalists must identify themselves and explain their purpose fully, without lies, deception or false pretense. D00045/41-42,44; T6/30,73,100,117-118; P00177/10-n.14.

²⁷ P00050, D00035, T3/57-58,61,63-64, 71; D00013, T4/139; T8/52-54.

²⁸ P00074/1.

- b. M.Habli and M.Al-Bassam affirmed to Lebanon's media council that the persons interviewed by Al-Jadeed "were not speaking under duress."²⁹
 - c. "The allegations [that Al-Jadeed used] false identities and hidden cameras are baseless . . ."³⁰
 - d. "[N]o fraudulent means were employed to conduct the interviews."³¹
13. To the contrary:³²
- a. "In the first part of the [Tribunal] series: luring the first witness in order to film ^[REDACTE] was intentional and premeditated, and the purpose of it is to lure [REDACTED] . . . [REDACTED] is one of the witnesses of the International Tribunal."³³
 - b. "We visited [REDACTED] under the pretext of conducting an interview for a local magazine."³⁴
 - c. "In order to get closer to ^[REDACTE], we had to send a colleague under the pretext of conducting an interview for an economic magazine."³⁵
 - d. One of the persons broadcast was first contacted by an Al-Jadeed reporter under false pretenses and then, when the reporter pushed ^[REDACTE] to talk about the Tribunal, Al-Jadeed itself said the person "got perturbed when we asked ^[REDACTE] about ^[REDACTE] testimony for the Tribunal."³⁶

²⁹ T7/121-24.

³⁰ P00070, P00072.

³¹ P00074.

³² Journalists must identify themselves and explain their purpose fully, without lies, deception or false pretense. D00045/41-42,44; T6/30,73,100,117-18; P00177/10-n.14. Any deviation from this principle must be the exception, not the rule, and is only justified in extreme cases to prove the culprit's wrongdoing. T6/25,27-28,30,32,128. There was no suggestion here that the alleged confidential witnesses were "culprits."

³³ P00049 (emphasis added).

³⁴ P00053 (emphasis added).

³⁵ P00077.

³⁶ P00077.

e. [REDACTED]

- f. “So you did not do anything to lure them or trick them to talk to you? [R.Al-Amin]: No, never . . .³⁸ “In the documentary, it showed that you used some tricks,^[REDACTED] Why did you do that? . . . [R.Al-Amin]: This is part of TV work. This is our last resort. This is part of the show. It usually happens on TV.”³⁹
- g. “Did you discuss using such tricks and scenarios with [K.Khayat]? [R.Al-Amin]: Some were discussed. Others were invented in accordance with circumstances on that day, while filming. We sort of invented those tricks.”⁴⁰

False Statement No. 4: All of the alleged confidential witnesses voluntarily provided the information Al-Jadeed requested. None of the alleged confidential witnesses were pressured, deceived or put under duress in making their statements.

14. Al-Jadeed and its representatives stated:

- a. All of the individuals featured in the broadcasts were clearly informed that the persons they were speaking to were journalists and “knowingly and willfully gave their information to the journalists of [Al-Jadeed] without reservations or pressure.”⁴¹
- b. “All the individuals who provided [Al-Jadeed] with information were aware of the identity of the requester, the journalist and his professional affiliation, and willfully provided the said information.”⁴²
- c. M.Habli and M.Al-Bassam assured the Lebanese Government “that the persons interviewed in the [Al-Jadeed] reports were entirely aware that they were speaking with reporters from [Al-Jadeed] and that they were not speaking under duress.”⁴³

³⁷ T4/11,13-16.

³⁸ P00126/53.

³⁹ P00126/23-24 (emphasis added).

⁴⁰ P00126/25-26.

⁴¹ P00074/1.

⁴² P00074/2.

⁴³ T7/121-24.

d. Al-Jadeed broadcast: “It is important for us to point out that all the witnesses who gave their statements did so of their own free will.”⁴⁴

e. “Did any of the witnesses that you tried to meet really did not want to talk to you or express their fear . . . ?” [R.Al-Amin]: “No . . .”⁴⁵

15. If all the persons contacted by Al-Jadeed knowingly and voluntarily provided their information, then why did they have to be misled, pressured, "lured," manipulated with references to Hezbollah, and approached surreptitiously, without being told the full purpose of why they were being contacted or asking their consent?⁴⁶

a. [REDACTED]

b. [REDACTED]

⁴⁴ P00070.

⁴⁵ P00126/52-53.

⁴⁶ Journalists must be honest and not abuse sources just because they are foolish enough to talk, as they might think that doing so is safe. D00045/38-40; T6/128. Journalists must respect a person’s choice whether to speak or not, as well as their request for anonymity, and must protect them from revenge, punishment, danger to their lives or other negative consequences or injustices, especially when they are not culprits, but innocent parties. D00045/43,49; T6/25,29-30,105-06,109-10,115-16; P00177/9-n.3,11,12.

⁴⁷ [REDACTED]

⁴⁸ [REDACTED]

⁴⁹ [REDACTED]

⁵⁰ [REDACTED]

[REDACTED]

c. Witness Chouaib specifically told Al-Jadeed that he could not give an interview without the permission of his government agency, that it was against the law, but Al-Jadeed insisted.⁵²

d. [REDACTED]

[REDACTED]

e. [REDACTED]

⁵¹ [REDACTED]

⁵² T8/36-37,50,59.

⁵³ [REDACTED]

⁵⁴ [REDACTED]

[REDACTED]

f. [REDACTED]

[REDACTED]

False Statement No. 5: No hidden cameras were used and no secret recordings were made.

16. Al-Jadeed falsely denied using hidden cameras:

- a. “[Al-Jadeed’s] attention was drawn by [the Cease-and-Desist] letter and the false accusations [that Al-Jadeed used] false identities and hidden cameras. These accusations are false . . .”⁶⁰
- b. At some point in the filming, you used a hidden camera? [R.Al-Amin]: It is not a hidden camera. Maybe the alleged witnesses did not notice they were being filmed,

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

⁵⁹ [REDACTED]

⁶⁰ P00074.

but practically, the cameraman was holding a small handy cam. Some shots were also taken by a mobile phone, the mobile phone of the cameraman.⁶¹

17. To the contrary:⁶²

- a. Al-Jadeed admitted that none of the witness wanted to be shown on camera: “Narrator: . . . [REDACTED] . . . preferred -- as all the other witnesses did -- not to be shown on camera but we found that we had pictures of [REDACTED] in our archive.”⁶³
- b. “Considering the sensitivity of the subject, we had to use hidden cameras to film the witnesses.”⁶⁴
- c. “[REDACTED] so we preferred to ask [REDACTED] in private, accompanied of course by a hidden camera.”⁶⁵
- d. As set out below, many of the persons contacted did not know they were being filmed and/or did not given permission for any images of (or information about) them to be broadcast.

