

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 FIVE

March 17, 2023  
9:19 a.m.

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

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WITNESS

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

1  
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 17, 2023.)

8 MS. LAU: Good morning, Your Honor.

9 THE CLERK: You can be seated.

10 THE COURT: Okay. Mr. Haley can go first today for  
11 showing up at my breakfast.

12 MR. HALEY: Good morning, Your Honor. Your Honor, I  
13 think with respect to pretrial matters, we have the defendant's  
14 motion under Rule 50(a) for the entry of a judgment as a matter  
15 of law. We have a dispute about a piece of evidence that  
16 relates now to punitive damages. We have the plaintiffs'  
17 proffer with respect to the conspiracy elements that was filed  
18 last night. And then I guess general scheduling, which I think  
19 we understand. If it pleases the court, I could proceed to  
20 argue my Rule 50(a) motion.

21 THE COURT: Okay. Or do you have something you want  
22 to do first?

23 MS. VANDERVALK: No. That's fine, Your Honor. Thank  
24 you.

25 MR. HALEY: Thank you, Your Honor. Your Honor, the

1 defendant makes a motion under Rule 50(a) for the entry of  
2 judgment as a matter of law. In the first instance, with  
3 respect to the issue of arson, this is the one count that  
4 doesn't fall under the Uniform Victim Torture Act. It's a  
5 count under the law of Haiti. With respect to the law of  
6 Haiti, we have heard expert evidence from Mr. Concannon as to  
7 that law and, as the court's proposed jury instruction  
8 reflects, arson revolves around intentionally lighting fire to  
9 a building that is inhabited or has been inhabited.

10           There has not been any evidence that that law in the  
11 country of Haiti would extend to aiding and abetting or  
12 secondary liability. No one asked Mr. Concannon while he was  
13 on the stand is there also liability under the law of Haiti for  
14 aiding and abetting, directing and ordering. The evidence  
15 that's been adduced by the plaintiffs in their case-in-chief  
16 has not indicated that the defendant was present in Les Irois  
17 at the time of the alleged arsons. Instead it is a secondary  
18 liability. And absent the culpability under the law of Haiti,  
19 the defendant believes that an instruction for judgment as a  
20 matter of law under that count would be appropriate.

21           Going further, of course, and assuming that the court  
22 were to ignore the Haitian law issues and graft onto the law of  
23 Haiti the secondary liability aspects of federal law itself,  
24 the Supreme Court has been relatively direct in instructing  
25 that when secondary liability arises, it should arise under the

1 terms of the statute and not be ad hoc grafted on in that  
2 manner. But if the court were to proceed in that fashion, the  
3 evidence adduced by the plaintiffs have not demonstrated that a  
4 reasonable jury could find liability. The evidence that has  
5 been adduced, indulging for the moment the screen play break  
6 where people hear somebody saying, I just heard Peter Justin  
7 Haley committing a violation of Section 2 of the Uniform Victim  
8 Torture Act. Is that what you want me to do? Ignoring the  
9 credulity of that evidence for the moment and indulging the  
10 evidence as presented.

11 What hasn't been adduced by the plaintiffs and doesn't  
12 follow is that the person who received that phone call, one,  
13 the defendant believes that the evidence as to the recipients  
14 of that phone call has not been adduced with sufficient  
15 specificity to identify who those secondary actors will be.  
16 And furthermore, there's been no evidence whatsoever that those  
17 secondary actors themselves lit a building on fire or committed  
18 the arson. There's evidence that there were multiple fires,  
19 that there was arson going on. There's general evidence, as we  
20 have heard repeatedly, as to a crew or a group, but there isn't  
21 evidence that Joe Smith received a phone call and then I saw  
22 Joe Smith light this building on fire.

23 It's not enough that the phone call itself exists.  
24 There needs to be some follow-up act by the alleged secondary  
25 actor committing the tort itself, and here that just hasn't

1    been demonstrated with sufficient particularity.  There's also  
2    a notable lack of any evidence as to the value of the  
3    residences or the damages.

4           With respect to the Uniform Victim Torture Act, as the  
5    defendant has argued previously, the defendant believes that  
6    the law does not permit the establishment of secondary  
7    liability with respect to that.

8           And then further, assuming that the court finds the  
9    secondary liability would be appropriate, as some other courts  
10   have done, then in that instance the issue is whether or not  
11   the secondary actor was acting in accordance with the authority  
12   of the defendant.

13           Here, the secondary actor with respect to the shots  
14   fired at the radio station attack has been identified as  
15   Mr. Villeme Duclona.  Mr. Duclona was not and there's no  
16   evidence that he has been an employee of the mayoralty or  
17   otherwise in a relationship with respect to the defendant that  
18   the defendant had the ability to control his actions.  It's  
19   clear from the law in the First Circuit that mere presence at  
20   the scene of the act isn't sufficient to establish the  
21   association between the principal and the accused aider and  
22   abettor.

23           With respect to the death of Ecclesiaste Boniface, the  
24   same issue exists.  In this instance, the secondary actor, the  
25   testimony has been a little cloudy with respect to the identity

1 of the secondary actor, but that actor, indulging the testimony  
2 in the light most favorable to the plaintiffs, was Hautefort  
3 Bajon. Mr. Bajon was the general secretary of the Mayoral Hall  
4 at the time but there isn't any evidence that he was carrying  
5 out his acts in accordance with that role or part of that  
6 issue.

7 Further, the Uniform Victim Torture Act has a state  
8 actor requirement. It's not enough that, you know, that in a  
9 fit of drunken rage or something else I go out and run somebody  
10 over with my car or shoot them or take some act that otherwise  
11 would have culpability under ordinary tort law in the United  
12 States or in the country of Haiti. I must do it as a state  
13 actor. I must be carrying out some state role with respect to  
14 that act. And then the court looks to principles of agency law  
15 and jurisprudence under Section 1983 that an individual is  
16 acting under the color of law and he does so when he acts  
17 together with state officials or with significant state aid and  
18 that the offending actions derive from an exercise of the state  
19 power.

20 So again, indulging the evidence in the light most  
21 favorable to the plaintiffs here, there was a hearing in front  
22 of a magistrate judge with respect to the issuance of a trash  
23 citation. Mr. Boniface was present at the hearing. He made  
24 some statements at the hearing, and there were some verbal  
25 threats made with respect to him. But there isn't any purpose,

1 motive or reason why the defendant needs to accost a  
2 25-year-year-old who is making himself evident at a hearing  
3 because he was threatened, because, you know, it was going to  
4 inure to his pecuniary benefit or his political benefit.

5 The case has been presented in a way in which it is  
6 portrayed, at its outset and in the complaint and by the  
7 arguments of counsel and their witnesses, that this is a case  
8 where Mr. -- where the defendant as a representative of KOREGA  
9 and other malign forces is engaged in a battle with the forces  
10 of the Struggling People's Party. And yet, the testimony is  
11 that David Boniface was not a member of the Struggling People's  
12 Party, that Juders Ysemé was not a member of the Struggling  
13 People's Party, that Nissage Martyr was not a member of the  
14 Struggling People's Party. And when Juders Ysemé is asked on  
15 examination was it your understanding that the radio station  
16 was an arm of or was in place to promulgate the Struggling  
17 People's Party, his response to that inquiry is no.

18 There's a lack of evidence that a reasonable jury  
19 could conclude that the defendant's acts as alleged were as  
20 part of a state actor. The defendant has also made arguments,  
21 which it's made previously, with respect to the lack of  
22 jurisdiction and the role of David Boniface as a state actor.

