

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 FOUR

March 16, 2023
9:34 a.m.

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

Kelly Mortellite, RMR, CRR
Kristin Kelley, RPR, CRR
Official Court Reporter
One Courthouse Way, Room 3200
Boston, Massachusetts 02210
mortellite@gmail.com

1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Bonnie Lau

4 Christina L. Golden Ademola

5 Sarah Jane Vandervalk

6 Morrison & Foerster LLP

7 425 Market Street

8 San Francisco, CA 94105

9 (415) 268-6511

10 blau@mofo.com

11 cademola@mofo.com

12 svandervalk@mofo.com

13 Daniel McLaughlin

14 Elzbieta Matthews

15 Center for Justice and Accountability

16 268 Bush Street

17 Suite 3432

18 San Francisco, CA 94104

19 (347) 989-5138

20 dmclaughlin@cja.org

21

22 Philip A. O'Connell, Jr.

23 Dentons US LLP

24 Suite 2750

25 101 Federal Street

Boston, MA 02110

(617) 235-6802

philip.oconnelljr@dentons.com

26

27 On Behalf of the Defendant:

28 Peter J. Haley

29 Nelson Mullins Riley & Scarborough LLP

30 One Post Office Square

31 30th Floor

32 Boston, MA 02109

33 (617) 217-4714

34 peter.haley@nelsonmullins.com

35

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P R O C E E D I N G S

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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 16, 2023.)

8 THE COURT: Whenever you guys are ready.

9 MS. LAU: Thank you, Your Honor. The parties just had
09:38 10 a few housekeeping items for the court. So first we have
11 conferred with respect to the trial schedule. The plaintiffs
12 plan to complete their case-in-chief today. And then we will
13 present the defendant's case on Friday, along with any rebuttal
14 to the extent that would be necessary.

15 THE COURT: What time do you think you'll go until
16 today?

17 MS. LAU: I think it will be a shorter day, but we
18 will definitely take the afternoon.

19 THE COURT: Okay. So we'll keep to our regular
09:38 20 schedule.

21 MS. LAU: Okay. And then with respect to the trial
22 exhibits, we just wanted to do a little bit of housekeeping.
23 In the Juders cross-examination, I think there might have been
24 some confusion about the trial numbering. As the court will
25 recall, we moved Exhibits 1 through 4 into evidence on the

1 first day. I thought I would just read in the descriptions so
2 there's no confusion about what each of those exhibits is.

3 THE COURT: Okay. Also, the stipulations need a
4 number.

5 MS. LAU: Correct. So Exhibit 1 is the photograph of
6 the body of Ecclesiaste Boniface, dated July 28, 2007. Exhibit
7 2 is the photograph of Juders Ysemé's injured eye, undated.
8 Exhibit 3 is the photograph of Nissage Martyr and his wife in
9 the hospital, showing Nissage's injuries, dated April 2008.

09:39 10 And Exhibit 4 is copy of pages of Jean Morose Viliena's
11 passports showing travel between the United States and Haiti
12 from September 12, 2007 through September 28, 2021.

13 So with respect to additional exhibits, Your Honor,
14 during the examination of Juders Ysemé, I had requested to move
15 in the demonstrative of the radio station attack. We believe
16 that that accurately records his testimonial evidence with
17 respect to the locations that Nissage was beaten, that Villeme
18 Duclona shot him and where he was shot, so we think that is
19 properly admitted into evidence as Exhibit 5.

09:40 20 THE COURT: You had objected to that, but you have
21 subsequently relied on it yourself. So what is the current
22 position on that?

23 MR. HALEY: I think it was an appropriate
24 demonstrative, it aided and assisted the witness in testifying,
25 but the witness testified, and it's not a document that

1 otherwise has independent evidentiary value or purpose.

2 THE COURT: I'll look at the rule again, but I think
3 that's right. I'm not the rules of evidence maven or anything,
4 but I don't remember there being exception to demonstratives on
5 ones that accurately depict the testimony.

6 MS. LAU: We have looked at this issue, Your Honor, in
7 the First Circuit. You have a lot of discretion on how best to
8 address the issue. If you disagreed and did not believe it was
9 appropriate to admit as evidence, we would request that the
09:41 10 demonstrative be marked for identification and be sent back
11 into the jury deliberation room.

12 THE COURT: That's a whole issue. If I'm going to
13 send it back to the jury room, I'm going to admit it. But if
14 it's not admitted, it won't go to the jury room. I will mark
15 it for identification so we all know what we're talking about.

16 MS. LAU: Understood.

17 THE COURT: We gave that 5. Okay. I'll take a look
18 at the rule myself. I think it is a demonstrative on the one
19 hand. On the other hand, I don't think it's prejudicial at
09:41 20 all. I think it's just sort of illustrative, so let me take a
21 look at that, but I know that objection is still pending.

22 MS. LAU: And then with respect to the court's request
23 that the joint -- sorry -- the joint stipulation of facts be
24 admitted, we've prepared that as Exhibit 6, and I'm prepared
25 with exhibits to hand up to the clerk.

1 THE COURT: Great.

2 MS. VANDERVALK: Your Honor, we also wanted to object
3 to Mr. Haley's objections to disclosed Exhibit A that we plan
4 to introduce later on today. It's a 1:44 video from a video
5 posted to YouTube in 2012 of Nissage Martyr in which he
6 describes and discloses his physical and emotional injuries
7 following the radio station attack.

8 While a fair number of his statements in that video
9 are admissible under 803.3, the remaining statements are
09:42 10 offered by plaintiffs' not for the truth of the matter asserted
11 but as evidence of damages in this case. Plaintiffs are happy
12 to agree to a limiting instruction, which the jury is well
13 familiar with by now, and we maintain that any prejudice from
14 offering the statements is further attenuated by the fact that
15 Nissage Martyr is not saying anything new. It's all things
16 that numerous witnesses have already testified to in this case,
17 and that Mr. Haley has already had an opportunity to
18 cross-examine them about.

19 For example, he states that the radio station was in
09:43 20 his home, that Deputy Orelie helped set up the radio station,
21 that the attack happened on April 8, 2008, that he was shot in
22 the leg during the attack, that he was in a hospital for
23 months, and that defendant and his associates were involved in
24 the attack.

25 THE COURT: 2012 you said?

1 MS. VANDERVALK: 2012. We have the clip cued up, and
2 we're happy to display it. It's fairly short.

3 THE COURT: I need to see it. I take it it's a
4 hearsay objection.

5 MR. HALEY: It is, Your Honor, a hearsay objection.
6 It's also, it was given as part of a press conference. It's
7 incredibly volatile. There's no opportunity to cross-examine
8 Mr. Martyr as to the statements, and he introduces statements
9 about facts that have not been part of the trial at all, his
09:44 10 fear that his wife and children would be raped, other concerns
11 that he articulates. In addition to its hearsay status, it's
12 also unduly prejudicial and unfair to the defendant.

13 MS. VANDERVALK: Your Honor, as stated, I think it
14 does go to his emotional injuries in this case, and it also
15 displays his physical injuries. And to the extent that the
16 court believes that it contains otherwise inadmissible hearsay,
17 we ask that it be admitted under Rule 807, the residual
18 exception.

19 We think this is precisely the type of circumstance it
09:44 20 was intended to apply. It is more probative on damages to
21 Nissage than any other evidence that plaintiffs can obtain,
22 given his sudden death following the complaint. And we think
23 there's sufficient guarantees of trustworthiness, given the
24 corroborating testimony that's already been introduced in this
25 case.

1 MR. HALEY: 803.3, Your Honor, is to prove the
2 declarant's state of mind as to a fact that's relevant to the
3 matter. His state of mind five years after these things
4 happened isn't really at issue here, and for the reasons
5 articulated earlier, the defendant objects to the admission of
6 the exhibit.

7 THE COURT: I'm going to look at it right now, but
8 just on the issue of, for damages but not for the truth of the
9 matter asserted, I'm not sure I understand that. If you want
09:45 10 them to rely on it for damages you need it for the truth,
11 right?

12 MS. VANDERVALK: It's not the truth of the statement
13 that he's saying. It's indicating the emotional harm that he's
14 undergone. So it's not for the truth of the words that he's
15 saying.

16 THE COURT: Okay. Let's see it. Can I see it?

17 MS. VANDERVALK: Yes.

18 (Video played.)

19 THE COURT: There's parts of that that I think could
09:47 20 probably come in but there's other parts that definitely can't,
21 so I don't know if you want to --

22 MS. VANDERVALK: I can provide a transcript if that's
23 helpful.

24 THE COURT: Do you want to try to edit that? Are you
25 objecting to all of it, Mr. Haley?

1 MR. HALEY: All of it, Your Honor.

2 THE COURT: If we do some excising --

3 MR. HALEY: I think the inability to cross-examine the
4 declarant and there being no other relevant hearsay exception,
5 the defendant objects to all of it.

6 THE COURT: Okay. When would you get to this?

7 MS. VANDERVALK: I'm sorry, Your Honor?

8 THE COURT: Today I presume?

9 MS. VANDERVALK: Yes, yes, we plan to introduce it
09:48 10 through the testimony of Nissanderé Martyr, and we'd like to
11 talk about any competency objections that Mr. Haley might have
12 this morning as well. Nissanderé can testify that it is his
13 father, that he has sustained those injuries. He's just not
14 familiar with the making of the video.

15 MR. HALEY: Is there someone who can testify as to
16 when it was recorded?

17 MS. VANDERVALK: The full clip of the video, as it
18 still appears on YouTube, has the other plaintiffs, David
19 Boniface and Juders Ysemé, in the video, so they are familiar
09:49 20 with when and how it was made.

21 THE COURT: All right. I need to think about this one
22 and take a look at the transcript. So is he your next witness?

23 MS. LAU: No, he is not, Your Honor.

24 THE COURT: All right.

25 MS. LAU: Your Honor, we plan to present Nissanderé as

1 our last witness today, so we could address it at the lunch
2 break if that would be helpful to the court.

3 THE COURT: Okay. I have another proceeding at the
4 lunch break, but we'll squeeze it in. We can always give them
5 a little bit longer lunch break if we need to.

6 MS. LAU: Those were all of the plaintiffs' issues for
7 this morning, Your Honor.

8 THE COURT: Mr. Haley.

9 MR. HALEY: One thing I wanted to confirm, Your Honor,
09:50 10 Mr. Concannon, who is an expert witness, in his report at
11 paragraph 31 on page 8, he concludes, "Based on my analysis, I
12 conclude that the defendant would be both criminally and
13 civilly liable under Haitian law for arson in light of the
14 allegations in the complaint."

15 I don't mind him testifying about arson, I guess, but
16 he shouldn't testify that the defendant is liable for anything.

17 THE COURT: Yes.

18 MR. HALEY: I believe that counsel agrees.

19 MS. ADEMOLA: Your Honor, just for clarity,
09:50 20 Mr. Concannon is not going to offer testimony on the ultimate
21 issue that he's expressed.

22 THE COURT: That's right. Okay.

23 MR. HALEY: Thank you, Your Honor.

24 THE COURT: You want five minutes to do whatever?
25 Take the next five minutes.

1 (Recess, 9:50 a.m. - 10:00 a.m.)

2 MS. ADEMOLA: Could I ask a small housekeeping matter?
3 As we did with Professor Maguire, do we need to formally offer
4 Mr. Concannon as an expert?

5 THE COURT: No. He hasn't contested his credentials.

6 (Jury enters the courtroom.)

7 THE COURT: Good morning, everyone. Right on time.
8 You're going to call your next witness, correct?

9 MS. ADEMOLA: Your Honor, plaintiffs call Brian
10:00 10 Concannon.

11 BRIAN CONCANNON, Sworn

12 THE CLERK: Can you please state your name and spell
13 your last name for the record.

14 THE WITNESS: Brian Concannon, C-o-n-c-a-n-n-o-n.

15 DIRECT EXAMINATION BY MS. ADEMOLA:

16 Q. Mr. Concannon, where do you currently work?

17 A. I work for the Institute For Justice and Democracy in
18 Haiti. We go by the acronym, IJDH. And I'm based in
19 Marshfield, Massachusetts.

10:01 20 Q. And what is IJDH?

21 A. It is a nonprofit organization, and our mission is to help
22 our colleagues in Haiti make the justice system in Haiti work
23 for the majority of Haitians and also to bring Haitians' fight
24 for justice and human rights to the international community.

25 Q. And when was IJDH established?

1 A. IJDH was established in 2004.

2 Q. And could you tell us what your role is at IJDH, please?

3 A. Yes. I'm the executive director, so I manage the
4 organization. That includes some administration, fundraising.
5 I also work on program work, including helping to prepare human
6 rights reports, helping to prepare submissions to international
7 organizations, such as the U.N.

8 I also meet with members of Congress, brief members of the
9 executive branch, journalists, scholars, whoever I can who is
10:02 10 interested in writing or deciding about Haiti. I try to give
11 them information about the human rights situation on the
12 ground.

13 Q. And you mentioned publications. How often does IJDH issue
14 publications?

15 A. We issue, every six months we issue a document we call the
16 Human Rights Update, which is a compilation of the human rights
17 situation over the previous six months. We also, less
18 regularly but when it's appropriate, we prepare reports for
19 U.N. agencies and the Organization of American states.

10:03 20 Q. And you mentioned that it focuses on human rights. Is
21 that human rights in Haiti?