False Statement No. 6: All of the alleged confidential witnesses featured in the broadcasts knew that they were being filmed and/or recorded and knowingly and voluntarily consented to being filmed and/or recorded for the purpose of being broadcast as part of Al-Jadeed’s reports.

18. Al-Jadeed claims that all of the persons featured in the broadcasts knowingly and voluntarily provided information:

- a. All of the individuals featured in the broadcasts “knowingly and willfully gave their information to the journalists of [Al-Jadeed] without reservations or pressure.”⁶⁶
- b. M.Habli and M.Al-Bassam affirmed to the Lebanese Government that the persons interviewed by Al-Jadeed “were not speaking under duress.”⁶⁷

⁶¹ P00126/21-22.

⁶² The use of hidden cameras must be the exception to the rule, only in extreme cases to prove a culprit’s wrongdoing, and the journalist must go back to the source for permission before using the recording. T6/25,27-28,30,32,128.

⁶³ P00071 (emphasis added).

⁶⁴ P00053 (emphasis added).

⁶⁵ P00054.

⁶⁶ P00074/1.

- c. “[N]o fraudulent means were employed to conduct the interviews.”⁶⁸
- d. Nobody objected to be filmed or run away from you or did that happened? [R.Al-Amin]: No.⁶⁹
19. To the contrary:
- a. Again, Al-Jadeed admitted that none of the witness wanted to be shown on camera.⁷⁰
- b. “Did you not tell them that you were filming them? [H.Bazzi]: I did tell some of them, of course.”⁷¹ That means that at least some of them were not told.
- c. A number of persons, [REDACTED], said that they had not consented to being filmed or broadcast and “felt completely duped by [Al-Jadeed].”⁷²
- d. [REDACTED] [] . . . preferred -- as all the other witnesses did -- not to be shown on camera but we found that we had pictures of [REDACTED] in our archive.”⁷³
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]

⁶⁷ T8/121-24.

⁶⁸ P00074.

⁶⁹ P00126/23.

⁷⁰ P00071 (emphasis added).

⁷¹ P00156/T2/19.

⁷² [REDACTED]

⁷³ P00071 (emphasis added).

⁷⁴ [REDACTED]

⁷⁵ [REDACTED]

[REDACTED]

- h. Chouaib asked the Al-Jadeed reporters to leave the camera outside the office, but was filmed with a hidden camera without his knowledge.⁷⁷

False Statement No. 7: Al-Jadeed did not reveal the identities of the alleged confidential witnesses featured in their broadcasts, but in fact protected them.

20. Al-Jadeed claims that it did not reveal the alleged confidential witnesses' identities:

- a. Al-Jadeed stated its "total dismissal" of assertions in the Cease-and-Desist that the Al-Jadeed broadcasts, "televis[ing] the interviews [of "alleged 'STL witnesses'"] using minimal or no facial distortion," "may place at risk the security of those individuals . . .".⁷⁸
- b. Al-Jadeed "respect[ed] the rights of third-parties by not revealing their identities and distorting their faces."⁷⁹
- c. Al-Jadeed "protected" the witnesses' identities by pixilating their facial images and only using their initials.

21. To the contrary :

- a. In Al-Jadeed's own words, the reports were designed to "reveal"⁸⁰ and "expose"⁸¹ "the identity of the most prominent witnesses" of the Special Tribunal"⁸² (who Al-Jadeed described as "collaborat[ing] with the International Tribunal"⁸³) . . . , as well as the "contents of their statements."⁸⁴

⁷⁶ [REDACTED]

⁷⁷ T8/36,50-51.

⁷⁸ P00074.

⁷⁹ P00074.

⁸⁰ P00046; P00052.

⁸¹ P00049.

⁸² P00052.

⁸³ P00049.

⁸⁴ P00046.

Al-Jadeed announced their "scoop" with great fanfare, as an Al-Jadeed "exclusive:"

- b. "The Tribunal promised a cover of confidentiality to the witnesses but the leak has knocked on the doors of The Hague once again, and exclusively from Al-Jadeed."⁸⁵
- c. "And on to the proceedings of the International Tribunal, where tonight we . . . reveal the identity of the most prominent witnesses who have been classified as confidential."⁸⁶

22. In the circumstances here, the very fact that Al-Jadeed did not use the actual names of the persons broadcast and made minor, but ineffective use of pixilation to conceal their faces⁸⁷ is an admission by Al-Jadeed that the information was indeed sensitive, that they were putting these people in harm's way. One of the Al-Jadeed reporters involved in producing the reports, testified:

[Question:] "Yes they used the pixels to hide their faces and then they used only initials why would they use that? . . . [F.Hatoum]: Maybe, usually we use this to protect the identity of the person."⁸⁸

[Question:] ". . . we saw that in the recording they used some masking technique, like the pixels there. Is that something that is normal, that is done? Why would they have used that masking technique? [F.Hatoum]: Usually we use it to protect people if we feel that it might be in danger in case the tape was put on air. Why we used in this specific case, also I suppose for this, for this reason."⁸⁹

23. In reality, the pixilation was poor, as admitted by Al-Jadeed's own cameraman, H.Bazzi:

Would you say that the masking that was used in that particular episode was good? [H.Bazzi]: My personal opinion? . . . [Question]: Ok but it looked to me that they were easily recognizable, the features. . . . [H.Bazzi]: It is not up to me. I only have to film. The person who does the masking, should mask the faces very well. If he wanted to mask the faces, he should mask them well. There is a technical mistake. . . . [Interpreter]: So

⁸⁵ P00052 (emphasis added).

⁸⁶ P00052 (emphasis added).

⁸⁷ P00056; P00079/para.5. In three instances, where Al-Jadeed had not filmed the person and did not have another photograph, computer-generated silhouettes were used, which of course did not show the person. In each instance, however, a significant amount of other identifying information was provided.

⁸⁸ P00137/T3/3-4.

⁸⁹ P00137/T2/4.

that was not the best [b]lurring? [H.Bazzi]: As a cameraman or a viewer, I would say no, that was not the best. [Interpreter]: Myself as a photographer, as a film, as a cameraman or as a person, no, or an individual, no it's not.⁹⁰

24. The fact that Al-Jadeed did not use the broadcast persons' actual names and made half an effort to cloak its actions with minimal pixilation was nothing more than an attempt to give itself some protection from civil liability. And in the end, it didn't matter and Al-Jadeed knew it didn't matter. Both K.Khayat and M.Habli admitted that Lebanon "is like a small village" and people are easily identified:

[K.Khayat] . . . because Lebanon is . . . diversified and also divided at the same time, you can directly know for instance, this family name is in this region or this family name is in this area etc . . . so it is not difficult to pinpoint the names through, if you have a few details about the person. [M.Habli]: Lebanon is like small village in Canada, the whole Lebanon, we live here like a village, everybody knows everything about everybody.⁹¹

25. Indeed, while Al-Jadeed and K.Khayat did not use the individuals' actual names, they clearly revealed significant identifying information to the public. [REDACTED]

and none of their voices were distorted. In many instances, their occupation, business or place of employment, title, rank and/or position were identified, along with the name of a town or other geographic information. The videos themselves often provided background information, in terms of signs, information, business premises and the environment which could be seen in the background. Given a person's occupation and title at a particular business in a small geographic area, where perhaps there was only one such business, it was easy to identify the person, whether or not Al-Jadeed used his actual name.