23 It is not the practice of courts, where a jury is  
24 present, to grant Rule 50(a) motions. And they're not granted  
25 for two reasons. The first reason is it seems rude to 12

1 people who come in from the street, listen patiently to all the  
2 arguments being made, to take it away from them at the last  
3 moment.

4           And the second and more important reason is that we  
5 are always educated and informed by the response of the jury.  
6 So the rationale is, one, I should -- one, the court should let  
7 them continue their participation and honor the work they've  
8 done and let them weigh in. And two, the court can always  
9 correct it later under Rule 50(b) if the court is so offended  
10 by the verdict or -- not offended but finds that the verdict is  
11 against the weight of the evidence.

12           But there isn't any jurisprudence, nor anything in the  
13 law, that would support that habit or practice of being  
14 deferential to the concerns of the jury. It is an appropriate  
15 concern. It makes sense. But it also inflicts a penalty on  
16 the defendant at the same time. Because once the jury comes  
17 back, nothing is the same. And even if the court might be  
18 inclined to grant a Rule 50(a) motion but says we'll wait to  
19 hear from the jury, and the jury comes back the other way,  
20 because it has acted unreasonably, it becomes elementally more  
21 difficult to enter that Rule 50(b) motion. And juries act  
22 unreasonably all the time. We've had to build this whole  
23 appellate court system to deal with the fact that juries act  
24 unreasonably. But that system, although it acts as a backstop,  
25 has its own time delay, costs and penalties, and that is the

1 reason why Rule 50(a) exists and why in this case it would be  
2 appropriate for the court to exercise its powers under Rule  
3 50(a) and enter judgment on behalf of the defendant, dismissing  
4 the counts against him.

5 MS. VANDERVALK: Your Honor, plaintiffs oppose  
6 defendant's motion for judgment as a matter of law. Plaintiffs  
7 have put on sufficient evidence that a reasonable jury could  
8 and would find defendant liable for all the claims asserted  
9 against him.

10 With respect to arson, I did not see any argument in  
11 Mr. Haley's brief regarding secondary liability, but the  
12 elements for arson are clear, which is that someone  
13 intentionally set fire to a building while that building was  
14 inhabited or serving residential purposes, and that's satisfied  
15 here.

16 Defendant also argues, without any legal support, that  
17 plaintiffs must identify the individuals that were directly  
18 liable in order to establish defendant's secondary liability.  
19 No such requirement exists. But defendant does not dispute  
20 that plaintiffs have put on evidence tying defendant to the  
21 crimes, including Juders' testimony that he heard Viliena on  
22 the phone directing his associates to burn down Juders' and  
23 Nissage's houses. Juders also testified that he heard the  
24 mayor's voice. The Mers testimony was that he heard Viliena on  
25 the phone directing his associates which homes to burn down and

1 that the people committing the arson were addressing him as  
2 mayor.

3 With respect to attempted extrajudicial killing, as  
4 this court has recognized, it's well established that the TVPA  
5 allows secondary liability. This is something that the Supreme  
6 Court has addressed. Defendant argues that there has been no  
7 evidence from which the jury could find that the defendant had  
8 the ability to control or direct the actions of Mr. Duclona or  
9 that the defendant otherwise took actions consistent with the  
10 requirements to establish solicitation, conspiracy or aiding  
11 and abetting liability. This is patently incorrect. Mers  
12 Ysemé, Vilfranc Larrieux, Jean Denais Laguerre and Franckel  
13 Isme all testified that they saw Defendant Viliena give a  
14 shotgun to Villeme Duclona. Juders testified that Viliena told  
15 Duclona to shoot Juders. Mers testified that Viliena told  
16 Duclona to shoot Nissage. Franckel Isme testified that Viliena  
17 told Duclona three times to shoot Nissage. This is more than  
18 sufficient evidence to support claims under all four types of  
19 secondary liability. He directed, he ordered, he urged, he  
20 gave substantial assistance to shoot Nissage and Juders, and he  
21 conspired with Villeme to attack the radio station.

22 With respect to the extrajudicial killing, defendant  
23 implies in its motion that the factual allegations in  
24 plaintiffs' 2017 complaint have limited their extrajudicial  
25 killing claims to secondary liability only. This is incorrect.

1 The eyewitness testimony of Osephita Lebon evidences  
2 defendant's direct liability for the extrajudicial killing.  
3 Osephita testified that she saw Defendant Viliena shoot  
4 Ecclesiaste Boniface. The eyewitness testimony of Mers Ysemé  
5 evidences defendant's secondary liability for the death of  
6 Ecclesiaste Boniface. Mers testified that he saw Hautefort  
7 Bajon shoot Ecclesiaste and that Defendant Viliena directed  
8 Hautefort to shoot Ecclesiaste.

9 With respect to color of law, defendant argues that  
10 plaintiffs have failed to introduce any evidence from which a  
11 jury could reasonably conclude that Defendant Viliena was a  
12 state actor and in his briefing further states that the acts  
13 could not have been accomplished absent the exercise of such  
14 power. This misstates the law and attempts to require but-for  
15 causation where no such requirement exists.

16 Plaintiffs have put on overwhelming evidence of  
17 Defendant Viliena's use of his position as mayor to perpetrate  
18 the acts at issue in this case. Numerous witnesses testified  
19 that Viliena was mayor of Les Irois when all three incidents  
20 happened. Osephita Lebon testified that a mayor has authority  
21 over his team. Quote, what he says, tells them to do, they do.  
22 Expert Bob Maguire provided his opinion that MODEREH fits the  
23 profile of a political group supported by a community-based  
24 arms group that rewards with jobs and weapons.

25 Specifically, with respect to the killing of

1 Ecclesiaste Boniface, the killing was the escalation of a  
2 dispute regarding Viliena's management of the sanitation crew  
3 and David Boniface's subsequent questioning of his authority as  
4 mayor to slap Ostanie Mers for putting her trash in the street.  
5 These events are described in the testimony of David Boniface,  
6 Osephita Lebon, Mers Ysemé and Nissage Martyr.

7 Defendant has stipulated that Hautefort Bajon worked  
8 in the mayor's office as a general secretary. Defendant  
9 Viliena was accompanied by Hautefort Bajon both to Judge Bell's  
10 house, where David Boniface was threatened, and to Boniface's  
11 house, where Ecclesiaste was killed.

12 With respect to the attempted extrajudicial killing of  
13 Nissage Martyr and Juders Ysemé, Vilfranc Larrieux and Jean  
14 Denais Laguerre testified that the mayor asked the civil  
15 protection office to take control of the radio station.  
16 Vilfranc Larrieux and Franckel Isme testified that attempts to  
17 mediate defendant's opposition to the radio station failed.  
18 Numerous witnesses described that Viliena was a member of the  
19 MODEREH party and was backed by KOREGA.

20 Numerous witnesses have testified that New Vision  
21 Radio was supported by the Struggling People's Party. Mers  
22 Ysemé, Vilfranc Larrieux, Jean Denais Laguerre and Franckel  
23 Isme all testified that Viliena gave a shotgun to Villeme  
24 Duclona. And as I stated earlier, Juders Mers and Franckel  
25 also testified that Viliena instructed Duclona to shoot.

