

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DAVID BONIFACE, NISSAGE MARTYR,	)	
AND JUDERS YSEMÉ,	)	
	)	
Plaintiffs,	)	Civil Action
	)	No. 17-10477-ADB
v.	)	
	)	
JEAN MOROSE VILIENA,	)	
a.k.a. JEAN MOROSE VILLIENA,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE ALLISON D. BURROUGHS  
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY SIX

JURY CHARGE AND CLOSINGS

MARCH 20, 2023

John J. Moakley United States Courthouse  
Courtroom No. 17  
One Courthouse Way  
Boston, Massachusetts 02210

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## 1 P R O C E E D I N G S

2 (The following proceedings were held in open court  
3 before the Honorable Allison D. Burroughs, United States  
4 District Judge, United States District Court, District of  
5 Massachusetts, at the John J. Moakley United States Courthouse,  
6 One Courthouse Way, Courtroom 17, Boston, Massachusetts, on  
7 March 20, 2023.)

8 THE COURT: I didn't tell you to stand up. I'm not  
9 going to tell you to sit down.

09:04 10 I have a couple of questions. Are you ready?

11 MR. HALEY: Yes, Your Honor.

12 THE COURT: My law clerk and I are having a debate. I  
13 thought the arson count went to Nissanderé himself, or did it  
14 go to the father's house?

15 MS. LAU: It goes to the father's house because  
16 Nissanderé has been substituted, so he stands in the shoes of  
17 his father as to all claims.

18 THE COURT: I just wasn't sure about that. The  
19 verdict form -- hopefully we sorted it out. We gave you  
09:05 20 redlines. Can we start with the verdict form because at least  
21 I have a hard copy of that.

22 MS. LAU: Yes.

23 MS. MATTHEWS: Plaintiffs don't have anything on the  
24 verdict form, Your Honor. We think it looks good.

25 THE COURT: How about you, Mr. Haley?

1 MR. HALEY: Defendant does not, Your Honor.

2 THE COURT: That's excellent. All right. So we're  
3 going to, a few minutes before 10:00, just get clean copies of  
4 all of this printed out. Although, David, I have a clean copy  
5 of the verdict form, right? So I can give the jury my copy.

6 All right. On the co-conspirator hearsay, I'm going  
7 to call it a motion, although it's not really a motion, I'm not  
8 going to let those statements in. The third one is not a  
9 statement in furtherance of the conspiracy for sure in my mind.

09:06 10 The other two are closer calls, but I am not confident enough  
11 about the object of the conspiracy or who was in the conspiracy  
12 or that they're in furtherance of the conspiracy for those  
13 statements to overcome the prejudice analysis, and I'm not  
14 going to let them in.

15 All right. In terms of the verdict form, I mean, the  
16 instructions, which I'm having trouble with because I don't  
17 have my computer --

18 MR. MCLAUGHLIN: Your Honor, can we confirm the  
19 statements you let in for their effect on the hearer --

09:07 20 THE COURT: Yes, yes.

21 MR. MCLAUGHLIN: -- for those limited purposes?

22 THE COURT: Yes. Just a couple of questions. We  
23 don't have in here, and I'm wondering if anybody would like me  
24 to add, an instruction that they need to be unanimous on which  
25 form of liability.

1 MR. HALEY: Yes, the defendant would request that,  
2 Your Honor.

3 THE COURT: I think they do have to be unanimous on  
4 it, right? I'm sort of thinking of like it's a RICO predicate.

5 MS. MATTHEWS: I don't think that's correct, Your  
6 Honor, because any one form of liability is sufficient.

7 MS. LAU: Correct.

8 MS. MATTHEWS: So whether they find on conspiracy or  
9 solicitation --

09:07 10 THE COURT: No, no. But they have to be unanimous  
11 whether it's a conspiracy or solicitation.

12 MS. LAU: I don't think that's correct, Your Honor.

13 THE COURT: I'm not putting it on the verdict form.  
14 I'm not doing a special verdict on it.

15 MS. LAU: Your Honor, do you have the language of the  
16 instruction that you would propose on that count?

17 THE COURT: I was just going to add a sentence to the  
18 effect of you have to be unanimous. There are five forms of  
19 liability. You have to be unanimous on which one. Not on the  
09:08 20 verdict form, just as an instruction.

21 MS. MATTHEWS: Your Honor, we don't think that's  
22 correct as a matter of law. We would appreciate some time to  
23 look at it.

24 THE COURT: How can it not be?

25 MS. LAU: Your Honor, I think we would appreciate some

1 time to look into that question and get back to you because we  
2 do not believe that is a correct statement of law.

3 THE COURT: Some of them think it's a conspiracy and  
4 some of them think it's aiding and abetting. I'm not going to  
5 put it on the verdict. Go ahead and look it up. It struck me  
6 last night, lying in bed, that they probably did need to be  
7 unanimous on which theory.

8 MS. LAU: Understood. I don't think that's correct,  
9 but we will look at that as quickly as possible and let Your  
09:08 10 Honor know.

11 THE COURT: It seems like one of those things it's  
12 safer to put in than to not put in.

13 MS. LAU: Not if it's an erroneous statement of law,  
14 Your Honor, but I understand your point.

15 THE COURT: All right. So you'll look into that,  
16 whether they need to be unanimous on which form of liability.

17 MS. LAU: Yes, Your Honor.

18 THE COURT: If it's not right, it's not right. It's  
19 one of those things I'm assuming they will be one way or the  
09:10 20 other. They won't find either, they won't find liability, or  
21 they'll all be in agreement which form it is, but I don't want  
22 to get it wrong.

23 MS. MATTHEWS: Your Honor, just to note, that  
24 instruction has never been given.

25 THE COURT: You know that argument doesn't move me. I

1 want to get it right.

2 MS. MATTHEWS: I understand, Your Honor, but just for  
3 the record, it has never been given before, and invariably  
4 there's always multiple forms of liability pled that go to the  
5 jury.

6 THE COURT: I was talking to another judge this week  
7 who gave a charge in the last couple of weeks and realized  
8 there was an error in his charge and went back and looked at  
9 every charge he'd ever given and realized they all had the same  
09:11 10 error because we all just cut and paste what has come before in  
11 some fashion.

12 I want to get it right. You may be right. I just  
13 don't understand why they would not have to be unanimous on the  
14 form of liability. So I looked it up. Mr. Haley, on the  
15 association idea, I think it's baked into the aiding and  
16 abetting charge already, but I did add it to the conspiracy  
17 charge, which is where I think it belongs. I think that's a  
18 standard conspiracy.

19 MS. MATTHEWS: We're happy with the language proposed  
09:11 20 in the conspiracy charge, Your Honor.

21 MR. HALEY: Defendant saw the language, Your Honor,  
22 and we're satisfied.

23 THE COURT: You're what?

24 MR. HALEY: We're satisfied with that.

25 MS. MATTHEWS: While we're talking about the

1 conspiracy charge, Your Honor, plaintiffs would like to drop  
2 that to the final form of liability rather than the third. We  
3 had proposed it as the fourth of the secondary theories, and we  
4 would like to have them in that order if possible.

5 THE COURT: Really?

6 MS. MATTHEWS: Yes, Your Honor.

7 THE COURT: Why? Because it's weak, you want it  
8 moved?

9 MS. MATTHEWS: If it's not too much trouble.

09:12 10 THE COURT: Let me just see. Someone give me a page  
11 number.

12 MS. MATTHEWS: It would affect -- we do have page  
13 numbers. It would affect the case overview where we describe  
14 the liability theories, which is on page 20, the instruction on  
15 liability on page 28, and then we just need to essentially  
16 switch conspiracy and aiding and abetting. So that's page 32.

17 THE COURT: What do you think, David, can you do that?  
18 Page 28.

19 MS. MATTHEWS: On page 20, the third theory would be  
09:13 20 aiding and abetting and the fourth would be conspiracy. On  
21 page 28, it would just require switching the numbering.

22 THE COURT: That's changing pages 32 and 33 with 34.  
23 You have to read it because on the conspiracy it says "third,"  
24 and you need to change that, change "aiding and abetting" to  
25 "third" and "conspiracy" to "lastly."



1 I have to find my notes, but there was one other. So  
2 Mr. Haley, I think that you are -- I add "the mere association  
3 of the conspiracy," which is where I think it belongs. I  
4 changed the "color of law" every place. I think that the idea  
5 of holding political office by itself not being enough to  
6 establish that they acted under color of law, so we added that.

7 The one that we did not add in any way was what you  
8 wanted on directing and ordering on the idea that the existence  
9 of a superior-subordinate relationship does not equate to an  
09:15 10 ability to compel another to act. I think that's baked into  
11 the charge sufficiently that that language isn't warranted.

12 MS. MATTHEWS: Couple of things.

13 THE COURT: Okay. Give me some page numbers.

14 MS. MATTHEWS: Yes. So on the color of law on page  
15 23, the edition that Your Honor has proposed, plaintiffs  
16 maintain their objection to including that language.

17 THE COURT: Hold on.

18 MS. MATTHEWS: Defendant hasn't cited any supporting  
19 authority for including that. And since it's not supported by  
09:15 20 any authority, we would maintain our objection to including it.

21 THE COURT: I think it's a correct statement. I'm  
22 going to leave it in there.

23 MS. MATTHEWS: If we are going to leave it in there,  
24 plaintiffs would request that we add that the participation of  
25 a single official is sufficient to meet the color of law

1 requirement, and there are cases that do support that statement  
2 of law. Aldana, the Eleventh Circuit case that I cited last  
3 week and Jaramillo, which is a Southern District of Florida  
4 case also explicitly states that the active participation of a  
5 single official is sufficient to establish color of law.

6 THE COURT: I don't have those cases in front of me,  
7 but they must be talking about an official acting in an  
8 official capacity, right?

9 MS. MATTHEWS: Yes. Aldana was a mayor who talked at  
09:16 10 a radio station along with a private security force, and  
11 Jaramillo was a paramilitary group that was acting with a state  
12 official. We think that the language that is proposed is  
13 confusing and a bit vague.

14 THE COURT: I think the sentiment is right. But what  
15 about this? If I say -- if it says, "Acting under color of law  
16 means a person is acting or purporting to act in the  
17 performance of his official duties," and then move that  
18 sentence that you don't like to the second sentence and then  
19 say, "The action must be cloaked with the authority of the  
09:17 20 government"?

21 I know you still don't like it, but would you prefer  
22 that? So taking the last sentence and moving it to the second  
23 sentence. It would have to be edited a little bit to make it  
24 fit there. Would you be happier if I moved it?

25 MS. MATTHEWS: We'd be happy with that, but we

1 maintain our objection.

2 THE COURT: I know, I know. All right. So as soon as  
3 David is finished doing the other thing, we'll go over and mess  
4 with this.

5 I want to be careful how we say it. The first  
6 sentence will say "acting under law color of law. It means  
7 that a person is acting or performing to act in his official  
8 duties," and then say -- take out "on the other hand," "Holding  
9 political office by itself is not necessarily enough to  
09:19 10 establish that." Then take out "in other words," and then say,  
11 "The action must be cloaked with the authority of the  
12 government."

13 It should say now, "Acting under color of law means  
14 that a person is acting or purporting to act in the performance  
15 of his official duties." Then what was the next sentence?

16 THE COURT: No.

17 LAW CLERK: "Holding political office by itself is not  
18 necessarily enough to establish that the action" --

19 THE COURT: "The action must be cloaked with the  
09:20 20 authority of the government."

21 So assuming I'm going leave in the sentiment. Is that  
22 all right?

23 MS. MATTHEWS: I mean, we maintain our objection, but  
24 we're fine with it, if that is what is going to happen.

25 THE COURT: Mr. Haley?

1 MR. HALEY: Your Honor, the defendant finds the  
2 language satisfactory with respect to that. With respect to  
3 all of the secondary liability issues, the defendants  
4 previously stated his objections and reserves those.

5 THE COURT: Anything else?

6 MS. MATTHEWS: The only other thing, Your Honor, is  
7 the title of "Directing and Ordering" should say, "Directing or  
8 Ordering," not "Directing and Ordering," which is how we titled  
9 it in the rest of the instructions.

09:21 10 THE COURT: Yes, that's fine, that's correct.

11 So you guys are still researching. Anything from you,  
12 Mr. Haley?

13 MR. HALEY: No, Your Honor. I think the only other  
14 open issue that wasn't addressed by the court's edits was the  
15 locality reference in the compensatory damages request made by  
16 the defendant with respect to that.

17 THE COURT: Yeah, I think, I took your point on that,  
18 but after some research I don't think it's warranted. You can  
19 argue that because the compensatory damages were supposed to  
09:22 20 make you whole and all of that, you can argue what you want,  
21 but I don't think it belongs in the instruction.

22 MS. MATTHEWS: We agree, Your Honor.

23 THE COURT: I know.

24 MR. HALEY: Your Honor, during deliberations, what's  
25 the court's practice with respect to the availability of

1 counsel and the parties?

2 THE COURT: Ten minutes. What are you looking for?

3 MR. HALEY: I'm just looking for the freedom to get  
4 back to my office, which is about an 11-minute walk.

5 THE COURT: You can have 11, but I hate to keep them  
6 waiting. My suggestion is that you stay here for a while at  
7 the beginning.

8 MR. HALEY: Understood, Your Honor. And then I raised  
9 this with the court at the outset of the proceedings. It  
09:23 10 doesn't seem to me that it's going to become relevant. But I  
11 do have three court appearances this week on Tuesday afternoon,  
12 Wednesday morning, and Thursday lunchtime.

13 THE COURT: What time tomorrow?

14 MR. HALEY: Tomorrow should be very manageable. It's  
15 a telephone appearance at 2:30.

16 THE COURT: Okay. So if you need a phone, you can use  
17 my office if your cell phone doesn't have any service.

18 MR. HALEY: I should be able to do it via Teams, so I  
19 shouldn't have a problem, if I need to dial in --

09:24 20 THE COURT: I used to walk down the street from where  
21 I worked when I was not a judge, and I loved to escape my  
22 office. So I'm just going to tell you one side of Gather is  
23 communal workspace, which is fantastic. And the whole second  
24 floor of the Capital One Cafe is workspace.

25 MR. HALEY: Right, I've discovered that and the lobby

1 of the Fish & Richardson building. I've also discovered that  
2 once your phone has been blocked by suspension of service, you  
3 need to turn it on and off again to reboot it. Thank you, Your  
4 Honor.

5 MS. ADEMOLA: Your Honor, just this morning coming  
6 into the court we filed a motion for protective order related  
7 to some threats and witness intimidation that has happened in  
8 the last few days and as recently as yesterday in Haiti. So we  
9 wanted to be heard on that motion.

09:25 10 MS. LAU: It does not need to be now, Your Honor, but  
11 we --

12 THE COURT: Have you looked at this, Mr. Haley?

13 MR. HALEY: I have not, Your Honor. I haven't seen  
14 it.

15 MS. ADEMOLA: We did inform Mr. Haley this morning we  
16 would be filing.

17 THE COURT: Did you submit a draft order?

18 MS. ADEMOLA: We did not, Your Honor. We can  
19 certainly do that.

09:26 20 MS. LAU: We can do that promptly.

21 THE COURT: I'm happy to enter a protective order.

22 MS. ADEMOLA: Thank you, Your Honor.

23 THE COURT: But I don't have time to draft it.

24 MS. LAU: We'll get that on file promptly.

25 THE COURT: I could draft it later, but if you want it

1 right away, I can't do that.

2 MS. ADEMOLA: Thank you.

3 THE COURT: So all that we're waiting for is whether  
4 or not we need the unanimity. And we'll just need time to make  
5 copies and give you a chance to look at them.

6 We've done some research of our own. It doesn't look  
7 like they need to be unanimous on the theory of liability.

8 MS. MATTHEWS: We agree, Your Honor. We found one of  
9 your cases that says that.

09:30 10 THE COURT: Which one?

11 MS. MATTHEWS: Rose v. Gelb.

12 THE COURT: You know, consistency is the hobgobbler of  
13 this, all right. It was a thought that came to me at midnight.  
14 I should ignore those more often. We won't have a theory of  
15 unanimity.

16 So, David, my suggestion is that we give them each one  
17 more redline because we've moved the conspiracy and aiding and  
18 abetting and let them look at it before we print clean copies.  
19 Can you do that? Can he send those email or do you want to see  
09:32 20 a printed copy?

21 MR. HALEY: Email is file for the defendant, Your  
22 Honor.

23 THE COURT: Let's just email it to them. We'll save a  
24 tree. Let me know. And we'll print out some clean copies.

25 MS. MATTHEWS: Your Honor, I think the color of law

1 language is not quite what you had dictated on the record. I  
2 thought it was going to be, "Acts under color of law means that  
3 a person is acting or purporting to act in the performance of  
4 his official duties," period. "Holding political office itself  
5 is not enough to establish that," period.

6 THE COURT: Can you tell me where to find it?

7 LAW CLERK: 22.

8 THE COURT: You're not in the document. Why don't you  
9 cut and paste and email the language you're talking about and  
09:37 10 we can --

11 MS. MATTHEWS: Then "The action must be cloaked with  
12 the authority of the government." We wonder if it would be  
13 clearer --

14 THE COURT: Hold on. Let me just read it.

15 MS. MATTHEWS: Of course.

16 THE COURT: It should be "Holding political office by  
17 itself is not necessarily enough to establish that," period.

18 MS. MATTHEWS: We wonder if it would be clearer just  
19 to say --

09:38 20 THE COURT: Let me just get what I want it to say.  
21 "Holding political office by itself is not necessarily enough  
22 to establish that," period. "The action must be cloaked with  
23 the authority of the government," period. That's what it  
24 should say. What do you now -- actually, hold on a second. I  
25 can't edit this from here.



1 Now I have in front of me what I want it to say.

2 MS. MATTHEWS: We wonder if it's clearer to say,  
3 "Holding political office by itself is not necessarily enough,"  
4 period. "The action must be cloaked with the authority of the  
5 government."

6 THE COURT: No, I'm going to leave it in. Mr. Haley,  
7 where are you on that?

8 MR. HALEY: The edited version where it says, "Holding  
9 political office by itself," Your Honor, is the language that  
09:39 10 the defendant would request.

11 THE COURT: Okay. All right. So do you have it now?  
12 I'm going to send it back to you. All right. I just sent it  
13 back. Thank you for catching that. I never know whether we're  
14 more apt to make mistakes when we're talking and he's editing  
15 or when I'm editing myself. It's all fraught.