26. In fact, on this point, K.Khayat and M.Habli were right -- "everybody knows everything about everybody," and almost anyone who wanted to could, with little or no effort, identify most

⁹⁰ P00156/T3/16-18. An example of steps taken to actually protect the identities of persons can be found in one of the media items that the Defence has cited as involving a prior disclosure of confidential IIC or Tribunal information, concerning the Canadian Broadcasting Corporation. In its presentation of certain matters, the CBC actually used actors, rather than the real persons, to protect their identities while presenting a report. D00008/3:23.

⁹¹ P00173/60 (emphasis added).

⁹² [REDACTED]

of the disclosed persons. [REDACTED]

False Statement No. 8: The Al-Jadeed Broadcasts Were Legally Approved Before They Were Broadcasts.

27. Al-Jadeed's lead reporter on the Tribunal series claimed that the reports were legally reviewed and approved before they were broadcast:

[W]hen you do have a story that might be touchy, do you get the legal advice to say ok to do this or what are the chances that we get sued? [R.Al-Amin]: In general at the investigative reporting unit, we receive continuous training concerning these sensitive issues. Of course, we conduct legal consultations before airing any report.⁹⁵

[R.Al-Amin]: I have already said that in all investigative reports, we ask legal questions, consult with certain lawyers. We do this for all issues, including this one. [Interpreter]: As I said before in all investigates in all reports. [R.Al-Amin]: Investigative features. [Interpreter]: Investigative features we take that legal Counsel opinion before beforehand and this report was also the same.⁹⁶

28. To the contrary, the company attorney M.Habli, who was responsible for vetting the news programs,⁹⁷ had only seen, at most, one of the reports, as indicated when the broadcasts were reviewed during the interview of H.Bazzi:

[Video]: . . . What happened here was done designedly and voluntarily. The purpose was to allure a traffic expert . . . [Video]: in 2006, when Israel targeted several Lebanese

⁹³ [REDACTED]

⁹⁴ [REDACTED]

⁹⁵ P00126/34.

⁹⁶ P00126/65 (emphasis added).

⁹⁷ T6/50,112. According to the witness R.Sabbagh, every investigation must be vetted and approved by a certified media lawyer before the broadcast. T6/17-18,31,33,49,51,78,133.

facilities . . . But this story is true. We have names and information we want to publish. . .
 . [M.Habli]: This was part of the documentary? Those were parts of the documentary?
 [H.Bazzi]: Yes. [M.Habli]: Like that? [H.Bazzi]: Yes.⁹⁸

We'll just take a few seconds and show a video clip. [Video]: In this series of reports, we are trying to untangle the threads of the Special Tribunal for Lebanon . . . We obtained a list of most witnesses heard by the investigators. . . . Given the sensitivity of the issue, we had to use hidden cameras to execute the task of filming witnesses. . . . [M.Habli]: I don't recall seeing this. . . . [Video]: We visited him at his office under the pretext of conducting an interview for a local magazine, and called him later. He confirmed that he had testified before the Tribunal. [M.Habli]: I didn't know it was five episodes anyway, and now I didn't see. I didn't get the chance to see it again. I remember seeing one when . . . when delivered on the 08th of August. I've sent the respon[se] on the 9th, so maybe I watched. I thought it was only one episode and I watched. But these I have never seen.⁹⁹

D. COUNT 1, ELEMENT 1: Al-Jadeed (through the acts or omission of its principals, employees, agents, representatives and/or affiliates) and K.Khayat broadcast and/or published, or caused to be broadcast or published, information on purported confidential witnesses in the *Ayyash* case.

29. There is no dispute that on 6-10 August 2012, Al-Jadeed broadcast a series of reports about alleged confidential STL witnesses during prime time daily news bulletins, or that the broadcasts were uploaded, stored and accessible to the public on Al-Jadeed's website, YouTube channel and Facebook page.¹⁰⁰

30. The parties agree that K.Khayat was Deputy Head of News and Political Programs at Al-Jadeed. There is no evidence in the record except that K.Khayat was the person in charge of, and responsible for producing and broadcasting the series on alleged confidential Tribunal witnesses.¹⁰¹

31. Al-Jadeed plainly described the persons featured in the broadcasts as confidential STL witnesses and the information disclosed as confidential information. The broadcasts

⁹⁸ P00156/T3/11-12 (emphasis added).

⁹⁹ P00156/T2/5-7 (emphasis added).

¹⁰⁰ Table-13,14,15,16,28,30,31,33,34.

¹⁰¹ Table-5,6,8.

“reveal[ed]”¹⁰² and “expose[d]”¹⁰³ “the identity of the most prominent witnesses of the Special Tribunal,”¹⁰⁴ who were known to be “classified as confidential,”¹⁰⁵ as well as the “contents of their statements:”¹⁰⁶

- a. “[A] new headline enters the political scene through Al-Jadeed: . . . The Tribunal will depend on the testimonies of more than fifty names in Lebanon and they are classified in the confidential list of the Witness Protection Program. . . . Each had his own level of collaboration with the International Tribunal. . . .”¹⁰⁷
- b. “Since [the persons featured in the Al-Jadeed broadcasts] “hold this level of importance, why did the Tribunal dispense so easily with their confidential status?”¹⁰⁸
- c. “And on to the proceedings of the International Tribunal, where today we look at a new chapter . . . to reveal the identity of the most prominent witnesses who have been classified as confidential. . . . The Tribunal promised a cover of confidentiality to the witnesses but the leak has knocked on the doors of The Hague once again, and exclusively from Al-Jadeed.”¹⁰⁹
- d. “[T]he International Tribunal has proven yet again to be infiltrated. What we are looking for essentially is based on information leaked from inside the International Tribunal. We obtained a list containing the names of most of the witnesses who testified before the investigators.”¹¹⁰

E. COUNT 1, ELEMENT 2: The broadcast and/or publication of information on purported confidential witnesses in the *Ayyash* case interfered with the administration of justice by creating a real risk that public confidence in the Tribunal would be undermined, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality

¹⁰² P00046; P00052.

¹⁰³ P00049.

¹⁰⁴ P00052.

¹⁰⁵ P00052.

¹⁰⁶ P00046.

¹⁰⁷ P00049.

¹⁰⁸ P00049.

¹⁰⁹ P00052.

¹¹⁰ P00053.