1           Regarding the standing of David Boniface, defendants  
2 claim that plaintiffs have adduced no evidence from which a  
3 jury could find that David Boniface is a proper claimant.  
4 Defendant bears the burden of raising and proving lack of  
5 standing. David Boniface is not required to put on affirmative  
6 evidence of standing at this trial.

7           Your Honor, we ask that the court deny defendant's  
8 motion for judgment as a matter of law.

9           THE COURT: Okay. I'm not going to rule on that from  
10 the bench. We'll take it under advisement and either rule on  
11 it or we won't. I may -- I hear your points on everything  
12 changes after the jury and you're not wrong about that, but I  
13 don't know that I'll rule on it. I may reserve on it until  
14 after the verdict comes back.

15           MR. HALEY: Understood, Your Honor.

16           Your Honor, I think the next item on our agenda, the  
17 court has included in its instructions an instruction for  
18 punitive damages which makes the point that the defendant bears  
19 the burden of establishing his indigency.

20           At the outset of this trial, defendant asked for  
21 permission to refer to his indigency at the time of the opening  
22 by making reference to the appointment of his court-appointed  
23 lawyer. The court instructed counsel that no, that would alert  
24 the jury that the defendant is indigent. That has no relevance  
25 to this proceeding.

1           It now appears that it is relevant to this proceeding,  
2 although the defendant reserves the objections he has with  
3 respect to the applicability of punitive damages under the law.  
4 As such, the defendant would now like to adduce testimony on  
5 his direct examination that he is the beneficiary of a court-  
6 appointed lawyer that arises out of his indigency.

7           And second, that he would like to introduce into  
8 evidence the statement from his most recent bank statement from  
9 the Bank of America showing a balance of \$363. Plaintiffs  
10 object to the introduction of the bank statement on the grounds  
11 that it was not previously provided to them or indicated as an  
12 exhibit at trial. As a matter of fairness, the defendant would  
13 ask that the court allow the defendant, one, to solicit  
14 testimony as to his indigency, the presence of a  
15 court-appointed lawyer, and to allow him to introduce into  
16 evidence his current bank statement.

17           MS. VANDERVALK: Your Honor, plaintiffs oppose  
18 notifying the jury of defendant's indigent status. If that is  
19 his status, our understanding was no investigation had been  
20 made prior to appointing him counsel in this case. And also,  
21 that was five years ago. I think it would be highly  
22 prejudicial to introduce this information to the jury.

23           With respect to defendant's bank statement, this was  
24 received for the first time last night. It was not timely  
25 disclosed as an exhibit. It should have been disclosed back on

1 February 2. But even more, it's an untimely discovery response  
2 because we served an RFP I think back in 2019 asking for any  
3 documents relating to real property, bank accounts, trusts, et  
4 cetera, et cetera, and defendant objected as overbroad and  
5 unfair invasion of his privacy, irrelevant to this action, and  
6 made for the purposes of harassment. Defendant never produced  
7 these documents. We did not have an opportunity to depose him  
8 on this, and it is not reasonable for them to produce this on  
9 the eve of putting him on the stand.

10 Further, the document provided is just one page of an  
11 eight-page statement. It appears that at least part of it has  
12 been redacted, the account number. We don't know what else has  
13 been because it's not clearly marked. So we have authenticity  
14 concerns as well. So we ask that this proposed exhibit be  
15 excluded.

16 MR. HALEY: Your Honor, briefly with respect to the  
17 document itself, yes, the account number has been redacted, as  
18 the defendant understands that that's a requirement of practice  
19 within this court. And second, I do have the complete  
20 eight-page document if that's an issue.

21 THE COURT: All right. He can testify about his  
22 financial status and financial resources. The ruling about the  
23 fact that you have been appointed didn't go to the financial  
24 argument. It went to creating the impression that you weren't  
25 happy to be here, which, when you say -- there was an aspect to

1 that where it makes it sound like "I have to be here because  
2 I'm representing him," which is what I was concerned about.

3 If you want to adduce the fact that you're appointed  
4 counsel or pro bono counsel during his testimony in connection  
5 with his financial status, you can do that. Your clients  
6 testified that their lawyers were pro bono, too. So let's go  
7 with that, that they're not paying for counsel and they're not  
8 paying for counsel.

9 MS. VANDERVALK: Your Honor, we think this is unduly  
10 prejudicial. The appointment in this case had nothing to do  
11 with his indigency, and we don't think that there was really  
12 any investigation or confirmation that he is, in fact,  
13 indigent.

14 THE COURT: Well, I don't know if he's indigent or  
15 not, and you can cross-examine on that. I mean, your clients  
16 have been all over saying they're not paying for counsel and  
17 their expenses are being picked up. So tit for tat on that.

18 MS. VANDERVALK: I mean, this is at Mr. Haley's  
19 prompting.

20 THE COURT: Well, I'm not sure that's all true, but  
21 I'm going to let him have that but not -- and you can  
22 cross-examine on it. And the document is not going to come in  
23 because it's late. He can testify to it but it's  
24 late-produced. They don't have any opportunity to go and see  
25 if earlier statements reflect that money has been moved to

1 produce this statement. They haven't had an opportunity to  
2 depose him on it. So, no document, but you can elicit the  
3 testimony.

4 As long as we're on the punitive damage instruction,  
5 so I haven't ever -- I've put in what plaintiffs asked for in  
6 large part because it's -- but I've never seen some of it. I  
7 just want to make sure that we're right on this. I have never  
8 seen this idea that the ratio of punitive damages can exceed  
9 nine to one. Is that a statute?

10 MS. VANDERVALK: Ms. Matthews can address that.

11 THE COURT: Are there specific cases?

12 MS. MATTHEWS: Your Honor, I believe that's drawn from  
13 the Supreme Court cases around punitive damages and how -- what  
14 is required by due process. So we just want to make sure that  
15 any award is proper and in line with the Supreme Court's  
16 requirements around due process.

17 THE COURT: There's a Supreme Court case that has that  
18 nine-to-one ratio in it, or are you saying it has to be  
19 reasonable and related?

20 MS. MATTHEWS: State Farm Mutual says it has to be a  
21 single-digit multiplier.

22 THE COURT: Okay. So I put it in. I just didn't know  
23 that. I had never seen that before.

24 And then I also added about being able to consider the  
25 financial resources of the defendant, but I'm not familiar with

1 that either. I mean, usually you instruct the jury not to  
2 consider ability to pay. Is that -- I'm sure it exists. I  
3 just haven't seen it before.

4 MS. MATTHEWS: I'd have to go look up the citation,  
5 Your Honor.

6 THE COURT: It's your request. If anything, it's to  
7 your detriment, so I've included it, but I just thought to  
8 educate myself.

9 MS. MATTHEWS: We can strike it, Your Honor.

10 THE COURT: No, I'm not going to strike it because you  
11 asked for it and now you have it and now he's relying on it.  
12 But the only instruction I've ever given with regards to this  
13 is that you should not consider the ability to pay.

14 MR. HALEY: It's common in the assessment of punitive  
15 damages, you see it most frequently with respect to large  
16 corporations where the market value of the corporation, so the  
17 argument being made is always in order to inflict real pain on  
18 the defendant who is worth \$50 billion, it's appropriate that  
19 your punitive damages be some percentage of that \$50 billion  
20 net worth. So the case law that arises out of it all relates  
21 to whether it's appropriate to consider corporate wealth in  
22 considering punitive damages, and generally courts have found  
23 that it is.