16 MR. HALEY: Your Honor, can I excuse myself from the  
17 courtroom to use the men's room?

18 THE COURT: Yes, you can excuse yourself from the  
19 courtroom for any reason.

09:41 20 MR. HALEY: Thank you, Your Honor.

21 THE COURT: We'll get you clean copies. If you want  
22 to take 15 minutes for yourselves, go ahead.

23 MR. MCLAUGHLIN: Your Honor, I think there's one more  
24 issue. Exhibit 7, which is the video of Nissage Martyr,  
25 consistent with the court's order, we were going to provide

1 both a sort of USB stick version for the jurors but also paper  
2 copies of all the exhibits. So what we had proposed to do,  
3 because it's quite a short video, is just to have screenshots  
4 of each frame. I think it's about four frames that we can give  
5 to the jurors in addition to the USB video if they want to  
6 watch it.

7 My understanding is defendants objected to including  
8 both of those. And we think it's just consistent with the  
9 court's order for the jurors to have access to both the paper  
09:45 10 version if they want to look at that or the USB version. So  
11 we'd ask the court for your guidance on that.

12 THE COURT: We don't usually give paper copies of the  
13 video. We just give them the video to watch. They watch it in  
14 the form it was shown.

15 MR. MCLAUGHLIN: It's very short and has subtitles,  
16 without them having to load up the video and watch it that way.

17 MR. HALEY: Your Honor, the defendant's objection is  
18 based on the fact that the inclusion of the exhibit twice  
19 multiplies its effect and its importance with respect to the  
09:46 20 matter, and the video by itself is sufficient and also reflects  
21 what was introduced as evidence.

22 THE COURT: Well, they get everything twice, right? I  
23 give them a paper copy and I give them a copy that they can  
24 look at on the screen, so they get two copies anyway. I'm  
25 happy to give an instruction that we're just, for their ease,

1 we're giving them paper copies, but the actual exhibit is the  
2 video.

3 MR. HALEY: That's fine, Your Honor.

4 MR. MCLAUGHLIN: As Your Honor confirmed, we had moved  
5 Exhibit 7 into evidence. I believe you had ruled on it, but  
6 just to confirm that was the case. Yes?

7 THE COURT: Karen says it's in.

8 MR. MCLAUGHLIN: Thank you, Your Honor.

9 THE COURT: Can you work off the redlines? We gave  
09:55 10 the court reporter and interpreters clean copies and I have a  
11 clean copy. Can you guys work off a redline until -- I don't  
12 want to make a billion copies until we make sure nothing gets  
13 changed.

14 MS. LAU: I think that's fair. Could you email us a  
15 copy as well? We have it. All right. Sorry, I haven't been  
16 tracking my email. That way we can just follow along.

17 THE COURT: We'll give you whatever you need because I  
18 know the next judge is going to -- I get how this works now. I  
19 want to fully -- it's never been done, except once. I get it.

10:00 20 (Jury enters the courtroom.)

21 THE CLERK: Court is in session. Please be seated.

22 Good morning, everybody.

23 This is the last morning I'll say that to you at  
24 10:00. I'm going to finish the substantive part of the charge,  
25 and then there will be closing arguments, then I'll have a

1 couple more minutes of instructions on your deliberations, and  
2 then you will begin your deliberations.

3 So I'm going to start with the elements of the claims  
4 and begin with the case overview. First, this case involves  
5 United States law even though the events occurred in another  
6 country, with the exception being the arson claim which is  
7 governed by Haitian law. Plaintiffs first claim that  
8 Ecclesiaste Boniface was the victim of extrajudicial killing.

9 Second, plaintiff's claim that Nissage Martyr, the  
10:01 10 father of plaintiff Nissanderé Martyr and Juders Ysemé, are the  
11 victims of both attempted extrajudicial killing and torture.

12 Third, plaintiffs claim that David Boniface and  
13 Nissage Martyr and Juders Ysemé were the victims of an arson  
14 that destroyed their respective homes. You will hear me refer  
15 to these allegations as the wrongful agents or the harms. You  
16 will first have to determine whether the plaintiffs have  
17 suffered the specific harm alleged, in the case of Nissanderé  
18 Martyr, whether his father Nissage Martyr suffered the specific  
19 harm alleged. Again, the alleged harms are extrajudicial  
10:02 20 killing, attempted extrajudicial killing, torture and arson.

21 If you find that the plaintiffs have suffered one or  
22 more of these alleged harms, you will then determine whether  
23 the defendant is responsible for that harm or harms.

24 Plaintiffs allege that the defendant is liable or responsible  
25 for each of the alleged harms under five different theories of

1 liability. The first is that he directed or ordered the person  
2 who committed the crimes or wrongful acts to do so. The second  
3 is that he solicited the persons to do the wrongful act. The  
4 third is that he aided and abetted the persons who committed  
5 the acts, and the fourth is that he entered into a conspiracy  
6 to commit the wrongful acts.

7 Plaintiffs also allege that defendant is liable for  
8 the torture of Nissage Martyr and Juders Ysemé -- sorry. I  
9 just told you he's responsible for five theories of liability  
10:02 10 and then I am only gave you four. The fifth is that he  
11 directly committed the acts himself.

12 Plaintiffs also allege that defendant is liable for  
13 the torture of Nissage Martyr and Juders Ysemé because he  
14 personally participated in the torture. That's the fifth form  
15 of liability. Any single one of these forms of liability is  
16 sufficient to establish the defendant's liability in connection  
17 with each of the alleged harms.

18 I am going to begin with the wrongful acts themselves.  
19 After I discuss the alleged wrongful acts, I'll provide you  
10:03 20 with instructions on each of these forms of liability.

21 First, extrajudicial killing. Plaintiff David  
22 Boniface claims that Defendant Viliena is liable for the  
23 extrajudicial killing of his brother Ecclesiaste Boniface. For  
24 purposes of this case, this means a killing outside of the  
25 judicial process of Haiti. For this claim, plaintiffs must

1 prove each of the following by a preponderance of the evidence.

2 1. That a person or persons deliberating killed  
3 Ecclesiaste Boniface;

4 2. That the killing of Ecclesiaste Boniface was committed  
5 under actual or apparent authority, or color of law, of the  
6 Republic of Haiti; and

7 3. That the killing was not previously authorized by a  
8 judgment of a regularly constituted court affording all the  
9 judicial guarantees, which are recognized as indispensable by  
10:04 10 civilized peoples.

11 A "regularly constituted court" must be independent and  
12 impartial. Further, the judicial guarantees recognized as  
13 indispensable by civilized people include:

14 1. The right to have a conviction and sentence reviewed  
15 by appeal to a higher court or tribunal;

16 2. The right to a lawyer to represent the accused without  
17 restrictions or undue pressure and the right to freely  
18 communicate with one's lawyer;

19 3. The right to a fair hearing where the accused isn't  
10:04 20 tortured and witnesses are not bribed; and

21 4. The right to access evidence in the possession of the  
22 prosecution that could potentially assist the accused.

23 Acting "under color of law" means that a person is acting  
24 or purporting to act in his performance of official duties.

25 Holding political office itself is not necessarily enough to

1 establish that. The action must be cloaked with the authority  
2 of the government. A person can act under "color of law" even  
3 when his actions overstep, or constitute an abuse of, his legal  
4 authority.

5 Next, Plaintiff Nissandère Martyr is representing the  
6 estate of Nissage Martyr and Plaintiff Juders Ysemé claim the  
7 Defendant Viliena is responsible for the attempted  
8 extrajudicial killing of Nissage Martyr and Plaintiff Ysemé.  
9 To establish this claim, plaintiffs must prove each of the  
10:05 10 following by a preponderance of the evidence:

11 1. That a person or persons attempted to deliberately  
12 kill Nissage Martyr and plaintiff Juders Ysemé;

13 2. That the attempted killings of Nissage Martyr and  
14 plaintiff Juders Ysemé were committed under actual or apparent  
15 authority or color of law, of the Republic of Haiti.

16 3. That a person or persons -- this is the third one.  
17 That a person or persons intended to carry out the deliberate  
18 killings of Nissage Martyr and Plaintiff Juders Ysemé and that  
19 a substantial step was made toward the commission of the  
10:05 20 deliberate killings;

21 And 4. That the attempted killings were not authorized by  
22 previous judgment pronounced by a regularly constituted court  
23 affording all the judicial guarantees which are recognized as  
24 indispensable by civilized peoples.

25 I just defined "extrajudicial" and "under color of law"

1 and explained the fourth element with respect to the claimed  
2 extrajudicial killing of Ecclesiaste Boniface. Those terms  
3 have the same meaning here and throughout these instructions.

4 A "substantial step" is an act in furtherance of a  
5 criminal act. A "substantial step" must be something more than  
6 mere preparation, but less than the last act necessary before  
7 the crime is completed. It must mark a defendant's conduct as  
8 criminal and strongly corroborate the required culpability.

9 Torture. Plaintiff Nissandère Martyr, representing the  
10 estate of Nissage Martyr, and Plaintiff Juders Ysemé claim that  
11 Defendant Viliena is liable for the torture of Nissage Martyr  
12 and Plaintiff Ysemé. To establish this claim, plaintiffs must  
13 prove each of the following by a preponderance of the evidence:

14 1. That Nissage Martyr and Plaintiff Juders Ysemé were  
15 subjected to severe mental or physical pain or suffering;

16 2. That the person who intentionally inflicted the pain  
17 or suffering -- the severe pain or suffering on them did so  
18 while acting under actual or apparent authority, or color of  
19 law, of the Republic of Haiti;

20 3. That Nissage Martyr and Plaintiff Juders Ysemé were in  
21 the custody or under the physical control of that person or  
22 persons; and

23 4. That the severe pain or suffering was inflicted for  
24 such purposes as obtaining from them or another person  
25 information or a confession, punishing them for an act that



1 they or another person had committed or was suspected of having  
2 committed, intimidating or coercing them or another person, or  
3 for any discriminatory purpose.

4 Sufficient custody or physical control exists in  
5 situations where an individual is held in a custodial setting  
6 or where his freedom of movement is restrained by a concrete  
7 threat. Severe physical pain or suffering may include, but is  
8 not limited to: shooting, suffocating, kicking, beating, use  
9 of electrical shock, or any form of mutilation. To constitute  
10 torture, mental pain and suffering must be prolonged and caused  
11 by or resulting from the intentional infliction or threatened  
12 infliction of severe physical pain or suffering, or the threat  
13 of imminent death.

14 Arson. Plaintiffs David Boniface, Juders Ysemé and  
15 Nissandère Martyr, as the representative of the estate of  
16 Nissage Martyr, claim that Defendant Viliena is liable for the  
17 arson of the homes of David Boniface, Juders Ysemé, and Nissage  
18 Martyr. To establish this claim, plaintiffs must prove each of  
19 the following by a preponderance of the evidence:

- 20 1. That someone intentionally set fire to a building,
- 21 2. While that building was inhabited or serving  
22 residential purposes.

23 Now I'm going to move on to liability. Plaintiffs claim  
24 that Defendant Viliena directly perpetrated or participated in  
25 the torture and attempted extrajudicial killing of Nissage

1 Martyr and Plaintiff Juders Ysemé. They also claim that  
2 Defendant Viliena is liable under alternative forms of  
3 liability for the torture and attempted extrajudicial killing  
4 of Nissage Martyr and Plaintiff Juders Ysemé as well as the  
5 extrajudicial killing of Ecclesiaste Boniface and the arson of  
6 plaintiffs homes. In other words, theories of liability  
7 different from direct participation.

8 Beyond direct participation, you may also find Defendant  
9 Viliena responsible for the extrajudicial killing of Ecclesiaste  
10:08 10 Boniface, the attempted extrajudicial killing and torture of  
11 Nissage Martyr and Juders Ysemé, and arson under one or more of  
12 the four additional theories of liability.

- 13 1. Directing or ordering;
- 14 2. Solicitation;
- 15 3. Aiding and abetting; or
- 16 4. Conspiracy.

17 Each of these is a separate theory of liability which I  
18 will explain in more detail. You must consider each theory  
19 separately. You only need to find in plaintiffs' favor on  
10:09 20 either direct liability or participation or one of these four  
21 other -- hold on. You only need to find in plaintiffs'  
22 favor -- okay. I'm going to start that sentence over.

23 You only need to find in plaintiffs' favor on either  
24 direct liability or participation or one of these four other  
25 theories to hold Defendant Viliena liable with respect to each

1 of plaintiffs' claims. If you find that plaintiffs have not  
2 carried their burden of proof on any one theory of liability,  
3 that finding does not affect any other theory.

4 Directing or ordering. Defendant Viliena may be found  
5 liable if he directed or ordered the extrajudicial killing of  
6 the Ecclesiaste Boniface, the attempted extrajudicial killing  
7 and torture of Nissage Martyr and Plaintiff Juders Ysemé or the  
8 arsons of plaintiffs' homes, or if he directed or ordered  
9 another person or persons to carry out an act or omission  
10:10 10 during which these wrongful acts took place. Directing or  
11 ordering responsibility makes a person in a position of  
12 authority liable for the acts of others, even if the person who  
13 gave the direction or order did not personally commit the acts.

14 To hold Defendant Viliena liable for directing or  
15 ordering, plaintiffs must prove the following by a  
16 preponderance of the evidence, as to each claim:

17 1. That a superior-subordinate relationship existed  
18 between Defendant Viliena and the person or persons who  
19 committed the wrongful acts such that the defendant had the  
20 authority to give that person or persons an order;

21 2. That the defendant gave a direction or an order, which  
22 had a substantial effect on the commission of the wrongful  
23 acts; and

24 3. That plaintiffs [sic] knew, or, in light of the  
25 circumstances at the time, should have known of the substantial

1 likelihood that the wrongful acts would be committed following  
2 his direction or order.

3       The first element requires the existence of a  
4 superior-subordinate relationship between Defendant Viliena and  
5 the person or persons who committed the wrongful acts. To  
6 establish this element, plaintiffs must prove, by a  
7 preponderance of the evidence, that Defendant Viliena was in a  
8 position of authority that could compel another to commit the  
9 wrongful acts at Defendant's direction or order. Plaintiffs  
10 are not required to prove the existence of a formal  
11 superior-subordinate relationship between the defendant and the  
12 person or persons who committed the wrongful acts. The  
13 superior-subordinate relationship may be informal or of a  
14 temporary nature. To determine whether such a relationship  
15 existed in this case, you should consider the circumstances and  
16 the perception of the relationship from the perspective of the  
17 person receiving the direction or order.

18       The second element of directing or ordering is that  
19 Defendant Viliena gave a direction or order to the person or  
20 persons who committed the wrongful acts. To establish this  
21 element, plaintiffs must prove by a preponderance of the  
22 evidence that Defendant Viliena gave an instruction that had a  
23 direct and substantial effect on the commission of the wrongful  
24 acts. Plaintiffs do not have to establish that the wrongful  
25 acts were caused solely by Defendant Viliena's instruction.

1 Defendant Viliena does not need to have given the instruction  
2 in any particular form. The instruction does not need to have  
3 been explicit as to the intended consequences, and the  
4 defendant does not have to have been physically present when  
5 the wrongful acts took place.

6 The third element requires proof of the Defendant's intent  
7 or awareness of a substantial likelihood that wrongful acts  
8 would result from his orders or directions. In other words,  
9 plaintiffs must prove that Defendant Viliena actually intended  
10 that his subordinates commit the wrongful act or,  
11 alternatively, that, in light of the circumstances at the time,  
12 Defendant Viliena was aware of a substantial likelihood that  
13 his subordinates would commit wrongful acts in response to his  
14 instructions.

15 Next, Defendant Viliena may be found liable if plaintiffs  
16 prove by a preponderance of the evidence that he solicited the  
17 wrongful acts. To hold Defendant Viliena liable for  
18 solicitation, plaintiffs must prove each of the following by a  
19 preponderance of the evidence, as to each claim:

20 1. That Defendant Viliena urged, encouraged, or prompted  
21 another to commit a wrongful act;

22 2. That the encouragement substantially contributed to  
23 the conduct of the person who committed the wrongful act; and

24 3. That Defendant Viliena was aware of the substantial  
25 likelihood that a wrongful act would be committed in response

1 to his encouragement. Solicitation does not have to be  
2 express; it can be implied and involve either acts or  
3 omissions. Plaintiffs do not have to specifically identify the  
4 person Defendant Viliena solicited to commit the wrongful act  
5 by name. To be liable for solicitation, Defendant Viliena did  
6 not need to have been physically present when the wrongful acts  
7 were committed.

8 Next, Defendant Viliena may be found liable if you find by  
9 a preponderance of the evidence that he aided and abetted  
10:13 10 others in the alleged -- in the alleged wrongful act committed  
11 against Ecclesiaste Boniface, Nissage Martyr or Plaintiffs  
12 Juders Ysemé and David Boniface. To hold Defendant Viliena  
13 liable under theory of aiding and abetting, plaintiffs must  
14 prove by a preponderance of the evidence as to each claim.

15 1. That one or more of the alleged wrongful acts was  
16 committed.

17 2. That Defendant Viliena committed or gave substantial  
18 assistance to the person or persons who committed or caused one  
19 or more of the alleged wrongful acts;

10:14 20 And 3. That the Defendant Viliena knew that his actions  
21 would assist in the illegal or wrongful activity at the time he  
22 provided the assistance.

23 If you find that Defendant Viliena is liable for aiding  
24 and betting, then he is liable for all the wrongful acts that  
25 were a natural and foreseeable result of the activity he helped

1 to undertake.

2 Lastly, Defendant Viliena may be found liable if you find  
3 by a preponderance of the evidence that he conspired with  
4 another person or persons to commit one or more of the alleged  
5 wrongful acts against Ecclesiaste Boniface, Nissage Martyr, or  
6 Plaintiffs Juders Ysemé or David Boniface. To hold Defendant  
7 Viliena liable under theory of conspiracy, plaintiffs must  
8 prove the following by a preponderance of the evidence as to  
9 each claim.

10:14 10 1. That two or more persons agreed to commit a wrongful  
11 act.

12 2. That Defendant Viliena joined the conspiracy knowing  
13 of at least one of the goals of the conspiracy and intending to  
14 go help accomplish it;

15 And 3. That one or more of the alleged wrongful acts was  
16 committed by someone who was a member of the conspiracy and  
17 acting in furtherance of the conspiracy.