32. “The reason for seeking confidentiality of witnesses’ particulars is to avoid exposing them to risk.”¹¹¹ If it was not for provisions of confidentiality, protective measures and the like, many persons would be reluctant or even refuse to give evidence.¹¹² If there is no or insufficient evidence, the Tribunal cannot administer justice and cannot carry out its mandate. Conduct, therefore, that interferes with or prevents the Tribunal’s administration of justice is obstruction of justice -- here, also called contempt. Conduct that breaches confidentiality or protective measures under which a witness has agreed or otherwise been arranged to provide evidence therefore interferes with obtaining that witness’s evidence. A witness in such situations acts and relies upon his or her belief that the Tribunal can and will afford them real and meaningful protection.¹¹³ If confidence in the Tribunal’s ability to do so is undermined, the Tribunal’s capacity to do justice is harmed. It also frustrates the Tribunal’s overall judicial function of creating and preserving a secure environment for potential and future witnesses who can and will testify only if their safety and confidentiality are protected.¹¹⁴ Public confidence in the effectiveness of such orders is vital to the Tribunal’s work.¹¹⁵

33. The Prosecution is not required to prove actual interference with, or harm to the administration of justice,¹¹⁶ but only that the charged conduct created a “real risk” of such interference or harm.¹¹⁷

¹¹¹ F0001, para.34 (emphasis added).

¹¹² *Marijačić- Rebić/TJ*, paras.49-50; See also *Margetić*, para.15,87; *Seselj4/TJ*, para.40; *Haxhiu*, para.34; *Nshogoza/AJ*, para.218.

¹¹³ *Bulatović*, para.41.

¹¹⁴ *Margetić*, para.69; *Nshogoza/AJ*, para.218; *Haxhiu*, para.34; *Gaa*, para.10.

¹¹⁵ See fn.113.

¹¹⁶ Contemptuous conduct is conduct which “tends to obstruct, prejudice or abuse the administration of justice.” *Vujin/TJ*, para.26. See also, *inter alia*, *Nobilo/TJ*, para.36; *Beqaj*, para.9; *Petković*, para.25.

¹¹⁷ Where a person is charged with contempt involving interfering with a witness or potential witness, it is required that the conduct of the Accused creates a “real risk” or is likely to interfere with a witness or potential witness: *Beqaj*, para.21; *Margetić*, para.64; *Haraqija-Morina*, paras.18-19; *Seselj2/TJ*, para.27; *Seselj2/AJ*, para.20; *Bangura*, para.664.

34. The conduct of Al-Jadeed and K.Khayat in this case created a “real risk” to the administration of justice. As stated by Judge Baragwanath in issuing the charging document in this case, “[a]s a matter of common sense, intentionally broadcasting or publishing information about purportedly confidential witnesses potentially constitutes such interference [with a tribunal’s administration of justice].”¹¹⁸

35. This “common sense” was fully corroborated by the Prosecution evidence, including the evidence of expert witness Dr. Anne-Marie De Brouwer (AP07).¹¹⁹ She explained the importance of protection and security for victims and witnesses, as international tribunals are heavily dependent on their evidence.¹²⁰ While not every instance of witness interference will result in an unwillingness to testify, it is clear that such interference (of whatever sort and however accomplished) creates a significant risk that victims and witnesses will be unwilling to give their evidence.¹²¹ This applies to “actual, potential and alleged victims/witnesses, since it is the conduct of witness interference that creates a hostile environment or sends a signal that similar things can happen to anyone and not only to individuals who are actual victims/witnesses. . . . It is the perception that confidential or protected information of purported victims/witnesses has been disclosed that has the damaging effect”.¹²² The Prosecution expert concluded that “disclosure of identifying information of alleged and actual victims/witnesses has significant negative effects on them, the public and its understanding and perceptions of the international criminal tribunals as well as on the tribunals’ administration of justice”.¹²³

¹¹⁸ F0001, para.12.

¹¹⁹ P00001.

¹²⁰ P00001/6-7; T5/28, 85.

¹²¹ P00001/8; T5/19-22, 40, 42, 99; P00097, P00098, P00151.

¹²² P00001/9, T5/23-24,41-42.

¹²³ P00001/25.

36. The context in which substantial identifying information concerning alleged confidential witnesses takes place must also be considered. Lebanon is a “close knit” society¹²⁴ where everyone, in one way or the other, seems to know each other and where it is possible, even with a little information, to identify a person.¹²⁵ The effects of disclosure of confidential or protected information can be especially significant at the local level.¹²⁶ Lebanon is a country with a tense political climate,¹²⁷ with political, territorial and religious fragmentation and a permanent state of security alert.¹²⁸ Given the political polarization,¹²⁹ being associated or “collaborating” with the Tribunal or being called a witness “against Hezbollah,” can have serious negative repercussions.¹³⁰ [REDACTED] : “[e]ach person co-operating with the international tribunal is considered a traitor to his country.”¹³¹

37. It is a common and recurring experience at the Tribunal that witnesses, because of the prevailing situation in Lebanon, often seek, and are granted confidentiality and other protective measures.¹³² As De Brouwer explained, “[t]he risks and perceptions of risk for victims/witnesses are even greater in conflict, post-conflict or highly charged situations than in other regular peace time situations.”¹³³

38. The very reality of these dynamics and impacts was recognized by witness V.Bernard, who was the former head of security at the Tribunal’s Beirut Office. On learning about the Al-

¹²⁴ P00001/11.

¹²⁵ P00173/60; T8/71.

¹²⁶ T5/30; T6/109.

¹²⁷ T4/24-25,39.

¹²⁸ *Ayyash (F112)*, para.117; S/2011/720; D00001/2; D00003/1; D00005/6-7; T8/55.

¹²⁹ S/2011/648, paras.5,55; S/2012/244, para.3; S/2012/773, para.2; T6/39.

¹³⁰ T8/29, 48; P00142; T1/43; T4/26 ; D00008/3:23; P00150.

¹³¹ [REDACTED]

¹³² F84, para.13.

¹³³ P00001/15; T5/28.

Jadeed, she immediately recognized the potential serious impact on actual and potential witnesses: “I had an idea of the general context because we'd had a meeting the day before to talk about that very point linked to the witnesses because this could endanger, well, the staff or personnel of the Tribunal or at least have an impact on everyday life of -- and daily work of STL staff but also people that we would be receiving for certain meetings and appointments.”¹³⁴

39. “[W]hether or not a witness came to harm after confidential information about his identity and testimony was revealed is not relevant to the question of whether the party revealing that information should be found responsible for contempt.”¹³⁵ In this case, however, the Prosecution has gone further, in showing that various persons featured in Al-Jadeed’s broadcasts have in fact suffered significant consequences:

- a. [REDACTED] witnesses [REDACTED] expressed concerns about the media exposure. They were mainly worried for the safety and well-being of themselves and their families. Some reported quite negative repercussions¹³⁶ and some seriously questioned their willingness to continue cooperating with the Tribunal.¹³⁷ [REDACTED]

- b. [REDACTED]

¹³⁴ T2/105.

¹³⁵ *Marijačić-Rebić/TJ*, para.44.