24 THE COURT: Okay. Well, they asked for it and now  
25 they have it.

1           In terms of -- so we'll go over the instructions.  If  
2 we have a few minutes to do it now, we can start, or we can  
3 wait until after, but I take your points, Mr. Haley, and  
4 they're well argued.  I think the only thing I really kind of  
5 adopted wholesale from your objections was -- I mean, I did  
6 some tinkering around the margins.  I took out the language  
7 that reminds them on every instruction that they can consider  
8 circumstantial evidence because they're sort of getting every  
9 instruction once.  I'm not going to overemphasize one over  
10 another by repeating it.  So they'll get the direct and  
11 circumstantial evidence instruction but I took out the  
12 references to it.  I left it in for the conspiracy count  
13 because conspiracy counts are a little bit different in that  
14 regard, but otherwise I took it out.

15           You guys want any -- do you want to start on the  
16 charge, or do you want to take ten minutes and we'll do the  
17 charge at the close of the day?  Is that easier?

18           MR. HALEY:  The defendant would prefer option B.

19           MS. MATTHEWS:  We're ready to go now, Your Honor.

20           THE COURT:  We only have like seven minutes.  I  
21 don't want -- let me ask you one question, though.  I was  
22 thinking that if this goes super quick today, one thing that  
23 might make sense, just to kind of keep us all moving, is if I  
24 gave the first half of the charge on general instructions today  
25 just to use their time.

1 MS. LAU: Your Honor, the plaintiffs may have a  
2 rebuttal case, so I think it would be preferable to charge all  
3 at once immediately preceding the closings on Monday.

4 THE COURT: So the only thing I think is that the  
5 elements of the claims are the most important part of the  
6 charge. And they've listened to a lot of pages of kind of more  
7 standard charge. Sometimes I think it's nice to start fresh so  
8 they can really focus on the law elements.

9 It depends what time we're done today. I'm not going  
10 to keep them late today. But just for my own edification, are  
11 there any corrections to the charge up through the charge on  
12 stipulations?

13 MR. HALEY: The defendant didn't have anything, Your  
14 Honor.

15 MS. MATTHEWS: No, Your Honor. We didn't have  
16 anything.

17 THE COURT: Okay. It's just an option. Let's see  
18 where we are. I'm not going pedal to the metal today. It's  
19 Friday afternoon. But I do think they're going to be doing a  
20 lot of sitting and a lot of listening on Monday. If we can  
21 knock off sort of the less intense parts of the charge, it just  
22 might make sense to do it.

23 Do you want to take your five minutes before we get  
24 going?

25 MS. LAU: Thank you, Your Honor.

1 MR. HALEY: Thank you, Your Honor.

2 (Recess 9:50 a.m. - 9:57 a.m.)

3 (Jury enters the courtroom.)

4 THE COURT: Good morning, everybody. Mr. Haley, do  
5 you want to call your witness?

6 MR. HALEY: Yes, Your Honor. The defendant calls Jean  
7 Viliena.

8 JEAN MOROSE VILIENA, Sworn

9 THE CLERK: Can you state your name and spell your  
10 last name for the record.

11 THE WITNESS: My name is Jean Morose Viliena. Jean,  
12 J-e-a-n, Morose, M-o-r-o-s-e, Viliena, V-i-l-i-e-n-a.

13 DIRECT EXAMINATION BY MR. HALEY:

14 Q. Do you speak English, Mr. Viliena?

15 A. Yes, I speak English but I prefer to speak Creole.

16 Q. How old are you?

17 A. I am 50 years old.

18 Q. Where do you live?

19 A. I live in Malden, Massachusetts.

20 Q. Do you own a home there?

21 A. No. I'm renting.

22 Q. Are you married?

23 A. Now I'm separated.

24 Q. Do you have any children?

25 A. Yes, I have a boy.

1 Q. How old is your son?

2 A. 12 years old.

3 Q. Do you support him?

4 A. Yes, I support him. At this time he goes to school in  
5 Sacred Heart in Malden. I'm paying for his school.

6 Q. And do you have a job?

7 A. Yes, I am working.

8 Q. What is your job?

9 A. I am a truck driver.

10 Q. Who do you drive trucks for?

11 A. I drive a truck for a company named Cypress Food in Lynn.

12 Q. And the name of the employer, is it Cypress or Seacrest  
13 Food?

14 A. Seacrest Foods.

15 Q. And what hours do you work?

16 A. I start working sometimes from 3:00 a.m. or sometimes at  
17 4:00 a.m. and at times I may finish at 4:00 p.m. It depends if  
18 I complete my delivery.

19 Q. And how much do you earn there, what is your salary?

20 A. My salary is \$29 per hour.

21 Q. And what -- in terms of your assets, how much cash do you  
22 have in the bank?

23 A. For now in my bank account I would evaluate it, I may have  
24 about \$10,000.

25 Q. And I've been appointed to represent you as your lawyer by

1 the court?

2 A. Yes.

3 Q. Where were you born?

4 A. I live in -- I was born in a locality called Jogue, which  
5 is a subdivision of Les Irois.

6 Q. And what was Les Irois like when you were growing up?

7 A. Growing up in Les Irois, it was very poor. No  
8 electricity, no water, and forgive me for saying that, but the  
9 people did their natural needs on the sea and there was no  
10 police officers. It was very poor.

11 Q. What did your father do?

12 A. My father was a farmer. He worked in the third communal  
13 section in the area. And to go to that communal section  
14 itself, you have to cross over about 52 water passages. And  
15 that is where my father worked and his four children did their  
16 schooling there.

17 Q. Did you go to school?

18 A. Yes, I did.

19 Q. What schools did you go to?

20 A. I did my primary school in Les Irois. To go to primary  
21 school, I have to walk from Les Irois -- from Jogue to Les  
22 Irois, and it took about an hour, an hour walk, an hour and a  
23 half walk every morning.

24 Q. And after primary school did you go to high school?

25 A. Yes, I went to high school in Les Cayes. To get there, to

1 Les Cayes I have to walk about 12 hours in order to get a car  
2 and to get to where I wanted to go to Les Cayes.

3 Q. And did you get a further degree in Haiti after high  
4 school?

5 A. Yes, I have a degree in economic science.

6 Q. And since coming to the United States, have you continued  
7 your education?

8 A. In 2009, when I came here, I went to Banker Hill  
9 University where I had an associate degree. And then I  
10 continued. I went to Boston University, and then I had a  
11 degree in health science. And then I continued to go to  
12 University of Massachusetts in Lowell, where I was studying  
13 public health. And at the University of Massachusetts Lowell,  
14 I was studying public health, and I had to stop because of this  
15 case. I was unable to continue with my study.

16 Q. And I apologize. My grandparents were from Charlestown  
17 and they wouldn't forgive me, but it's Bunker Hill Community  
18 College, right?

19 A. Bunker Hill.

20 Q. Sorry. What did you do after you graduated?

21 A. When I graduated, I believe it was necessary and important  
22 for me after I graduated from economic science for me to go  
23 back to the community of Les Irois so that I could help in  
24 education anywhere that I can.

25 Q. And what did you do in Les Irois?

1 A. Once I returned to Les Irois I was -- I became the chief  
2 of service at TELCO. I became a vice principal at the high  
3 school, St. Martin.