18 A conspiracy is an agreement, spoken or unspoken. For a  
19 conspiracy to have existed, it is not necessary that the  
10:15 20 conspirators made a formal agreement or that they agreed to  
21 every detail of the conspiracy. Proof of a spoken or written  
22 agreement is not required. Proof of a tacit, as opposed to  
23 explicit, understanding is sufficient to show agreement.

24 The very nature of conspiracy frequently requires the  
25 existence of an agreement to be proved by inferences based on

1 the conduct of the alleged participants or from circumstantial  
2 evidence of a scheme. Among other things, this may include the  
3 nature of the acts done, the relationship between the  
4 co-conspirators, the interests of the alleged co-conspirators,  
5 and the relationships between the co-conspirators and the  
6 actions, meaning, for example, the proximity in time and place  
7 of the acts. Mere association between the defendant and others  
8 does not necessarily establish proof of the existence of a  
9 conspiracy, but you may consider it.

10:16 10 The exact limits or scope of the plan need not be known as  
11 to each conspirator, nor is it necessary that the identity of  
12 everyone involved in the conspiracy be known to all of them.  
13 What the plaintiffs must show is that the conspirators shared  
14 the same general conspiratorial objectives, even if their  
15 motives for desiring the result were not necessarily identical.

16 Defendant can be found liable even if his participation in  
17 the scheme is "slight" by comparison to the actions of other  
18 co-conspirators. Once the conspiracy has been formed, all of  
19 its members are liable for injuries caused by acts pursuant to  
10:16 20 or in furtherance of the conspiracy and all acts that were the  
21 natural and foreseeable consequence of the conspiracy. A  
22 conspirator need not participate actively in or benefit from  
23 the wrongful action in order to be found liable.

24 Next I will instruct you on the law of damages. The fact  
25 that I charge you on measuring damages does not indicate that I



1 think damages should be awarded. Instructions as to the  
2 measure of damages are given for your guidance and should only  
3 be considered in the event you find that, in accordance with  
4 all of my other instructions, one or more of the plaintiffs has  
5 proven by a preponderance of the evidence each element of one  
6 or more of his claims.

7 If you determine that damages are warranted, you must  
8 decide the amount of damages, if any. Damages must be proved  
9 with a reasonable degree of certainty. Although uncertainty in  
10:17 10 the amount of damages does not bar recovery and mathematical  
11 precision is not required, damages cannot be speculative.  
12 Damages that are complex or difficult to ascertain are not  
13 necessarily speculative. A damages award must be computed by  
14 rationale methods, based on just and reasonable inferences from  
15 the evidence. In other words, damages must be proved and not  
16 left to speculation.

17 If you find in favor of any or all plaintiffs on any  
18 claim, then you must determine an amount that will fairly  
19 compensate that plaintiff or plaintiffs for the damages he or  
10:17 20 they suffered. Compensatory damages seek to make the injured  
21 party whole, that is, to compensate a plaintiff for the damage  
22 suffered as a result of a defendant's wrongful conduct.

23 If you decide to award compensatory damages, you should  
24 decide by dispassionate common sense. Computing damages may be  
25 difficult, but you must not let that difficult lead you to

1 engage in arbitrary guesswork. Plaintiffs do not need to prove  
2 their losses with mathematical precision.

3 Compensatory damages are the measure of the loss or injury  
4 sustained by the injured plaintiff, and may embrace shame,  
5 mortification, humiliation, indignity to the feelings, and the  
6 like. You may also award compensatory damages for pain and  
7 suffering, physical disfigurement and mental and emotional  
8 distress. There is no exact standard for fixing the  
9 compensation to be awarded for these elements of damages. Any  
10:18 10 award you make must be fair in light of the evidence presented  
11 at trial.

12 In determining the amount of compensatory damages that a  
13 plaintiff may be entitled to recover, you may consider the  
14 reasonable value of medical care incurred by the plaintiff for  
15 the treatment and cure of the injury; the plaintiff's physical  
16 mental and emotional pain and suffering to date; and reasonable  
17 probable future physical, mental, and emotional pain and  
18 suffering; any harm to plaintiff's reputation; and fair  
19 compensation for any lost wages or diminution in earning  
10:19 20 capacity, meaning the loss of plaintiff's capacity to work and  
21 earn a living that you find were proximately caused by the  
22 defendant's unlawful conduct. No evidence of the value of  
23 tangible things, such as physical pain and suffering, needs to  
24 be introduced. There's no exact standard by which you can  
25 measure the money equivalent of such an injury. The only

1 measuring stick is the collective enlightened conscience of the  
2 jury. The law leaves it up to the fairness and common sense of  
3 the jury to determine the amount of these damages. In this  
4 difficult task of putting a money figure on an aspect of injury  
5 that does not readily lend itself to an evaluation in terms of  
6 money, you should try to be fair, objective, and dispassionate,  
7 and not be unduly swayed by sympathy for the plaintiffs or for  
8 the defendant. Once you have calculated each of these areas of  
9 damages, medical expenses, pain and suffering, mental and  
10 emotional distress, reputational harm, lost wages or earning  
11 capacity and so on, you should add them up to arrive at the  
12 total award. There must not be any overlapping of the various  
13 elements constituting the damages. The total sum must be fair  
14 compensation for the entire injury, no more and no less. In  
15 other words, if you decide that a plaintiff is entitled to  
16 compensatory damages for more than one of his claims, any  
17 damages awarded for one claim must not be duplicative of any  
18 damages you award for the other claim. Damages should not be  
19 awarded more than once for the same injury. Compensatory  
20 damages aim to make the plaintiff whole, and he may not recover  
21 more than he has lost.

22 In addition to awarding damages to compensate the  
23 plaintiff, you may, but are not required to, award plaintiff  
24 punitive damages if you find that the acts of the defendant  
25 were wanton, reckless, or malicious. I note that punitive

1 damages are not to be awarded and on the arson count even if  
2 you find that claim proven. The purpose of punitive damages is  
3 not to compensate the plaintiff but to punish the defendant and  
4 thereby discourage the defendant and others from acting in a  
5 similar way in the future.

6 An act is malicious when it is done deliberately with  
7 knowledge of the plaintiffs' rights and with the intent to  
8 interfere with those rights. An act is wanton and reckless  
9 when it demonstrates conscious indifference and utter disregard  
10:21 10 of its effect upon the health, safety and rights of others. If  
11 you find the defendant's acts were not wanton or reckless or  
12 malicious, you may not award punitive damages. On the other  
13 hand, if you find that defendant's acts were wanton and  
14 reckless or malicious, you may award plaintiffs punitive  
15 damages. Punitive damages are appropriate only for especially  
16 shocking and offensive misconduct.

17 In arriving at your decision as to the amount of punitive  
18 damages, you should consider the nature of what the defendant  
19 did, including the character of the wrongdoing, whether the  
20 conduct was done with an improper motive or with  
21 vindictiveness, whether the act or acts constituted outrageous  
22 or oppressive intentional misconduct, defendant's awareness of  
23 the harm and potential harm caused by the conduct, how often  
24 defendant engaged in similar conduct, and any effort to conceal  
25 or cover up the wrongdoing.

1           There is no exact standard for fixing the amount of  
2           punitive damages. The amount can be as large as you believe is  
3           necessary to fulfill the purpose of punitive damages, but the  
4           amount of punitive damages that you award must be fair,  
5           reasonable and proportionate to the actual and potential harm  
6           suffered by plaintiffs, and to the compensatory damages you  
7           award to plaintiffs. Generally speaking, this means that the  
8           ratio of punitive damages to compensatory damages must not  
9           exceed a 9:1 ratio. The nature of defendant's conduct,  
10          including how offensive you find the conduct, is an important  
11          factor in deciding the amount of punitive damages.

12          Finally, you may consider the financial resources of the  
13          defendant in fixing an amount of punitive damages. However, I  
14          instruct you that the burden is on the defendant to show that  
15          his financial circumstances warrant a limitation of any award.

16          That concludes the substantive portion of the charge with  
17          only the deliberations instructions left. Anything from  
18          plaintiffs?

19                 MR. MCLAUGHLIN: In the "Ordering and Directing" at --

10:22 20                 THE COURT: Hold on. Any corrections we'll do at  
21          sidebar. Mr. Haley?

22                 MR. HALEY: Nothing from the defendant.

23                 THE COURT: Let's do this at sidebar.

24          **SIDEBAR:**

25                 MR. MCLAUGHLIN: Page 26, it's in the transcript,

1 Directing or Ordering."

2 THE COURT: These are all the places where there are  
3 typos. Why did she print those copies and bring them in the  
4 middle jury charge? Because now they need to be tossed. I  
5 have it.

6 MR. MCLAUGHLIN: For the third point, there is the  
7 "defendant knew, or, in light of the circumstances," you just  
8 switched out "plaintiffs" for "defendant." So as read out, it  
9 was that "plaintiffs knew, or, in light of the circumstances."  
10:24 10 That's all, that's at 26 on the transcript. Okay.

11 (End of sidebar.)

12 THE COURT: Okay. Tell me when you're all set.

13 The parties told me that I misspoke at one point. So  
14 in Directing or Ordering, the three elements with the  
15 superior-subordinate relationship, that defendant gave a  
16 direction or order, and that it should be that the "defendant  
17 knew, or, in light of the circumstances at the time, should  
18 have known of the substantial likelihood that the wrongful acts  
19 be committed following his direction or order." The parties  
10:24 20 tell me that third element I said "plaintiffs" instead of  
21 "defendant." It should be "defendant." Does that satisfy --

22 MR. MCLAUGHLIN: Yes, thank you, Your Honor.

23 THE COURT: Mr. Haley?

24 MR. HALEY: Nothing further, Your Honor.

25 THE COURT: Okay. All right. So as you might have

1 noticed, there are a couple of typos in here that I want to  
2 correct before we print off the copies for you all. So we're  
3 going to take a ten-minute recess so I can input those changes,  
4 and then we'll close, and we'll have the copies. So why don't  
5 you take the ten minutes, and we'll come get you as soon as I  
6 take care of this.

7 THE CLERK: All rise for the jury.

8 (Jury exits the courtroom.)

9 (Recess, 10:25 a.m. - 10:35 a.m.)

10:34 10 THE COURT: Mr. Haley, they've submitted a proposed  
11 order on the emergency motion for a protective order. I'm  
12 going to sign the order as they submitted it. And I just want  
13 to make it very clear to the defendant that you may not engage  
14 in any actions that are designed to intimidate or physically  
15 harm anybody in connection with this trial, and I am deadly  
16 serious about that.

17 So I don't know if it was you doing these things or it  
18 isn't you, but if you have any involvement, there will be  
19 consequences to it. And that is where the order is going to  
10:34 20 stand. All right? So I'm going to enter it as it is, only  
21 deleting "Proposed."

22 Do you want to just resend it? Why don't you email it  
23 to Karen without "Proposed Order," please.

24 MR. MCLAUGHLIN: Yes.

25 MS. LAU: I'll do that, Your Honor.

1           THE COURT: And we'll get it entered right now. Mr.  
2 Haley, I saw you stand up. Did you want to say something?

3           MR. HALEY: I did not.

4           THE COURT: Karen, you can enter it when they send it  
5 to you.

6           (Jury enters the courtroom.)

7           THE COURT: When you're ready.

8           MS. LAU: Thank you, Your Honor. If I could invite  
9 the jury to take out their screens.

10:41 10           Hello again, members of the jury. I want to thank you  
11 for your time and attention throughout this entire trial. You  
12 listened really patiently as we presented all of our  
13 plaintiffs, our witnesses, and our evidence. And really, we  
14 thank you for the time that you've spent, giving the time,  
15 attention and care, and for what you're going to do in the jury  
16 deliberation room.

17           This has been really their first opportunity to speak  
18 in a fair and impartial court where they could finally safely  
19 tell you their stories. And they shared with you the violence,  
10:41 20 the pain and the suffering that they experienced, not only in  
21 the three attacks themselves but for many years after.

22           And so now we've reach the point in the case where  
23 we're going to entrust this case to your good judgment. And so  
24 before we do that, I have the privilege of offering you  
25 hopefully a few tools to help organize the evidence because



1 there was a lot of it from the plaintiffs and to help you make  
2 your decision.

3 So we'll review the key testimony and evidence  
4 together, which we think overwhelmingly shows that the  
5 defendant was liable for each of these attacks. So first, we  
6 presented compelling evidence, including from two eyewitnesses,  
7 that on July 27, defendant ruthlessly shot and killed  
8 Ecclesiaste Boniface, the brother of David Boniface. This amply  
9 satisfies the legal elements of extrajudicial killing under the  
10:42 10 Torture Victim Protection Act, or TVPA. And as the court just  
11 instructed, extrajudicial just means no court authorized what  
12 happened that night.

13 Second, numerous witnesses corroborated that on April  
14 8, 2008, the defendant threatened to destroy the radio station.  
15 He said this live on-air so the entire Les Irois community  
16 could hear him. Then he followed up on that threat, attacking  
17 the radio station, brutally battering Juders and Nissage with  
18 his own fists, and then he ordered them to be shot. And that  
19 is torture and attempted extrajudicial killing under the TVPA.

10:43 20 Third, on October 29, 2009, defendant orchestrated the  
21 mass arson of 36 homes in Les Irois. This was perpetrated by  
22 his associates and his family members, and that constitutes  
23 arson of the plaintiffs' homes. So when I say that the  
24 evidence shows overwhelmingly that the defendant is liable,  
25 what I mean is that the evidence is more than strong enough to

1 meet the legal standard of proof here.

2 As the judge instructed you, this is a civil case with  
3 what we call the preponderance of the evidence standard. And  
4 she showed you the scales, right? She said if it tips just  
5 ever so slightly in the plaintiffs' favor, 51 to 49 percent,  
6 that means we have satisfied our burden. But I submit to you  
7 that this is not just a feather. We don't just have a feather  
8 more evidence. We have the overwhelming weight of the evidence  
9 in our favor. And so that's what we're going to go through.

10:44 10 That was a quick high level summary. Now we're going  
11 to talk about each of the events in order.

12 And as we go through each of the events, I'm going to  
13 show you how we have met each of the legal elements of the  
14 claim and show you how you should fill out your verdict form at  
15 the end of the deliberations today. And at the end, I'm going  
16 to ask you to finally hold defendant Jean Morose Viliena  
17 accountable, liable, responsible for these three vicious  
18 attacks.

19 Defendant Viliena abused his position as mayor of Les  
10:45 20 Irois. He committed murder, torture and arson with his  
21 associates. His defense, his only defense is not corroborated  
22 and it is not credible, especially when compared to all of the  
23 evidence that plaintiffs have presented to you. So we're going  
24 to ask that after all of these years you finally provide the  
25 plaintiffs some measure of real justice and hold the defendant

1 accountable for what he has done.

2 So let's start with the evidence around the murder of  
3 Ecclesiaste Boniface. And as you heard, on the morning of July  
4 27, the town of Les Irois was cleaning up after public market  
5 day. The sanitation crew, which reports to the mayor, they  
6 were picking up trash off of the street, right? And then an  
7 argument catches everybody's attention.

8 A woman named Ostanie Mersier, she had tried to sweep  
9 some of her trash out of her yard onto the street, and then the  
10:46 10 mayor got involved and things escalated quickly. You heard  
11 Nissandère testify he slapped her with rage, slapped Ostanie  
12 for what? For putting some trash on the street? Osephita  
13 Lebon, she also testified to the slap. Defendant then arrested  
14 this woman, Ostanie Mersier, and took her to Judge Bell's  
15 house. And word of this slap rippled quickly through the tiny  
16 Les Irois community.

17 So Osephita, her interest was piqued and so she  
18 followed the defendant and the associates who had brought  
19 Ostanie Mersier to the judge's house. You heard her testify  
10:46 20 that Hautefort Bajon, Pierrot Boileau, Lifaite Livert, Benicoit  
21 Bell and Jean Louis Bell, they all followed behind the  
22 defendant.

23 Now, David Boniface, he also went to Judge Bell's  
24 house to monitor the proceedings, remember, because he had that  
25 human rights training. And others in the community came

1 around. They were curious what was going to happen here. And  
2 there, David Boniface had the temerity to question the mayor's  
3 authority and try to protect Ostanie's rights. As Laguerre  
4 testified, remember, he was the one who was in the video  
5 deposition, he said David Boniface was asking the judge if  
6 officially the mayor has the right to slap this lady. And when  
7 David tried to leave, defendant and his associates surrounded  
8 him, threatening him, menacing him.

9 They ultimately let him go with this threat. "Later  
10 on, I'm coming for you." Osephita called this a promise. Mers  
11 Ysemé said this was a threat. Osephita also described the  
12 mayor's demeanor when he said it. His face was really harsh  
13 and mean and the tone also, like he wanted to slap him, but he  
14 didn't hit him then.

15 Now, David, he was only capable to get home because of  
16 the kindness of a pastor and group of parents who rescued him.  
17 They escorted him to safety. And then we learned he went to  
18 church later that night with his mother, right? And Ecclesiaste  
19 Boniface, he stayed behind in the family home. They had no  
10:48 20 idea what was going to happen next.

21 At trial you heard from three witnesses, Jean Denais,  
22 Osephita and Mers, and each of them testified that they saw  
23 Mayor Viliena with Hautefort Bajon, remember, that's the  
24 general secretary in the mayor's office, and a group of about  
25 20 people walking in the direction of David's house. Jean

1 Denais testified that this group included Meritus Beaublanc,  
2 Lifaite Livert, Agnel Jean, Michelet Noel, Roland Vilsaint and  
3 France Isme, all individuals that he testified were affiliated  
4 with KOREGA.

5 Mers and Osephita both testified that the defendant  
6 and Hautefort each had guns, and the others of them had weapons  
7 like sticks. Osephita actually ran into the crowd when she was  
8 trying to go to her mom's house. Do you remember that they  
9 were so big they blocked the path? So she had to step off the  
10:49 10 path, and she waited on a neighbor's porch where she had a  
11 clear view of what happened next. Mers also, he was sitting in  
12 a different place on his own front porch, and he watched this  
13 crowd march by. Osephita and Mers were both eyewitnesses.

14 Now, defendant and his crowd of partisans stopped at  
15 the home of David Boniface, and they called out his name,  
16 called for David. His brother Ecclesiaste answered, "David's  
17 not home." And so one of defendant's partisans shouted, "Come  
18 out. We have something for David." And so Ecclesiaste opened  
19 the door, and he stepped outside onto the street.