¹³⁶ [REDACTED]

¹³⁷ [REDACTED]

¹³⁸ [REDACTED]

¹³⁹ [REDACTED]

¹⁴⁰ [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. While Chouaib claimed that he did not suffer any harm from the Al-Jadeed broadcasts, but that his problems flowed from his involvement with, and alleged “leaks” from the Tribunal, it was Al-Jadeed’s broadcasts that shined a spotlight on his involvement.¹⁴⁵ Indeed, it appears from his testimony that what affected him psychologically and emotionally was the exposure that followed (“I am a victim of the leaks of the Tribunal to the media”).¹⁴⁶ He received inquiries following the broadcast,¹⁴⁷ and did not want to be thrust in the limelight “again,” as it may negatively affect his career.¹⁴⁸

40. Al-Jadeed’s claims on national television that it was disclosing the identities of previously confidential STL witnesses and that this information was “leaked” from the Tribunal can only have had a negative effect on the Tribunal and the public’s confidence in it, and especially its ability to protect victims and witnesses. Al-Jadeed’s highly-dramatized claims (we had to use hidden cameras, we had to “lure” them and approached them “undercover” -- using false pretexts) had this effect whether the information broadcast was true or not. Much of the public, and many actual, potential or alleged witnesses, would believe it was true, or at least very

¹⁴¹ [REDACTED]

¹⁴² [REDACTED]

¹⁴³ [REDACTED]

¹⁴⁴ [REDACTED]

¹⁴⁵ T8/29-30,36,45-47,62.

¹⁴⁶ T8/47-48,55-56,69,71,76-77.

¹⁴⁷ T8/38-39,56.

¹⁴⁸ T8/67-68, 77-81.

likely or quite possibly true, and what did it mean for them and their security, or the security of their family?¹⁴⁹ “If those ‘witnesses’ were exposed, might I or my husband or friend be next?” “Do I want to have any further involvement with that ‘compromised,’ incompetent Tribunal?” “Maybe I don’t want to testify after all.”¹⁵⁰

F. COUNT 1, ELEMENT 3: Al-Jadeed and K.Khayat knowingly and willfully interfered with the administration of justice, in that they knew, should have known or were recklessly indifferent to the real risk that their conduct posed to the administration of justice, in undermining public confidence in the Tribunal, including, *inter alia*, its ability to grant and enforce protective measures and confidentiality.

41. The clear purpose of Al-Jadeed’s Tribunal series -- its big “scoop” -- was to dramatically claim that confidential witness information had been “leaked” from the STL and, from that, to claim with great fanfare that it had identified and was exposing to the public alleged confidential STL witnesses, thereby interfering with the administration of justice and undermining public confidence in the Tribunal. Sitting as the Contempt Judge, Judge Baragwanath minced no words: “The entire tenor of the programme was the exposure of alleged confidential witnesses.”¹⁵¹

42. International jurisprudence only requires that the accused knew that the accused’s deliberate conduct created a real risk of interference with the administration of justice, including risks created concerning victims, witnesses, the administration of justice and public confidence in a court’s ability to do its work. “The *mens rea* requires proof that the accused acted willingly and with the knowledge that his conduct was likely to deter or influence witness.”¹⁵² In the *Margetić* case, the court said that “the Accused knew that the publication of these witnesses’ identities was likely to dissuade them from giving evidence in the future . . .”¹⁵³ Note that in

¹⁴⁹ P00177.

¹⁵⁰ P00082.

¹⁵¹ F00001, para.36.

¹⁵² *Haraquija-Morina*, para.19 (emphasis added).

¹⁵³ *Margetić*, para.74 (emphasis added). See also *Hartmann/TJ*, paras.53-55; *Seselj 2/TJ*, para.27; *Jović/AJ*, para.27.

both of these judicial statements, the court said that the conduct (and knowledge of it) must only concern a likely effect, not that the conduct would, or did have an actual effect.

43. Al-Jadeed and K.Khayat were well aware of the significance and impact of claiming leaked information from inside the Tribunal and revealing alleged confidential witnesses and information. Indeed, they had previously disclosed confidential information about the Hariri investigation and knew that Tribunal officials were against it and had warned about it.¹⁵⁴ In January-February 2011, Al-Jadeed and K.Khayat produced and broadcast a ten-episode series titled “Truth Leaks,” disclosing alleged audio recordings of IIC interviews with a number of high profile persons.¹⁵⁵ On 18-January-2011, the Tribunal issued a press release stating that the Prosecutor was “very concerned with the recent unauthorized broadcasts on some Lebanese TV channels of what appear to be interviews conducted by [IIC] officials . . . This material is confidential and protected information and was made public in breach of the law. . . . The Prosecutor strongly condemns the disclosure of this confidential information.”¹⁵⁶ Despite the press release and warning, Al-Jadeed continued broadcasting the series.

44. Al-Jadeed and K.Khayat were also well aware of the confidentiality of the *Ayyash* Indictment and its supporting material. They publicly acknowledged the confidentiality of the Indictment and the fact that some information would only be made public during trial.¹⁵⁷ In addition, they were specifically put on notice, warned and ordered not to disclose confidential information by the 7-August-2012 Cease-and-Desist and the 10-August-2012 Order, with those documents specifically referring to the Orders of 28-June-2011, 25-May-2012 and 14-June-2012.¹⁵⁸

¹⁵⁴ E.g., P00003 to P00007.

¹⁵⁵ P00009 to P00028.

¹⁵⁶ P00030.

¹⁵⁷ P00033 to P00035, P00038 to P00041.

¹⁵⁸ P00039, P00043, P00044, P00056, P00079.

45. Based on years of reporting on the tumultuous and insecure situation in Lebanon and frequent controversy surrounding the Tribunal and its work, Al-Jadeed and K.Khayat knew full well the significance and impact of the claims that they knowingly broadcast to the Lebanese public.¹⁵⁹ Indeed, on 27-April-2013, Al-Jadeed itself broadcast an interview with a man who had been wrongly publicly identified as a confidential Tribunal witness, stating: “The newspapers that published the names appearing in the list should not be surprised if they face in the coming days a torrent of lawsuits brought by individuals whose only fault was to testify before the international tribunal at the request of the Lebanese judiciary itself . . .”¹⁶⁰

46. The Al-Jadeed broadcasts themselves plainly evidence knowledge of the significance and sensitivity of what was being done and said: “today we look at a new chapter . . . to reveal the identity of the most prominent witnesses who have been classified as confidential . . . exclusively from Al-Jadeed;” “[c]onsidering the sensitivity of the subject, we had to use hidden cameras” -- especially since “[the individual] preferred -- as all the other witnesses did -- not to be shown on camera . . .”¹⁶¹ Al-Jadeed plainly knew of Hezbollah’s powerful and -- to many persons -- terrifying role in Lebanon, knew of Hezbollah’s opposition to the Tribunal and plainly knew of the likely effect of telling an alleged confidential witness that he had been, or was about to be disclosed to Hezbollah as collaborating against them. Al-Jadeed and K.Khayat were plainly aware that their conduct, at the very least, created a “real risk” for victims, witnesses and the administration of justice, and undermined public confidence in the Tribunal.¹⁶²

¹⁵⁹ See, e.g., D00003/1 (Lebanese investigator assassinated for his role in the Hariri investigation); D00005/6-7 (outlining the history of recurring political assassinations in Lebanon); D00001/2 (“In the present climate, the possible revelations (concerning Hariri’s assassination) are potentially explosive, with the risk of aggravating tensions between the Shi’i and Sunni communities”). The Tribunal itself has clearly and frequently recognized this situation, on the basis of which it has frequently granted protective measures to witnesses, victims and their families. See *Ayyash (F112)*, para.117.