4 Q. And how old were you when you became the vice principal?

5 A. I was 30 years old.

6 Q. Do you know David Boniface?

7 A. Yes. I know David Boniface. His father -- well, his mom  
8 is my father's sister.

9 Q. Were you friendly with him?

10 A. Yes, we were friends.

11 Q. And did David go to the high school?

12 A. Yes, he was my student at the high school.

13 Q. And did he finish at the high school?

14 A. No, he did not finish at the high school.

15 Q. Why not?

16 A. To my recollection, he did -- well, in Haiti, in order to  
17 pass the next class to the next grade, you had to have an  
18 average of 5 average to get promoted.

19 But my cousin Boniface, his average grade was 2 over 5.  
20 He came to my house and asked me as he's growing up, getting  
21 older, how can I move him to the next grade with the 2 over 5  
22 grade that he has because I was the principal of the high  
23 school.

24 Q. Did you do that?

25 A. No, I did not do that. I did not do that. I told him

1 that no, I cannot do it because there are many other students  
2 who did not pass, I cannot do that for him.

3 Q. And did you otherwise offer to help him?

4 A. Yes, I did. I told him if the school is a bit too  
5 advanced for you, I will pay for you to go to another school so  
6 you can keep up.

7 Q. Did he accept your help?

8 A. No, he did not agree.

9 Q. Were you friendly with him after that?

10 A. No. After that he distanced himself from me. He kind of  
11 stopped talking to me. He used to come to my house and he  
12 stopped doing that. He distanced himself from me.

13 Q. And at some point did you decide to run for mayor of Les  
14 Irois?

15 A. Yes.

16 Q. When was that?

17 A. That was in 2006.

18 Q. How old were you then?

19 A. I was 35 years old.

20 Q. Why did you want to run for mayor?

21 A. I decided to see how I can contribute with Les Irois, have  
22 police present there, created a health center, created a public  
23 restroom so that people would not do their thing on the side of  
24 the sea anymore. And I tried to contribute as much as I can.

25 MR. HALEY: Your Honor, the defendant has some

1 demonstrative aids, photographs that I've shared with counsel  
2 and we've agreed on.

3 Q. Do you recognize that picture, Mr. Viliena?

4 A. Yes, I do.

5 Q. And what is it a picture of?

6 A. That is a picture of a project that I was able to help lay  
7 down foundations for roads in Les Irois.

8 Q. And what is the next picture?

9 A. This is the same work, different angle, that they're doing  
10 the same work.

11 MR. HALEY: I apologize, Your Honor, I could be better  
12 at computers.

13 Q. And is this a picture of the work when it was complete?

14 A. Yes.

15 Q. And who did you run against for mayor?

16 A. There was many people running for that position as mayor.  
17 It was part of -- there was also William Lebon, who was running  
18 under the banner of OPL.

19 Q. Was the election close?

20 A. Yes, it was close.

21 Q. And what happened after the voting in December of 2006?

22 A. The election was close because there was a previous  
23 election held on December 3, 2006. But the partisan of OPL  
24 went to the Jogue area and destroyed the election there. Then  
25 there was a second election that was held on April 29, 2007.

1 That election, although close, but I won at the time.

2 Q. When you testified that they destroyed the election in  
3 December of 2006, what did you mean by that?

4 A. That election, when they go to the voting booth in Jogue,  
5 and they realize that I was leading in all the booths, Denais  
6 Laguerre, who was a member of BEC, Denais Laguerre said, Guys,  
7 are you going to let little Jean Morose win that election?

8 MS. LAU: Objection. Move to strike.

9 A. And many other parties, in solidarity with OPL, destroyed  
10 that election.

11 THE COURT: Excuse me. Did you have an objection?

12 MS. LAU: Yes, objection. Move to strike the  
13 statement by Laguerre.

14 THE COURT: So it's hearsay and I'll strike it unless  
15 you're relying on it to show what came next.

16 MR. HALEY: The witness's testimony is simply what  
17 happened and why he believed there was a following election,  
18 his understanding at the time.

19 MS. LAU: That does not respond to the hearsay  
20 objection, Your Honor.

21 THE COURT: Well, you can come at it another way,  
22 Mr. Haley. Try again. Why the election was redone or whatever  
23 the verb is, his understanding of why there was a second  
24 election.

25 Q. Mr. Viliena, what was your understanding of why there was

1 a need for a second election?

2 A. Because the first election was destroyed.

3 Q. And Mr. Lebon as a candidate, was he older than you?

4 A. Yes, Mr. Lebon was older than I was, and he was also a  
5 pastor in the community.

6 Q. Were you affiliated with a political party when you ran  
7 for mayor?

8 A. Yes, I was affiliated with a political party.

9 Q. And what party was that?

10 A. It's the political party called MODEREH.

11 Q. And were you ever associated with the KOREGA party?

12 A. No, never.

13 Q. Do you know Maxime Roumer?

14 A. Yes, I do know him.

15 Q. And who was Maxime Roumer?

16 A. Maxime Roumer was a senator. He had three terms as a  
17 senator.

18 Q. And did he support your mayoral election?

19 A. Yes, he supported me.

20 Q. And what party was Mr. Roumer associated with?

21 A. Mr. Roumer was part of a party called Lespwa.

22 Q. Did you support Mr. Roumer in his election?

23 A. Yes. I supported him during his election under the banner  
24 of Lespwa, which is why in turn he supported me in different  
25 ways during my campaign.

1 Q. And was Maxime also affiliated with KOREGA?

2 A. I heard people say that he was supportive of KOREGA, but  
3 myself I never discussed anything of that sort with him, asking  
4 if he was a member or not.

5 Q. Have you ever seen anyone wearing a KOREGA T shirt?

6 A. No, I never see that in Les Irois.

7 Q. Did you ever see it anywhere inside or outside Les Irois?

8 A. No, I never did.

9 Q. To your knowledge was KOREGA the type of organization that  
10 would have T shirts?

11 A. No, I never saw anyone wearing any KOREGA T shirt.

12 Q. And what were some of the issues in the mayoral election?

13 A. Well, the thing is, during the election, I was a young  
14 man, and Pastor William was older than I was. And the OPL  
15 partisan, they were against a young man, 35-year-old young man  
16 to come and lead them. That was one of the issues that they  
17 had during the election.

18 Q. And after you started your job as mayor after you were  
19 elected in spring of 2007, what happened then?

20 A. Like I stated earlier, the election occurred on April 29.  
21 I was sworn in on June 20, 2007. Shortly thereafter I sat down  
22 with the sanitation department people called Voirie and  
23 strategized how we can keep the streets clean. And then I went  
24 to Port-au-Prince. I came back to Les Irois on July 26, 2007.

25 Q. And at some point after you came back in July of 2007, did

1 you have an encounter with Ostanie Mersier?

2 A. Yes. Because once I got there, I went to Port-au-Prince  
3 so I can have my signature as one to have right over the  
4 accounts of City Hall's account. I was only elected about a  
5 month. And then on, I believe it was like July 27, maybe I  
6 woke up maybe about 6:30 in the morning to see how the  
7 function, the way that the sanitation department was working,  
8 their way of operation.

9 The 26th was a Thursday. The streets was very dirty  
10 because the day before, on Friday -- the day before, on  
11 Thursday was public market they had there. While I was  
12 supervising and talking to the sanitation department, the  
13 Voirie, and see what they were doing, then we got by the house  
14 next to Ostanie's house.