22 A. Yes, everything we do is related to human rights in Haiti.

23 Q. And you also mentioned that you sometimes engage with
24 government officials here in the U.S. What topics do you
25 discuss with them?

1 A. It's usually about political violence in Haiti and the
2 justice system. Those are the two main topics.

3 Q. And Mr. Concannon, have you lived or worked in Haiti?

4 A. Yes. I both lived and worked in Haiti from 1995 until
5 2004, about nine years.

6 Q. And since you returned to the U.S., how often have you
7 returned to Haiti?

8 A. It's been an average of about four trips a year since
9 2004.

10:04 10 Q. And when was your last trip to Haiti?

11 A. The last trip was in April of 2019.

12 Q. And could you tell us why you haven't returned since April
13 2019?

14 A. You know, I'd love to go back, but right now things are
15 just too dangerous.

16 Q. And during the trips that you would take to Haiti from
17 2004 to 2019, what was the primary focus of your visits?

18 A. I did two things. One, I had collaborations on specific
19 cases, so I would meet with my colleagues I was collaborating
10:04 20 with, and then the second was just to try to get a handle of
21 what was going on in the broader human rights situation. And
22 to do that, I would talk to anybody. I obviously talked to my
23 colleagues, human rights lawyers in Haiti, but I would also
24 speak with journalists, current or former government officials,
25 grassroots leaders, people I met in the street. I'd try to get

1 as many perspectives as I could. I would also sometimes meet
2 with the U.S. Embassy and other foreign embassies.

3 Q. And during your visits to Haiti have you personally
4 trained lawyers there?

5 A. Both while I was living there and in my visits I've
6 trained lawyers in Haiti, yes.

7 Q. Could you tell us approximately how many lawyers you've
8 trained in Haiti?

9 A. In terms of people that I've given ongoing training, it's
10:05 10 been somewhere between 15 and 20. In terms of people that I've
11 done one or two training sessions it's dozens, at least 50.

12 Q. And what topics do you typically focus on during those
13 trainings?

14 A. The principal topic is usually how to get cases of
15 political violence or other human rights violations through the
16 justice system.

17 Q. And as a part of your work today at IJDH, do you remain up
18 to date on human rights issues in Haiti?

19 A. Yes. I follow human rights closely. I read every human
10:06 20 rights report I can find on human rights in Haiti. I follow
21 Haitian media daily. I'm on a couple of different WhatsApp
22 chats. I'm on a couple of different conference calls every
23 week where people are talking, people from the U.S. and Haiti
24 and in other countries, are talking about the situation. So
25 yes, I follow it very closely.

1 Q. And just moving back in time a little bit, could you
2 briefly describe your work experience before you founded IJDH.

3 A. I graduated law school in 1989, and I worked for a few
4 years for a firm in Boston doing corporate law. I spent a
5 little bit of time doing some volunteer work in private
6 practice. But then in 1996 I had the opportunity to -- sorry,
7 1995, I went to Haiti as a volunteer for the United Nations. I
8 was a human rights officer. And I was there with the U.N. in
9 1995 and 1996.

10:07 10 Q. And what attracted you to Haiti in 1995?

11 A. I had decided that I wanted to do human rights work. I
12 felt that I had had enormous privilege growing up in the United
13 States in a country that was relatively stable where we had
14 stable transfers of power, where the court system gave people
15 their day in court. And I felt that I wanted to use the
16 benefits of those privileges to help other people move their
17 countries towards having those same benefits.

18 Specifically with respect to Haiti, at the time Haiti was
19 just coming -- was just having democracy restored after a
10:08 20 three-year very brutal military dictatorship, and I thought
21 this was an excellent opportunity to really make a difference,
22 to use the skills I had the privilege of developing in the
23 United States by working with a functional justice system, to
24 use that to help Haitians obtain their own functional justice
25 system.

1 Q. And what did you do after you left the U.N.?

2 A. When I left the U.N. I joined with a group of lawyers in
3 Haiti called the Bureau des Avocats Internationaux. The
4 English translation of that is the international lawyers
5 office, and we usually use the acronym BAI.

6 Q. And what was the focus of BAI at that time?

7 A. At the time the BIA's focus was trying to move cases of
8 political violence through the justice system. We started with
9 a recognition that the justice system had very serious
10:09 10 limitations, but we felt that with some extra support we could
11 get these prominent cases of political violence through the
12 justice system. And the idea was that we would obtain justice
13 for our clients, but in the big picture, we'd help transform
14 the justice system so that all Haitians could get their day in
15 court.

16 Q. And could you tell us why you decided to join BAI and
17 remain in Haiti after you left the U.N.?

18 A. When I was with the U.N., my job, one of my tasks was to
19 meet with local leaders, grassroots leaders, you know, people
10:09 20 in the justice system. And we were having those official
21 meetings, but also, when I was just talking to people on the
22 streets, everybody said what they needed was prosecution of
23 crimes from this 1991 to 1994 dictatorship.

24 The U.N. was not doing that. We were writing reports, and
25 Haitians were telling us, "We don't need any more reports. We

1 need prosecutions." And so I had an opportunity to join the
2 BAI, and a friend of mine, who I had met through the U.N., was
3 working at the BAI, and she talked about the work. And I said,
4 "That's exactly what Haitians are telling us they need done."
5 And so I was grateful for the opportunity to join the BAI to
6 really do what Haitians were saying they needed done with their
7 justice system.

8 Q. And during your time at BAI, what were some of your
9 primary responsibilities?

10:10 10 A. I was the co-manager of the office, so I kind of ran
11 things, but I also worked on cases. Again, these were cases of
12 political violence. The two biggest cases for the office and
13 for me personally were the Raboteau massacre case and Cite
14 Soleil arson case. Both of those were politically motivated
15 attacks that happened against civilians who were fighting for
16 democracy under the dictatorship.

17 Q. And during your time at BAI, would you meet with Haitian
18 government officials?

19 A. Yes, we would meet with ministers of justice about once a
10:11 20 month. A couple of times we met with the presidents. We had a
21 police team that worked out of our office for much of that
22 time, so we were collaborating with them daily. But we'd also
23 meet very regularly with prosecutors on our cases, sometimes
24 judges.

25 And I also would informally reach out to judges, and there

1 were a couple of judges that I would just have dinner with
2 every once in a while on an unofficial basis just to learn from
3 them about the justice system.

4 Q. And you mentioned that you would meet with the minister of
5 justice. Could you just explain to us who that is?

6 A. Sure. The equivalent in the United States is the Attorney
7 General. So the minister of justice is head of the justice
8 work of the government. He supervises, he or she supervises
9 prosecutors, sets justice policy for the country, oversees the
10:12 10 police.

11 Q. And how often would you meet with the minister of justice?

12 A. For most of the time it was about once a month.

13 Q. And during your time at the BAI were there local Haitian
14 lawyers on your team?

15 A. Not initially, but after about two months I started
16 bringing on Haitian lawyers because we felt that was important
17 to our work. And so for most -- I was there for eight years,
18 so almost all, for most of the eight years we had Haitian
19 lawyers on our team.

10:12 20 Q. And would you have regular interactions with those team
21 members?

22 A. Yes, every day, every day that I was in the office.

23 Q. And just to confirm, who was your primary client base when
24 you were at BAI?

25 A. It was victims of political violence. Most people in

1 Haiti are impoverished, and we felt it was important that we
2 make sure that the justice system worked for the majority of
3 people who are impoverished, A, because that's a majority and,
4 B, because we felt that it was most important for the people
5 who needed justice the most to be able to get access. So we
6 did cases on behalf of lots of people, but we specifically
7 tried to reach out to impoverished people and help make their
8 cases get through the system.

9 Q. And while you were at the BAI, did you work with Haiti's
10:13 10 legal code?

11 A. Yes, I did, and at the United Nations as well.

12 Q. And how often would you do that?

13 A. You know, it would depend. I read through the criminal
14 code and the code of criminal procedure multiple times. It
15 would kind of depend on what was happening in the office.
16 Sometimes I would spend, you know, a couple of hours every day
17 on it for a week or two. Sometimes I might go a week or so
18 without it. But, you know, I certainly consulted the legal
19 code over 100 times.

10:14 20 Q. And did you gain an understanding of the requirements to
21 prosecute claims in Haiti?

22 A. I did. I'm not licensed to practice law in Haiti. I'm
23 not licensed to practice law anywhere outside of Massachusetts.
24 But what I would do would be, I worked with the Haitian
25 lawyers, and we -- we'd have a legal problem and the Haitian

1 lawyers would have the way that it was traditionally done in
2 Haiti, and my role was to try to bring an outside view to that
3 to say, Okay, this is how you normally do it. What about doing
4 it this way?

5 And I would be able to do that from a little bit bringing
6 in traditions from the United States or, you know, procedures
7 that had worked here, but it was also just taking a fresh look
8 at the legal codes. Then saying, you know, they would look at
9 it and the Haitian lawyers would define how they normally did
10:15 10 it, and I would ask, Hey, is there another way we can look at
11 this? Is there something that can help our cases if we look at
12 it from a different angle?

13 So we'd have discussions about what the criminal code
14 provisions meant, and that was discussions with the lawyers in
15 the office, but we'd also have similar discussions with
16 prosecutors, with judges, with the minister of justice.

17 Q. And what did you do after you left BAI?

18 A. When I left BAI, I left in 1994 and I started -- I came
19 back to the United States and started IJDH.

10:15 20 Q. Could you just confirm when you left BAI, Mr. Concannon?

21 A. April or February 28, 2004, and I started IJDH almost
22 immediately thereafter.

23 Q. And why did you leave Haiti in 2004?

24 A. There was a coup d'état. We had been fairly successful,
25 in the eight years I was at the BAI and when I was at the U.N.,

1 we had been successful in the sense we got some precedents set
2 in cases through the system, but it was part of a much broader
3 period of success of advancing Haiti's democracy.

4 When the coup d'état happened in 2004, most of that
5 progress was reversed, and our ability to get cases through the
6 justice system was removed because you had a dictatorship where
7 people who were trying to get cases through the justice system
8 were pretty systematically killed. So there was no point in
9 doing our work, doing the kind of work we had been doing before
10:16 10 the coup.

11 I felt it was important and we felt it was important that
12 we start an organization in the United States that would help
13 bring Haiti's fight for justice to the international community,
14 so I left Haiti and came back to the United States.

15 Q. And during your time in Haiti did you learn the local
16 language?

17 A. So Haiti has two languages, two official languages, French
18 and Haitian Creole. I knew French before I went to Haiti. I
19 was a French major in college. I learned Creole in Haiti,
10:17 20 though. And Creole is the language that most Haitians speak.
21 So I could speak French with judges and lawyers. But to speak
22 with our clients and everyday people, I needed to learn Creole.

23 Q. And could you just tell us briefly about your educational
24 background, beginning with high school.

25 A. Sure. I went to high school a couple of miles away from

1 here at Boston College High School in Dorchester. I went to
2 college at Middlebury College in Vermont. I have a BA in
3 French and history. And I went to law school at Georgetown
4 University in Washington, D.C.

5 Q. And have you written any articles or book chapters about
6 Haiti?

7 A. I've written both articles and book chapters, yes.

8 Q. And what subject matters do you typically write about?

9 A. Typically it's about my work. It's about getting cases
10:18 10 through the justice system and especially cases of political
11 violence.

12 Q. And have you previously served as an expert witness here
13 in the United States?

14 A. I have. I pretty regularly serve as a country conditions
15 expert on immigration cases. And once before I served as an
16 expert in a district court trial also on country conditions in
17 Haiti and the justice system.

18 Q. Could you just tell us briefly topics you typically opine
19 upon?

10:18 20 A. Sure. Typically for immigration cases it's often somebody
21 who is fleeing some kind of political asylum. Also I sometimes
22 do gender-based asylum as well. And so I'm talking about the
23 political -- what kind of political violence there was in Haiti
24 at the time that the person is claiming that they were injured.
25 I also talk about the prospect of the person getting protection

1 from either the justice system or the police.

2 Q. And were you asked to serve as an expert witness in
3 connection with this trial?

4 A. Yes, I was.

5 Q. And what topics were you asked to opine upon?

6 A. I was asked to address three principal topics. The first
7 one is whether people who pursue claims against powerful people
8 in Haiti in courts for political violence, whether they are at
9 risk of retributive violence.

10:19 10 The second opinion is regarding politicization and
11 corruption in Haiti's justice system. The third opinion is on
12 the elements of arson under Haiti's penal code.

13 Q. And did you submit an expert report in this case
14 reflecting your opinions that you expect to offer today?

15 A. I did, yes.

16 MS. ADEMOLA: I have a demonstrative, Your Honor.
17 Would you like a copy?

18 THE COURT: Are you going to put it on the screen or
19 easel?

10:20 20 MS. ADEMOLA: On the screen.

21 THE COURT: I can see it, that's fine.

22 Q. Mr. Concannon, what are your conclusions?

23 You have time. They're not going have the demonstrative
24 yet.

25 A. So my conclusion on the first opinion is that people who

1 pursue claims against powerful people in Haiti for human rights
2 violations, they do face a very significant risk of retributive
3 violence.