¹⁶⁰ P00095, P00096 (emphasis added); P00004.

¹⁶¹ P00071/1.

¹⁶² P00092, P00093, P00099.

47. Al-Jadeed and K.Khayat knowingly engaged in deliberate conduct which created real risks to the administration of justice, which clearly continued with the non-removal of Al-Jadeed's online material.

G. Count 2, Element 1: On 10-August-2012, the Pre-Trial Judge ordered Al-Jadeed and its agents “immediately not to disseminate in any form” and immediately to remove from their websites and other Al-Jadeed platforms any confidential information or material alleged to be related to witnesses or purported witnesses before the Tribunal.

48. There is no dispute that the 10-August-2012 Order was issued. The Order specifically addressed Al-Jadeed's Tribunal witness reports and their disclosure of what was acknowledged in the broadcasts themselves as confidential information.¹⁶³

H. Element 2: On and after 10-August-2012, Al-Jadeed and K.Khayat disclosed (or continued to disclose) and did not remove from Al-Jadeed's public platforms confidential information or material alleged to be related to witnesses or purported witnesses before the Tribunal.

49. The crimes committed by Al-Jadeed and K.Khayat very plainly continued after the Tribunal's Cease-and-Desist and 10-August Order. It is an agreed fact that the Al-Jadeed broadcasts were placed on Al-Jadeed's website, YouTube channel and Facebook page and the evidence is uncontradicted that they remained there until at least 25-April-2013, 15-January-2014 and 26-September-2012, respectively,¹⁶⁴ with Al-Jadeed not removing or taking down these items. Al-Jadeed “total[ly] dismiss[ed]” the Cease-and-Desist and stated that “the decisions of the International Tribunal are not legally binding for Lebanese media.”¹⁶⁵ In his 31-January-2014 Decision, Judge Baragwanath said that the broadcasts were still available on Al-Jadeed's YouTube channel.¹⁶⁶

¹⁶³ P00079; P00116.

¹⁶⁴ Table-31,33,34,40-42.

¹⁶⁵ P00068, P00073, P00074.

¹⁶⁶ Indictment Decision, para.3.

50. As noted by the Pre-Trial Judge, the Accused were perfectly aware of the confidential nature of the information they disclosed and of the confidentiality of the OTP investigation. Revealing confidential witness information was Al-Jadeed's stated purpose in broadcasting the August-2012 episodes. [REDACTED]

Al-Jadeed

was aware of the 25-May-2012 Order and of the confidentiality of the Indictment and its supporting material.

51. Al-Jadeed and K.Khayat, having authority over the production and broadcast of the August-2012 episodes and having decided to broadcast them, both before and after the Cease-and-Desist, and also having the ability to remove them, continuously violated the 10-August-2012 Order by not removing the episodes from all of Al-Jadeed's resources available to the public.¹⁶⁹

I. Element 3: In continuing to disclose and not removing confidential information or material alleged to be related to witnesses or purported witnesses from Al-Jadeed's resources accessible to the public, the accused Al-Jadeed and K.Khayat knew about, should have known about or were recklessly indifferent to the existence of the 10-August-2012 Order and knowingly and willfully violated the Order.

52. The deliberate disobedience of a court order is *per se* willful and knowing interference with the administration of justice and contempt of court.¹⁷⁰ Al-Jadeed and K.Khayat knew or should have known of the Order and deliberately disobeyed it. While actual knowledge, willful

¹⁶⁷ [REDACTED]

¹⁶⁸ [REDACTED]

¹⁶⁹ For a charge of contempt for violation of a court Order, the *actus reus* is constituted by the wilful disclosure of, or failure to remove disclosed information in violation of an Order. *Marijacić-Rebić/TJ*, para. 17; *Jović/TJ*, para.19; *Margetić*, para.36; *Hartmann/TJ*, paras.20-21; *Seselj 3/TJ*, para.31; *Seselj 4/TJ*, paras.40-41; *Nshogoza/TJ*, para.157.

¹⁷⁰ *Nshogoza/AJ*, para. 56

blindness or reckless indifference are all sufficient to establish the requisite *mens rea*,¹⁷¹ there can be no *bona fide* dispute, based on the evidence in the record, that Al-Jadeed had actual knowledge of the Order and its contents.

53. There is no dispute that on 14-August-2012, two Lebanese judicial officers delivered the Order to Al-Jadeed, by delivering it to Al-Jadeed senior manager, M.Al-Bassam at Al-Jadeed's place of business.¹⁷² (In her 9-August-2012 response to the Cease-and-Desist, Al-Jadeed attorney M.Habli stated: [M.Al-Bassam] "is the director of the company according to the Lebanese law."¹⁷³) There is also no dispute that M.Al-Bassam (although at one point denying it and causing a forgery complaint to be filed against the officers), signed the report of service.¹⁷⁴ The only evidence in the record, and uncontradicted, is that M.Al-Bassam, in the presence of the two officers for about 15-20 minutes, received the Order, read it and said to the officers, "The Tribunal did [sic] not want us to publish anything."¹⁷⁵

54. Both Al-Jadeed and K.Khayat had actual knowledge of the Order. Prior to Al-Jadeed receiving the Order, the STL delivered the Cease-and-Desist to Al-Jadeed and K.Khayat.¹⁷⁶ There can be no dispute that K.Khayat had personal knowledge of the Cease-and-Desist.¹⁷⁷ On 9-August-2012, Al-Jadeed responded to the Cease-and-Desist, stating, *inter alia*, that "we only abide by decisions issued by the competent Lebanese authorities and by binding judicial

¹⁷¹ *Nobilo/AJ*, paras.53-54; *Marijačić-Rebić/TJ*, para.18; *Jović/AJ*, para.27; *Margetić*, para.36-37; *Hartmann/TJ*, para.22; *Seselj 3/TJ*, para.32; *Seselj 4/TJ*, paras.40-41; *Nshogoza/AJ*, para.80; *Samura*, paras.24-25; *Griffith*, paras.36-40.

¹⁷² Table-38.

¹⁷³ P00074.

¹⁷⁴ Table-38.

¹⁷⁵ Table-38.