15 When I was coming with members of the sanitation  
16 department, she was holding a basket that had garbage in it.  
17 She saw me and was about to throw the garbage on the floor.  
18 And I told her, "Given that the sanitation department are here  
19 and they have equipment to pick up the garbage, you have no  
20 reason to throw the garbage on the street. You should just put  
21 it in the sanitation department's bucket."

22 But there was Nissage Martyr and xxx, who were standing  
23 across the street. And they told her, "Throw the garbage on  
24 the floor and see what Jean Morose can actually do to you."  
25 But Ostanie did not want to throw the garbage on the street.

1 She was like just hesitating, moving around to see what to do.  
2 And finally, the gentlemen I mentioned before, they instructed  
3 her again to throw the garbage on the floor.

4 Q. What did you do?

5 A. Once I see that, I left them and went to the justice of  
6 peace so that I can -- I have two warrants for all three of  
7 them.

8 Q. And what did you do with the warrants?

9 INTERPRETER: This is the interpreter speaking. I  
10 didn't quite hear. May I ask for repetition?

11 THE COURT: Yes.

12 A. I took the warrants, went home with them and then get in  
13 touch with the police so they can execute the warrants.

14 Q. Were there police in Les Irois?

15 A. No, there's no police in Les Irois.

16 Q. Where were the closest police?

17 A. They were in area called Anse d'Hainault.

18 Q. What did you have to do to get the police to come to Les  
19 Irois?

20 A. Either I call them on the phone or go on motorcycle to get  
21 in touch with them and bring them to Les Irois.

22 Q. And in general, when you needed to get the police to come  
23 to Les Irois, in addition to calling them or contacting them,  
24 did you have to do anything else to convince them to come to  
25 Les Irois?

1 A. Yes. For the police officers to come to Les Irois, I have  
2 to provide gas, gasoline money and transportation for them  
3 sometimes for them to come.

4 Q. Were you with the police when they served the warrant on  
5 Ostanie?

6 A. No.

7 Q. Did you go back to Judge Bell's house that day?

8 A. No.

9 Q. Did you see Ostanie at all later that day?

10 A. No.

11 Q. Did you see David Boniface at all on that day?

12 A. No, never.

13 Q. Did you know Ecclesiaste Boniface?

14 A. I know him when he was younger but he left Les Irois when  
15 he was a child.

16 Q. Did he live in Les Irois in 2007?

17 A. 2007, 2007, I'm not sure. I'm not sure exactly when he  
18 was in Les Irois, but he was in Les Irois.

19 Q. Were you present the night that he died?

20 A. Are you saying if he died, if I was in the area where he  
21 died or was I in Les Irois at that time?

22 Q. Were you in the area where he died?

23 A. No.

24 Q. And did you ask anyone to shoot him or harm him in any  
25 manner?

1 A. No, never.

2 Q. Did you hear anything that night about trouble in town?

3 A. Usually when there's something, there's an issue in the  
4 area, everybody's calling the mayor, trying to get in touch  
5 with them to see how they can support or have the police come  
6 over. That is how at night on July 27 I was getting a lot of  
7 phone calls, people asking me to come in the area of Grand  
8 Bassin.

9 Q. Why were they asking you to come?

10 A. No, they didn't ask me to come. They were asking me to  
11 see if I can bring the police in the area because people were  
12 throwing a lot of rocks.

13 Q. And did you go out yourself to this area?

14 A. No, at that time I did not go out. There was no police  
15 officer in Les Irois, and I did not have any security.

16 Q. At some point did people bring the body of Ecclesiaste  
17 Boniface to your house?

18 A. Yes.

19 Q. Do you know why?

20 A. The idea was to always embarrass my administration and to  
21 create problems where they would have to replace me with  
22 someone of their own, their own partisan.

23 Q. And when you heard that Ecclesiaste had died, what did you  
24 do?

25 A. I had called the police and asked them to come to the

1 area.

2 Q. And did you ask them to investigate?

3 A. I did not call. It wasn't really my thing as far as  
4 investigation. It is up to the justice of peace. My role was  
5 to make sure that the area was secure, there was peace and so  
6 things would not escalate.

7 Q. Do you know who Hautefort Bajon was?

8 A. Yes, I know Hautefort Bajon. He was a mayor, he was a  
9 French teacher at the high school, and he was former candidate  
10 for deputy.

11 Q. And did he also serve as general secretary in your mayoral  
12 administration?

13 A. Yes, he was the Secretary General.

14 Q. And why did you make him the Secretary General?

15 A. I had hired, I hired him as Secretary General in my  
16 administration. As a mayor, I needed to use his experience as  
17 a former mayor. That's why I had hired him.

18 Q. And did you tell Hautefort Bajon to shoot Ecclesiaste  
19 Boniface?

20 A. No, never.

21 Q. Did you ever tell or ask him to kill, harm or injure  
22 anyone?

23 A. No, I never did anything like that.

24 Q. At some point did Hautefort Bajon stop being the General  
25 Secretary?

1 A. Yes, I fired him as Secretary General.

2 Q. When was that?

3 A. If I'm not mistaken, it was in March, in March, I believe,  
4 yeah, I believe it was March 2009 that I fired him.

5 Q. Why did you fire him?

6 A. He had stopped coming to work maybe a good six months. I  
7 needed another Secretary General. That's why I fired him.

8 Q. And what happened when you fired him?

9 A. He was upset with me with that and his family was upset  
10 with me. They didn't think that I should have fired him, and  
11 then he was against me since.

12 Q. Do you know Villeme Duclona, Pierrot Boileau, Meritus  
13 Beaublanc, Lifaite Livert, Mones Dorcenat, Louines Charles,  
14 Guerson Pierre, France Isme, Cedernier Fleurime, George Simon?

15 A. As mayor of Les Irois, I know almost everyone in Les  
16 Irois. Those name you mention, yes, I know them.

17 Q. Did any of them work for you in the Mayoral Hall?

18 A. Do you mind repeating the names for me, please.

19 Q. My God. Villeme Duclona, Pierrot Boileau, Meritus  
20 Beaublanc, Lifaite Livert, Mones Dorcenat, Louines Charles,  
21 Guerson Pierre, France Isme, Cedernier Fleurime, George Simon?

22 A. Only from the name you call, you mention only Meritus  
23 Beaublanc was working at the mayor, at the City Hall.

24 Q. When you were mayor did you have the opportunity to attend  
25 mayors' conferences in the United States?

1 A. Yes. In 2007 I participated in two conferences. One was  
2 held in Florida. The other one was in Mississippi.

3 Q. Why did you move to the United States?

4 A. In 2009, I travel -- let me see, I traveled already into  
5 the U.S. That was in July 14, 2008. And I acquired a green  
6 card holder status that my wife had filed for me. In 2009, I  
7 came back to the U.S. because my wife, since we got married, we  
8 never had any children, and she demanded that I come back to  
9 have a child. So that's why I came. But we got married in  
10 2003.

11 Q. Were you familiar with the radio station at Les Irois?

12 A. Yes. In 2008, I was aware of a radio station that was in  
13 Les Irois.

14 Q. And were you in favor of establishing the radio station?

15 A. Well, I was in favor of establishing the radio station,  
16 but the money that was provided to have the radio station, it  
17 was money that was for project for City Hall.

18 My intent with that money was to use it for draining  
19 issues that we have when water comes down that's going into  
20 other people's houses in Les Irois. Given that the deputy used  
21 the money to create the radio, but it's already there so I have  
22 no problem with it.