4 My second opinion is that Haiti's justice system is
5 pervasively corrupt and subject to deep political interference.

6 My third opinion is that under Haitian law, under the
7 first paragraph of Article 356 of Haiti's penal code, arson
8 constitutes an intentional setting of fire to a dwelling or a
9 building that serves as a dwelling.

10:21 10 Q. Thank you, Mr. Concannon. Let's talk about your first
11 opinion related to retributive violence. Could you tell us
12 about your first opinion, please.

13 A. So my first opinion is that people do face substantial
14 risk of violence if they try to pursue a legal claim against a
15 powerful person in Haiti. And the extent of that is, I've been
16 involved in many cases where people have been trying to do
17 this. I've followed a few other cases. And I can't think of
18 anyone who has pursued a legal claim for human rights
19 violations against a powerful person where there has not been
10:22 20 retributive violence. It might have happened, but I'm just not
21 aware of it.

22 So certainly in my recollection every time someone has
23 tried it, they face retribution. And certainly it's safe to
24 say that the vast majority of the cases that people who try to
25 get justice face some cost.

1 Q. Just so we understand, what do you mean by retributive
2 violence?

3 A. In the actual cases where this happened, it's run a gamut.
4 At sort of the less harmful end is threats that people get,
5 whether telephone or mailed or just in the streets. And it
6 runs, at the most harmful end, it's killing. And in between,
7 there's assaults, some of them that cause serious injury,
8 destruction of property by arson and other means. So it's all
9 along that spectrum. And often it can escalate.

10:23 10 So people will face initial retributive violence on the
11 low end of that spectrum, so it will start with threats, and if
12 the threats don't work, the threats don't stop the person from
13 pursuing their rights in court, then the violence can escalate
14 up to and including killing.

15 Q. And in your work BAI and IJDH, have you worked with
16 victims of human rights abuse in Haiti?

17 A. Yes, that's most of our work over the last 23 years.

18 Q. And how does that risk of retributive violence impact
19 their pursuit of claims in Haiti?

10:23 20 A. It convinces most people not to do it. In every case
21 we've been involved in, we need to have a frank discussion with
22 the people about the risks. Many people decide that it's not
23 worth the risks. Very few very courageous people make the
24 decision that they will take the risk, but everybody
25 acknowledges that they're taking a risk by filing these cases.

1 Q. And based on your work in Haiti, what do you understand to
2 be the goal of retributive violence?

3 A. In the short term, it's to get the person to stop trying
4 to get justice. In the long term, it's to dissuade anybody
5 else from doing it. So the idea is that if everybody faces
6 that risk that not only is the particular person who is being
7 pursued, are they going to be safe from justice, but that will
8 also allow other people to be safe for justice for the
9 political violence that is all too common in Haiti.

10:25 10 Q. And you mentioned threats as one device. Could you tell
11 us about the methods of those threats.

12 A. It's a pretty broad range. People make telephone calls or
13 send texts now. People send letters, sometimes with like a
14 bullet or warning message. Sometimes it's much more subtle,
15 you know, even just people, unknown people hanging out outside
16 somebody's house, that's often perceived as a threat or someone
17 saying, you know, "You better watch out," just in passing, that
18 can be a threat. And the same -- oh, actually, you just asked
19 about threats. Sorry.

10:26 20 Q. If you have something to add, please do.

21 A. It was on another subject, so I don't mean to step out of
22 turn.

23 Q. Mr. Concannon, in your experience you mentioned property
24 damage. What types of property damage did you have in mind?

25 A. Most people's property is in their house. So the first

1 target when someone wants to do property damage is somebody's
2 house, and the type of damage that can happen in a house, we've
3 had clients where people went in and kind of trashed the house,
4 just broke things. We've also had people whose houses were
5 burned down.

6 Q. And you mentioned that you worked on the Raboteau massacre
7 at BAI. Could you tell us some of the facts in that case,
8 please.

9 A. Sure. The Raboteau massacre happened on April 22 of 1994.
10:26 10 It was during what we call the de facto dictatorship. And at
11 the time Raboteau was a neighborhood of impoverished people who
12 lived by, you know, fishing and working in the salt flats.
13 They were probably the last neighborhood in Haiti that was
14 openly resisting the dictatorship. They would do these kind of
15 quick demonstrations just to keep sort of the light of
16 democracy alive, and they would hopefully run before the police
17 could come and get them.

18 The government decided that it had enough in April of
19 2004, and soldiers, police officers, along with some allied
10:27 20 armed groups and unofficial armed groups, they attacked the
21 neighborhood of Raboteau. They went through houses, kind of
22 ransacked people's houses, they beat people up, arrested them
23 and tortured them. Several people tried to flee, and people
24 who tried to flee were shot at and some were killed.

25 Q. And were you involved in the efforts to prosecute that

1 case?

2 A. I was. When I was with the U.N., I was assigned to follow
3 the beginnings of the prosecution of the case. And then when I
4 joined the BAI, that was my primary case for four years.

5 Q. And was retributive violence used in that case?

6 A. Yes, it was.

7 Q. And could you give us some specific examples of the
8 retributive violence there.

9 A. Sure. Lots of people throughout the course of our work
10:28 10 over those four years were subject to threats. We had fairly
11 good -- at the trial we had fairly good security. There was, I
12 don't know how many, but dozens of police officers there to try
13 to keep the trial safe. But after the trial, that's when the
14 real retribution started. A couple of our clients had their
15 houses burned down. One of them was brought in front of the
16 police station and executed. Even people in the justice system
17 working on the case faced retribution. A chief prosecutor had
18 his law office and radio station burned down. The chief judge
19 was pulled from his car and beaten up.

10:29 20 Q. And you also mentioned your work on the Cite Soleil case
21 while you were at BAI. Could you give us some of the facts in
22 that?

23 A. Sure. Cite Soleil, that was an arson, over 100 houses
24 were destroyed. City Soleil, in English it's city of the sun,
25 and it's this very poor area on the outskirts of Port-au-Prince

1 and mostly small, very tightly packed houses.

2 Cite Soleil had also, like Raboteau, had also been a place
3 where people were continuing to resist the dictatorship. And
4 the government, along with some paramilitary groups, some
5 unofficial armed groups, they decided to end that resistance.

6 So they went from -- they went after houses in a
7 particular neighborhood, and they went out and burned the
8 houses down. I believe, we were never sure how many people
9 died, but our best estimate was about six people died, but over
10:30 10 100 houses were destroyed, and dozens of people were arrested,
11 tortured, beaten.

12 Q. And were you involved in the prosecution efforts for that
13 case?

14 A. Yes, I was.

15 Q. And did anyone experience retributive violence as part of
16 that prosecution?

17 A. Yes. There was, one of the people that was accused in the
18 case was the mayor of Cite Soleil at the time. His name was
19 Fritz Joseph. And talking to witnesses, there was fairly
10:31 20 consistent witness testimony that Mayor Joseph was involved in
21 the arson. And so we presented that and it was part of our
22 case.

23 The prosecutor issued a document, a charging document that
24 did not have Mayor Joseph's name in it. We felt that was
25 problematic because we felt the evidence showed that he should

1 should be a defendant in this case.

2 So one day I went down to complain to the prosecutor after
3 this document came out, along with a man named Milliona who was
4 from Cite Soleil. He was one of the victims of the arson and
5 one of the leaders of the groups of people trying to seek
6 justice. And we went down to the prosecutor and explained why
7 we thought that Mayor Joseph's name should be in the charging
8 documents.

9 That night, when we left, I went back to my office and
10:32 10 then went home. Milliona went home. That night somebody
11 called him out to the street in front of his house and shot him
12 to death.

13 We never found out exactly who did it. There was a police
14 investigation. No arrests were made, but both the police and
15 Milliona's family were confident that he was killed by a gang
16 member, his name was Colibri, and that the gang member was sent
17 by Mayor Joseph and that it was in retaliation for Milliona
18 complaining.

19 Q. Are you familiar with any recent cases involving Haiti's
10:32 20 minister of justice?

21 A. Not a recent case, but there was a case involving
22 retribution of a former minister. In 2014, the former
23 minister's name was Josue Pierre-Louis, was working for the
24 electoral council, and one of his subordinates accused him of
25 raping her.

1 Some of our colleagues in Haiti represented the victim and
2 pursued charges. The victim immediately faced retribution.
3 She faced threats to her and to her family. It was kind of a
4 campaign of slander against her on social media and on the
5 regular media.

6 I went down one day. While I was in Haiti, there was a
7 hearing in the case, and I went to observe it and to help the
8 lawyers. While we were waiting for the hearing, all of a
9 sudden there was a big commotion. And pretty soon a group of
10:34 10 men, probably about 20, they came in and they were yelling and
11 chanting and acting very aggressively, kind of marching around
12 in this pack, jumping up and down in an aggressive way and
13 yelling.

14 They went through kind of the main courthouse corridors
15 where we were and really scared a lot of people, especially the
16 victim of the attack. They kind of ushered her off into a kind
17 of closet to hide. But then they went to the judge's courtroom
18 and kind of marched around the courtroom for a little bit.

19 The police, at no time did I see police try to stop
10:34 20 anybody or arrest them, even though there were police there.
21 And they left the courtroom. The hearing was postponed. And
22 soon after, the victim said that she needed to drop the case,
23 that she just could not put her family up to the risks of
24 violence for her continuing it.

25 Q. And in your work with human rights cases in Haiti, have

1 you seen any cases involving retaliation against journalists?

2 A. Yes, many.

3 Q. Have you seen radio journalists be the victim of
4 retaliation in Haiti?

5 A. Yes. A majority of journalists who are attacked in Haiti
6 are radio journalists.

7 Q. And why is that?

8 A. So radio is by far the most important medium in Haiti.

9 That's becoming a little bit less true over the last couple of
10:35 10 years with social media. But certainly five, ten, 15, 20 years
11 ago, by far, radio was the way people got information.

12 Literacy rates in Haiti are low. Newspaper distribution
13 is low. So very few people read newspapers regularly.

14 Television is often inaccessible, it's expensive. You need
15 electricity, which a lot of people don't have. And especially
16 rural areas, there just isn't any signal.

17 So radio has kind of and has always been, for at least the
18 last 50 years has been the main way people in Haiti get
19 information. So if you want to get information out there, you
10:36 20 do it through radio. If you want to stop information from
21 getting out there, you stop radio from putting that information
22 out.

23 Q. And are you familiar with a radio station called They Said
24 It?

25 A. I'm not familiar with the radio station. There was a

1 radio program, a current events discussion program on a radio
2 station in Petit-Goave. And in 2011, the show was known for
3 being critical of the authorities in Petit-Goave, including the
4 mayor and including the prosecutor.

5 In 2011, the two hosts of the program were arrested.
6 There was a big outcry by human rights groups and press freedom
7 groups because it was clear that it was completely unjustified.
8 But even though it was completely unjustified, one of the
9 journalists -- one of the journalists spent a few days in
10:37 10 prison and was let go but one of them spent a full month in
11 jail.

12 Q. And are you familiar with Wendy Phele?

13 A. Yes. Wendy Phele was a radio journalist with Radio Tele
14 Zenith in the town of Thomonde, which is in the center
15 department of Haiti. In his reportage he had been critical of
16 the local mayor of Thomonde, and one day the mayor's bodyguard
17 shot him. He recovered. I think he lost a kidney, but the
18 bodyguard was never arrested. The radio station and Mr. Phele
19 made a formal complaint, tried to get justice, but the mayor
10:38 20 made sure that -- the mayor prohibited the police from
21 arresting the bodyguard. And as far as I know, the bodyguard
22 was never punished.

23 Q. And what happened to Mr. Phele?

24 A. He was forced to flee. He kept -- after getting shot and
25 while he was continuing to seek justice for his shooting, he

1 kept getting threats, and those threats forced him to leave
2 Haiti.

3 Q. And earlier we talked about arson as one method of
4 retaliation in Haiti. Could you just tell us what the
5 significance of arson is in Haiti?

6 A. Arson can be catastrophic, especially to the majority of
7 Haitians who are relatively impoverished. People don't have a
8 lot of -- the average person in Haiti does not have a lot of
9 belonging. But other than perhaps farmland they own, all of
10:39 10 their belongings are tied up in their house. If they own their
11 house, it's by far their most valuable asset. Even if they
12 don't own their house, everything they have is there.

13 Most people don't have bank accounts, at least not
14 significant bank accounts. They don't have investments. So
15 everything they have is in the house. And so if the house is
16 burned, not only do you lose by far your largest asset but you
17 also lose all of your possessions.

18 And people in Haiti don't have, they don't have fire
19 insurance or home insurance. Almost everywhere there's not an
10:40 20 adequate fire department, so once a fire starts, it keeps
21 going. People don't have credit cards, so the day after a fire
22 you can't go out and buy yourself at least one new set of
23 clothes. It's really devastating to have your house burn down.

24 Q. And Mr. Concannon, I'd like to turn to your second
25 opinion. Could you tell us about your second opinion, please.

1 A. My second opinion is that corruption in Haiti is pervasive
2 in the justice system and that politicization is deeply
3 ingrained in the justice system, and both the executive and
4 legislative branches exert undue influence on the courts.

5 Q. And when you say -- when you talk about politicization,
6 what do you mean?

7 A. By politicization I mean exercising undue authority. So
8 Haiti, like the United States, has three branches of
9 government: The judicial branch that does the courts, the
10:41 10 executive branch that runs most of the government, and the
11 legislative branch that votes the laws.