¹⁷⁶ Table-17,20, 22.

¹⁷⁷ Table-17, 23, 27.

decisions.”¹⁷⁸ Thus, Al-Jadeed and K.Khayat had every reason to believe that additional STL action would follow their publicly-stated total dismissal of the Cease-and-Desist.

55. With such knowledge, Al-Jadeed made every effort to evade service. At 10:16 on 11-August-2012, senior STL official A.Lodge sent an email message to K.Khayat, at the same email account that both the STL and K.Khayat had used on many prior occasions to send emails to one another -- including the undisputed email from M.Youssef on 7-August-2012 alerting K.Khayat to the Cease-and-Desist.¹⁷⁹ The email attached the 10-August-2012 Order and a copy of Rule 60bis. There is no evidence in the record that K.Khayat did not receive the email and attachments. A.Lodge did not receive any type of response, automated or otherwise, that the email was not received, just as other emails to that address had been and were regularly received.

56. At 10:32, the same day, STL official V.Bernard arrived at Al-Jadeed’s offices to deliver the Order and asked to see M.Al-Bassam. The receptionist spoke over the phone two or three times with some person or persons, and then said that there was nobody in the building to receive the documents. V.Bernard stated, however: “[W]e really had the feeling that there was someone in the building. But nobody wanted to accept and to receive us and particularly to receive and take responsibility for the envelopes . . .” V.Bernard called I.Dsouki (to whom she delivered the Cease-and-Desist a few days earlier) several times, but I.Dsouki, who had V.Bernard’s number, never answered or returned the call.

57. Taking all of this together, and given K.Khayat’s senior position at Al-Jadeed, the fact that her Tribunal reports were front-and-center in this controversy, and her otherwise extensive involvement in all aspects of this matter, it is not credible that she did not have knowledge of the 10-August-2012 Order. *Amicus* submits that it is clearly established that both Al-Jadeed and K.Khayat knew or should have known of the Order and its contents.

¹⁷⁸ P00074 (“we only abide by decisions issued by the competent Lebanese authorities and by binding judicial decisions”); P00075; P00173/80.

¹⁷⁹ Table-17.

58. Mere awareness of an order is sufficient to impute knowledge of its contents. In the *Hartmann* case, Hartmann was charged with violating protection orders that she knew of, but had not specifically seen. She argued that while she knew generally of the applicable order, she did not know of its contents and could not be held to its terms. The ICTY rejected this argument: “What is of consequence is that she became aware of the confidential information, and of the fact of its confidentiality, and disclosed the information nonetheless.”¹⁸⁰ If K.Khayat did not have actual knowledge of the Order, she should have known or willfully blinded herself to the fact.

J. CORPORATE LIABILITY

59. The first three elements of corporate liability are similar to those for natural persons. Elements 4 - 6 concern the attribution of the acts or omissions of a corporation’s principals, employees, agents and/or affiliates (hereafter “agents”) to the corporation. In order to establish that the acts or omissions of Al-Jadeed’s agents trigger its criminal responsibility, the evidence must show that such individuals (a) acted within the scope of their employment (b) had authority on behalf of Al-Jadeed and (c) acted on behalf of Al-Jadeed. Purely private acts and other acts outside the scope of a person’s agency are not attributed to the corporation.¹⁸¹

60. While the Appeals Panel affirmed the liability of a legal person for contempt,¹⁸² it did not specify the details of such liability.¹⁸³ Based on a review of corporate liability models in national

¹⁸⁰ *Hartmann/AJ*, para.57.

¹⁸¹ F0066, paras.24; F0066, paras.23-25; F0066, paras.23-24.

¹⁸² F0012-AR126.1 para.67 “[G]iven all the developments outlined above, corporate criminal liability is on the verge of attaining, at the very least, the status of a general principle of law applicable under international law”. The Appeals Panel concluded that “under Lebanese law, a legal person can be held criminally liable for its own actions as well as the actions of its agents and employees acting on its behalf or using its means”.

¹⁸³ The Defence contends that simply because this is the first case against a legal entity before an international tribunal, the elements are undefined and therefore the Accused would not be in a position to properly defend itself against the charges it faces. The Appeals Panel has already determined that the crime of contempt was foreseeable to a legal entity doing business in Lebanon and there is no violation of the principle of *nullem crimen sine lege*. [F0012-AR126.1 paras.71,85. It is also recognized that an accused is not required to know all details of a crime in order to be held accountable. *CR v. United Kingdom*, para.34; *Aleksovski*, para.127; *Milutinović*, paras.37-38; *Beqaj*, para.14; *Ntagerura*, para.127; *Kordić-Cerkez*, para.311.

systems, *Amicus* submits that the three elements set out above are common to nearly every model of corporate liability, including that in Lebanon.¹⁸⁴

61. A possible additional element would require that a natural person be identified and/or convicted of the crime before the corporation can be convicted, which may be called an identification/conviction element. Here, Al-Jadeed will be liable whether the Court requires this element or not, since natural persons (including K.Khayat) were identified at trial with sufficient evidence to sustain their conviction.

62. Nonetheless, as a case of first impression, *Amicus* submits that the identification/conviction element should not be adopted in international law, for the following reasons:

63. First, international law is clearly moving away from and does not require an identification or conviction element.¹⁸⁵ As stated by one authority, “[t]he idea that a relevant person must first be convicted is not usually paralleled in national legislation . . .”¹⁸⁶

64. Second, such a requirement is not consistent with the object and purpose of legal person liability. One purpose of imposing legal person liability is that corporations are frequently large and complex. As the Appeals Panel noted, “[t]he reality is that many corporations today wield far more power, influence and reach than any one person.”¹⁸⁷ Finding one particular individual responsible for the criminal behavior may be very difficult and is one of the reasons that this requirement has not been adopted: “the commonly opaque nature of accountability within corporate structures, the expendability of individuals, the practice of corporate separation of

¹⁸⁴ Article 210 of the Lebanese Criminal Code (“LCC”) reads: “... Legal persons shall be criminally responsible for the actions of their directors, management, staff, representatives and employees when such actions are undertaken on behalf of or using the means provided by such legal persons. “It also requires the actions must be accomplished on behalf of the legal entity or by using its means. *See also* Al-Akhbar F0004-AR126.1, para.58.

¹⁸⁵ *See generally* A.A. Robinson, Corporate Culture As A Basis for the Criminal Liability of Corporations, prepared for the UN Special Representative on Business and Human Rights, February-2008, p.73.

¹⁸⁶ A.Clapham, Extending Int’l Criminal Law beyond the Individual to Corporations and Armed Opposition Groups, *Journal of Int’l Criminal Justice*, 6 (2008), 899-926.