10:50 20 Mers testified that Defendant Viliena told Hautefort  
21 Bajon to shoot Ecclesiaste in David's place and that Hautefort  
22 shot him. Osephita testified that Defendant Viliena shot  
23 Ecclesiaste. Now, the witnesses were watching from different  
24 locations, but both testified that the defendant and Hautefort  
25 were together right next to each other at the front of the pack

1 and both had guns. That attack, it was frenetic, it was  
2 violent. After the shot, Ecclesiaste fell to the ground. The  
3 witnesses could not tell whether Ecclesiaste had actually been  
4 killed by the gunshot, but that was answered when Benicoit Bell  
5 picked up a cinder block and crushed Ecclesiaste's head with it.

6 Osephita testified that she shivered and she cried  
7 because it was such a weird, bizarre way to lose your life.  
8 Ecclesiaste was an innocent victim. He wasn't armed. He hadn't  
9 committed any wrong, and he never went before a court for  
10:51 10 anything. Defendant Viliena abused his power that night and  
11 unilaterally sentenced Ecclesiaste to death. He was the judge,  
12 the jury and the executioner. Whether defendant pulled the  
13 trigger himself or whether he ordered Hautefort to do it, that  
14 doesn't matter for liability purposes. He is legally  
15 responsible for Ecclesiaste's murder either way.

16 And what was Ecclesiaste's offense? That he was the  
17 brother of David. That David had been courageous enough to  
18 speak out and question the mayor's authority. For that  
19 Ecclesiaste became the victim of this surrogate killing. David  
10:52 20 and his mother found out about this while they were still at  
21 church, but they actually couldn't go to the body. It wasn't  
22 safe. Defendant's associates had now surrounded them at the  
23 church, so they spent this panicked sleepless night knowing  
24 what happened but unable to go and see the body, hiding in the  
25 pastor's home.

1           And that entire night, Ecclesiaste's lifeless, bloody  
2 body lay out there on the street unmoved. His body was a  
3 warning to others that might choose to speak out against the  
4 defendant. And it was a sign that the defendant truly believed  
5 he was above the law, that he could murder someone with  
6 impunity out in the middle of the street.

7           Finally, the next morning, David Boniface was able to  
8 return to Judge Bell's house and ask for him to investigate.  
9 Once the judge was there, people felt safe enough to come and  
10:53 10 to bear witness to Ecclesiaste's body. And David returned to  
11 his family home and he saw his brother's inert, mutilated body  
12 on the ground. The neighbors started to gather. Jean Denais  
13 stressed the community's emotional reaction to the death. And  
14 then David, he described how the population picked up his  
15 brother's body, and they carried it to Jean Morose Viliena.

16           Osephita explained to you the significance of this,  
17 this procession. The person responsible for the death should  
18 be the person responsible for the burial. And through this  
19 procession, the community of Les Irois was expressing that all  
10:54 20 of them knew Defendant Viliena was responsible for the murder  
21 of Ecclesiaste.

22           Now, let's take all of that harrowing evidence and put  
23 it in the context of the question before you today, which is  
24 whether the evidence of this attack proves extrajudicial  
25 killing under the TVPA. As the court instructed, there are

1 three elements.

2 First, the killing of Ecclesiaste was clearly  
3 deliberate. He was lured out of his home. He was shot with a  
4 gun, and his head was smashed. Second, it must be under color  
5 of law, which is satisfied here first because everyone agrees  
6 the defendant was the mayor. A defendant can act under color  
7 of law of Haiti even if his actions overstep or abuse that  
8 authority. Okay. That's really important here.

9 And here the killing flowed from his traditional  
10:55 10 duties, right? He was the mayor. He was supervising his  
11 sanitation crew. He tried to have Ostanie arrested and  
12 obtained a warrant. But he also retaliated against David for  
13 speaking out about his authority. And of course he acted in  
14 concert with Hautefort, his general secretary in the mayor's  
15 office, in shooting Ecclesiaste. So color of law is satisfied.

16 And then third, Ecclesiaste's killing was  
17 extrajudicial. There is no death penalty in Haiti, and there  
18 was no fair or impartial hearing for this poor man. No court,  
19 no judge authorized what happened that night. So you're going  
10:56 20 to get a verdict form a bit later today, and after you've  
21 deliberated, you're going to answer several questions, the  
22 first of which is do you find that defendant Jean Morose  
23 Viliena is liable for the extrajudicial killing of plaintiff  
24 David Boniface's brother, Ecclesiaste Boniface? And for this  
25 question, based on the law that we have just discussed and all



1 of the evidence that you have heard, the answer is yes.

2 Okay. Now, I'm going to switch gears for a minute.

3 As you consider the evidence about each of the defendant's  
4 three attacks, as the court instructed, you're going to have to  
5 consider these different types of liability. You're going have  
6 a written copy of the instructions back with you in the  
7 deliberation room so you can look at these together yourself.

8 But I want to talk about them now because the relationship  
9 between defendant and his associates, that's really important  
10:57 10 here, okay?

11 So the court first explained there's direct liability,  
12 if the defendant did it himself. And you heard the testimony  
13 that he punched Juders in the face, in the chest. That's  
14 direct liability. And then there are these other kinds,  
15 secondary or indirect liability. Okay. So this means the  
16 defendant might not have pulled the trigger himself, but he is  
17 legally responsible for that act because one of his associates  
18 committed it.

19 Now, there are four different types here, any one of  
10:57 20 them, just one of them is sufficient to find liability. So let  
21 me give you a couple of examples. Directing or ordering. This  
22 obviously occurs when the defendant directs one of his  
23 associates to commit an act. And so an example here is when  
24 defendant ordered Villeme Duclona to shoot Juders and Nissage.  
25 For this one, the defendant has to be the superior of the

1 associate. But it doesn't have to be that he's the boss. It  
2 can be informal, even temporary.

3 Next, soliciting, this is when defendant solicits,  
4 urges, encourages, prompts the associate to commit the act. It  
5 can be explicit. It can be implicit. And so an example here  
6 is when defendant urged his associates to burn the different  
7 houses. That's an example of solicitation.

8 Aiding and abetting. This occurs when defendant gives  
9 substantial assistance to an associate that then commits a bad  
10:59 10 act. So an example here is when the defendant would take  
11 weapons and guns and hand them out to his associates. That's  
12 aiding and abetting the attack.

13 And then conspiring. And this is when defendant and  
14 his associates, they agree on a common goal, for example,  
15 "David, we're going to come get you later." Even if that  
16 agreement is informal, like the judge said, it doesn't have to  
17 be expressed; it can be tacit, it can be implied through their  
18 conduct, then each conspirator becomes responsible for acts of  
19 other conspirators if they were partly foreseeable related to  
10:59 20 the conspiracy. And so here, that would be the murder of  
21 Ecclesiaste. Does that make sense? Okay.

22 So one really important point that I want to emphasize  
23 about all four of these types of liability, the defendant does  
24 not have to be physically present, okay? He does not have to  
25 be present. And that makes sense, right? We've all watched

1 gang movies. You know the capo, he gives the order. He  
2 doesn't do the dirty work himself. He isn't in the room when  
3 somebody is being taken out. And so that's why when you have  
4 indirect secondary liability, he doesn't actually have to be  
5 there.

6 Okay. It's also important to talk about  
7 circumstantial evidence here. And as the judge explained,  
8 circumstantial evidence is when you have a chain of facts or  
9 circumstances that help you prove a fact. And she used that  
11:00 10 really cute example of her kid, she gets home from work, the  
11 cookie jar is empty, the kid has chocolate smeared all of over  
12 her face. And you can draw the conclusion, right? It's a  
13 reasonable inference your child ate the cookie. And you should  
14 use your judgment and your common sense here as well. Both  
15 direct and circumstantial evidence, they can be used equally in  
16 order to reach your verdict.

17 And circumstantial evidence is particularly important  
18 in the context of these types of secondary liability, right?  
19 Conspirators don't wander around saying, "I'm a member of a  
11:01 20 conspiracy. Let me tell you what we're going to do." So you  
21 have to use that circumstantial evidence to piece together what  
22 their common plan was, what their conspiracy was, what criminal  
23 act or bad act they were going to participate in.

24 Okay. So both with direct and indirect liability in  
25 mind, now I want to focus on organizing the evidence that we've

1 showed you about defendant and his relationship with his  
2 associates, which is pertinent to all three of the attacks.

3 So of course it's totally undisputed that the  
4 defendant was mayor. I'm sure you guys heard that like a  
5 hundred times during this trial. But throughout his time as  
6 mayor, one thing that we heard is that defendant at all times  
7 surrounded himself with his associates. Right? Some worked in  
8 the mayor's office with him. Some were loyal because he was a  
9 mayor, he had power, he had privilege, he had money. And some  
11:02 10 were through his affiliation with KOREGA. So I want to talk  
11 you through a couple of them.

12 Defendant Viliena admitted that the founder of KOREGA,  
13 Maxime Roumer, they supported one another's campaigns and we  
14 saw that they communicated, WhatsApp, Facebook message, email,  
15 they communicated together. Now, next, Hautefort Bajon and  
16 Meritus Beaublanc, those are both direct members of the mayoral  
17 staff, and they were identified by witnesses as members of  
18 KOREGA. Witnesses also identified other KOREGA members. So we  
19 have Villeme Duclona, Michelet Noel, Agnel Jean and Gardy  
11:03 20 Jean-Pierre. The last person I want to highlight of course is  
21 dad, Lissage Viliena.

22 Professor Maguire described this type of relationship  
23 as a symbiotic relationship. Defendant relied on KOREGA to  
24 provide additional muscle to silence, to crush those who might  
25 oppose him. One witness described KOREGA members as the

1 mayor's security team. And in exchange, those associates, they  
2 received jobs, weapons, money, resources from their patron,  
3 from their politician, from the defendant.

4 Now, defendant claims to know nothing about KOREGA,  
5 but regardless of his affiliation, the bottom line is we can  
6 see through the conduct and the testimony that's been put on at  
7 trial that these men were loyal to the defendant because of the  
8 power that he wielded as the mayor of Les Irois, both  
9 sanctioned and unsanctioned. In some ways, it actually doesn't  
11:04 10 even matter if any of them were formally members of KOREGA, as  
11 long as the defendant and his associates acted in concert.

12 Osephita Lebon, you'll remember she previously served  
13 as mayor of Les Irois. And she testified that as the mayor,  
14 what he says, tells them to do, they do. And that's exactly  
15 what happened here. The defendant organized his associates, he  
16 armed his associates. He encouraged his associates, and he  
17 directed them to commit acts of violence like the three attacks  
18 here.

19 Okay. Let's go back, we're going to now turn to the  
11:04 20 radio station. As witnesses explained, the community was so  
21 excited and proud of the radio station. Franckel Ysemé told  
22 you that it was such an important way for them to share the  
23 news, to get the word out, to provide entertainment and just to  
24 listen to music. It was supported and financed by Deputy  
25 Orelie from the Struggling People's Party. And because of

1 that, defendant perceived it as a threat to his power as mayor.  
2 You'll recall he admitted that he had heard critical radio  
3 programs that criticized his conduct as mayor.

4 Now, a number of different witnesses explained to you  
5 that defendant vocally opposed the radio station from the very  
6 beginning. As you heard from Vilfranc and Jean Denais,  
7 defendant tried to use this government agency, it's called the  
8 Civil Protection Unit, remember that orange vest that Vilfranc  
9 showed you, that's the Civil Protection Unit. It's a  
11:05 10 government agency that is under the mayor's authority. And he  
11 told them shut it down. Luckily, the civil protection officers  
12 refused.

13 Vilfranc, he told us that he spoke on the radio one  
14 day because he wanted to fulfill his civic duty, and he said on  
15 the air that a radio station was for all of the people of Les  
16 Irois and the mayor had no right to take it over. And Vilfranc  
17 told you that, after that radio broadcast, defendant's  
18 associates, including Pierrot Boileau, they beat him up. And  
19 while he was being beaten up, the defendant was right there,  
11:06 20 looked quite happy that his henchman was beating up Vilfranc.

21 And you've heard from multiple witnesses that  
22 Defendant Viliena then called into the radio station and stated  
23 live on the air while the whole community was listening that he  
24 was going to destroy the radio station. Nissandère was  
25 actually home that day, and he couldn't sleep that night for

1 fear of what the mayor might do to the radio station, which was  
2 in his home. Defendant even on another occasion toured the  
3 radio station and essentially cased the joint, taking down  
4 detailed notes of the radio equipment inventory before he left  
5 that day.

6 So all of these attempts to mediate the dispute  
7 failed, and on April 8, 2008, defendant did exactly what he had  
8 threatened to do. He attacked and destroyed the radio station.

9 That afternoon defendant, along with his associate  
10 Maxene Vilsaint, they went on a motorcycle to Anse d'Hainault.  
11 Juders and Nissage were watching from Nissage's front porch,  
12 and Franckel, Vilfranc, Mers and Jean Denais, they all watched  
13 from different locations on the same street. So defendant and  
14 Maxene had come back and they've got this sack in front of them  
15 and the long duffle bag.

16 Witnesses identified defendant's father, Lissage  
17 Viliena, as well as Lifaite Livert, Agnel Jean, Pierrot  
18 Boileau, Meritus Beaublanc, Benicoit Bell, Gardy Jean-Pierre,  
19 France Isme, Michelet Noel and Villeme Duclona, as part of this  
11:08 20 large group that was gathered at the health clinic waiting for  
21 the defendant. And so then multiple witnesses testified that  
22 the defendant organized his crew and started handing out guns  
23 from that first bag. And then he pulled out of that long  
24 duffle bag, he pulled out a shotgun, and he tossed it over to  
25 Villeme Duclona, who snatched it out of the air.

1           You heard Franckel testify that then Defendant Viliena  
2 gestured and ordered his crew, "Guys, attack," this order,  
3 "Guys, attack." This satisfies every single type of secondary  
4 liability. Defendant and his associates then fired their  
5 weapons into the air as they headed over to the radio station.  
6 Nissage and Juders, who had been sitting on the front porch,  
7 they immediately, once they heard the gunshots, they ran inside  
8 to seek safety, and Juders hid at the very back of the house.

9           When they got to Nissage's house, they busted down the  
11:09 10 front door. From where he was hiding in the back of the house,  
11 Juders could hear Nissage being beaten and punched by the  
12 defendant and pistol-whipped in the face. Nissage was  
13 screaming with pain, pleading with the defendant. This is  
14 direct liability.

15           The defendant discovered Juders hiding in the back of  
16 the porch, and then they grabbed him by the collar and started  
17 punching and hitting him in the face and in the chest. He then  
18 dragged Juders up to the front porch where defendant's crew was  
19 gathered. Juders testified that Villeme Duclona, Lifaite  
11:10 20 Livert and defendant's father, Lissage Viliena, they were all  
21 there, and defendant said to Juders, "I'm going to put a noose  
22 around your neck, and then I'm going to hang you on the public  
23 plaza." Juders testified that he thought he was going to die.  
24 Defendant directed his associate Lifaite Livert to restrain  
25 Juders, and he did, pinning down his arms tightly. Now, all of



1 this time defendant's crew had been vandalizing the radio  
2 station and carrying the stolen equipment out the front door.

3           Seizing a brief opening, Nissage and Juders tried to  
4 break away and run out onto the street, but defendant saw them  
5 trying to escape and he ordered his associate Villeme Duclona  
6 to shoot Juders and Nissage. As he was trying to escape,  
7 Juders testified that he heard defendant forcefully say,  
8 "Villeme, shoot him, shoot Juders." Mers and Franckel  
9 testified how the defendant ordered Villeme Duclona to shoot  
11:11 10 Nissage more than once. Duclona initially hesitated, but  
11 because his superior, Defendant Viliena, repeated the order,  
12 Duclona ultimately followed, and he opened fire with the  
13 12-gauge shotgun. The shotgun pellets sprayed out, striking  
14 Juders all over the right side of his face and body and Nissage  
15 in the right leg. Defendant and his associates then stole the  
16 rest of the equipment and fled the scene.

17           Juders and Nissage were taken to the local health  
18 clinic. Vilfranc and Franckel saw the horrific injuries.  
19 Franckel described how Nissage lay on a bed in the clinic in  
11:12 20 excruciating pain, screaming for a doctor and thinking that he  
21 was dying. And he described Nissage's leg as lifeless.  
22 Vilfranc described that Nissage was drenched in blood. He was  
23 bathing in blood.

24           For Juders, the shotgun pellets had gone directly  
25 through his eye, and they were lodged in his skin, all over his

1 head and his right side. In the health clinic, Franckel  
2 described as he gently lifted the bandage off of his eye, and  
3 he testified that he could see what looked like optic fluid  
4 flowing down Juders' face, while Juders said, "I can't see  
5 anything. I can't see." Somehow Juders and Nissage survived  
6 this horrific shooting, but as you know, they were permanently  
7 maimed and disfigured in the attack.

8 And this attack was about more than just brutalizing  
9 two voters of the Struggling People's Party. It was about  
10 defendant following up on his threat to destroy the radio  
11 station and to silence the entire community. As expert Brian  
12 Concannon explained, in Haiti, quote, "If you want to get  
13 information out there, you do it through radio, and so if you  
14 want to stop information from getting out there, you stop radio  
15 from putting that information out."

16 Now, all of this evidence clearly shows that defendant  
17 is responsible for torture and attempted extrajudicial killing  
18 of Juders and Nissage under the TVPA. Now, attempt, it  
19 includes all the same elements that we talked about for  
20 extrajudicial killing, but instead of the killing itself, you  
21 have to prove that there was at least one substantial step  
22 towards the killing. Here, we have a lot of different  
23 substantial steps.

24 I'll just give a few. He gave a shotgun to Duclona.  
25 He ordered his associates to attack the radio station. And

1 then he ordered Duclona to shoot Nissage and Juders. Each of  
2 those alone is enough to satisfy that first element.

3 Next, color of law is satisfied because the defendant  
4 was mayor, but keep in mind he also tried to shut down the  
5 radio station using his own government agency, the Civil  
6 Protection Unit, with the orange vests. And he attended  
7 mediation meetings with other politicians from other parties in  
8 his capacity as mayor. So these all demonstrate that color of  
9 law is satisfied here. And in fact, when the mediation efforts  
11:14 10 failed, we also see that other members of his mayor's staff  
11 joined him in the violent attack.