12 In the U.S. our system is set up to be balanced so that
13 each one has powers independent of the other and is able to act
14 with some independence. In Haiti, the system theoretically is
15 balanced, but in practice it's way out of balance. By far the
16 most powerful branch is the executive branch, and the
17 legislative is second, with the judicial branch being third.

18 The executive branch can often dictate, can manipulate
19 judges through its power to spend money and to nominate judges.
10:41 20 And it does things that aren't within its power, but it still
21 gets away with, like firing judges illegally or transferring
22 them illegally. And also the legislative branch exerts power
23 through its power to hire judges but also to give them
24 resources.

25 Q. And you mentioned pervasive corruption. What do you mean

1 by that?

2 A. Almost any report, any report that I can think of that has
3 assessed the Haitian justice system has put corruption as the
4 biggest problem. Almost any discussion you have about the
5 justice system as a big picture, whether it's with a judge, a
6 prosecutor, a lawyer, the average person on the street, that's
7 the first thing that anybody talks about.

8 I think that almost everybody within the justice system,
9 all prosecutors, all judges, probably all clerks engage in some
10:42 10 things that would be considered corrupt during their work, and
11 I don't think it's possible for anybody within the system to be
12 free of corruption because it's set up that way.

13 Q. And in your experience working in Haiti's legal system,
14 how would you describe the financial resources for the
15 judiciary?

16 A. It's very limited. The justice system doesn't have enough
17 to do, really to do anything. Judges aren't paid enough to
18 make a living, and that encourages corruption. So the average
19 judge makes somewhere around \$500 a month, which isn't enough
10:43 20 to live a dignified existence. Judges see corruption as a part
21 of having a decent salary, but also, they're not given enough
22 equipment to do their jobs. They're not given security.
23 They're not given transportation. And that also opens them up
24 to corruption because the executive branch will come in and
25 will in some cases offer, you know, help with office equipment

1 or transportation or security, which can be very important both
2 for the judge to do his or her job but also for their own
3 safety. And the executive branch can offer that money to some
4 but not all judges. Typically the judges that get offered that
5 very important help are judges that do the government's
6 bidding.

7 So if you're a judge and you make a decision that you know
8 the government's not going to like, you do that knowing that
9 you're probably going to be punished, and you're certainly not
10:44 10 going to be rewarded for it.

11 Q. And you mentioned that you might sometimes have dinner
12 with local Haitian judges. Have you spoken to them about this
13 corruption in the system?

14 A. Yes. One very memorable discussion I had with a judge
15 named Patrick who I used to meet with periodically, just to
16 have dinner and have completely off-the-record, informal
17 discussions about what was going on.

18 And one day he showed up to dinner and he was very
19 distressed, and he said, and it was amazing honesty, he said,
10:45 20 "I just issued a corrupt judgment today." He felt horrible
21 about it because, you know, he knew for reasons we all know
22 it's just a bad idea to have a bad corrupt justice system, and
23 he really wanted a better justice system for him and other
24 Haitians. In that case he said, "Look, I had this choice. It
25 was a locally powerful businessman who offered me a bribe. I

1 could have ruled against him and I probably would have been
2 killed. Or I could have ruled for him, taken the bribe and
3 lived another day and perhaps been able to do some kind of
4 justice in another case because I was still alive."

5 Patrick ended up -- this was an agonizing -- it was
6 agonizing him just talking about it. He ended up actually
7 leaving Haiti and the country. Even though he loved being a
8 judge, he hated being corrupt. And he actually went to Miami
9 to work illegally as a house painter because he just couldn't
10:46 10 handle being -- he couldn't handle being a corrupt judge, and
11 he couldn't be a judge without being corrupt.

12 MR. HALEY: Move to strike.

13 THE COURT: Basis?

14 MR. HALEY: Hearsay.

15 MS. ADEMOLA: We're not offering it for the truth of
16 the matter, Your Honor. It's just an example of conversation
17 around corruption in Haiti.

18 THE COURT: You're not offering it for the truth of
19 the matter?

10:46 20 MS. ADEMOLA: Well, I mean, I think it sort of goes to
21 a first-hand experience about how this impacted a judge and a
22 conversation that Mr. Concannon had personally with that judge.

23 THE COURT: Yeah, I think the more prudent thing is to
24 strike that as hearsay.

25 MS. ADEMOLA: Okay.

1 THE COURT: I want you to disregard anything that he
2 said that the judge told him. Okay? It did not happen. Those
3 words were not spoken.

4 Q. And Mr. Concannon, you spoke about the importance of
5 security and transportation for judges in Haiti. How does that
6 affect judges in Haiti in your experience?

7 A. So judges make \$500 a month on average, and that's not
8 enough to have a house that's secure against an attack. It's
9 not enough to buy a car. And so most judges in Haiti, they're
10:47 10 walking or taking public transportation to work, and they're
11 living in houses that would not withstand an attack for very
12 long. That puts them in a vulnerable situation because every
13 time that they're making a decision, they are making somebody
14 angry, and so they're making enemies all the time, and they're
15 a very easy target.

16 So in some -- some judges and judges on some cases get
17 additional help from the government, including, sometimes it's
18 just a car and a driver that they can use to get around for
19 their work and to home and back. But sometimes they have
10:48 20 security guards along with it. And really, there's no program
21 with criteria for deciding how that's done. And sometimes it's
22 been done because a judge really needed that for his work, but
23 in other cases it's done because the judge is doing the
24 government's bidding.

25 Q. And you mentioned that the executive branch plays a role

1 in nominating judges in Haiti. Who is in the executive branch?

2 A. So the executive branch, it's headed by the president, and
3 Haiti also has a prime minister. And under the prime minister,
4 there's a whole bunch of ministers. There's a minister of
5 justice. You also have a minister of health, minister of
6 education. And so that is the executive branch, and everybody
7 who works through them, the public health people, police,
8 judges, prosecutors.

9 Q. And who decides whether or not a judge's term might be
10:49 10 renewed?

11 A. That's up to the government and it's at the government's
12 discretion.

13 Q. And when you say "the government," is that a specific
14 branch of the government?

15 A. It's typically the Ministry of Justice will make that
16 decision. So the typical judicial term is for seven years.
17 And at the end of the seven years, the judge -- the government
18 will make a decision as to whether they renew it for another
19 seven years.

10:50 20 In principle they would do it based on the judge's record,
21 whether the judge has done a good job deciding cases. In
22 practice, it's often a political test. So the government will
23 renew judges quickly who decide in ways the government likes,
24 and sometimes they kind of hang judges out to dry for a little
25 bit so they won't renew the term for a year or two just as a

1 way of showing the judge that they have this power. And in
2 some cases they just will decline to renew a judge who decides
3 cases in a way the government doesn't like.

4 Q. And does Haiti have a Supreme Court?

5 A. It does. It's called the Cour de Cassation. That's the
6 Supreme Court.

7 Q. And how are the judges selected for that Supreme Court?

8 A. In principle there's a process involving the senate. The
9 senate comes up with a list, and the president or the executive
10:51 10 branch picks people from that list. In practice, that doesn't
11 always work. In practice sometimes the executive branch just
12 names people.

13 Q. And are you aware of any recent examples where the
14 president played a role in choosing the Supreme Court?

15 A. Yes. So in 2012, the president at the time, it was
16 President Martelly. He named three people to the Supreme
17 Court, including the chief justice. And that was done
18 unilaterally without going through the process. Most recently,
19 just last month, the prime minister named eight people to the
10:51 20 Supreme Court without going through the process.

21 Q. Are you aware of any situations where judges were removed
22 from the Supreme Court?

23 A. Yes. You're not allowed -- the law is very clear that
24 you're not allowed to remove judges from office before their
25 term is up, except they have a process somewhat like

1 impeachment in the United States. Except, unless you go
2 through the impeachment, you're not allowed to remove judges
3 before the end of their term. But in 2021, the president
4 removed three judges from the court, from the Supreme Court.

5 Q. Mr. Concannon, I'd like to turn to your third and final
6 opinion, please. Could you tell us about your third opinion.

7 A. Sure. The third opinion is on the elements of arson under
8 Haitian law. And under the first paragraph of Article 356 is
9 that arson is intentionally setting fire to a building while
10:52 10 the building was inhabited or serving residential purposes.

11 Q. And to your understanding is Haitian law violated even if
12 no one is in the building at the time the fire is set?

13 A. Yes. I think inhabited, even if someone happens to be out
14 that day and it's their regular residence, it's inhabited. But
15 also, it's pretty clear under the law that they want a broad
16 definition, and they said a building that serves as residential
17 purposes.

18 So if it was house that someone had lived in once but was
19 vacant at the time, that would still be covered by paragraph 1.

10:53 20 Q. Are you aware whether or not the death penalty exists in
21 Haiti?

22 A. So the Constitution of 1987 abolished the death penalty,
23 so there has been no death penalty since 1987. Originally
24 under Article 356, the crime for arson of a residence was
25 death. Now that's been -- by the Constitution that changed to

1 a life sentence.

2 Q. And are civil damages available for arson victims in
3 Haiti?

4 A. Yes, they are.

5 Q. And what types of civil damages are available?

6 A. Under the law it's basically damages for any harm that
7 came from the wrongful act. Under Haitian law, they talk about
8 both pecuniary and non-pecuniary damages. Pecuniary damages
9 are things like the value of property, medical bills, things
10:54 10 like that. Non-pecuniary damages are pain and suffering. I
11 also think -- well, they are -- I think it's used to express
12 moral outrage so they can be, non-pecuniary damages can be much
13 higher than the pecuniary ones.

14 Q. Does Haiti permit civil damages for any individual who
15 might have belongings in the building that burned down?

16 A. Yes. You can claim damages if you were hurt by the
17 illegal activity. So if it was the burning down of a house,
18 obviously whoever owned the house has a claim, but anybody who
19 had belongings there that burned up, they were damaged.

10:55 20 Anybody who might have suffered a physical injury, whether
21 or not they lived in the house, if they suffered an injury from
22 the act, they would be entitled to claim damages.

23 Q. And who are civil damages issued against?

24 A. It's anybody who is responsible for the wrongful act that
25 caused harm. So in the case of arson, it's anybody who was

1 responsible for the arson. And under Haitian law, it includes
2 people who set the fire but also the people who helped prepare
3 the -- who helped participate in preparing or executing the
4 act.

5 Q. And in a Haitian court, what's the process that they used
6 to determine civil liability in a civil damages award?

7 A. Typically there's two different routes that people who are
8 claiming harm can take. One of them is a lot like the system
9 in the United States where you go to court and you file a civil
10:56 10 case. And you do it yourself, you or your lawyers pursue the
11 case in court.

12 Haiti also has a second way of doing it. They call it the
13 parte civile or civil party procedure. And the civil party
14 procedure allows people who are harmed to piggyback their civil
15 case on top of a criminal case. So there will be a criminal
16 case, so the prosecutor or the police will start a prosecution
17 against somebody. And then the victims can say, Okay, we were
18 hurt by the same action that's the subject of this criminal
19 case, and they're allowed to participate in the case, attend
10:56 20 the hearing. And at the end of the hearing, if the person is
21 convicted, they can then claim their civil damages.

22 So they let the prosecutor establish that the person did
23 the wrongful act, and then at the end they present the damages
24 that they suffered as a result. And then the judge in the same
25 case that presided over the criminal trial, that same judge

1 will then make a decision on the damage award to the victims.

2 MS. ADEMOLA: Thank you, Mr. Concannon. I'll pass the
3 witness, Your Honor.

4 CROSS-EXAMINATION BY MR. HALEY:

5 Q. Did you observe any of the events that are the subject of
6 the complaint in this action that took place in 2007, 2008, and
7 2009?

8 A. I did not, no.

9 Q. Have you ever been to Les Irois?

10:57 10 A. Never been to Les Irois, no.

11 Q. And you make your living running the Institute For
12 Democracy and Justice in Haiti; is that correct?

13 A. Yes, Justice and Democracy.

14 Q. IJDH, my apologies. But that's the way you support
15 yourself?

16 A. That's my main job, yes.

17 Q. And as part of that, as part of your advocacy, you've
18 concluded, have you not, that a lot of the plight of the
19 Haitian people lies with the fault of the United States?

10:58 20 A. I think it's a significant contribution that some U.S.
21 policies are contributing to problems in Haiti, yes.

22 Q. And historically, I think in your article in the Miami
23 Herald in September of 2021, you raise the fact that Haitian
24 independence in 1804 wasn't followed by United States
25 recognition until 1864, and there was an intervening blockade.

1 And you said that the United States is to blame for the plight
2 of the Haitian people. I think that was the title of the
3 article actually.

4 A. I wouldn't say completely to blame. I believe I said in
5 the article that we contributed to it, yes.

6 Q. And with respect to your testimony this morning, it's not
7 your testimony that just because a lot of crime and corruption
8 takes place in a certain area that anyone passing through or
9 living in that area is responsible for that crime and
10:59 10 corruption, correct?

11 A. I'm not sure that I follow that exactly. So I'm not
12 saying that everybody in the area is responsible for all of the
13 crime and corruption in the area, that's correct.

14 Q. I mean, there's a lot of crime and judicial corruption in
15 Chicago, but we don't accuse everybody who lives in Chicago of
16 murder or taking advantage of political corruption, correct?