¹⁸⁷ F0012-AR126.1, para.82.

those responsible for past violations and those responsible for preventing future offences, as well as the safe harbouring within corporations of individual suspects” are arguments against such a requirement.¹⁸⁸

65. One of the reasons that the Appeals Panel upheld legal person liability is that a single natural person in a complex situation may not be identifiable. There may be situations where a court is unable “due to the complexity of corporate structures, internal operating processes, and the aggregate effect of the actions of many individuals, to identify and apprehend the most responsible natural persons within a corporation. . . . Punishing only natural persons in such circumstance would be a poor response where the need for accountability lies beyond any one person. In other words, the prosecution and punishment of legal persons pursues different aims and interests than the punishment of natural persons.”¹⁸⁹

66. Imposing an identification/conviction element would violate one of the key reasons for corporate liability and weaken a court’s ability to safeguard its proceedings.

K. Counts 1 and 2, Element 4: Al-Jadeed’s agents acted within the scope of their employment (or relation to the company).

67. The episodes of 6-10-August-2012 were official¹⁹⁰ and exclusive¹⁹¹ Al-Jadeed broadcasts, as part of its news bulletins.¹⁹² Al-Jadeed announced and took credit for the series.¹⁹³ The broadcasts were prepared and aired by Al-Jadeed’s agents.¹⁹⁴

¹⁸⁸ J.KYRIAKAKIS, Australian Prosecution of Corporations for International Crimes, *JICJ* 5, 2007, pp. 809-826.

¹⁸⁹ F0012-AR126.1, para.83.

¹⁹⁰ P00046/1; P00049/1.

¹⁹¹ P00052/1.

¹⁹² Table-13,14,15,16,28,30; P00056/1.

¹⁹³ Table-13; P00046/1.

¹⁹⁴ P00053/1.

68. The reports were no accident or coincident. They were planned, prepared, broadcast, archived, and put on Al-Jadeed's website, YouTube channel and Facebook page by a number of Al-Jadeed staff (reporters, cameramen, archivists and others) over a period of six months,¹⁹⁵ using Al-Jadeed equipment and resources,¹⁹⁶ all acting as part of and within the scope of their employment, with full knowledge and the objective of broadcasting the reports as part of Al-Jadeed's news program. The reports were prepared and broadcast in accordance with regular Al-Jadeed procedures.¹⁹⁷ [REDA] All of

this required management coordination, primarily by K.Khayat.¹⁹⁹

69. Al-Jadeed's news management is responsible for what is available to the public on Al-Jadeed's public platforms.²⁰⁰ The news bulletins are broadcast live online and transferred to online platforms.²⁰¹ The Chief of Al-Jadeed's Online Section takes his instructions from K.Khayat and M.Al-Bassam.²⁰² As everything that is broadcast on television is published on the website, "they have the decision of what is being broadcasted on TV and consequently what is being published on the website."²⁰³ There is no indication that any "rogue" person placed something on Al-Jadeed's public platforms or that someone hacked into Al-Jadeed's systems. All of this was done by, for and on behalf of Al-Jadeed, as part of its business.

¹⁹⁵ P00126/38; P00173/68.

¹⁹⁶ P00156/T2/9-12.

¹⁹⁷ P00173/35-37.

¹⁹⁸ [REDACTED]

¹⁹⁹ P00173/39-40,54; P00131/T2/9-12; P00156/T2/4-5; T4/11.

²⁰⁰ P00131/T2/11.

²⁰¹ P00173/37,41-42.

²⁰² P00131/T2/11-12.

²⁰³ P00131/T2/11; P00173/37.

70. Since all of this was Al-Jadeed's known practice and procedure, its management, including K.Khayat, knew that the Tribunal reports first broadcast as part of Al-Jadeed's news bulletins would also be placed on Al-Jadeed's website, YouTube channel and Facebook page. Al-Jadeed and its managers had the capacity to remove any material from these platforms,²⁰⁴ but did not do so, notwithstanding the STL's Cease-and-Desist and 10-August Order.

L. Counts 1 and 2, Element 5: Al-Jadeed's agents had authority on its behalf

71. Al-Jadeed has authority to own, manage and broadcast news and political programmes on its television channel.²⁰⁵ The Tribunal broadcasts were prepared and carried out under Al-Jadeed's management.²⁰⁶ Al-Jadeed owned, controlled and operated its website, YouTube channel and Facebook page, and the Tribunal reports were placed on these platforms as part of Al-Jadeed's regular business practice.²⁰⁷ K.Khayat and M.Al-Bassam had the authority and power to decide what to publish on the air, and what to place on or remove from Al-Jadeed's online resources.²⁰⁸

M. Counts 1 and 2, Element 6: Al-Jadeed's agents acted on behalf of Al-Jadeed.

72. All of the activity set out above was done under Al-Jadeed's name and the broadcasts were made on Al-Jadeed's television channel, as part of Al-Jadeed's television business. The broadcasts were made "exclusively by Al-Jadeed."²⁰⁹

73. In Al-Jadeed's own words, the Tribunal's Cease-and-Desist was directed at Al-Jadeed and told Al-Jadeed to cease broadcasting the Tribunal reports.²¹⁰ Al-Jadeed's lawyer reviewed

²⁰⁴ P00173/91; P00131/T2/5-6.

²⁰⁵ P00117/9; P00118; P00119; P00120; P000121.

²⁰⁶ P000173/28,29,40.

²⁰⁷ Table-31,33,34.

²⁰⁸ P00173/39,54. P00173/91; P00131/T2/5-7,11-12; P00046/1.

²⁰⁹ P00052.

²¹⁰ P0056; P00067/1.

the Cease-and-Decist and sent Al-Jadeed's corporate response.²¹¹ The Al-Jadeed channel continued to broadcast the Tribunal reports after the Cease-and-Desist, and also made the reports available on Al-Jadeed's website, YouTube channel and Facebook page. Likewise, after the STL's 10-August Order was issued,²¹² delivered to Al-Jadeed and the service signed by M.Al-Bassam, Al-Jadeed did not remove the reports from its public platforms, but continued to make them available,²¹³ in violation of both the Cease-and-Desist and the 10-August Order.

N. CONCLUSION

74. In the end, there is no mystery why this case is important or what motivated Al-Jadeed and Karma Khayat to put victims, witnesses and the administration of justice at risk. Al-Jadeed's own reporter, Firas Hatoum, answered both questions:

[Question]: Do you know why the STL was not . . . happy with that [documentary] feature? [F.Hatoum]: I can estimate because maybe they thought that this thing might put the witnesses in danger and that would discourage others to give information if they have.²¹⁴

[Question]: Do you know what would have motivated [Al-Jadeed] to put such a documentary on the air? [F.Hatoum]: The scoop thing we talked about, having the scoop.²¹⁵

Count: 13900 words

RESPECTFULLY SUBMITTED THIS 16 JUNE 2015.



Mr Kenneth Scott
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²¹¹ P00074/3; P00072/2; P00067/1; P00070/1.

²¹² P00079/5.

²¹³ Table-40 to 42; P00159; F0001, para.3.

²¹⁴ P00137/T2/8.

²¹⁵ P00137/T2/10.

