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Thierry Cruveilli: Thanks Thomas, we move on now, with Simone and Charity Kagwi from the office of the Prosecutor.

Simone Monasebian: I'm going to present from over here, because I'm going to show you some of the evidence in the case, and some pieces of the hate media involved so that you can make your own decision. So I'll just step down for a moment. I came the ICTR as a prosecutor in the year 2000, a true believer in virtually unbridled free speech. I was a defense attorney and a journalist, a First Amendment absolutist. The 240 days at trial tested that on a daily basis. In Rwanda, unlike the United States, which of course, also has it's own problems, and is not a pure democracy, the judiciary was emasculated, was made impotent by the executive branch. There was not a free marketplace of ideas, not everybody was given a platform. And while all of the media that emerged by 1994 came under the guise of the liberalization of the press, of freedom of speech, of providing a free marketplace of ideas, it wound up doing the very opposite. And so what I took away from this case was that, what may be very well and good in the United States may not be the same approach that has to be applied elsewhere. I still believe in the absoluteness of the First Amendment in the context of the United States, even in the post-9/11 United States, but in the circumstances of what happened in Rwanda, I don't think one can responsibly take a First Amendment absolutist stance.

I'd like us to look at some of the excerpts from RTLM Radio so we can see what exactly was being broadcasted over the radio in 1994 in Rwanda, but before we do so, I think it's important to make a distinction. In the December 3 judgment in the media case, the judges criminalized RTLM radio's emissions both before and after April, 1994, and while the broadcasts after April 6, 1994, by any responsible accounting were clearly not protected even by a First Amendment absolutist stance, there is a legitimate controversy as to whether or not the broadcasts before April 6 were also criminally sanctionable under international criminal law, and international humanitarian law. In the ICTR, the judges found that the broadcasts before April 6 were just as criminal, albeit to a different degree.

Let's look at a few of them after April 6, and then a few before. So if the booth is ready, I'm going to be playing sound and video, and we'll go to the first clip now. Of course we tested this before, and yet the screen is frozen. Could ... It's frozen. Okay. In the meantime, I'll just speak about something else so we can get this proceeding going.

It's not frozen any more thank you. Okay. What we're going to be looking at now is a broadcast from RTLM Radio from June 4, 1994, by one of it's broadcasters, Kantano Habimana.

FRENCH broadcast (inaudible).

Now for the benefit of you who speak French, that was excerpt five for the booth, and in the future, I will say the number of the excerpt so that you can read that. In the meantime,

if the French booth can just read excerpt five, or maybe we can come back to that later is probably more preferable.

That instance of talking about the small noses clearly signified the physical characteristics of Tutsis, and certainly was a call to exterminate them by RTLM.

Another broadcast talks about standing up as one man against the Tutsi, and that's a broadcast from May 30, 1994, by Gaspard Gahigi who was the editorial director of RTLM, as well as a journalist, and if the booth can go to excerpt one, and read that paragraph, I'll now play that short one so you can get another idea.

FRENCH broadcast (inaudible).

Okay, I'm sorry that the sound is not coming out loud enough in that one, but because General Dallaire spoke today, I think it might be interesting to also see one in which RTLM mentioned him. General Dallaire, Francois-Xavier Nsanzuwera, Thomas Kamilindi were among people who were often targeted by RTLM. If the booth can now go to excerpt number two, this is a May 31, 1994, broadcast by Kantano Habimana.

FRENCH broadcast (inaudible).

The last thing I'll leave you with, and we can maybe in another venue later in the day because I'm being held to a tight timeline by the moderator, look at some other transcripts, and play them with better sound quality. But, in the end, what is the danger of this judgment? Because as journalists I'm sure that's probably one of the most important questions, and is there a risk that this judgment will be used in an over broad manner with a sweeping effect to chill speech? I don't think so, and I think the judges provided for that by saying the following in the judgment, and I'm going to read those words to you in closing. The judges wrote that, "the dangers of censorship have often been associated, in particular, with the suppression of political or other minorities, or opposition to the government. The special protections developed by the jurisprudence for speech of this kind in international law, and more particularly in the American legal tradition of free speech, recognize the power dynamic inherent in the tradition, and the circumstances that make minority groups and political opposition vulnerable to the exercise of power by the majority or by the government. These circumstances do not arise in the present case, where at issue is the speech of the so-called majority population in support of the government. The special protections for this kind of speech should accordingly be adapted in the chamber's view, so that ethnically specific expression would be more, rather than less carefully scrutinized to ensure that minorities without equal means of defense are not endangered."

So in closing, the judges looking at who was being targeted and why, and what their level of power was in comparison to those who had the speech against them was a way of noting that these types of cases have to be judged in a case by case circumstance, and if we do it in that manner, we will protect the rights of freedom of speech. I'm now going to pass over to my partner in the case, Charity Kagwi, to talk a little bit about the print

media. Thank you.

Thierry Cruvellier: I'm sorry it's going to be pretty short for Charity. It's only two minutes. Maybe you'll have more time with the questions.

Charity Kagwi: Okay, well since I have two minutes, I'll have to just rush through this. Now one of the main issues with regard to Kangura, was that Rwanda is not a very literate society, in fact, both expert and lay witnesses stated that Rwanda, perhaps a very low percentage of them, the people in Rwanda who are literate. Although the court did not require us to prove that there was an actual causation between the media to genocide, the Kangura, and what actually happened, we had a responsibility to show that there was an actual phenomenal effect in this highly illiterate society, of the print media. Now how did we do this? This was done through lay witnesses, some who were illiterate, who said that they bought Kangura, and they asked those who knew how to read, to read it to them. Professor Marcel Kabanda gave evidence, and said that in Rwanda there is a culture known as oral reporting, in which somebody who knows how to read will read to his neighbor. Sometimes you will actually spread the message, you will photocopy it, and this was a similar that was done in Germany by Doscharmer (sic) although they were actually highly literate, however, the figures of publication did not show the extent of the message, because the message was transmitted in other forms. I'm being told it's one minute now.

So I can read for you one particular excerpt from Kangura that shows perhaps the impact of Kangura, and this is an expert, interestingly enough that was written in Kangura but came from Burundi. This is what the Power of the Hutu president said, "I do not know how to describe the prevailing situation. When this issue of the Kangura appeared in some areas of the Bujumbura all the Hutus heaved a deep sigh of relief. They distributed the newspaper everywhere, including prisons, to the extent that a copy could cost up to 1,000 Burundi francs, and that is if you were lucky, because some people preferred to frame it, so that they could enlighten their family members. Now this particular issue stated that when the Tutsis, this is in Burundi, when the Tutsis saw Kangura, they were struck with fear. So this was the effect that Kangura was having within not just the central Africa region, not just in Rwanda, but in the whole central Africa region. There was fear by the Tutsis all over, and there was a sense by the Hutus that they were to rise up and defend themselves.

Now can I go on? Okay, Well, I think I will answer some questions, but the issues rise here as to, now the extent in which, say a republication, and that is one thing that has not been dealt with actually, because the Ten Commandments were not made by Hassan Ngeze. They were not his publication. He actually republished them, and there was something that was very interesting also the 19 Tutsi Commandments, and the only parallel that you can draw between the 19 Tutsi Commandments that were republished in Rwanda, were the particles of the elders of Zion in which they drew upon a worldwide conspiracy by the Tutsis to take over the central Africa region. That's the same thing that Doscharmer (?) did. There was a worldwide conspiracy of the Jews to take over the world. Now can I have a look at that one. Okay we'll do it later.