17 A. That's correct. The difference in Haiti is that everybody
18 who is in the justice system is involved in corruption. I
19 mean, that may be the case about Chicago. I'm unaware that
11:00 20 that's the case in Chicago.

21 Q. And everybody on both sides of the system or only one side
22 of the system in Haiti?

23 A. I'm not sure what you mean by "both sides," but everybody
24 who works for the justice system, I'll say all judges, all
25 prosecutors and probably most clerks are involved in

1 corruption.

2 Q. And in this case, your involvement arose, did it not, out
3 of the acquittal of Mr. Viliena for the crimes of killing
4 Ecclesiaste Boniface and the radio station attack?

5 A. I don't think that's true, no.

6 Q. Well, in your expert report you note that he was acquitted
7 and that you attribute that to corruption, correct?

8 A. Yes.

9 Q. And the same with respect to the arson, you note that
11:00 10 there were 12 people held responsible for the arson but not
11 Mr. Viliena, correct?

12 A. Yeah. He was not held not responsible, but he was not
13 among the people convicted.

14 Q. He was not charged?

15 A. Yes.

16 Q. And you also I think take issue with the fact that the
17 civil damages awarded to Mr. Boniface, Mr. Ysemé and
18 Mr. Martyr's estate totalled \$53,000, correct?

19 A. Yes, I think that was at the time that they were awarded,
11:01 20 the equivalent was 53,000. It's going to be a lot less now.

21 Q. Okay. And you're here this morning as an expert, right?

22 A. Yes, I am.

23 Q. But you have a rooting interest in how this case comes
24 out, right?

25 A. I have a rooting interest in all the cases I work on that

1 people get their day in court.

2 Q. Is that the limit of your rooting interest in this case?

3 A. Yes. I'm not -- my work is not outcome-determinative. We
4 don't look for -- we don't measure our success by people
5 getting convicted because in some cases the evidence in our
6 cases hasn't justified the conviction.

7 We measure our success by having a process that's fair to
8 the plaintiffs, fair to the defendants, where everybody's
9 rights are respected.

11:02 10 Q. You're a member of the Massachusetts bar, right?

11 A. I am, yes.

12 Q. And you would agree with me that when you represent
13 somebody, you owe them a duty of zealous advocacy, you're
14 charged with making sure, as much as you're able to within the
15 ambit of the rules, that they prevail, correct?

16 A. When you're representing somebody, yes.

17 MR. HALEY: Your Honor, may I approach the witness?

18 THE COURT: Yes.

19 MR. HALEY: Your Honor, to the court.

11:03 20 THE COURT: Sure.

21 Q. And Mr. Concannon, I show you what's a printout from your
22 website under the heading "Our Team." Do you recognize that?

23 MS. ADEMOLA: Objection, Your Honor. This doesn't
24 have any information that indicates where it comes from. I
25 don't see anything about where Mr. Haley found this.

1 MR. HALEY: I can --

2 THE COURT: He can ask him if he recognizes it.

3 MR. HALEY: I can pull the website up and put it on
4 the screen if you'd like.

5 Q. Do you recognize it?

6 A. It does -- it's not exactly what's on our website, but I
7 know those three people are listed on our website.

8 MR. HALEY: You should have that on your HDMI1.

9 THE CLERK: Is this for everybody?

11:04 10 THE COURT: It hasn't been admitted yet.

11 MR. HALEY: No. Just for the witness.

12 Q. Do you see the website?

13 A. I do, yes.

14 Q. And is that the website that you maintain at your
15 organization?

16 A. Yes.

17 Q. And who is the individual listed first there?

18 A. Well, the person on the screen, on the far top left is
19 Mario Joseph.

11:04 20 Q. And Mario Joseph is the lawyer for David Boniface, Juders
21 Ysemé, and the estate of Nissage Martyr, correct?

22 A. I believe that's the case, yes.

23 Q. Okay. So you and Mr. Joseph are affiliated, he's on your
24 team, and he's the lawyer for the people who are the
25 plaintiffs?

1 A. So he -- we're affiliated. Mario runs the BAI where I
2 used to work, and we used to be partners running the office.
3 But since 2004, BAI is a separate organization. We do
4 collaborate very closely together. We call our ourselves
5 sister organizations.

6 Q. And you still list him under "Our Team" on your website?

7 A. Does it say "Our Team"? Yes, it does. Yes, I do.

8 Q. Okay. But you don't have a rooting interest in how this
9 case comes out?

11:05 10 A. I have a rooting interest in the case giving everybody
11 their day in court.

12 Q. You've never been to Les Irois, right?

13 A. As I said before, no.

14 MR. HALEY: I don't have anything further, Your Honor.

15 THE COURT: Redirect?

16 MS. ADEMOLA: Nothing further at this time, Your
17 Honor.

18 THE COURT: You're excused. Thank you.

19 MS. MATTHEWS: Plaintiffs call their next witness.

11:06 20 Franckel Isme.

21 FRANCKEL ISME, Sworn

22 THE CLERK: Can you please state your name and spell
23 your last name for the record.

24 THE WITNESS: My name is Franckel Isme. Isme,
25 I-s-m-e. Franckel, F-r-a-n-c-k-e-l.

1 DIRECT EXAMINATION BY MS. MATTHEWS:

2 Q. Good morning, Mr. Isme.

3 Where did you grow up, Mr. Isme?

4 A. I grew up in Les Irois.

5 Q. Have you always lived in Les Irois?

6 A. Yes, I live in Les Irois.

7 Q. Did you have any family in Les Irois growing up?

8 A. Yes, I grew up with my family.

9 Q. Are you related to any of the plaintiffs in this case?

11:08 10 A. Yes, I do.

11 INTERPRETER: Your Honor, may the interpreter ask him
12 to repeat what he added.

13 THE COURT: Yes.

14 A. Yes. I have my cousin who is in the case, who is a
15 plaintiff.

16 Q. Which of your cousins is a plaintiff in this case?

17 A. Juders Ysemé.

18 Q. And while you were growing up in Les Irois, what was life
19 like?

11:09 20 A. It was a very beautiful life in Les Irois. Things were
21 very comfortable when we were growing up. We would fill days
22 where we would go to the beach, we would eat mangos and do
23 things together. Things were very beautiful back then.

24 Q. And what do you do for a living, Mr. Isme?

25 A. I'm a farmer. I grow food and I am also a cattle raiser.

1 Q. Do you know the defendant in this case, Jean Morose
2 Viliena?

3 A. Yes, I do recognize him, Jean Morose Viliena.

4 Q. How do you know the defendant?

5 A. I recognize the defendant. It's a young man who grew up
6 with us in the city, and I went to the same school where he
7 went to school, although we're not in the same class, in the
8 same grade.

9 Q. In 2006, did Les Irois hold elections for mayor?

11:11 10 A. Yes, there was a mayor election in 2006.

11 Q. Do you recall who the candidates for mayor were in 2006?

12 A. Yes.

13 Q. Who were they?

14 A. The candidates were William Jean Lebon, Jean Morose
15 Viliena and Renault Vaillant.

16 Q. Did you vote in the election, Mr. Isme?

17 A. Yes, I did.

18 Q. Who did you vote for?

19 INTERPRETER: Your Honor, this is the interpreter. I
11:12 20 apologize. Can I please get the middle name of William Lebon.
21 May I?

22 THE COURT: Yes. I'm sorry.

23 A. Jean. It's Mr. William Jean Lebon. My apology.

24 Q. And the candidate you voted for in the 2006 election,
25 Mr. William Lebon, which political party did he belong to?

1 A. Mr. William Jean Lebon was on the OPL platform.

2 Q. And what does OPL stand for?

3 A. It's the people -- Struggling People's Party.

4 Q. Were you a member of the Struggling People's Party,
5 Mr. Isme?

6 A. No.

7 Q. In 2006, when Defendant Viliena ran for mayor of Les
8 Irois, do you know what political party he was running for?

9 A. Yes.

11:14 10 Q. Which party?

11 A. MODEREH.

12 Q. And who won the election for mayor in 2006?

13 A. Defendant Jean Morose Viliena.

14 Q. When Defendant Viliena first became the mayor of Les
15 Irois, do you know if he hired any individuals to work for him?

16 A. Definitely, yes, because at the City Hall there are many
17 jobs open and available. He can't do all of the jobs himself.

18 Q. Do you know who he employed in the Mayoral Hall?

19 A. I don't know. I never worked, I was never inside the City
11:16 20 Hall, so I don't know who were all the employees, but I know
21 there was Maxene Vilsaint worked there as an employee.

22 Q. Do you know any other of the employees at the Mayoral Hall
23 while Viliena was mayor?

24 A. No.

25 Q. When Defendant Viliena became mayor of Les Irois, did

1 things change?

2 A. Yes.

3 Q. How did things change in Les Irois?

4 A. There was always some hot discussions going on, a lot of
5 altercations, the city became upsidedown.

6 Q. Moving now to the radio station in Les Irois. Are you
7 familiar with the community radio station called New Vision?

8 A. Yes.

9 Q. When did you first hear about the possibility of a radio
11:18 10 station being established in Les Irois?

11 A. The first time I heard about it was during the election
12 campaign of Deputy Orelie Joaquim.

13 Q. And what did you hear during the campaign of Deputy
14 Orelie about a radio station in Les Irois?

15 A. The candidate Orelie used to say for a long time, he used
16 to say, "Dame-Marie, you have one. Anse d'Hainault, you have
17 two. What about you," referring to the neighboring city, "When
18 will you have one?" So they were competing.

19 Q. How did --

11:19 20 A. After, when he became candidate and we told him in order
21 for us to vote for him, he needed to establish a radio station
22 in Les Irois, and he agreed that he could keep that promise.

23 Q. Was Deputy Orelie associated with a political party?

24 A. Yes.

25 Q. Which political party was he associated with?

1 A. OPL.

2 Q. By "OPL," do you mean the Struggling People's Party?

3 A. Yes.

4 Q. How did you feel about the possibility of a radio station
5 being established in Les Irois?

6 A. I don't need to tell you how wonderful that was for us.
7 The population was very happy because we never, we didn't have
8 a radio to disseminate the news, for the children, and to have
9 any entertainment. So that was a great prospect.

11:21 10 Q. Before the radio station was established, did you
11 participate in any meetings between Defendant Viliena and
12 Deputy Orelieen about the radio station?

13 A. Yes.

14 Q. Where was this meeting held?

15 A. At the school, St. Joseph's School in Les Irois.

16 Q. And what happened at this meeting?

17 A. Deputy Orelieen sat down with Mayor Viliena about the
18 disbursement of a fund to establish the radio station.

19 Q. And what did Mayor Viliena do during this meeting?

11:23 20 A. When he stood up to speak at the meeting, he said a radio
21 station was not a possibility for him for the moment, that
22 wasn't a priority, and he left.

23 Q. And was a radio station ever established in Les Irois?

24 A. Yes. Deputy Orelieen established a radio station.

25 Q. Are you aware of any other conversations between Deputy

1 Orelien and Defendant Viliena regarding the radio station?

2 A. Yes, there was a discussion, a debate on the radio.

3 To be more clear, it was Deputy Orelien who was speaking
4 over the phone with the mayor, Mayor Viliena, on the radio on a
5 show that was airing on the radio station.

6 Q. Did you hear the conversation airing on the radio?

7 A. Yes, I heard, and the public also heard because it was a
8 live show.

9 Q. What did Defendant Viliena say on the radio to Deputy
10 Orelien?

11:25

11 A. He was replying to Deputy Orelien, and he told him that
12 while you are talking about the radio, the radio is something
13 that would be destroyed, and I will surely destroy or shut it
14 down.

15 Q. What radio station were you listening to when you heard
16 Defendant Viliena say that he would surely destroy the radio
17 station?

18 A. New Vision Radio.

19 Q. And after the on-the-air discussion over the radio, did
11:26 20 you witness any other discussions between Deputy Orelien and
21 Defendant Viliena regarding the radio station?

22 A. Yes.

23 Q. Were you present at this meeting?

24 A. Yes.

25 Q. Where did this meeting take place?

1 A. It took place at a nightclub they call Boya Nightclub.

2 Q. And what happened during this meeting between Deputy
3 Orelieu and Defendant Viliena?

4 A. At that meeting, Deputy Orelieu did not want the radio to
5 be destroyed, to be shut down. He had invited a few
6 authorities from the department of Jérémie, the prosecutor from
7 Jérémie. There was also the chief officer from the police,
8 from the precinct, and also some other authorities, some other
9 officials. There was also another deputy elected like himself
10 for the department of Grand'Anse.

11:28

11 Q. And how did this meeting end?

12 A. The way the meeting ended, after everything was said, the
13 authorities were present, the Mayor Viliena was present, Deputy
14 Orelieu, they left to go on a visit of the site of where the
15 radio station is located.

16 Q. And did you go with them to the radio station?

17 A. Yes.

18 Q. What did Defendant Viliena do during this visit to the
19 radio station?

11:29

20 A. The prosecutor, when we arrive at the radio station, was
21 talking to the mayor and said, "Please make yourself
22 comfortable. Take a look around. Look at everything that's in
23 the radio station. Please make a tour or verification of what
24 radio is equipped with." And the mayor was taking notes, like
25 the attorney general was saying, "Look, this is our laptop."