23 Q. Were there any troubles with the radio station?

24 A. Well, the issue that I noticed with the radio station was  
25 that there were children there, children getting on the

1 microphone, no experience, no training, they would say anything  
2 that they wanted. And then people in the community were not  
3 pleased with that.

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

5 A. Yes, I was in Les Irois.

6 Q. What were you doing that day?

7 A. That day on April 8 I got up to go to work at the high  
8 school because I was the principal there.

9 Q. Did anything happen?

10 A. While I was at the high school, there was a teacher who  
11 was teaching there, and I heard a noise. When I came out, and  
12 I saw Josie Isme with a weapon in hand.

13 Q. Was Josie a student at the school?

14 A. Yes, he was a student at the school.

15 Q. What did you do?

16 A. I did not know the intent of the student with the weapon,  
17 so everybody wanted to leave. And then I was trying to avoid  
18 students to secure them so they would not approach the student  
19 with the weapon. I did not know the intent of that student,  
20 armed student.

21 Q. What did you do after that?

22 A. After what happened, I figured that there might be some  
23 escalation in the city, so I got on a motorcycle, went to Anse  
24 d'Hainault to get the police to bring them to Les Irois.

25 Q. Were you able to bring the police back to Les Irois?

1 A. No, I did not find the police.

2 Q. And did you go elsewhere to try and find them?

3 A. No. When I went to Anse d'Hainault to find the police, I  
4 went to another location that's much further called Dame-Marie.  
5 I wasn't able to find the police there either.

6 Q. Did you go back to Les Irois?

7 A. Yes, I came back to Les Irois.

8 Q. And what happened when you got back?

9 A. When I came back, that is when I was informed, when I came  
10 back to Les Irois I was informed that Josie Isme went to the  
11 radio station and things got escalated. From what I understand  
12 four people actually got shot. Nissage Martyr was shot.  
13 Juders Isme was shot. Alain Duclona was shot and another  
14 person by the name of Jean Baptist was shot also.

15 Q. Do you know Villeme Duclona?

16 A. Yes, it is someone from the Les Irois community. The same  
17 way that I know everybody else, I know him, too.

18 Q. Did you ever tell him or anyone else to shoot or harm  
19 Nissage Martyr or Juders Ysemé?

20 A. No, I never mentioned to no one to shoot Nissage or  
21 Juders.

22 Q. Who was Nissage Martyr?

23 A. Nissage Martyr is a citizen in Les Irois community. He  
24 has a wife in Les Irois, and he also has a wife in Anse  
25 d'Hainault. Sometimes when he's going to Anse d'Hainault, he

1 asked me for a ride, and I would drop him off.

2 Q. Did you know Juders Ysemé?

3 A. Juders was younger. It's not someone that I really know  
4 at that time.

5 Q. Did you know that Nissage got hurt that day on April 8,  
6 2008 and had to go to the hospital?

7 A. Yes.

8 Q. How did you find that out?

9 A. He has two children, Kenson Martyr and Nissandére Martyr,  
10 and they came to me telling me that their father was shot; how  
11 can I assist with their father.

12 Q. And did you help them?

13 A. Yes, that is how I -- I helped them to find other means to  
14 help move their father. That was to help them move their  
15 father so that he can go get help.

16 Q. And were you in Les Irois the night of the arson in  
17 October of 2009?

18 A. No, I was not in Les Irois.

19 Q. And did you hear about the fires that night?

20 A. Somebody had called me as the mayor of the city. And  
21 given that, they called me to say that there are people who  
22 came to the city from Matador, from d'Hainault. They setting  
23 things on fire. How can I help? Have the police come over.

24 Q. And did you try to get the police to come over?

25 A. I spent the whole afternoon talking to the police chief to

1 see how they can send police officers in Les Irois.

2 Q. And were they able to send police officers?

3 A. No, they never did.

4 Q. Did you ever tell anyone to burn down other people's homes  
5 Les Irois?

6 A. No, never.

7 Q. I have a currency question for you. We heard testimony  
8 about Haitian dollars. How many gourdes is a Haitian dollar?

9 A. Five gourdes is equivalent to one Haitian dollar.

10 MR. HALEY: Thank you. Your Honor, could I have one  
11 second to look at my notes?

12 I don't have anything further of the witness at this  
13 time, Your Honor.

14 CROSS-EXAMINATION BY MS. LAU:

15 Q. Mr. Viliena, my name is Bonnie Lau. We met when we took  
16 your deposition in this case?

17 A. Yes.

18 Q. And you were the mayor of Les Irois between at least 2007  
19 to 2010, correct?

20 A. Yes.

21 Q. And you were the leader of your community?

22 A. Exactly. As a mayor, I was leading the community.

23 Q. And you had many friends in Les Irois?

24 A. Yes, I have friends in Les Irois.

25 Q. And you had many political supporters in Les Irois; is

1 that right?

2 A. Yes, I do have lots of partisans and supporters in Les  
3 Irois.

4 Q. And you were responsible for those supporters and  
5 partisans in Les Irois?

6 MR. HALEY: Objection.

7 THE COURT: Overruled.

8 A. No, I'm not responsible for the partisans and the  
9 supporters in Les Irois.

10 Q. Are you responsible for the health and well-being of the  
11 Les Irois community?

12 A. I don't understand the question very well. Can you please  
13 repeat.

14 Q. You're the mayor of Les Irois?

15 A. Yes.

16 Q. And you just testified, if something happens in the city,  
17 people call you and they ask you for help, correct?

18 A. Yes.

19 Q. And so you are responsible for their safety, correct?

20 A. Yes, as a mayor I'm responsible to help the people to find  
21 safety in any ways that I can.

22 Q. And you testified that David Boniface is your cousin; is  
23 that correct?

24 A. Yes.

25 Q. So Ecclesiaste Boniface, he is also your cousin, correct?

1 A. Yes.

2 Q. How far is your house from the Boniface house?

3 A. 15 minutes.

4 Q. 15-minute walk?

5 A. Yes.

6 Q. How far is your house from the radio station and the  
7 Nissage Martyr family house?

8 A. It might be seven -- five to seven minutes.

9 Q. And you've been living in the United States for about 14  
10 years here in Malden?

11 A. Yes. I have resident status in the U.S. about 14 years  
12 ago.

13 Q. And you said you graduated from Bunker -- not Banker --  
14 Bunker Hill Community College.

15 A. Yes.

16 Q. And you also pursued a bachelor of science from UMass  
17 Boston; is that correct?

18 A. Yes.

19 Q. And you speak English?

20 A. Yes.

21 Q. But you prefer Creole?

22 A. Yes.

23 Q. And you read English?

24 A. Yes.

25 Q. And these past few days you've been sitting in the

1 courtroom every day listening to the testimony, correct?

2 A. Yes.

3 Q. And you've been listening without interpretation?

4 A. Yes.

5 Q. And you have understood everything that's going on in the  
6 courtroom?

7 A. Yes.

8 Q. Mr. Viliena, I'd like to talk now about July 27, 2007.  
9 You were the mayor of Les Irois on that date, correct?

10 A. Yes.

11 Q. And on July 27, 2007, Ecclesiaste Boniface, he died; is  
12 that right?

13 A. Yes.

14 Q. You said you weren't present when Ecclesiaste Boniface was  
15 murdered.

16 A. No.

17 Q. But on the morning of July 27, 2007, you said it was the  
18 day after the public market, correct?

19 A. Yes.

20 Q. And the streets were dirty, so the sanitation crew was  
21 there to clean it up, correct?

22 A. Yes.

23 Q. And so you did speak to Ostanie Mersier the morning of  
24 July 27, 2007, correct?

25 A. Yes.

1 Q. But you say that you never physically interacted with  
2 Ostanie Mersier; is that correct?

3 A. No. I said that when I saw her, she attempted to put the  
4 pile of trash on the pile of the sanitation department. I put  
5 my hand around her neck and told her, "Don't put it there. Put  
6 it with the Voirie people," because I never knew I had an issue  
7 with her at all.