12 Okay, last. This was extrajudicial because no court  
13 authorized it. The evidence also clearly satisfies the four  
14 elements for torture of both Nissage and Juders. So there's no  
15 question that there was extreme pain and suffering, mental  
16 anguish, they were beaten, they were shot, and they were in  
17 fear of their imminent death. So we have severe pain or  
18 suffering. Color of law is satisfied for all of the same  
19 reasons we just talked about. And defendant also had custody  
11:15 20 or physical control of Juders and Nissage, right? Remember  
21 that he was beating them. He had them restrained. And of  
22 course at all times the associates were surrounding them.

23 And then last, punishment or intimidation. The  
24 defendant attacked the radio station in order to intimidate  
25 those who would criticize him, and he attacked Juders and

1 Nissage in order to punish them. He thought they were going to  
2 report the attack, and he also punished them for resisting the  
3 attack.

4           When you complete the verdict form, you will see  
5 separate questions for both claims and both plaintiffs. So the  
6 law and the evidence that we've just discussed should lead you,  
7 for attempted extrajudicial killing, to answer yes for Nissage,  
8 and then yes for Juders. And then likewise, when you get to  
9 the questions on your verdict form with respect to torture, you  
11:16 10 should answer yes, defendant is liable for the torture of  
11 Nissage and for the torture of Juders based on the evidence  
12 that we've just reviewed.

13           Now let's shift gears and talk about the mass arson.  
14 In the days before the mass arson, trouble was already brewing  
15 in Les Irois. Hautefort Bajon had fallen ill, and the  
16 defendant's associates, they blamed the Struggling People's  
17 Party for it. The day before the arson, Juders Ysemé was at  
18 home, and he saw this group of defendant's associates that had  
19 kidnapped and tied together two members of the Struggling  
11:17 20 People's Party. Doston Lebon was one of them. And they were  
21 marched down the street to Hautefort's house. I think they  
22 thought they could cure the illness.

23           The next day Hautefort died. And defendant's  
24 associates rampaged through the public market. They announced  
25 the death, and they vowed houses would be burned down in

1 retaliation for Hautefort's death.

2           Around 6:00 p.m., Juders spotted a crowd of about 25  
3 different people, including at least Lissage Viliena, Lifaite  
4 Livert, Villeme Duclona and Michelet Noel. And they had guns,  
5 machetes, and they had gallon jugs full of liquid. Juders  
6 watched from behind a cluster of nearby plantain trees as they  
7 set fire to his neighbor's home. He listened as Lifaite Livert  
8 told everyone to quiet down, the mayor was speaking. And  
9 another associate said to Livert, "Put the mayor on speaker  
11:18 10 phone." And then Juders could hear the mayor asking for  
11 updates on the arson and telling his associates which houses to  
12 burn. This cell phone call, likewise, is every type of  
13 secondary liability.

14           After the call, Juders watched as Villeme Duclona and  
15 Merer Souverain followed the mayor's instructions and  
16 intentionally set his house on fire. His old father, Mers,  
17 whose home is next to Juders also testified that he heard the  
18 associates talking with the defendant over the speakerphone,  
19 and directing the mayor by name and asking what he wanted them  
11:19 20 to do next.

21           Mers's home was also burned down that night and he  
22 fled Les Irois. He wasn't able to return until a couple of  
23 days later, and he required a police backup to do so. And when  
24 he got there, he saw that his home and dozens of other homes  
25 had been burned down.

1           When David Boniface returned to Les Irois three weeks  
2 after the arson, he also saw that his family home had been  
3 completely burned down. And Boniface told all of us, I was out  
4 of myself with the feeling of desolation and I realized that  
5 had it been that myself and my family were at the house that  
6 night, we could have all been dead. And he counted 36 homes  
7 and 42 families that had been displaced because of the mass  
8 arson. Nissandère also returned to Les Irois three weeks later  
9 to discover that the whole Martyr family home had been  
11:20 10 destroyed, and with it his and his family's personal  
11 possessions.

12           You heard testimony that all of the homes burned down  
13 that night were of voters for the Struggling People's Party.  
14 Not a single one of the homes that was burned down belonged to  
15 defendant, belonged to his father, or belonged to his  
16 associates. In fact, defendant admitted on cross-examination  
17 that he could not identify a single home belonging to any  
18 member of MODEREH or KOREGA that was burned that night. Jean  
19 Denais, whose home was also burned down, he testified that if a  
11:21 20 home is even next to one of the defendant's partisans, it  
21 wasn't burned to avoid the partisans' homes being set on fire.

22           Now, the evidence that you heard clearly establishes  
23 both elements of arson under Haitian law. As the judge  
24 explained, arson requires that someone intentionally set fire  
25 to a home being used for a residential purpose. So here you

1 heard eyewitness testimony that the defendant's associates were  
2 armed, they were carrying these gallon jugs, and they  
3 intentionally lit on fire several homes that evening. Juders  
4 and Mers testified that the defendant instructed which homes to  
5 target over speakerphone to the associates. And they burned  
6 all three of the plaintiffs' family homes, which were obviously  
7 used for a residential purpose. And so we have both of these  
8 elements satisfied here.

9 Now remember, you can use circumstantial evidence and  
11:22 10 draw reasonable inferences. You heard how Hautefort was sick,  
11 and they blamed the Struggling People's Party. You heard that  
12 the day Hautefort died, defendant's associates vowed to burn  
13 down houses, and defendant's associates were seen lighting  
14 fires of certain homes. And then defendant's associates spoke  
15 by speakerphone to this man that they kept calling the mayor.  
16 As the instructions say, the defendant did not need to be  
17 physically present to be held responsible for arson. It could  
18 have been ordering, soliciting, aiding and abetting or  
19 conspiring.

11:22 20 And as Brian Concannon explained, Haitian law imposes  
21 liability upon anyone who is responsible for the arson, and he  
22 called it intellectual authors who were not at the scene but  
23 gave the order. So liability in Haiti also flows to arson  
24 accomplices and conspirators. So when you get to the verdict  
25 form, you should follow the evidence and check yes for the

1 losses, the arson of David's house, Nissage's house and Juders'  
2 house.

3 So I want to thank you again for your time and  
4 attention as we put on the plaintiffs and witnesses and the  
5 evidence. We took almost the whole week. And I'm sure you  
6 were waiting patiently and listening to the court's  
7 instruction. Keep an open mind. Make sure you give the  
8 defendant an opportunity to tell his side of the story. And  
9 you were probably really curious to see what was the defendant  
10 going to say in the face of all of this evidence showing that  
11 he was liable?

12 And the defendant, he denied pretty much everything.  
13 For each of the three attacks, he denied being there; he denied  
14 ever going to the scene; he denied ever investigating it. It  
15 really does seem like he was always out looking for the police  
16 in other towns, for hours, even though he could and he said he  
17 did at times call the police on the phone. So maybe it's no  
18 surprise that he denied everything, but let's take a minute and  
19 break down the defendant's denials and talk about whether they  
11:24 20 make any sense.

21 So let's start with the very basic question of whether  
22 defendant had any connection to KOREGA. Professor Maguire  
23 testified that KOREGA has been active in the region around Les  
24 Irois since the 1980s. KOREGA was closely aligned with  
25 defendant's political party MODEREH. And this has been



1 documented by domestic and international sources. Yet,  
2 defendant denies everything. He denies he's a member. He  
3 denies knowing other KOREGA members. He denies what they do in  
4 Les Irois. He denies that he's ever seen a KOREGA T shirt or  
5 logo or banner. He denies -- he couldn't even answer my  
6 question about whether KOREGA has ever committed violence in  
7 Les Irois, his own town.

8           So let's be real. Defendant is this savvy politician.  
9 He's an elected official. And Les Irois is tiny. He has to be  
11:25 10 familiar with all of the political players. It's just not  
11 possible that he knows nothing about KOREGA whose members, by  
12 all witness accounts, followed him around the town at every one  
13 of these major events. And because we have defendant's  
14 personal emails and Facebook messages, he had to admit that he  
15 does know Maxime Roumer. He does communicate with Maxime  
16 Roumer. And who is that? He is the founder of KOREGA. In  
17 fact, defendant admitted that he worked with Senator Roumer,  
18 his fixer, to release his family members from jail. And when  
19 this U.S. complaint was filed against him, who did he email it  
11:26 20 to? To none other than Maxime Roumer, the founder of KOREGA,  
21 his fixer. Defendant falsely denied all of this basic  
22 information about his political associations. He's just not  
23 credible.

24           Let's look at the attacks. On July 27, 2007,  
25 defendant actually starts off the day with the same story as

1 everybody else, right? It's trash day. He gets into this  
2 dispute with Ostanie Mersier. Now, defendant denied ever  
3 slapping Ostanie, but I don't know if you caught this on cross,  
4 he said, he let it slip, "I put my hand around her neck when I  
5 told her not to put the trash on the street."

6 But from there the stories diverge. Defendant claims  
7 he never talked to David Boniface all day. After getting  
8 Ostanie arrested, he denies ever leaving his house for the  
9 entire night, even though his own cousin was murdered by a mob  
11:27 10 less than a 15-minute walk away from his house. He denies any  
11 involvement whatsoever in the murder of Ecclesiaste Boniface.

12 Next, the radio station. Four witnesses testified  
13 that the defendant stated live on-air that he wanted to destroy  
14 the radio station, and six witnesses placed him physically in  
15 the vicinity leading the attack on the radio station. But  
16 defendant denies any involvement in the radio station attack,  
17 and again, he says, "I didn't go there the entire night."  
18 Instead, defendant spun you a tale about Josy, the student with  
19 a gun at his school, who apparently he left totally  
11:28 20 unsupervised, and then that guy walked to the radio station.  
21 Conveniently Josy is dead, so he can't corroborate the  
22 defendant's story. Neither does anyone else.

23 I want you to compare that to the evidence that we  
24 showed you. It's not a close call. Defendant was at that  
25 radio station directly involved in the attack just as all of

1 the other witnesses told you that he was.

2 On October 29, once again, defendant offers a bizarre  
3 denial. So our witnesses testified that although he wasn't  
4 physically present, he was orchestrating the arson. He was on  
5 this speakerphone call with his associates. Defendant admits  
6 that he spoke to many people on the night of the arson on his  
7 cell phone but he couldn't identify a single person that he  
8 spoke with that night. He couldn't even estimate the number of  
9 people that he spoke to. And of course he couldn't. It wasn't  
11:29 10 just what the defendant said. It was how he said it. There  
11 were long pauses. His voice cracked. He started stuttering.  
12 He was squirming there in the witness box. And I said, well,  
13 you know you've been warned by many people about these fires  
14 taking place in Les Irois. I asked him if he was worried about  
15 his father's safety or his house. Did you call your father to  
16 warn him? Defendant first denied speaking with his father, but  
17 then he flip-flopped, and he testified that he did, but then I  
18 reminded him of his sworn deposition testimony, and he went  
19 back to denying the call.

11:29 20 Defendant didn't call because he wasn't worried about  
21 his father. He already knew that his father was safe, that his  
22 home was not going to be targeted. The only homes that burned  
23 down that night belonged to the Struggling People's Party. And  
24 defendant knew that that was exactly what was going to happen.

25 Now, remember earlier what I said about how the

1 witnesses for the plaintiffs corroborate one another. Their  
2 memories and their testimony, they all fit together, and that's  
3 a compelling way to prove the truth. Compare that to  
4 defendant's stories. No one, absolutely no one took the stand  
5 to testify on his behalf, not here in court, not over Zoom, not  
6 in any recorded deposition. And defendant had the same  
7 opportunity as plaintiffs did to identify and produce  
8 corroborating witnesses to testify on his behalf either here or  
9 remotely from Haiti. In the end, he presented no one. And he  
11:31 10 couldn't find anyone anywhere to support his story because it's  
11 false.

12 Finally, defendant tries to claim that after being  
13 declared a fugitive in Haiti, he was acquitted of the attacks  
14 in this 2018 trial in Haiti. Now, Defendant Viliena has  
15 admitted that he went to jail in September 2008 for the murder  
16 of Ecclesiaste and the radio station attack. He was somehow  
17 released, and then he fled to the United States in January  
18 2009. After that, though, between 2009 and 2017, he traveled  
19 back many, many times. You're going to see the passport  
11:31 20 exhibits in your exhibits. And he traveled back and forth with  
21 impunity even though these criminal proceedings were ongoing  
22 against him in Haiti. He was even declared a fugitive by the  
23 Haitian court after he failed to attend that trial that  
24 convicted five of his other associates. And so he never  
25 participated in Haiti at all until 2017. So what happened

1 then? We had filed this U.S. complaint. So after that, the  
2 defendant thought I'll participate in the Haitian proceedings.  
3 And he made his first appearance at the 2018 trial where he was  
4 supposedly acquitted.

5 But I want you to remember what Brian Concannon  
6 explained. This trial was very odd. The entire record of the  
7 entire 2018 trial was three pages. The judge asked maybe ten  
8 questions. Defendant Viliena was the only witness. None of  
9 the plaintiffs, none of the witnesses were there. This was  
10 supposed to be a trial about the murder of Ecclesiaste, and the  
11 name Ecclesiaste doesn't appear anywhere in that trial record.  
12 It just doesn't hold up, right?

13 Instead, this has all the hallmarks of a corrupt  
14 verdict, as Brian Concannon concluded. And as Brian, I'm just  
15 paraphrasing him, said, when you have a powerful politician  
16 like Mayor Viliena, then very curious things happen in the  
17 justice system that aren't explainable or a fair process.

18 So I'm going to switch topics now and talk to you  
19 about damages. After you decide the defendant should be held  
11:33 20 liable for these violations, these attacks, then you're going  
21 to have to decide how to value the losses that plaintiffs  
22 experienced. This is called compensatory damages. And as the  
23 judge just explained to you, they're intended to help make the  
24 plaintiffs whole. The instructions say that compensatory  
25 damages may be awarded for pain and suffering, physical

1 disfigurement and mental and emotional distress, not just in  
2 the past but also for the future. And we don't have to  
3 introduce any evidence of the value of these types of  
4 intangible things such as pain and suffering. The instructions  
5 say that's left, quote: "To the enlightened conscience of the  
6 jury." And that's you.

7 As Brian Concannon explained, arson damages in Haiti  
8 can be pecuniary and nonpecuniary, and so that can also include  
9 pain and suffering as well as what he described as moral  
10 outrage, a factor to account for the devastation of the loss.

11 So here are David Boniface, Nissage Martyr -- I think  
12 I've done something wrong -- oh, okay -- and Juders Ysemé. For  
13 David, it was the vicious murder of his loved one, his little  
14 brother Ecclesiaste. Ecclesiaste was only 23 years old when he  
15 lost his life, and he lost his life in a truly horrific,  
16 despicable way. You heard David describe that moment when that  
17 white sheet was lifted and he first saw his brother's body  
18 broken, bleeding on the ground. And you saw his reaction even  
19 now, years after the death, how he broke down on the stand and  
20 he couldn't continue his testimony, all because of the impact  
21 of his brother's death on him. And it's not just his brother's  
22 death. David has lived for all of these years with survivor's  
23 guilt that his brother was killed in his place for what he  
24 spoke for, what he did.

25 For Nissage and Juders, the pain and suffering were

1 immediate and debilitating. Juders testified that the  
2 defendant grabbed and punched him in the face and all over his  
3 body. He described feeling as if all of his bones were  
4 cracking from the pain of the defendant's blows, and then the  
5 defendant dragged him up the hallway and threatened to hang him  
6 with a noose in the public plaza. Juders felt that he was  
7 about to die imminently. And then Juders described being shot,  
8 had this incredible pain, the shotgun pellets striking him all  
9 over his face and his right side, in his stomach, in his arms.  
11:36 10 He could feel the blood running down his face. And he  
11 testified that he saw death in front of him.

12 Juders also testified that he could hear Nissage  
13 screaming and crying out in pain when defendant was beating and  
14 punching and pistol-whipping him. When Nissandère saw his  
15 father later in the day in an ambulance on the way to the  
16 hospital, his father was drenched in blood with his right leg  
17 tied up with a tourniquet, and Nissage said to him, "My son, I  
18 am dying."

19 For Nissage and Juders, the effects of the attack have  
11:37 20 also been long term. Juders was hospitalized for 15 days. And  
21 remember, he had to return repeatedly to the hospital for  
22 multiple surgeries to remove 58 shotgun pellets from his body.  
23 Some had been lodged so deeply and in such sensitive places  
24 that the doctors couldn't remove them, and they still pain and  
25 torture him to this day. He testified that sometimes it feels

1 like his skin is tearing apart from the pellets, and he suffers  
2 these excruciating, nonstop headaches. And of course, Juders  
3 is permanently blind in his right eye. He has been  
4 incapacitated for the rest of his life.

5 Nissage's beating and gunshot wounds were so severe  
6 that he had to stay in the hospital for six months and  
7 ultimately had his right leg amputated above the knee. He went  
8 from being a proud, able-bodied farmer with two legs to a man  
9 who is disabled, unable to work, unable to support his family.  
10 He was a shell of himself.

11 Juders testified that if they walked long distances,  
12 Nissage would get so tired, he'd have to scoop up his crutches  
13 and carry him on his back. In his brief video clip, Nissage  
14 shared with you how he felt. He said, "Since the shooting, I  
15 have not been living with the dignity of a human being. I live  
16 as an animal." And so he spent almost ten years suffering from  
17 the physical and mental toll from that attack. And then of  
18 course Nissage died the day after the defendant received the  
19 complaint in this case.

11:38 20 All three homes, all three plaintiffs' homes were lost  
21 in the mass arson, and with that, all of their worldly  
22 possessions. As Brian Concannon explained, arson is truly  
23 catastrophic, particularly for Haitians. Their house is their  
24 most valuable asset, and all of their belongings are tied up in  
25 that house. There's no insurance to recover any of these



1 losses. They don't have credit cards to buy new things the  
2 next day. So literally, the day after the fire, you are left  
3 with the clothing that is on your back.

4 The plaintiffs here lost everything. Juders testified  
5 that he lost his batteries and solar panels and with them his  
6 livelihood. He couldn't sell cold drinks. And especially  
7 after all of his medical bills, Juders just had nothing left to  
8 try to rebuild his home, and he told you how he had to live  
9 homeless, wandering from place to place, dependent on the  
10 charity of his friends.