1 INTERPRETER: This is the interpreter. I don't
2 know -- never mind.

3 A. This is the radio console. They made a note of all the
4 equipment that the radio station had.

5 Q. When you say "they," do you mean Defendant Viliena was
6 taking notes of everything that the radio station had?

7 A. Yes. The defendant had a pen and a notepad, and he was
8 noting everything that the radio station was equipped with.

9 Q. How did this visit to the radio station conclude? How did
11:31 10 it end?

11 A. It ended on a beautiful note. Everybody was happy, and
12 they made a beautiful speech about that the radio will not shut
13 down, it won't be destroyed. And everyone left. And the
14 authorities who came from the city of Jérémie, they got back in
15 their car and they left.

16 Q. Was Defendant Viliena told anything about the radio
17 station during that speech?

18 A. He made the promise not to destroy the radio, and they
19 invited him to have a radio show if he wanted to. And they
11:32 20 also told him that he could do what he pleased with the radio
21 as he is an authority, he had authority over the radio station.

22 Q. But they told him he couldn't destroy the radio station,
23 right?

24 MR. HALEY: Objection, Your Honor. Leading.

25 INTERPRETER: Your Honor, this is the interpreter. I

1 need a repeat.

2 THE COURT: Is your objection it was leading?

3 MR. HALEY: Yes, Your Honor.

4 THE COURT: Sustained.

5 MS. MATTHEWS: Let me rephrase the question.

6 Actually, I'll move on.

7 Q. Were you present in Les Irois on April 8, 2008?

8 A. Yes.

9 Q. Do you know Defendant Viliena's father?

11:33 10 A. Yes.

11 Q. What is Defendant Viliena's father's name?

12 A. Mr. Lissage Viliena.

13 Q. Did you see Lissage Viliena on April 8, 2008?

14 A. Yes.

15 Q. Where did you see Lissage Viliena?

16 A. On Boulevard Pont-Pigy.

17 Q. When you saw Lissage Viliena on Boulevard Pont-Pigy, where
18 were you?

19 A. I was on the boulevard, very close by.

11:34 20 Q. And whereabouts on the Boulevard Pont-Pigy were you and
21 Lissage Viliena?

22 A. I was right across from the radio station at the
23 Immaculate School. And I was pacing around right next them,
24 not too far from them.

25 Q. What did you see Lissage Viliena doing on Boulevard

1 Pont-Pigy on April 8, 2008?

2 A. Mr. Lissage Viliena had a group of people behind him, and
3 he had a gallon of sugarcane moonshine in his hand.

4 Q. What else did you see him do?

5 A. There was a tire on the street. Mr. Lissage Viliena lit
6 up a match and put fire in the tire that started smoking
7 afterwards.

8 Q. And you said that Lissage Viliena was with a group. Could
9 you see the people in the group?

11:36 10 A. I saw some of the them because I didn't go in the group to
11 see all of them who were present, but I did notice a few of
12 them.

13 Q. And could you recognize the people that you could see?

14 A. Some I could identify, yes.

15 Q. Could you name the people in the group that you could
16 identify?

17 A. Yes.

18 Q. Please name them.

19 A. I saw Mr. Lissage Viliena, Agnel Jean, Pierrot Boileau,
11:37 20 Mertitus Beaublanc, France Isme, Cedernier, to only these few.
21 And these are the ones that I saw that I'm most familiar with,
22 but there were so many others.

23 Q. Did you see Defendant Viliena that day?

24 A. Afterwards he joined the crowd.

25 Q. And where were you when you first saw Defendant Viliena

1 that day?

2 A. There were many people standing by on the boulevard.
3 There were many other people on the boulevard. So there was
4 nothing that indicated that something bad was going to happen.
5 Because I was there, standing, also just hanging out on the
6 boulevard.

7 Q. So you were still on Boulevard Pont-Pigy; is that right?

8 A. Yes.

9 Q. You said that Defendant Viliena came to join the group; is
11:39 10 that right?

11 A. Yes. He stayed there with them for a very short time.
12 Then after that he took off on his motorcycle in the direction
13 of Anse d'Hainault.

14 Q. Was he with anybody when he took off in the direction of
15 Anse d'Hainault?

16 A. Yes.

17 Q. And how was he heading towards Anse d'Hainault?

18 A. Defendant Viliena was driving the motorcycle, and he had
19 somebody else behind him, Maxene Vilsaint. And he started the
11:40 20 motorcycle. He let the crowd pass by right in front of the
21 radio station and in front of everybody who was there and took
22 off in the direct of Anse d'Hainault.

23 Q. Did Defendant Viliena return that day?

24 A. Yes. He came back the same day, maybe a bit later, an
25 hour and a half, an hour and 45 minutes later.

1 Q. And could you see him when he returned?

2 A. Yes. Everybody was still there. There was a group, the
3 public was just around, and then there was the mayoral staff
4 also. But no one knew what they were doing there, so everybody
5 was kind of like observing.

6 Q. And what happened when Defendant Viliena returned?

7 A. When he came back with Maxene Vilsaint, Maxene Vilsaint
8 had a backpack on his back, and also there was a long duffle
9 bag in between the two of them, right behind Defendant Viliena.

11:42 10 Q. Did you see what happened next?

11 A. Yes.

12 Q. What happened?

13 A. Maxene Vilsaint got off the bike first, and then the mayor
14 got off the motorcycle. Then Maxene Vilsaint took off the
15 backpack he was holding and handed it over to Mayor Jean
16 Morose.

17 Q. Did you see Defendant Viliena open the backpack?

18 A. Yes.

19 Q. What did he do with the backpack?

11:43 20 A. So when he handed over the backpack to Defendant Viliena,
21 Viliena put his hand inside the bag and started distributing,
22 he gave this to this one. He put his hand in again and gave to
23 another one. He did that a few times until he was done. Then
24 Maxene went to get the long duffle and heading over to
25 Defendant Viliena. Viliena took out a shotgun, and he held it

1 up in the air and throw it to Villeme and Villeme caught the
2 shotgun.

3 Q. What did you see Viliena taking out of the backpack?

4 INTERPRETER: I'm sorry, this is the interpreter.

5 Correction, backpack or the long bag?

6 Q. The backpack.

7 A. He was taking out handguns.

8 Q. After Defendant Viliena distributed the handguns and gave
9 the shotgun to Villeme, did you hear him say anything?

11:45 10 A. Yes, he spoke to the crowd or the mob.

11 Q. What did he say?

12 A. He made a gesture, he said, "Guys, attack." And then he
13 took the lead, and they were following him.

14 Q. Did you see Villeme do anything with the long gun that
15 Defendant Viliena gave to him?

16 A. The first thing he did, he manipulated the shotgun, and he
17 shoot it in the air. So he manipulated the shotgun and was
18 trying it and shot in the air.

19 Q. Did you see Villeme do anything else with the shotgun that
11:46 20 Defendant Viliena handed to him?

21 A. Yes.

22 Q. What did you see?

23 A. He shot Nissage with it.

24 Q. Did anything happen before he shot Nissage with it?

25 A. Well, the first -- when he first got the shotgun, he

1 manipulated, like he loaded the gun and shot in the air. And
2 then they started walking toward the radio station, the crowd
3 started walking toward the radio station.

4 Q. Before Villeme shot Nissage with the shotgun, did you hear
5 anyone say anything?

6 A. Yes, the Defendant Viliena, the Mayor Viliena spoke with
7 Villeme before Villeme shot Nissage.

8 Q. What did the mayor, Defendant Viliena, say to Villeme
9 before he shot Nissage?

11:48 10 A. He told Villeme to, "Shoot Nissage." Villeme did not do
11 anything. And he repeated again, he ordered him to shoot
12 Nissage, and Villeme still didn't shoot. And a third time, he
13 said, "I am telling you to shoot Nissage." And Villeme
14 hesitated and put the gun and kind of like aim toward Nissage's
15 leg and then he shot, and I heard Nissage say, "Damn. They
16 shot me."

17 Q. Where were you when you saw Defendant Viliena tell Villeme
18 to shoot Nissage?

19 A. At that time I had joined the whole crowd that walked
11:49 20 toward the radio station, so with the crowd, the public that
21 was looking, the onlookers, they had no issue with us looking,
22 so everybody had gotten closer to the radio station. I was on
23 the side of the street and the radio station was right there
24 across from me.

25 Q. Do you know if anyone was injured in the attack on the

1 radio station other than Nissage?

2 A. Yes, other people got injured.

3 Q. Who else was injured?

4 A. Juders Ysemé.

5 Q. Did you see Juders' injuries?

6 A. Yes. After they had been taken to the health clinic, so I
7 went to the health clinic and I saw them.

8 Q. When you said "they" were taken to the health clinic, who
9 was taken to the health clinic?

11:51 10 A. Juders' family, mom and dad took him to the health clinic.
11 And Nissage's family, his dad took him to the health clinic.

12 Q. And did you see Nissage's injuries in the health clinic?

13 A. Yes. We were friends so I went to see him. I went to his
14 bed where they had put him.

15 Q. Can you describe Nissage's injuries as you saw them when
16 you saw him in the health clinic.

17 A. When I saw him, he was in excruciating pain, lying on the
18 bed, and he was screaming, grieving and tapping or touching his
19 leg. And he was saying, "I'm dying. Please get me a doctor.

11:53 20 Get me a doctor." He was wearing a pair of jeans. They
21 removed the jeans, and I could see the leg was lifeless.

22 Q. Did you see Juders' injuries when you were in the health
23 clinic?

24 A. When I went, I saw Juders as well. Juders is my cousin.
25 He was sitting there, and I went over to him, and he was

1 sitting on a bench and holding the side of his face, holding
2 his eyes and in pain. And I put my hand on his hand and I ask
3 him, "How do you feel? How is your eye?" He said, "I lost my
4 eye. They busted my eye. They busted my eye."

5 And I was trying to see if I can see underneath. And very
6 gently, I tried to get him to allow me to look under the cloth
7 that he was holding, and I could see what looked like optic
8 fluid flowing on his face, and he had some liquid coming out of
9 the face. And he kept saying that he thinks -- and I was
11:55 10 asking him, "Can you see?" And he says, "I can't see anything.
11 I can't see."

12 MS. MATTHEWS: Thank you. I pass the witness.

13 THE COURT: Any objection to taking the break?

14 MR. HALEY: No, Your Honor.

15 THE COURT: Okay.

16 MS. MATTHEWS: That's fine, Your Honor.

17 THE COURT: I have another proceeding at noon, so I'm
18 going to endeavor to finish that and have you back by 12:30,
19 but it might be a couple of minutes after, so bear with me.
11:55 20 You're excused for lunch.

21 (Jury exits the courtroom.)

22 THE COURT: Let's shoot for 12:30, okay? You all know
23 he's on cross-examination now, so no fraternizing.

24 In terms of the objections, I'm not going to let the
25 demonstrative be admitted as an exhibit or go to the jury room.

1 And in terms of the transcript, there's very little of this
2 that I think comes in. There's some that I'm wondering,
3 Mr. Haley, if you object to, given what I'm going to let in.
4 So I'm going to let in, "I was in the hospital for six months,"
5 to the bottom of the page, which I think comes in under I think
6 it was 803.3.

7 I'm a little on the fence, Mr. Haley, about -- do you
8 have the transcript in front of you?

9 MR. HALEY: I do, Your Honor. Thank you.

11:57 10 THE COURT: If you go to the top, there was a Deputy
11 Orelieen Joaquim. The next line would be out, and then the next
12 three would be in. "So I thought it would be good. I chose to
13 let him set it up. I gave him the rooms."

14 So I'm not sure that comes in under an exception. I
15 could perhaps see my way clear to context, but I'm not sure
16 I'll do it over your objection.

17 MR. HALEY: And are we editing the video; is that what
18 we're doing?

19 MS. VANDERVALK: Your Honor, we have a few more we
11:58 20 think come in under 803.3. The statement, "Since then I can
21 say I have not been living with the dignity" --

22 THE COURT: Yes, that's what I said. "I was in the
23 hospital for six months," to the bottom of the page.

24 MS. VANDERVALK: Okay.

25 THE COURT: Four lines.

1 MS. VANDERVALK: Thank you. Our suggestion in terms
2 of editing is to just remove the subtitles from the portions of
3 the video.

4 THE COURT: No.

5 MR. HALEY: No. I'm sorry, Your Honor.

6 THE COURT: Glad you agree with me. It's nice when
7 someone does. It doesn't happen that often. I can't do it
8 like that. It's too emotive, I guess is the word.

9 MS. VANDERVALK: But Your Honor, the point of the
10 exhibit is to be emotive to show --

11 THE COURT: Yes, but it's too emotive on things that
12 are not admissible. So it's not admissible, and to show it for
13 all that time is its own prejudice.

14 So maybe the easiest thing for to you do is just, I'll
15 keep out the stuff about the radio station, which, it probably
16 doesn't properly come in, but it's really not controversial.
17 But the easier thing might be for you to just cue up the video
18 where he says, "I was in the hospital for six months." That
19 might be the easiest if you're dealing with issues of trying to
20 cut the video.

21 MS. VANDERVALK: But if we are able to cut the video
22 in time, we can include the other portion?

23 THE COURT: I'm soliciting Mr. Haley on that.

24 MR. HALEY: So the defendant's objection remains as to
25 the lack of opportunity to cross-examine. And it seems to me

1 that the presence of the deputy and the establishment of the
2 radio station have been repetitively put in evidence, so it's
3 not really adding anything to the proceeding.