11:40

11 David also lost everything, including priceless,  
12 irreplaceable items like birth certificates and family photos.  
13 You might have wondered why we never showed you a picture of  
14 Ecclesiaste while he was still alive. And that's because all of  
15 them have been lost. David's only picture of his younger  
16 brother is the picture of his dead, bloody body.

11:40

17 Juders and Nissage's pain and suffering didn't end  
18 when they were released from the hospital, and David's pain and  
19 suffering didn't end when he buried his brother. Attacks this  
20 brutal then haunt you for the rest of your life. And the law  
21 asks you to try to value this pain and suffering, ongoing and  
22 future mental, physical and emotional pain. The law also  
23 recognizes that it's really challenging to try to put a value  
24 on this, especially for something like torture or the loss of a  
25 loved one. But you've seen it. You've witnessed how

1 plaintiffs still experience these events so many years later.

2 In the more than 15 years since the attacks, the  
3 plaintiffs have even lost more. Defendant stole not only  
4 Juders' sight and his home, but also his future, his ability to  
5 make a living, his ability to build a family, his ability to  
6 see his wife and children more than two times in the past six  
7 years. And David lost not only his brother and his most  
8 precious possessions but also his ability to live with his  
9 community.

11:41 10 He was this articulate, educated teacher. He loved  
11 his human rights training, and he could have continued to stand  
12 up for the rights of others in Les Irois. Instead, the  
13 plaintiffs have been driven into hiding, and they are separated  
14 from their families and community. Plaintiffs are breathing,  
15 but they're not living.

16 So it's incredibly hard to assign a number to this  
17 kind of loss and injury. All I can do is offer some  
18 suggestions for you to consider when you go back and  
19 deliberate. Juders and Nissage were both beaten and tortured  
11:42 20 and then shot and permanently maimed in the radio station  
21 attack, and so we suggest one million for each of them for the  
22 torture and one million for each of them for the attempted  
23 extrajudicial killing.

24 And what about when a life is extinguished forever?  
25 The grief, the loss, the irreparable loss of a sibling. We

1 think the value of that needs to be higher, and so we suggest  
2 three million for the murder of Ecclesiaste. You'll have to  
3 deliberate and think that through together. You'll arrive at  
4 an appropriate number that makes the plaintiffs whole and  
5 accounts for their immeasurable suffering. And when you do,  
6 you'll fill in the verdict form with a number that you award to  
7 each of the plaintiffs for compensatory damages, and the form  
8 will ask you to write it out both in words and then in numbers.

9 Next, punitive damages. Punitive damages are designed  
11:43 10 to punish the defendant. They're separate from the damages  
11 that you award to compensate the plaintiffs for their losses.  
12 Punitive damages are appropriate when a defendant acts  
13 maliciously, recklessly, wantonly. And in this case, the  
14 evidence here shows clearly that defendant acted gratuitously  
15 in every one of these incidents.

16 In fact, some of you may remember that during his  
17 cross-examination the defendant agreed with me the death of  
18 Ecclesiaste, it was vicious. The beating and shooting of  
19 Nissage and Juders was equally reckless and malicious and  
11:44 20 frankly despicable. The defendant here, he used violence to  
21 silence his entire community, regardless of the cost to life or  
22 to others, and then he tried to avoid accountability by fleeing  
23 Haiti and the criminal proceedings and coming here to Malden to  
24 escape justice. And punitive damages are intended to deter  
25 conduct like that, to deter others who might act the way the

1 defendant has acted and to send the message that defendant's  
2 shocking acts and abuse of power are unacceptable.

3 The most important thing for you to consider in  
4 awarding punitive damages is how reprehensible the defendant's  
5 conduct was. As David testified, he's committed, he continues  
6 to seek justice to uplift his nation. He wants people who are  
7 causing injustice to know, to get the message that they are not  
8 above the law and they can be punished. And Juders testified  
9 that he continues to seek justice despite his tremendous  
10 personal suffering so that Defendant Viliena never does this to  
11 anyone else. So we ask that you award punitive damages here to  
12 send the defendant and others like him the message that this  
13 shocking, vindictive and violent conduct is unacceptable.

14 For punitive damages, we ask that whatever number you  
15 find as the total compensatory damages for the TVPA claims, not  
16 the arson, just the TVPA claims, that you take that total  
17 number and you multiply it. Take a number between one and ten  
18 that you think appropriately reflects the gravity of the  
19 conduct here and assign that number as punitive damages to make  
20 clear to Defendant Viliena that he is to be punished for these  
21 heinous acts. The amount should reflect the magnitude of the  
22 harm that he inflicted, the callousness of the abuse, and serve  
23 as a deterrent to others. So for example, if you award a total  
24 of \$7 million to all plaintiffs for the TVPA claims and you  
25 decide to multiply that number by five, then you should fill

1 out the punitive damages verdict form question with the number  
2 35 million, consistent with the type of torture victim abuses  
3 that were inflicted here.

4 The case is now in your hands. My clients have given  
5 you all of their evidence and testimony. And so it's to you  
6 now, and we ask that you return a verdict in favor of the  
7 plaintiffs, you hold the defendant liable for the extrajudicial  
8 killing of Ecclesiaste, for the torture and attempted killing of  
9 Juders and Nissage, and for the mass arson of the plaintiffs'  
11:47 10 homes, and we ask that you award a measure of damages that is  
11 sufficient to make the plaintiffs whole and to punish the  
12 defendant for what he has done. Thank you so much.

13 THE COURT: All right. Why don't you all stand up and  
14 move around a little bit while he's getting set up, and we'll  
15 go right to his closing.

16 MR. HALEY: There have been a lot of questions of  
17 witnesses in this case about how things make them feel, how did  
18 that make you feel? So let's start there. Let's talk about  
19 our feelings. We're all adult humans here, and we all have  
11:52 20 feelings. It's appropriate that we express them and they're  
21 important. All of us in some form have experienced trauma or  
22 loss. We all know how much that hurts. So do we have sympathy  
23 for the plaintiffs? We certainly do. And if you return to the  
24 jury room and there's a question about are you sympathetic  
25 towards the plaintiffs, sure, yes, we're sympathetic towards

1 the plaintiffs.

2 There is in the Jewish faith a concept called tikkun  
3 olam, which means to repair the world, and it's something that  
4 all of us I think have in common, regardless of our faith, and  
5 it is, we all want to do right by the world. We all want to  
6 eliminate, alleviate pain and suffering. So if we were to be  
7 asked, What would you do if you could eliminate all of the pain  
8 and suffering, including that of plaintiffs? Write down what  
9 that would be. But that isn't the question that we're being  
11:53 10 asked in court today either.

11 And then finally, the other question you won't find on  
12 the verdict form is write down what you think happened, because  
13 that's not the question that's being asked of us either. The  
14 only question that's being asked of us is, in the five days  
15 last week, did the evidence presented by the plaintiffs meet  
16 their burden of proof to establish the defendant's liability so  
17 that he should pay them money for the damages. So that's the  
18 only question that's being asked.

19 So let's talk about that. The first testimony that we  
11:54 20 heard was from David Boniface in which he says in 2006, 2007,  
21 2008, and 2009, I started an investigation. And these are the  
22 people, David, Juders, Nissage, Osephita, Vilfranc and  
23 Franckel, these are the people who participated in my  
24 investigation. And not surprisingly, these are the people, the  
25 investigators, who show up to testify.

1           We also have the testimony of Juders' father, Mers  
2 Ysemé. We have the testimony of Nissandère, the representative  
3 of his father's estate, and we have a deposition testimony of  
4 Jean Denais Laguerre. But for the most part, the people who  
5 have been flown to Boston, put up since sometime in January  
6 here, these are the people working with David to undertake this  
7 investigation. And it's an investigation that David says  
8 starts in 2006, which strikes me a little bit odd because Jean  
9 Morose Viliena doesn't become mayor until the spring of 2007.  
11:55 10 Yet, well before that, David has undertaken some sort of  
11 investigation.

12           The other odd part about the investigation is that we  
13 saw not a single piece of paper or evidence about the  
14 investigation itself. David's got a little bit of an answer  
15 for that. He says he lost everything in the fire. Fine. I  
16 then said to him, "Well, after the fire, did you investigate  
17 the fire?" He said, "Yes, of course I investigated the fire."  
18 We don't have any evidence of the investigation of the fire.  
19 For instance, we hear repeatedly there were 36 homes lost and  
11:56 20 they were all members of OPL. How difficult would it be if  
21 your job is human rights investigator and you're investigating  
22 the fire to simply write down the names of the people whose  
23 homes were lost? How does that compare to the number of homes  
24 in the town? And were these people all really members of OPL?

25           We know actually that the people who lost their homes

1 were not all members of OPL because Juders testified that he's  
2 not a member of OPL and he lost his home. Nissage, there's no  
3 testimony that Nissage is a member of OPL, and he lost his  
4 home. And David testifies he's a member of OPL, and he lost  
5 his home. So the investigation seems, one, to have started a  
6 year before the defendant becomes the mayor, and we don't have  
7 any evidence of what took place over these three years of what  
8 the investigation was.

9 The case starts in the opening of the plaintiffs to  
10 talk about how this is a war against the Struggling People's  
11 Party. Yet there's no evidence that any of the acts complained  
12 of were aimed at the accumulation of political power,  
13 influence, money or anything else. Where is the big tension  
14 between Jean Viliena and the Struggling People's Party? He's  
15 won the election. In 2007, he's a 35-year-old guy. July 26 is  
16 his first day after being sworn in in Port-au-Prince where he  
17 comes back. How is OPL a threat to him? David Boniface is a  
18 25-year-old guy. Juders is 20, someone who Jean testifies he  
19 barely knows. He's a young guy in town. Of course he's a  
20 mayor of a small town and he knows everyone, but these are two  
21 young guys. And they both say we don't belong to OPL, we hold  
22 no elective office or appointment with OPL. And Juders  
23 testifies that as far as he knew, and he spent all of his time  
24 hanging out there, the radio station wasn't connected to OPL.

25 So if David and Juders have no connection to OPL yet



1 this is a war against OPL, how is it that Jean Viliena is  
2 chasing around Juders and David to do them harm? In pursuit of  
3 what? There's no testimony that Jean Viliena is accumulating  
4 money or power. There's no testimony of how OPL threatened  
5 him. There was an election. He won. He just became mayor.  
6 It's not like there's another election, and it's not like he's  
7 desperately trying to hang on to power. He's only been mayor  
8 for a month. And there's no evidence whatsoever that OPL  
9 presents any threat to him, never mind these two 20-year-old  
11:59 10 guys.

11 Mr. Maguire, the expert witness, testifies and he  
12 tells us based on his studies of Haiti that what happens in  
13 return for muscle and influence, that politicians provide jobs,  
14 motorbikes, weapons, and government posts. So who got a job as  
15 a result of the attack on Ecclesiaste Boniface or the radio  
16 station or the arson? Well, once this attack took place, Joe  
17 Smith got a job. There's not a single piece of testimony or  
18 evidence about that. There's nothing about motorbikes. As far  
19 as I know, nobody got a motorcycle. There's a little bit of  
11:59 20 testimony about weapons. Prior to the radio station attack,  
21 the testimony is that Jean Viliena handed out weapons. But  
22 they're not weapons as in, here is a case of submachine guns  
23 that you can use to attack people or exercise your own power.

24 And there's no evidence that anybody got a government  
25 post as a result of this. Jean testifies that he appoints

1 Hautefort Bajon as the general secretary because he used to be  
2 mayor, he's a little bit older, he has some influence. But  
3 that appointment takes place right away. It's not he gave him  
4 the appointment because of the attack on Ecclesiaste Boniface or  
5 the radio station attack or the arson where Hautefort has  
6 already passed away.

7 So there's no exchange for power here. There's no, He  
8 did these things so he could get that. There's no evidence  
9 whatsoever that any of the things Mr. Maguire says are the  
10:00 10 currency locally were given to these people as a result of  
11 actions.

12 There's no OPL involvement in these actions. None of  
13 these guys are a member of OPL, and there's no state  
14 involvement. Yes, Jean Viliena is the mayor, but there's  
15 nothing that says he's doing this to carry out some mayoral  
16 goal of his administration, that it serves some government  
17 purpose or belief. These are two young guys, and there's no  
18 evidence that they had any power or control or ability to  
19 interfere with him whatsoever. There's no evidence that they  
12:01 20 posed any threat against him, and there's no evidence that he  
21 gained anything as a result of this. Yes, he accumulated all  
22 this money, drugs, power. There's not a single piece of  
23 testimony about that. The hole at the outset of this case,  
24 this was an attack against the Struggling People's Party.  
25 That's just not true. It hasn't been presented and there's

1 been no evidence at all.

2           What we do hear, though, is we hear from expert  
3 witnesses. What the expert witnesses, Mr. Maguire and Mr.  
4 Concannon, tell us, is that there's widespread corruption and  
5 violence in Haiti. Fine. No one's contesting that. We didn't  
6 put on any expert witnesses to say there's no violence or  
7 corruption in Haiti. But this is a false analogy. In logic,  
8 they have these things called syllogisms. You have a universal  
9 premise, a minor premise, and a conclusion. So all men are  
12:02 10 mortal, Peter is a man, Peter is mortal. It makes sense. And  
11 it makes sense because the first premise is universal. But if  
12 the first premise isn't universal, then the logic fails.

13           So here is an example. Over 80 percent of the adults  
14 living in Cambridge, Massachusetts have a college degree. Tom  
15 lives in Cambridge, Massachusetts. Tom has a college degree.  
16 We know that isn't necessarily true. Because if 80 percent of  
17 people in Cambridge have a college degree, 20 percent don't.  
18 So telling us that 80 percent of people in Cambridge have a  
19 college degree and that Tom lives in Cambridge doesn't prove to  
12:03 20 us that Tom has a college degree.

21           Same thing here. A false syllogism. Many people in  
22 Haiti in government offices are violent and corrupt. Jean  
23 Viliena held a government office in Haiti. Jean Viliena must  
24 have been violent and corrupt. We have two expert witnesses  
25 that tell us about this stuff.

1           If what the case is about are the facts of what  
2 happened, then we don't need expert witnesses to say this guy  
3 is Haitian, he was a mayor, he must be violent and corrupt.  
4 Because that doesn't prove anything. There's no coherent  
5 theory here of why Jean Viliena is trying to oppress these  
6 people.

7           Let's look at what his responses are to what happened.  
8 There's an altercation about picking up the trash on his first  
9 day as mayor. And what's his response? His response is to go  
12:04 10 to the magistrate judge's house and seek a warrant or a ticket  
11 against the person who threw the trash in. Ms. Lau, in her  
12 argument, makes reference to, "We've all seen gang movies."  
13 I've seen a lot of gang movies, too. I've never seen one where  
14 the gang guy is offended, and his response is, "I'm going to go  
15 to court and seek a just adjudication of this." That's not how  
16 gangs work. That's not how thugs work. If you have an issue  
17 with people somebody, you beat them up, you shoot them, you do  
18 something violent. That's not what Jean Viliena's response was  
19 here. "Oh, I'm upset by something that has taken place. Let's  
12:04 20 let me go to the magistrate's house and make a complaint."

21           Osephita Lebon in her testimony says that one of the  
22 reasons she was upset with the death of Ecclesiaste Boniface is  
23 that usually it's the custom that the person who kills the  
24 person buries them and that Jean Viliena didn't bury Ecclesiaste  
25 Boniface. Probably because he didn't kill him. But her other

1 problem is that we took the body to the mayor's house and he  
2 called the police to ask for an investigation. That seems like  
3 a pretty reasonable response to me. Somebody's been killed in  
4 town. What do you do? Call the police and ask for an  
5 investigation. And it seems like a pretty incongruent response  
6 for somebody who is a violent thug going around killing people.  
7 Well, somebody has died. Let's call the police and get an  
8 investigation. So Jean Viliena's response is, the interaction  
9 with Ostanie, let's go to the judge's house. Somebody has  
10:05 10 died. Let's call the police and get an investigation. Those  
11 aren't the responses of violent criminals. Those are the  
12 responses of responsible officials.

13 We heard a lot about KOREGA in the case. Great name.  
14 It's like a James Bond villain entity, the violent forces of  
15 KOREGA. But KOREGA is a convenient foil here. We didn't hear  
16 evidence of a single act that KOREGA has committed. We heard  
17 in general from Mr. Maguire that KOREGA is probably a  
18 paramilitary organization that does bad things. But the last  
19 time Mr. Maguire was in the region was 24 years ago in 1999.  
12:06 20 But in any event, we didn't hear about a single particular act  
21 that KOREGA took anywhere, never mind in Les Irois. And we  
22 don't hear how this was helpful to KOREGA, that KOREGA had  
23 anything to gain.

24 We hear a lot about and in the display we just saw as  
25 part of the closing, these are Jean Viliena's associates. But

1 there's no tie to Jean Viliena. Osephita's testimony is that  
2 these are people who supported him and voted for him or was  
3 seen in his physical presence. I was a moderator at my town  
4 meeting for ten years. I liked the people in my town. They're  
5 nice. I hung out with them. But I don't want to be  
6 responsible for everything they do or don't do, and that's not  
7 the law. There's no connection between associates.

8 And they make a big point, and we agreed to in the  
9 stipulations, that Jean Viliena knew these people. Yes, mayor  
10 of a small town, lot of people around. You know a lot of  
11 people in your town. That doesn't make you responsible for  
12 everything that they do.

13 The experts, it's confusing as to why we have experts  
14 in this case. Mr. Maguire testifies that the last time he  
15 visited the region was 24 years ago in 1999, and the basis of  
16 his knowledge comes from sources that aren't in evidence. Mr.  
17 Concannon testifies that his fellow team member, Mario Joseph,  
18 is the lawyer for the plaintiffs in Haiti. And then he goes on  
19 to say, "And there's a lot of bad things that happen in Haiti.  
12:08 20 Let me tell you about a Raboteau case." It's accusation by  
21 analogy, but there's nothing tying Mr. Viliena to these  
22 actions.

23 And Mr. Concannon isn't exactly direct with us when it  
24 comes to his association with Mr. Joseph. I show him a picture  
25 of his website that I printed out, and he said, "I'm not quite

1 so sure that is my website." Then when he sees the website,  
2 "Okay. Fine. He's my fellow co-worker who is the lawyer for  
3 the plaintiffs." He's there, though, and Mr. Concannon, he  
4 duplicates Mr. Maguire's testimony, but he's really there to  
5 explain why the plaintiffs were successful in suing other  
6 people in Haiti and getting judgments against others in Haiti  
7 but that Mr. Viliena was acquitted. And his supposition is,  
8 well, I think from my review of the records that, you know, it  
9 must have been because the Haitian judicial system did a poor  
10 job. One supposition. Another is because Mr. Viliena wasn't  
11 responsible for what happened and that the people who were  
12 found liable were the ones responsible.