4 THE COURT: I won't let it in over your objection, but
5 if you want some context for what comes after, I could see my
6 way clear to that.

7 MR. HALEY: Well, I guess the defendant is not
8 withdrawing his objection is the bottom line.

9 THE COURT: Yes, I know. I overruled your objection
10 on the last four.

11 MR. HALEY: Right.

12 THE COURT: Also, by the way, regardless of what you
13 do with the video, I'll let you identify the speaker as Martyr
14 Nissage or read the first sentence that says, "Hello World. I
15 am Martyr Nissage." And you want them to go -- I'm overruling
16 your objection on "the hospital," "the hospital" down. Given
17 that's that been overruled, do you want the narrative about the
18 radio station to come first?

19 MR. HALEY: No, Your Honor. Thank you.

12:01 20 THE COURT: Okay. So he can introduce himself and
21 then, "I was in the hospital for six months," to the bottom.
22 Okay?

23 MR. HALEY: Thank you, Your Honor.

24 MS. VANDERVALK: In terms of admitting this through
25 Nissanderé Martyr, we'd like to be clear. If there's any

1 objection to his competency to introduce this exhibit, we'd
2 like to address that now.

3 MR. HALEY: Well, my understanding is his testimony
4 would be, "I recognize my father," and that's in speaking.

5 THE COURT: It's an admitted exhibit. I've admitted
6 it, so you can play it while he's on the stand.

7 MS. VANDERVALK: Thank you.

8 THE COURT: All right. Go to lunch.

9 (Recess, 12:01 p.m. - 12:34 p.m.)

10 12:45 THE CLERK: All rise for the jury.

11 (Jury enters the courtroom.)

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

13 THE COURT: Sorry about that. Even as it was, none of
14 us got lunch though. Karen got chips, right?

15 THE CLERK: Yes, something.

16 THE COURT: Mr. Haley, you ready?

17 MR. HALEY: Yes, Your Honor. We need the witness.

18 CROSS-EXAMINATION BY MR. HALEY:

19 Q. Mr. Ysemé, who paid for your travel here to attend the
20 12:46 trial?

21 A. The attorneys.

22 Q. When did you arrive in the United States?

23 A. I came here on January 24.

24 Q. And have you been here since that time?

25 A. Yes.

1 Q. And is someone paying for your housing or hotel?

2 A. Yes.

3 Q. Who is that?

4 A. The law firm.

5 Q. And you attended a meeting with Jean Morose Viliena and
6 the deputy, Orelie, that ended with the parties shaking hands.
7 It was a meeting concerning the radio station, correct?

8 A. Yes.

9 Q. And on the day of the radio station attack on April 8,
12:47 10 2008, the crowd, there were more than a hundred people there,
11 is that correct?

12 A. Yes.

13 Q. And those people were yelling and screaming and throwing
14 things?

15 A. No.

16 Q. And do you recall giving a deposition in this action?

17 A. Yes.

18 Q. And at your deposition --

19 MR. HALEY: Counsel, I'm on page 48 at line 7.

12:48 20 Q. And my question was: "And those people were yelling and
21 screaming?"

22 And your answer was: "Yes. They were saying, 'Don't do
23 that, Mayor, please don't do that, because we have only one
24 radio station.'"

25 And then, at line 13: "And they were also throwing rocks,

1 some people were throwing rocks; is that correct?"

2 And your answer was: "Yes. While they were walking
3 toward the radio, some people were hiding. So they were
4 throwing some rocks to them so that they don't move toward the
5 radio, but this didn't prevent them to move forward."

6 THE COURT: Slow down, Mr. Haley.

7 MR. HALEY: I'm sorry.

8 A. No. They group -- the group was not throwing rocks. They
9 were heading toward the radio station. I don't think anybody
10 was throwing rocks.

11 Q. And your testimony at the time of your deposition, was
12 that truthful?

13 A. Yes. I told the truth. I'm not in this to lie.

14 Q. And you saw Villeme Duclona shoot inside the radio
15 station, is that correct?

16 A. No, not inside the radio station. On the porch where the
17 radio station was. Nissage, he shot him while I was standing
18 on the porch.

19 Q. And it was your testimony that the same bullet hit both
12:51 20 Juders and Nissage, is that correct?

21 A. No. I did not confirm that it was the same bullet, but
22 when I noticed that Nissage was struck and then I had fled
23 myself. I don't know what else was happening.

24 MR. HALEY: Counsel, I'm on page 41 at line 20.

25 Q. And my question was: "And you saw Villeme Duclona shoot

1 both Nissage Martyr and Juders Ysemé?"

2 And your answer was: "Yes, but I have to explain that it
3 was the same bullet, as is pellets, that hit both Nissage and
4 Juders."

5 A. No. Villeme shot both of them, but it was not the same
6 bullet.

7 Q. So when you testified at your deposition that it was the
8 same bullet, were you testifying truthfully?

9 A. I never said it was the same bullet. I said Villeme shot
10 Nissage and Juders.

11 Q. I'm just going to read your answer on line 22 at page 41.

12 "Yes, but I have to explain that it was the same bullet,
13 as is pellets, that hit both Nissage and Juders."

14 A. It could be that the language, my language was a bit
15 different or the translation might have been a bit off.

16 MR. HALEY: I don't have anything further, Your Honor.

17 THE COURT: Redirect?

18 MS. MATTHEWS: No, Your Honor.

19 THE COURT: You're excused.

12:56 20 MR. MCLAUGHLIN: Your Honor, plaintiffs call
21 Nissandére Martyr.

22 NISSANDÉRE MARTYR, sworn

23 THE CLERK: You can be seated.

24 Can you please state your name and spell your last
25 name for the record.

1 THE WITNESS: My name is Nissandére Martyr,
2 Nissandére, N-i-s-s-a-n-d-e-r-e, Martyr, M-a-r-t-y-r.

3 DIRECT EXAMINATION BY MR. MCLAUGHLIN:

4 Q. Good morning, Mr. Martyr.

5 A. Good morning.

6 Q. Mr. Martyr, how old are you?

7 A. I am 32 years old.

8 Q. And what is your level of education?

9 A. I finished my university in agricultural studies.

12:57 10 Q. And where were you born, Mr. Martyr?

11 A. I was born in Les Irois.

12 Q. And did you have family in Les Irois?

13 A. Yes.

14 Q. Who did you live with in Les Irois?

15 A. My father and mom's house.

16 Q. And what was your father's name?

17 A. Nissage Martyr.

18 Q. And is this the same Nissage Martyr who was an original
19 plaintiff in this lawsuit?

12:58 20 A. Yes.

21 Q. And did you have any siblings in this family home?

22 A. My mom had four girls. I was the only boy in the house.

23 Q. And your father, Nissage Martyr, how would you describe
24 him as a person?

25 A. My father, Nissage, was an honest citizen in the city of

1 Les Irois. He was the father of everyone. He loved everyone.
2 If I were to explain the kindness and goodness of my father's
3 heart, this would not be sufficient for me to tell you about
4 him.

5 Q. And growing up, what was your father's occupation?

6 A. My father was working the land, a farmer, and always he
7 was raising cattles, pigs.

8 Q. Did he financially support your household?

9 A. Yes. My father was the head of the household. He was
01:00 10 also helping other sisters, sisters he had.

11 Q. And did he support your schooling?

12 A. Yes.

13 Q. Was your education important to him?

14 A. Yes. My father believed in education and he wanted all
15 his children to be able to move forward and get an education.

16 Q. And what was your relationship like with him?

17 A. Well, growing up, my father loved me a lot, and so did I.
18 He named me after his name, Nissandére Martyr, and then -- we
19 were very close and we loved each other.

01:01 20 Q. Mr. Martyr, do you know the defendant Jean Morose Viliena?

21 A. Yes.

22 Q. How long have you known him?

23 A. Growing up -- growing up in Les Irois, I'd known the
24 defendant Jean Morose Viliena, the mayor.

25 Q. Can you identify defendant Jean Morose Viliena for the

1 jury?

2 A. Yes.

3 Q. Please do so.

4 A. This is Mayor Jean Morose Viliena.

5 MR. MCLAUGHLIN: Your Honor, let the record reflect
6 that the witness properly identified the defendant.

7 THE COURT: I think he could be a little more -- I'm
8 not sure who he identified. What he's wearing, where he's
9 sitting.

01:02 10 A. There he is. He stood up.

11 THE COURT: Okay. Yes. Now the record will reflect
12 the witness identified the defendant. Thank you.

13 MR. MCLAUGHLIN: Thank you, Your Honor.

14 Q. In 2006, did you live in Les Irois?

15 A. Yes.

16 Q. Did you live in your family home?

17 A. Yes, still at my father's house.

18 Q. And in 2006, did Les Irois hold any elections for mayor?

19 A. Yes.

01:02 20 Q. Did defendant Viliena run for mayor of Les Irois?

21 A. Yes.

22 Q. And while defendant Viliena was running for mayor in 2006,
23 did you see him in Les Irois?

24 A. Yes.

25 Q. And when you saw him, did you hear defendant Viliena state

1 whether he was running as a candidate for any political party?

2 A. Yes.

3 Q. And which political party?

4 A. It was the political party called MODEREH.

5 Q. And did you hear him say whether he was associated with
6 any other organizations when he ran for mayor of Les Irois?

7 A. Yes.

8 Q. Which organizations?

9 A. The organization by the name of KOREGA.

01:04 10 Q. And what was defendant Viliena wearing when you heard him
11 say he was associated with KOREGA?

12 A. During the electoral moment, the electoral time, he was
13 always wearing t-shirts stating "KOREGA" on it, and he was
14 always with a group of people behind him, with t-shirts, many
15 colors, that also said "KOREGA."

16 Q. Could you identify any of the individuals that were
17 standing behind him?

18 A. Yes. I know some of them. I cannot tell you all of them
19 but I've seen a few that I know.

01:05 20 Q. Can you identify them, please.

21 A. Lifaite Livert, Villeme Duclona -- Villeme Duclona, Agnel
22 Jean, Pierrot Boileau, Meritus Beaublanc, and many others.

23 Q. I want to turn your attention now to July 2007. Were you
24 living in Les Irois in 2007?

25 A. Yes.

1 Q. Were you still living in your family home?

2 A. Yes.

3 Q. Who were you living with?

4 A. My four sisters and myself as the boy.

5 Q. And was defendant Viliena the mayor of Les Irois in 2007?

6 A. Yes.

7 Q. Where were you on the morning of July 27, 2007?

8 A. I was over at my father's house.

9 Q. Do you know of a woman named Ostanie Mersier?

01:06 10 A. Yes.

11 Q. Who was she?

12 A. Ostanie Mersier was my neighbor. She lived up the other
13 side of the street from me.

14 Q. On that morning of July 27, 2007, did you see her?

15 A. Yes.

16 Q. Where were you when you saw her?

17 A. I was in front of my house.

18 Q. And how far away were you from Ostanie?

19 A. Not too far. I would say, from where I'm sitting, the
01:07 20 area where the interpreters are.

21 Q. What did you see Ostanie do that morning?

22 A. She was at her house.

23 Q. Did you see her doing anything?

24 A. Yes. She was just home.

25 Q. Were there other individuals around her?

1 A. No. She was at her house in the yard somewhere by
2 herself.

3 Q. And what was she doing in the yard at the house by
4 herself?

5 A. She was sweeping.

6 Q. Can you describe what happened next?

7 A. Yes.

8 Q. Please do.

9 A. At that moment, there was the sanitation department called
01:08 10 Voirie who was sweeping the streets. Ms. Ostanie took off a
11 little pile of garbage she was sweeping and put it on top of
12 the other garbage that was in the street. The sanitation
13 department, Voirie, did not agree for Ms. Ostanie took the
14 garbage from her house and put it on the pile that was in the
15 street. While the member of the sanitation department, called
16 Voirie, they disagreed. Some of them by foot went to get Mayor
17 Viliena and others just called him up.

18 Q. Did Defendant Viliena arrive?

19 A. Yes.

01:09 20 Q. Did you see what happened next?

21 A. Yes.

22 Q. Could you describe that, please.

23 A. While the mayor -- the mayor came. He took the pile of
24 garbage and was about to -- walking in to dump it inside
25 Ostanie's house, and then Ostanie kind of stood in his way, and

1 then he threw the garbage on her and then slapped her.

2 Q. How did Defendant Viliena slap Ostanie?

3 A. It was with rage, as if somebody he wanted to do something
4 to a long time ago, and then he just slapped her with rage.

5 And then, as I stood over there, I was witnessing this. I said
6 to myself, as a mayor, he didn't have to go grab the garbage
7 from the street and try to put it into her house, and he could
8 have just said to the employees of sanitation department,
9 that's nothing, just let it go.

01:11 10 Q. I want to turn your attention now to 2008.

11 Was defendant the mayor of Les Irois in 2008?

12 A. Yes.

13 Q. And are you familiar with a radio station in Les Irois
14 called New Vision Radio?

15 A. Yes.

16 Q. And where was the New Vision Radio station located?

17 A. It was located at my father's house.

18 Q. And how did you feel about having a radio station in your
19 home?

01:12 20 A. Myself as an educated person, I was really proud to know
21 that radio station was actually at my house.