13 A lot of what we hear from the people who did the  
14 investigation is the basis for their testimony here. The  
15 investigation provides a reason, a purpose. It provides rent  
16 and travel and resources. Other than in their role as human  
17 rights advocates, Juders and David have no visible source of  
18 support and nothing to do. This is why they're here.

19 The plaintiffs' counsel asks, "Oh, why didn't  
12:09 20 Mr. Viliena fly in all these people from Haiti and put them up  
21 since the month of January, all the other people from town?"  
22 Well, Mr. Viliena's humping food deliveries off the back of a  
23 food truck in Lynn at 29 dollars an hour. He quite obviously  
24 doesn't have the resources to fly in everybody else in town.

25 The extent of the influence and investment of these

1 people in the investigation is pretty extraordinary. Juders  
2 testifies that his rent is 300 U.S. dollars or 44,000 gourdes a  
3 month. His last annual salary was only 17,500 gourdes. His  
4 rent benefit is 30 times his last annual salary. If your  
5 salary was 100 grand a year, that would be getting like \$3  
6 million of a rent benefit. They fly everyone in. They house  
7 them since January 24.

8 I put this my note to myself about Vilfranc Larrieux  
9 because I asked everybody how did you get here, who paid for  
10 the hotel. And at the end, I asked Vilfranc that question.  
11 And he says, "My team," gesturing to the table full of lawyers,  
12 which struck me as a little odd because Vilfranc isn't a party  
13 here. He's a witness. But he takes ownership.

14 There's a guy, Upton Sinclair. He was an American  
15 author. He wrote a book called The Jungle. It was about the  
16 meatpacking industry. He goes on to run for governor of  
17 California, but he's a pretty Bernie Sanders-like figure, far  
18 to the left socialist, and the Hollywood studios are not very  
19 happy with the idea that Upton Sinclair is going to be the  
12:11 20 governor of California. So they get all their employees  
21 together, and they say, "Whatever you do, don't vote for Upton  
22 Sinclair." And Sinclair famously says that, "It's really hard  
23 to get a man to understand something if his salary depends on  
24 not understanding it."

25 I think the inverse of that is true as well. It's



1 pretty easy to convince a man of something if his living  
2 depends on it. If your rent is being paid by the people who  
3 are promoting the story and the investigation, then yes. As we  
4 talked about at the outset in our openings, if you have a story  
5 or a narrative, you take every fact you can find and you put it  
6 into that story or that narrative.

7 The odd part, though, despite all these resources, is  
8 that there's not a single picture other than the compelling  
9 pictures of Ecclesiaste Boniface and Juders and Nissage and  
10 their injuries, there's not a single picture of the town of Les  
11 Irois. There's no map, there's no identity of the streets,  
12 addresses, there's no medical records.

13 This is a pretty well-endowed and comprehensive  
14 investigation. There's no attempt at all to talk to us about  
15 damages. I asked Juders what the value of his house was. He  
16 says it was 250,000 gourdes. Nobody asked David the value of  
17 his house, nobody asked Nissandère what the value of their  
18 house was. Nobody attempts to get a witness to come in to say  
19 the average value of domestic housing in Haiti is X. There's  
12:13 20 no discussion about the cost of living. There's no mental  
21 health evaluation or physical health evaluation.

22 We heard in the closing again about Juders' ongoing  
23 health problems with the pellets. Do we have a doctor's report  
24 about Juders? Do we have any other medical information? The  
25 plaintiffs have all the resources in the world, but there's no

1 attempt to meet their burden of proof. Their ask is an award  
2 of \$35 million, but nobody can be bothered to get a medical  
3 exam of the guy who has remaining pellets. Nobody can be  
4 bothered to talk about what the value of the housing is.  
5 Nobody can be bothered to give the facts because it's not about  
6 the facts. It's about justice. It's about feelings. It's  
7 about millions of dollars. It's not about what the actual loss  
8 was.

9           Here is the picture that we used to show the work that  
12:14 10 Jean was able to do to build streets in Haiti. It's a picture  
11 of the town. It shows what the streets are like, and it shows  
12 the work that took place. Here is the map of the radio station  
13 that the plaintiffs used. I asked Juders, you know, are there  
14 any other houses in the street? Because we don't know exactly  
15 what it looked like, but we know it didn't look like that. And  
16 right, drawings and etchings are entirely appropriate because  
17 they can give us a sense of scope and range, but this isn't an  
18 attempt to do that. There's no measurement of the street.  
19 There's no indication of the other dwellings. There's nothing  
12:14 20 about the sight lines. There's no attempt whatsoever.

21           I mean, I understand that Nissage's home burned down,  
22 but there's no, "Here is a picture of what it looked like," or,  
23 "Here is the picture of that street and what the houses on the  
24 street looked like." There's no attempt to get the actual  
25 information or the facts.

1           The defendants were successful in finding the  
2 condominium deed that his separated wife bought for \$379,000.  
3 Hey, look, your wife bought a condo for \$379,000. It was a  
4 little bit offensive. I'm sure his wife has a job. I'm sure  
5 she probably can afford a condominium for \$379,000. It wasn't,  
6 "Here is a picture of your wife in her \$5 million condominium  
7 at the Four Seasons that she's pulling up to in her Ferrari."  
8 It's a woman making a living with a 12-year-old who is  
9 separated, who buys herself a \$379,000 condominium. They're  
10:15 10 able to chase that down but not a single other piece of  
11 evidence that might be relevant here.

12           Juders' testimony. Juders testifies not that he was  
13 on the porch. His testimony is he was outside near the health  
14 clinic, and he saw this mob of angry people with guns running  
15 towards the radio station. And then he says, "I went into the  
16 radio station," which doesn't make a lot of sense, unless  
17 Juders feels that he needs to say that he was outside so he can  
18 testify about seeing Jean Viliena give guns to people. That's  
19 the only reason why he needs to establish that he's outside the  
12:16 20 radio station.

21           Then at the time that he's shot, all the testimony of  
22 the other witnesses is that Nissage and Juders are inside the  
23 radio station, and yet Juders testifies that he's outside  
24 running away. Everyone else says that he was inside the  
25 station. And Juders also testifies that he heard John Viliena

1 say to Villeme Duclona, "Shoot Juders," and he was asked,  
2 because other witnesses like Franckel Ysemé testified that  
3 there were 100 people there yelling and screaming, and he said,  
4 "Oh, no. When I was outside, it was all quiet and nobody was  
5 there."

6 Juders is given a picture of himself and reflecting  
7 the loss of his eye when he starts his testimony. And he says,  
8 he's asked, "Is that a picture of what you looked like shortly  
9 after the accident?" And he says "Yes." So then on  
10:17 10 cross-examination because he's been shown this picture in his  
11 deposition where he testified that the picture was taken many  
12 years after the incident by his lawyer, I ask him about that,  
13 and it doesn't really make any difference. It's not a case  
14 about whether Juders lost his eye. He lost his eye. Nobody's  
15 disputing that. And whether the eye looked better or worse a  
16 couple of years later doesn't really matter. Yet, Juders is  
17 intent on not being honest about that. "Oh, no, no. This was  
18 a picture I took. And when I said at my deposition it was a  
19 picture taken by my lawyer many years ago, never mind that."

10:17 20 The other even more striking thing to me is, my first  
21 question to Juders at cross-examination is, "When did you get  
22 married?" And I asked him that question because at his  
23 deposition he's asked, pretty standard question for defense  
24 lawyers, "Are you married?" And he says "No." And he gets on  
25 the stand after his lawyers start to talk to him about how much

1 he misses his wife. And the whole time I'm thinking that's  
2 kind of weird because he said he wasn't married. So I ask him.  
3 "When did you get married?" And he says, "I didn't. I'm not  
4 married. I have a wife but I'm not married." So I thought,  
5 okay, on redirect examination, plaintiffs will ask him, "Your  
6 wife is a common law wife, correct? You're not married?" But  
7 no, they don't bother to do that. They don't bother to explain  
8 that at all. And this morning in their arguments, they're  
9 talking about Juders' wife. Juders isn't married. He  
10 testified he isn't married, and he gets up here and he talks  
11 about his wife. I'm fine. Maybe he refers to her as his wife.  
12 Maybe it's a common law wife. He can't even be bothered to  
13 explain that. He just gets up and he's not truthful.

14 There's a quite great quote by a poet, American poet  
15 named Maya Angelou. She says, "When people tell you who they  
16 are, believe them the first time. If people are dishonest with  
17 you, they're not straight with you, don't expect that they're  
18 going to change." These are the people who testified at trial  
19 and concerning the death of Ecclesiaste Boniface on July 27,  
20 2007. The only two people who were there were Osephita Lebon  
21 and Mers Ysemé, who testified by deposition. Osephita says  
22 that Jean Viliena shot Ecclesiaste Boniface. Mers Ysemé said  
23 that Hautefort Bajon shot Ecclesiaste Boniface. So there's no  
24 kind of consistent story or understanding there. Osephita says  
25 there were 37 men outside and that she was standing on a porch

1 nearby. Mers says he couldn't really hear anything everyone  
2 was saying, and there was a house between him and Ecclesiaste  
3 Boniface's house. There's no testimony that there was any sort  
4 of elevated exit to the Boniface house or any testimony that  
5 the porches were elevated or there would be any way to see over  
6 these 37 people who were standing around yelling and screaming.

7 If the defendants -- if the plaintiffs have a burden  
8 to demonstrate who shot Ecclesiaste Boniface and if the  
9 defendant was involved, they haven't met that burden because  
10 there's no consistent explanation here of what happened.

12:20

11 There's a lot of witnesses here, but there's only two people  
12 who claim to have seen anything: Osephita Lebon, who says that  
13 Jean Viliena was the shooter, and Mers Ysemé, who says  
14 Hautefort Bajon was the shooter. Mers is Juders' dad.  
15 Osephita is William Lebon's sister and still quite angry about  
16 that and the fact that William Lebon lost the election, stolen  
17 by Jean Viliena, she claims.

18 The radio station attack. Osephita says that Jean  
19 Viliena went home. Juders says, "I was outside the radio  
20 station. Everyone else was inside the radio station."

12:21

21 Franckel Ysemé said says it was the same bullet that hit both  
22 Nissage and Juders. Juders says that when he shot, it was  
23 quiet and there was no one there outside. Franckel says there  
24 were 100 people and screaming. But everyone agrees that  
25 Villeme Duclona was the shooter. Villeme Duclona is not an

1 employee of the mayor's office. He's just somebody that Jean  
2 Viliena and everybody else in town knew who he was.

3 The arson, which I think is telling both with respect  
4 to the arson and also with respect to what's going on here with  
5 the witnesses. The two witnesses to the arson are Juders and  
6 Mers. Juders says that he was hiding behind a bush. Mers says  
7 that he climbed up into a banana tree.

8 And the phone calls they testify about are peculiar.  
9 Mers says, "I heard the people on the phone saying 'Mayor, Jean  
10 Morose Viliena, I don't hear you well.'" Not really a phone  
11 conversation, it's the middle -- it's early evening. There's  
12 fires burning. There are lots of people around. These people  
13 are supposedly involved in some sort of conspiracy to commit  
14 arson, and they're on the phone saying, "Mayor Jean Morose  
15 Viliena, I don't hear you well." People don't speak out  
16 people's proper names when they're in the middle of the  
17 commission of a crime. It's not an ordinary or normal  
18 conversation. Juders, who is there at the same time, same  
19 conversation, has an even more unlikely story. His story is  
12:23 20 that, "Oh, they put the mayor on speakerphone. I could  
21 recognize his voice." Unlikely as well.

22 But even more important here is what happens after  
23 that. Did the person they spoke to commit the arson? What did  
24 they do next? There's no evidence of anything there. It's  
25 not, "I heard him speaking to Bill, then I saw Bill light the

1 house on fire. I heard him speaking to Tom, then I saw Tom  
2 pour gasoline on the house next door." It's all associates,  
3 crew, people around him. There's no attribution, there's no  
4 responsibility here in terms of what happened.

5 The Haitian proceedings -- let's talk about damages.  
6 The Haitian proceedings, Jean Viliena was acquitted of all  
7 charges but there were recoveries against other people. David  
8 Boniface recovered \$17,496. His last salary was 50,000  
9 gourdes. He recovered 1,100,000 gourdes or about 20 times his  
10 last salary. Nissage Martyr recovers a million gourdes or  
11 about \$15,000. We don't know what his last salary was. Juders  
12 recovers 900,000, \$14,000. His last salary was 17,500.

13 Juders testifies that his house value was 250,000  
14 gourdes or \$6,500. Mers says that he spent medical costs of  
15 \$1,950. It's striking that we don't know more about the  
16 medical costs here. Not only do we not have a single medical  
17 bill or a single piece of paper, we don't have any attempt to  
18 explain that. Nobody says, "Here is the letter we sent to the  
19 hospital in which they said we have no more records." Nobody  
20 says, "Here is the costs in an equivalent United States  
21 procedure." Nobody says, "The comparison between Haitian  
22 medical costs and the United States is X." All they say is,  
23 "We think you should give these people \$37 million." There's  
24 no basis for that. There's no attempt to justify the damages.  
25 There's no attempt to speak to what the facts are.



1           We speak a lot about the United States as a land of  
2 hope and opportunity, and I think that's true. But what we  
3 don't say all the time is that it's got to be your own hope.  
4 If you hope for things, you've got to bring that with you. And  
5 the same is true of opportunity. You want to take your 2007  
6 Honda and drive out to Lynn and make food deliveries for 12  
7 hours a day for 29 bucks an hour, go at it. We wish you well.  
8 But we are not making a lot of other promises or guarantees to  
9 people. It's a great place of opportunity, but we're not  
12:26 10 really guaranteeing a whole lot. You're going to need to make  
11 that on your own. We don't make too many promises.

12           We do make this promise, though, and this promise is  
13 that if you find yourself in court, we are not going to hold  
14 you liable for something because you happen to be from a  
15 country where there's a lot of corruption and violence. We are  
16 not going to find you responsible just because a lot of other  
17 people in your country have done corrupt and violent things.  
18 We are only going to find you responsible if the facts justify  
19 your liability. If we keep that promise to Jean Viliena in  
12:26 20 this case, it will be when you don't find him liable for any  
21 damages to these plaintiffs.

22           Thank you very much for your respect and the time  
23 you've spent in these last six days. Both Mr. Viliena and  
24 myself greatly appreciate it.

25           THE COURT: How long do you have, do you think?

1 MS. LAU: I don't know. Maybe five minutes.

2 THE COURT: Closings have been long, so let's make it  
3 short, okay? She has an opportunity for a quick rebuttal.

4 MS. LAU: I'll be quick because I know I'm standing  
5 between you and your lunch.

6 THE COURT: I'm standing between them and their lunch  
7 after the final instructions, but lunch isn't coming up until  
8 1:00.

9 MS. LAU: So I have 20 minutes.

10 12:24 THE COURT: No.

11 MS. LAU: I'm kidding, I'm kidding.

12 So I will be brief because this is rebuttal, but there  
13 were a couple of things that I think really merited responding  
14 to, and I'm going to talk about three key points.

15 The first is inconsistent witness testimony. So  
16 defendant tried to point out these inconsistencies in the  
17 witness testimony that you heard. That doesn't make these  
18 witnesses not credible. As we talked about at the very  
19 beginning and as the court instructed you, two people can see  
12:25 20 the exact same thing. Have you ever watched a bar fight? You  
21 might see entirely different versions of the story because  
22 you're standing in different places or the event is really  
23 frenetic and chaotic. So common sense tells you that this type  
24 of thing is particularly true if it is a traumatic event,  
25 right? And so what most of the defense counsel knit-picked at

1 here I would submit to you is immaterial. But I'm going to  
2 touch on three key ones.

3 So the first is, as for the radio station attack, he I  
4 think first exaggerated and misstated some of the witnesses'  
5 testimony, but ultimately he says Juders is totally wrong,  
6 everybody said something different from Juders. But Juders  
7 very specifically identified exactly what happened to him and  
8 exactly how Viliena ordered that he should be shot.

9 And remember, Juders actually told you on  
10 cross-examination when Peter was trying to knit-pick at his  
11 story, at the time it would be very difficult for me to notice  
12 who was around and who really wasn't because I was under a lot  
13 of stress; I was trying to run away. So imagine for a moment,  
14 if you are being shot, are you trying to count the number of  
15 bystanders who are also outside with you?

16 Second, who shot Ecclesiaste? Remember again that  
17 Osephita and Mers had different vantage points. They were on  
18 two different front porches. But the key is that they  
19 testified that both defendant and Hautefort were together, both  
12:27 20 armed with guns at the very front of the pack when Ecclesiaste  
21 was shot and his body fell to the floor.

22 And ultimately, some of these distinctions in the  
23 testimony, they are immaterial for purposes of liability  
24 because whether the defendant did it himself or whether he  
25 ordered Hautefort to do it, he is still liable under the law.

1 I'm going to take a quick detour on this marriage  
2 point. You know, Peter made much of whether Juders is married  
3 or not. He tried to call him a liar based on whether he knew  
4 whether he had a wife. I think Juders knows whether he has a  
5 wife. And, you know, it's just a cultural thing. In Haiti you  
6 can have a wife. They call it a madam, your spouse. But they  
7 might not have a formal marriage ceremony. And ultimately,  
8 whether Juders has a wife has nothing to do with whether he was  
9 tortured and almost killed by the defendant.

12:28 10 Then my third point about the inconsistency is that  
11 with respect to the mass arson, Juders and Mers, of course they  
12 had different stories. Juders testified that he could hear the  
13 mayor on the other side of the phone after one of the  
14 associates told Lifaite Livert to put the phone on  
15 speakerphone. Now, Mers is in a different place, he's also a  
16 totally different generation, so it's actually not that  
17 surprising that he might not have been able to hear the mayor's  
18 side of the conversation. But what is clear and very  
19 consistent across the testimony is that they could both hear  
12:28 20 the associates on this side of the conversation repeatedly  
21 saying that they were addressing the mayor on the other side of  
22 the phone.