22 Q. And was it important for Les Irois to have a radio
23 station?

24 A. Yes.

25 Q. Why?

1 A. A radio station is important to inform and -- for anything
2 that was about to happen or that is happening to disseminate
3 information to the city, and it was needed for us in the city.

4 Q. In 2008, were you continuing your studies?

5 A. Yes.

6 Q. Where?

7 A. In Anse d'Hainault.

8 Q. Did you sometimes return back to Les Irois to visit your
9 family?

01:13 10 A. Yes. On Monday, I go to school in Anse d'Hainault, and
11 during the weekend I go back to be with my family.

12 Q. In 2008, did you ever hear Defendant Viliena on the New
13 Vision Radio?

14 A. Yes. He did call at the radio station.

15 Q. And when you heard Defendant Viliena on the New Vision
16 Radio, where were you?

17 A. I was at the radio station at that time. I was in charge
18 of taking calls.

19 Q. And so -- and this is the radio station that is in your
01:14 20 family home?

21 A. Yes.

22 Q. And how do you know it was Defendant Viliena on the radio?

23 A. Not only did I know his voice, but he was also my
24 principal at the high school. I was in 7th grade there. He
25 was the principal there. Then I left and continued my

1 education in Anse d'Hainault.

2 Q. And did he identify himself on the radio?

3 A. Yes.

4 Q. And what did defendant Viliena say on the radio?

5 A. While the host of that show that time received the call
6 and then he had asked, who is it? Mayor -- the mayor
7 identified himself and said, this is Mayor Jean Morose. This
8 radio station, I will come and destroy it.

9 Q. And how did it make you feel to hear Defendant Viliena say
01:16 10 he was going to come and destroy the radio station?

11 A. I was really feeling uncomfortable because I was living
12 with my father and sisters, and to hear Mayor Viliena say
13 something like that, I was really having a tough time sleeping
14 that night.

15 Q. On the day of April 8, 2008, were you present in Les
16 Irois?

17 A. No. I was in Anse d'Hainault.

18 Q. And had you returned there for your studies?

19 A. Yes.

01:17 20 Q. And, to your knowledge, was your father in Les Irois that
21 day?

22 A. Yes. He was in Les Irois.

23 Q. Did you see your father later that day in Anse d'Hainault?

24 A. Yes.

25 Q. Where was he when you saw him?

1 A. I was at my house in Anse d'Hainault.

2 Q. And can you describe when you saw him, please.

3 A. When I was home, there was an ambulance that stopped in
4 front of my house.

5 Q. Did you go and see the ambulance?

6 A. Yes. While I stepped out and somebody lowered the car's
7 window. When I saw my father, he was drenched in blood and
8 then something tied up his leg, and he stated to me, my son,
9 I'm dying.

01:18 10 Q. Could you see his injuries?

11 A. I didn't really look anymore. I just run back inside and
12 cried.

13 Q. Were you able to accompany your father in the ambulance to
14 the hospital?

15 A. I didn't have the strength to actually do that. I stayed
16 home.

17 Q. Were you ever able to visit your father in the hospital?

18 A. No.

19 Q. Were you able to speak to your father by phone while he
01:19 20 was in the hospital?

21 A. Yes.

22 Q. And what did he say to you when you spoke to him?

23 A. He stated to me, my son, I love you so much, you and your
24 sisters and my wife. As I'm laying there in the hospital bed,
25 I feel like I'm dying.

1 Q. And after your father left the hospital, did you see him
2 in person in Les Irois?

3 A. Yes.

4 Q. And when you saw him in Les Irois for the first time after
5 he had left the hospital, what did he look like?

6 A. I saw him on crutches and he had one leg, an amputated
7 leg. I know my father had both legs. That's how God created
8 him.

9 Q. And from what you could observe, what impact did your
01:20 10 father's injuries have on his life?

11 A. I think one of the most impact it had on him is that he
12 was unable to work and provide for his children.

13 Q. And did your father's injuries impact his ability to work
14 as a farmer?

15 A. Yes.

16 Q. And how did you react seeing your father like that?

17 A. I felt that that's the end of the world for me for my life
18 because he was the one helping me through everything.

19 Q. Turning now to the year 2009.

01:21 20 Was Defendant Viliena still mayor of Les Irois in 2009?

21 A. Yes.

22 Q. Were you still continuing your studies in Anse d'Hainault?

23 A. Yes.

24 Q. Did your family still own their home in Les Irois in
25 October of 2009?

1 A. Yes.

2 Q. Did you continue to visit your family home in Les Irois?

3 A. Yes.

4 Q. Did you still keep your personal belongings in that home?

5 A. Yes.

6 Q. And did anything happen to your family home on October 29,
7 2009?

8 A. Yes, something had happened.

9 Q. What happened?

01:22 10 A. They set the radio station on fire, the house, the whole
11 house.

12 Q. When you say "the house," do you mean your family home?

13 A. Yes, my father's house.

14 Q. And after the fire, did you return to Les Irois to see
15 your family home?

16 A. It was a friend of mine, actually, who called me to inform
17 me that your house got set on fire. I said, Dahded, because
18 that's the nickname of the friend who had called me.

19 Q. And did you return to Les Irois to see your family after?

01:23 20 A. Yes, two to three weeks later I went back to Les Irois.

21 Q. And was your family home destroyed?

22 A. Yes. I saw my father's house burned down.

23 Q. And did you lose any personal possessions in the fire?

24 A. Yes.

25 Q. And did your family lose personal possessions in the fire?

1 A. Everything was gone.

2 MR. MCLAUGHLIN: I'd invite the jurors to take out
3 their screens.

4 Q. Mr. Martyr, is your father still alive today?

5 A. No.

6 Q. What year did your father die?

7 A. 2017.

8 Q. And following your father's death, did you replace him as
9 a plaintiff in this lawsuit?

01:24 10 A. Yes.

11 Q. And since replacing your father as a plaintiff in this
12 lawsuit, have you received any threats?

13 A. Yes, I did receive threats.

14 Q. Has Defendant Viliena personally threatened you?

15 A. Yes.

16 Q. Where were you when Defendant Viliena threatened you?

17 A. I was in front of my house.

18 Q. And is this in Les Irois?

19 A. Yes.

01:25 20 Q. And can you describe for the jury what happened.

21 A. Yes. It was during a soccer game. The soccer field was
22 close to my house. After the soccer game ended, I stood -- I
23 was standing outside and then Mayor Viliena was passing by with
24 his people and he pointed out to me and said, you, the son of
25 Nissage, I will shoot you if you don't calm down.

1 Q. And you said he was accompanied by others. Could you
2 identify any of those other individuals?

3 A. Yes. I can identify them.

4 Q. Can you provide their names, please.

5 A. Villeme Duclona, Lifaite Livert, Agnel Jean, Pierrot
6 Boileau, Meritus Beaublanc, and many others.

7 Q. Mr. Martyr, before your father's death, did your father
8 ever give any videotaped interviews describing the injuries he
9 suffered?

01:27 10 A. He used to tell me the press was always after him to make
11 statements about what had happened, but then he shared a few of
12 them with me, but I didn't have enough courage to watch
13 everything.

14 MR. MCLAUGHLIN: Your Honor, permission to public a
15 still screenshot of what I believe is now Exhibit 7 to the
16 witness and the jury.

17 THE COURT: Consistent with our earlier instructions?

18 MR. MCLAUGHLIN: Yes.

19 THE COURT: Yes. Go ahead.

01:28 20 Q. Mr. Martyr, do you recognize the person in this video?

21 A. Yes.

22 Q. Who is that?

23 A. My father.

24 Q. And do you recognize the clothes he's wearing?

25 A. Yes.

1 Q. How do you recognize those clothes?

2 A. While I was going to school at a place in Les Cayes, those
3 clothes are something that I brought for him. That's what he's
4 wearing.

5 MR. MCLAUGHLIN: Your Honor, permission to play the
6 video for the witness and the jury consistent with the
7 instructions?

8 THE COURT: Yes.

9 (Video recording played.)

01:29 10 MR. MCLAUGHLIN: Can we take the exhibit down, Your
11 Honor.

12 A. I will never find someone like him again, and Les Irois
13 will never find someone like that again, ever.

14 Q. Mr. Martyr, given everything you've testified to, why do
15 you choose to follow in your father's footsteps to seek justice
16 in this case?

17 A. I am seeking justice because I lost my father in a very
18 terrible way, and my father was a victim in many, many, many
19 things.

01:30 20 MR. MCLAUGHLIN: Thank you, Mr. Martyr. No further
21 questions.

22 THE COURT: Does it make sense to take a ten-minute
23 recess or do you want to go ahead, Mr. Haley?

24 MR. HALEY: I don't know that I have anything, Your
25 Honor, but I would appreciate the courtesy of the recess.

1 THE COURT: To give -- Mr. Haley has a right to
2 cross-examine and to give the witness just a chance to regroup
3 a little bit, we'll take a ten-minute recess. Okay?

4 THE CLERK: All rise for the jury.

5 (Jury exits the courtroom.)

6 THE COURT: Ten minutes, everyone.

7 (Recess, 1:32 p.m. - 1:43 p.m.)

8 THE COURT: Before I leave today, you'll have a draft
9 of the jury instructions. They're a little bit rough. I
01:43 10 haven't proofread them. I may have time to proofread them but
11 I don't know. We're still thinking about some things, so
12 consider it a working draft. And we will -- when we give you
13 anything after this, we will redline it so that you can follow
14 along with what we're changing, okay, save you guys some time.

15 MR. HALEY: Have you decided the 9:00 a.m. or 10:00
16 a.m. start time?

17 THE COURT: I will ask them when they come back. I
18 should have asked them to think about it outside.

19 THE CLERK: All rise for the jury.

01:44 20 (Jury enters the courtroom.)

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

22 THE COURT: Mr. Haley, when you're ready.

23 MR. HALEY: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. HALEY:

25 Q. Mr. Martyr, do you have a stepbrother named Kenson Martyr?

1 A. Yes.

2 Q. Your father Nissage was also the father of Kenson,
3 correct?

4 A. Yes.

5 Q. Are you aware that Kenson was charged in connection with
6 the attack on the radio station?

7 A. I'm not aware.

8 MR. HALEY: Thank you. I don't have anything further,
9 Your Honor.

01:45 10 THE COURT: Redirect?

11 MR. MCLAUGHLIN: No.

12 THE COURT: He's excused.

13 MR. MCLAUGHLIN: This concludes plaintiff's
14 case-in-chief, Your Honor.

15 THE COURT: So plaintiffs have rested. Because we
16 are, I'd say, at least on schedule, but we're actually ahead of
17 schedule, we're going to conclude for the day. Defendant will
18 put on his case tomorrow. We'll go as long tomorrow as his
19 case takes to put on. Then we'll do charge and close on Monday
01:46 20 morning.

21 Did you all have a chance to discuss amongst your
22 yourselves whether you want to start at 9:00 or 10:00 tomorrow?
23 Either 9:00 to 1:00 or 10:00 to whenever we finish.

24 JUROR: 10:00.

25 THE COURT: I don't think it will be a full day

1 tomorrow. I was just telling these guys I agreed to do this
2 crazy federal breakfast tomorrow. Everybody said, are you
3 going to be serving green beer? Not at breakfast. We might be
4 having green eggs and ham but we will not be having green beer.

5 All right. You're going to get this instruction two
6 more times from me, and I feel like each time it gets more and
7 more important because at this time, you have heard the
8 plaintiffs' case but not the defendant's case. So I want you
9 to keep an open mind until they other side has had a chance to
01:47 10 present their case as well. The closer we get to the end, the
11 harder it is to keep an open mind. You really have to keep an
12 open mind because it's not fair to them if you start making up
13 your mind before you hear the other side. So keep an open
14 mind.

15 Don't talk to anybody about the case. And no
16 extracurricular research. And we will see you at 10:00 a.m.
17 tomorrow.

18 THE CLERK: All rise for the jury.

19 (Jury exits the courtroom.)

01:47 20 MR. HALEY: Your Honor, the defendant intends to move
21 for a directed verdict in accordance with Rule 50. I'll file
22 my papers tonight. And if it's agreeable to the Court, the
23 Court can address it before the start tomorrow.

24 THE COURT: Okay.

25 Anything else for today?

1 MS. LAU: Not from plaintiffs, Your Honor.

2 MR. HALEY: Nothing for the defendant, Your Honor.

3 THE COURT: Okay. So I'll be on the bench as close to
4 9:00 as I can tomorrow. We'll get you a draft of the
5 instructions tonight. To the extent we can start to go through
6 those so I can think about them during the day tomorrow, I'll
7 take whatever part of the hour we have tomorrow morning to do
8 that once we're done with your motion. Okay?

9 MR. HALEY: Thank you, Your Honor.

01:48 10 THE COURT: All right, gang. Happy Saint Patrick's
11 Day Eve.

12 MS. LAU: Thank you, Your Honor.

13 MR. HALEY: Thank you, Your Honor.

14 (The Honorable Court exited.)

15 (Adjourned, 1:49 p.m.)
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CERTIFICATE OF OFFICIAL REPORTERS

We, Kelly Mortellite and Kristin Kelley, court reporters 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 our skill and ability.

Dated this 16th day of March, 2023.

/s/ Kelly Mortellite

/s/ Kristin Kelley