23 And I would submit to you, too, as well that the fact  
24 that Mers and Juders have distinct testimonies, they are family  
25 members. If it was truly a political witch-hunt where

1 everybody was coordinating their stories, why wouldn't the  
2 family members have gotten together to make sure they told you  
3 the exact same thing? So in some ways, the fact that Mers  
4 truthfully and candidly acknowledged that he couldn't hear one  
5 half of the conversation while his son could, to me that  
6 establishes their credibility.

7 My second point is about the plaintiffs' motivations.  
8 Now, defense counsel tried to suggest to you that this entire  
9 case is about this investigation, that David Boniface created  
10 this cynical scheme to damage the defendant's political career.  
11 And he suggests that plaintiffs' numerous fact witnesses are  
12 somehow in cahoots to frame the defendant. One of the  
13 counsel's questions was where is the threat? And actually, we  
14 agree. David, Juders and Nissage, they didn't pose any threat  
15 to Viliena. Remember, the defendant admitted on cross he's  
16 never seen them armed. They've never done anything to harm his  
17 supporters. But I think what does seem clear from the evidence  
18 is that the defendant is this small petty tyrant.

19 Counsel tried to use the example of the trash dispute  
12:30 20 to say, "Oh, the defendant, he's so reasonable." This woman  
21 put some trash on the street, and he hauled off and had her  
22 arrested. Is that what a normal, reasonable, judicious mayor  
23 would do? And of course he admitted that he actually put his  
24 hand on her neck. This is the conduct of a petty tyrant who  
25 takes something that's not a threat at all but blows it out of

1 proportion and overreacts.

2 Counsel also tries to impugn my team's integrity as if  
3 somehow we are paying for these clients and witnesses to  
4 testify. I think the testimony was clear, though, that the  
5 lawyers are in no way paying for this testimony and that, in  
6 fact, we supported our clients by obtaining appropriate funding  
7 through other sources, like Amnesty International. He also  
8 seemed to indicate that there's this disparity; we have so many  
9 lawyers on our side, and it's just him. Well, you know what?  
10:31 10 We have so much evidence on our side. We have so many  
11 plaintiffs, so many witnesses, so many stories to actually  
12 tell. And I am incredibly proud of our team for the work that  
13 we have done on this case.

14 He also asked where is the motive. And I think it's  
15 pretty obvious that we presented ample evidence of the  
16 defendant's motive, to silence dissent, to shut down his  
17 critics, to make sure that any political opponents had no  
18 opportunity to speak. But I want you to think about the motive  
19 for counsel's story. Right? That this entire case is some  
10:32 20 kind of political witch-hunt orchestrated by David with Juders  
21 and Nissandère to somehow embarrass or damage the defendant.

22 Do you think plaintiffs made this story up? As you  
23 know, the plaintiffs have been seeking justice in this case for  
24 15 years at incredible personal sacrifice, hardship and cost.  
25 Witnesses face threats and harassment. Juders and David have

1 been living in hiding. They haven't seen their wives and  
2 children. It's simply not credible to think that David and  
3 Juders, who are merely voters for the Struggling People's  
4 Party -- they're not the leaders, they're not even members --  
5 would do all of this just to damage the political career of  
6 some former mayor of some small town who doesn't even live  
7 there anymore, who isn't even in office anymore.

8 My third point and last point: Damages. It really  
9 bothered me when counsel went through the damages numbers. And  
10 I appreciate Haitian numbers are not the same as United States  
11 numbers, but what he's really asking you to do is he wants you  
12 to minimize, he wants to de-value the plaintiffs' losses. He  
13 pulled out the value of their salaries, their homes. He tried  
14 to discount their jobs, their contributions to society. He  
15 tried to reduce them to these little gourd numbers.

16 But at the end of the day, and as we've talked about,  
17 this isn't about material possessions. This is about us as  
18 humans. What is the value of not just a lost house but your  
19 home, everything that you had in it, including all of your  
20 family photos, the last living photograph of your brother?  
21 What is the value of daily pain and mental anguish and  
22 suffering? What is the value of years of separation and  
23 isolation?

24 As the judge instructed you, all people deserve fair  
25 and equal treatment in our system of justice, regardless of

1 their race or national origin. This is in your jury  
2 instructions. And she reminded you that you should ask  
3 yourselves would you view the evidence differently if people  
4 were from different groups, such as different racial or ethnic  
5 identity groups?

6 And here, a Haitian life is not worth less than an  
7 American life. Harm for these kinds of losses, they just do  
8 not depend on where you live. There's something that we all  
9 share as humans. And so when you deliberate about the harm and  
10 the loss, I invite you to consider what would you award if this  
11 was your neighbor's brother who had been lured out of his  
12 house, shot, his head crushed, and left in the middle of the  
13 street? Thank you.

14 THE COURT: Okay. You're now a real five minutes away  
15 from going back to the jury room. It's now time for you to  
16 start your deliberations. A few words about those  
17 deliberations.

18 In rendering your verdict, you must consider only and  
19 decide the case solely upon the evidence you heard in court in  
12:36 20 light of my instructions. Each of you must decide the case for  
21 yourself, but you should do so only after considering all of  
22 the evidence and listening to the views of your fellow jurors.  
23 Do not be afraid to change your opinion if you decide you are  
24 or you think you might be wrong after hearing the opinions of  
25 your fellow jurors. But do not come to a decision simply



1 because other jurors insist that it is right, and do not  
2 surrender an honest belief about the weight and effect of the  
3 evidence just to reach a verdict.

4 As you've seen, this case has taken a great deal of  
5 time and effort to prepare and try. There's no reason to think  
6 it could have been tried better or that another jury would be  
7 better qualified than you to decide it. It's important  
8 therefore that you reach a verdict if you can do so  
9 conscientiously. Your verdict must be unanimous as to each of  
10 the questions I'm going to ask you on the verdict form.

11 I'm going to ask Juror Number 4, that's the fourth  
12 seat, you, to serve as the foreperson. The foreperson will  
13 have the same voice and the same vote as all of the other  
14 deliberating jurors. The job does not come with extra pay or  
15 extra prestige. The fact that one of you is the foreperson  
16 does not give that person special status in your deliberations.  
17 You are all equal.

18 The foreperson will act to the extent helpful as the  
19 moderator of the discussion and will serve as the jury's  
12:37 20 spokesperson. The foreperson's most important obligation is to  
21 ensure that any juror who wishes to be heard on any material  
22 issue has a full and fair opportunity to be heard by his or her  
23 fellow jurors. If you as a group decide to take a recess  
24 during your deliberations, you should stop discussing the case  
25 until the recess is over. Don't discuss the case during a

1 recess when not everybody is present. All of your discussion  
2 on this case should occur only when you are all together and  
3 the foreperson has indicated that deliberations may proceed.

4 If it becomes necessary during your deliberations to  
5 communicate with me, you may do so by sending a note through  
6 the court officer who will be outside your door. No member of  
7 the jury should ever attempt to communicate with me except by  
8 such a signed writing. If you do communicate with me, do not  
9 tell me in the note where you stand either numerically or  
10 otherwise on any issue before you until after you've reached a  
11 verdict.

12 On matters touching simply on the arrangements for  
13 your meals, schedule, convenience, you are free to communicate  
14 with the court officer or Karen orally rather than in writing.  
15 You are not to communicate with anyone but me about the case  
16 outside of the jury room and then only in writing.

17 When you've reached your verdict, your answers will be  
18 recorded by your foreperson on what's call the verdict slip,  
19 simply a written notice with the decision that you've reached.

12:38 20 After you've reached unanimous agreement on the verdict, your  
21 foreperson will fill in the form, sign it and date it, tell the  
22 court officer outside the door you're ready to come back to the  
23 courtroom. Once you return to the courtroom, the foreperson  
24 will deliver the completed verdict form as directed in open  
25 court.

1           Your lunch is coming up at 1:00. The exhibits, 12  
2 copies of the jury instructions and a copy of the verdict form  
3 will be in shortly. You'll see there's a screen in the jury  
4 room. You've probably already seen it. So you can put the  
5 exhibits up and show them electronically. You'll have a paper  
6 copy of the exhibits, and you'll have the electronic version  
7 that you can put on the screen.

8           I just want to say one thing. The video, the evidence  
9 of the video is the video, okay? It's not the paper. But for  
12:39 10 your convenience we've given you some snapshots of the pictures  
11 that were in the video, but that's just for your convenience.  
12 The evidence is what's on the video. I have a verdict form for  
13 you. We're going to send you out with one. If you decide you  
14 want more, just let us know and we'll send up extras.

15           The first five questions are liability. So the first  
16 one is whether or not you find the defendant liable for the  
17 extrajudicial killing of Ecclesiaste Boniface. The next two go  
18 to the torture and the attempted extrajudicial killing of  
19 Nissandère Martyr. The next two after that go to the two  
12:39 20 claims, attempted extrajudicial killing of Juders Ysemé and the  
21 torture of Juders Ysemé.

22           Then you have to read the verdict form carefully. The  
23 first five are pretty straightforward. Do you find him liable,  
24 first five questions. When you get to the next page, it says,  
25 "If you answered yes to any questions 1 through 5, go to

1 question 6." So if you find him liable for any questions 1  
2 through 5, you start the damages questions, which begin at  
3 question 6. If you don't find him liable at all, so the  
4 answers to all questions 1 through 5 are no, then you're  
5 directed to go to question 10. So it's one of those things you  
6 need to pay attention to kind of the decision tree.

7 So assuming for the moment that you found liable on  
8 some count or another, if you do, you go to question 6. So  
9 question 6 is just about damages on the Boniface count. So you  
10 don't -- you only answer question 6 if you found liability for  
11 that count. So it says only answer this question if you  
12 answered yes to question 1. And then that's how the next  
13 questions go. So you only answer 7 if you find yes to 2 or 3,  
14 which are the two that go that to Nissandère Martyr. And then  
15 question 8, you only answer that if you find for either Juders  
16 Ysemé on either of those two questions. You just have to read  
17 it carefully.

18 So the first questions are the liability on the TVPA  
19 counts, and then you have compensatory damages on the TVPA  
20 counts. Question 9 is punitive damages on the TVPA counts. So  
21 then comes question 10. You'll either go to question 10 after  
22 question 9, or you'll go to question 10 if you've answered 1  
23 through 5 not liable. Okay? So you get to question 10 in two  
24 ways.

25 Question 10 are the questions about the arson, and

1 that is separate to make it clear to me that there's no  
2 punitive damages on the arson case. So you find liable, yes or  
3 no, on the arson counts, and then you go to question 11. If  
4 you found the arson counts proven against the defendant for any  
5 of the three plaintiffs, you go to question 11, which is the  
6 compensatory damages for the arson. No punitive damages on the  
7 arson. And then date and sign.

8 At some point this afternoon -- your lunch is coming  
9 up at 1:00. By 1:00 you should have all the exhibits, jury  
10 instructions, and verdict form. At some point this afternoon  
11 Karen will come up just to try and get an idea of what your  
12 schedule is, whether you want to stay late, you want to leave  
13 at the regular time, you want to leave early. Other than that,  
14 you are unlikely to be disturbed by anybody, except for that  
15 visit by her. And then again, whenever you want to -- either  
16 you'll have a verdict today or you'll come back tomorrow. If  
17 you're coming back tomorrow, you decide what time you want to  
18 start. No deliberations until everybody is present.

19 Anything from plaintiffs? Mr. Haley?

12:42 20 MR. HALEY: No, Your Honor.

21 THE COURT: Okay. You will all rise and go back and  
22 get settled, and we'll send up the exhibits and the  
23 instructions in just a minute.

24 (Jury exits the courtroom.)

25 THE COURT: So my suggestion is you have lunch here

1 just in case there's anything right away, but before we come  
2 back -- you can all sit. Before we come back with a verdict, I  
3 just want to say this case has been exceptionally well-tried by  
4 both sides. And sometimes I don't say anything; sometimes I  
5 say it was very well-tried. When I use the word "exceptional,"  
6 I really mean it was exceptionally well-tried. And really, I  
7 want to commend the plaintiffs for just an efficient  
8 preparation of the evidence. I really like the way you let  
9 everybody on the team have a chance to speak and get some  
10 experience.

11 And Mr. Haley, I think I told you before, my law  
12 clerks are in awe that there's a partner from a law firm who  
13 can actually manage his own affairs in the courtroom. So I  
14 really, I just want to thank you for the efficiency and the  
15 respect that you paid this jury. The only bad estimate of time  
16 was that last five minutes. Other than that, you were --

17 MS. LAU: How long did I run?

18 THE COURT: Longer than five.

19 We've had cases where they've said they have 20  
12:44 20 minutes and they go for like three hours. The whole case was  
21 just so well-tried. It was just a pleasure to listen to. And  
22 the issues in this case aren't easy. The emotions that run  
23 with this case aren't easy. So the fact that it was just so  
24 competently and professionally tried really made it, I think it  
25 really helped to make it a fair trial, but it certainly made it

1 easier on anyone that was working with it, not too many  
2 sidebars and no prolonged direct or crosses and no redirects  
3 when they weren't necessary. So I just really want to  
4 compliment on you on that. I do it now because there's no  
5 question that after the verdict -- I shouldn't say "no  
6 question." It is unlikely that everybody is going to be happy.  
7 And I'm just saying, regardless of how it comes out, it doesn't  
8 change the fact that you both have done incredibly well by your  
9 clients and that the case was just objectively, incredibly  
10 well-trying. So I thank you for that and I compliment you for  
11 that.

12 If there's nothing else, we're going to get everything  
13 up to the jurors. And we'll let you know, give Karen your  
14 contact information, we'll let you know what time they want to  
15 finish today or if they have a question.

16 Anything else from plaintiffs?

17 MS. LAU: Your Honor, we have one request. Given the  
18 emergency motion for protective order, plaintiffs would request  
19 that there be a bailiff or an officer in the room for the  
20 verdict, please.

21 THE COURT: Okay. We'll take care of that.

22 MS. LAU: Thank you.

23 MR. HALEY: Nothing from the defendant, Your Honor.

24 THE COURT: Okay. All right. Thanks everyone.  
25 You're recessed for lunch.

1 (All parties agreed to the exhibits to be submitted to  
2 the jury.)

3 (Recess 12:45 p.m. - 3:56 p.m.)

4 THE COURT: Anyone that stood up has to stay standing.  
5 All right. So Karen went up to find out what time they wanted  
6 to leave, and they said they wanted to leave at 4:00. But then  
7 they wanted to know what was the latest time they could ask a  
8 question today, so we knew it was coming. Here is the  
9 question. We'll get you copies of it if you want probably  
03:55 10 tomorrow morning.

11 "Your Honor, pertaining to verdict form decisions  
12 number 2 and number 4, the jury would like a definition of an  
13 extrajudicial deliberate killing. Our confusion is regarding  
14 the intention to kill versus potentially an intention to  
15 injure. Thank you, foreperson."

16 I mean, I just reread the instructions. I'm pretty  
17 sure it has to be an intent to kill, not an intent to injure.  
18 I'm going to propose just writing on this form, "The  
19 instructions require an intent to kill."

03:56 20 Does anybody want to come up and look at this? I'm  
21 going put the date on the top of it.

22 THE CLERK: Do you guys want to take a picture of it?  
23 That way you have it.

24 THE COURT: I mean, the instructions clearly  
25 contemplate a deliberate killing. They do not contemplate a



1 deliberate injury.

2 MS. LAU: We're pulling some language from a case for  
3 you.

4 THE COURT: That's fine. I'm happy to look at the  
5 cases. I only see two ways to handle this. One is the  
6 instructions are oriented around an intent on killing. The  
7 only other option would be to say something like, "The extent  
8 of the injuries may be something you can consider in assessing  
9 the intent." But those are the only two options. It's really  
04:05 10 the way the charge is oriented. So I'm happy to look at what  
11 you want me to look at. I'm also happy if you want to take the  
12 night and come back in the morning.

13 MR. MCLAUGHLIN: I think there is some case law to  
14 support that if one engages in conduct that creates a plain and  
15 strong likelihood that it will result in the death of an  
16 individual, that's sufficient. And then in the TVPA context  
17 that course --

18 THE COURT: Okay.

19 MR. MCLAUGHLIN: -- indiscriminate brutality that is  
04:06 20 likely to result in death, that is sufficient for the  
21 deliberate standard. But if we had a little bit more time, we  
22 could provide to you the citations and the support for those  
23 positions.

24 THE COURT: All right. Let's meet in the morning  
25 then. But, you know, I took your request to charge and

1 basically gave that charge really the way you asked for it. So  
2 whether it could have been charged in another way I'm not sure  
3 is the same thing as how we want to instruct them now, given  
4 what the question is.

5 MR. MCLAUGHLIN: I don't think we're arguing for  
6 changing the charge, but if they're asking for a clarification  
7 as to the definition used, I think we can provide supporting  
8 jurisprudence that explains the definition.

9 MR. HALEY: Although that's not what --

04:06 10 THE COURT: Hold on. They've asked if it's an intent  
11 to kill or an intent to injure. It definitely is an intent to  
12 kill. So if we're going to be straightforward about their  
13 question, it requires an intent to kill. But why don't we come  
14 back at 9:00 in the morning. What I'd like to do is have the  
15 answer written on the bottom of the piece of paper sitting on  
16 their table at 10:00. That's what I would like. So what time  
17 do you want to meet tomorrow?

18 MR. MCLAUGHLIN: 9:00, 9:30, whatever works for Your  
19 Honor.

04:07 20 MR. HALEY: Either one is fine with the defendant,  
21 Your Honor.

22 THE COURT: Do I have something at 9:15?

23 THE CLERK: We have a 9:15 status telephone.

24 THE COURT: Which case?

25 THE CLERK: Commerce Insurance.

1           THE COURT: I have a quick status at 9:15, so why  
2 don't you guys get here around 9:15, and I'll come out when  
3 it's done. Those aren't generally more than about five  
4 minutes. Okay?

5           Mr. Haley, you look enthusiastic. You'd miss me  
6 tomorrow you know if you don't come in at 9:00.

7           MR. HALEY: I'll take your word for that.

8           THE COURT: You could at least fake it. "Yes, Your  
9 Honor. It's such a pleasure doing business with this  
04:08 10 courtroom."

11           All right. You both have pictures of the question,  
12 and I'll be out as quick on the bench after 9:15 as I can.

13           (Recess, 4:07 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 20th day of March, 2023.

/s/ Kelly Mortellite

\_\_\_\_\_

Kelly Mortellite, RMR, CRR

Official Court Reporter