8 Q. Do you have any more of your story to tell?

9 A. No.

10 Q. Did you slap Ostanie Mersier the morning of July 27, 2007?

11 A. No, never.

12 Q. Nissanderé Martyr, Osephita Lebon and Mers Ysemé have each  
13 provided sworn testimony in this case that you slapped Ostanie  
14 Mersier in the face. Did you slap her?

15 MR. HALEY: Objection.

16 THE COURT: Hold on. So I'm going to strike the first  
17 part, which is not a question. It's a statement, and  
18 statements by counsel are not evidence, so I'm going to strike  
19 the statement. The question stands. She asked did you slap  
20 her, and now he can answer.

21 A. No, never, I never slapped Ostanie.

22 Q. And you say that you never spoke with David Boniface on  
23 that day at all?

24 A. No, I never spoke with David Boniface.

25 Q. And after the dispute with Ostanie Mersier, you say that

1 you never left the house the night that Ecclesiaste Boniface was  
2 murdered.

3 A. I never left my home.

4 Q. So you never went to the Boniface family home that entire  
5 night?

6 A. No, I did not.

7 Q. You never went to see the body of Ecclesiaste Boniface that  
8 entire night?

9 A. No, I didn't go that night because I didn't know that  
10 Ecclesiaste Boniface died that night.

11 Q. I thought you just said that everybody was calling the  
12 mayor to tell you about the person who lost his life that  
13 night, isn't that correct?

14 A. They called me to tell me that they were pelting a house  
15 with rocks in the area.

16 Q. Were there many people who told you about the person who  
17 was killed the night of July 27, 2007?

18 A. I don't really understand your question. Can you please  
19 repeat.

20 Q. My question was, were there many people who called and  
21 told you that a man was murdered on the night of July 27, 2007?

22 A. That night, no one told me that they killed anyone. They  
23 just told me that people were throwing rocks.

24 Q. Mr. Viliena, you testified in a deposition in this case,  
25 didn't you?

1 A. Yes.

2 Q. And you took an oath and you swore to testify truthfully  
3 in that deposition, didn't you?

4 A. Yes.

5 Q. Did you testify truthfully in that deposition?

6 A. Yes.

7 MS. LAU: Permission to approach, Your Honor.

8 THE COURT: Yes.

9 Q. Mr. Viliena, I'm handing you a copy of your deposition  
10 transcript in this case. Could you please open to transcript  
11 page 65, line 5.

12 MR. HALEY: Excuse me, what volume, counsel?

13 MS. LAU: Volume 1.

14 MR. HALEY: Thank you.

15 MS. LAU: 65.

16 Q. And during that deposition, I asked you, "Who is the  
17 gentleman who lost his life?" And you answered, "Eclesiaste  
18 Boniface," at line 11.

19 Mr. Viliena, did I read your prior sworn deposition  
20 testimony correctly?

21 A. You asked who lost his life that night, and I responded  
22 Eclesiaste Boniface.

23 Q. Mr. Boniface -- Mr. Viliena, you didn't murder Eclesiaste  
24 Boniface, correct?

25 A. No.

1 Q. Who did?

2 A. I don't know who did that.

3 Q. So you are the mayor of Les Irois, and there was a murder  
4 in your town, correct?

5 A. Yes.

6 Q. In fact, it was the murder of your own cousin?

7 A. Yes.

8 Q. And it was a vicious murder?

9 A. Yes.

10 Q. You would agree that being shot and a cinder block  
11 crushing your head is a pretty vicious way to go?

12 A. Exactly.

13 Q. And you never walked the 15 minutes from your house to  
14 your cousin's house to look at his dead body?

15 A. On July 28, when the police came in the morning, I went to  
16 see this person who died, my cousin died.

17 Q. I'd like to transition now back to your campaign for  
18 mayor. You ran for mayor in 2006 in the Les Irois election; is  
19 that right?

20 A. Yes.

21 Q. And you were associated with the MODEREH party when you  
22 ran, correct?

23 A. Yes.

24 Q. But you claim you are not a member of KOREGA?

25 A. No.

1 Q. And you claim that you had no association with KOREGA?

2 A. No.

3 Q. You also say that you don't know anything about KOREGA?

4 A. No.

5 Q. You can't say anything about the type of work that KOREGA  
6 does?

7 A. What work are you referring to?

8 Q. Are you able to describe the type of work that KOREGA  
9 does?

10 A. No.

11 Q. You also, you don't know if KOREGA acts like a political  
12 party?

13 INTERPRETER: Your Honor, can I ask please for a  
14 repetition.

15 THE COURT: Yes.

16 Q. I'll ask again. You don't know if KOREGA acts like a  
17 political party?

18 A. No.

19 Q. And you can't tell me how many members of KOREGA are in  
20 Les Irois?

21 A. I'm not a member of KOREGA, so I can't tell you how many  
22 members of KOREGA there are.

23 Q. And you don't know whether Villeme Duclona is a member of  
24 KOREGA?

25 A. No, I don't know.

1 Q. You don't know whether Lifaite Livert is a member of  
2 KOREGA?

3 A. No, I don't know.

4 Q. You don't know whether any of your associates are members  
5 of KOREGA?

6 A. No, I don't know.

7 Q. Did KOREGA ever commit violence in Les Irois?

8 A. I'm sorry, I'm sorry. Can you please repeat the question,  
9 the question you asked before that saying that.

10 Q. My question was you do not know whether any of your  
11 associates are members of KOREGA?

12 A. You said my associates, you're referring to who?

13 Q. I'm referring to Villeme Duclona, Lifaite Livert, Meritus  
14 Beaublanc, Pierrot Boileau, Hautefort Bajon and the rest of  
15 your crew.

16 THE COURT: Sustained.

17 MR. HALEY: Objection.

18 THE COURT: Sustained. It's the word "your crew" that  
19 I'm going to strike. And he can answer the question based on  
20 the individuals that you listed.

21 A. No, no, I don't have associates who are members of KOREGA.  
22 The people you mentioned, they're not my associates.

23 Q. Did KOREGA commit violence in Les Irois?

24 A. No, I don't know.

25 Q. And you've never seen a KOREGA T shirt; is that right?

1 A. No, I've never seen KOREGA T shirt.

2 MS. LAU: Your Honor, I'd like to play an impeachment  
3 video. I can publish it to you first if you prefer.

4 MR. HALEY: I don't know what video counsel is  
5 referring to, so I would appreciate the opportunity to review  
6 it at the time the court does.

7 MS. LAU: We can publish it to you, too, now.

8 THE COURT: How long is the video?

9 MS. LAU: Short.

10 THE COURT: Sound or no sound?

11 MS. LAU: It's irrelevant. No sound is fine.

12 THE COURT: Let's let he and I watch the video with no  
13 sound.

14 (Video played.)

15 THE CLERK: I don't have the sound, though. I have  
16 the sound.

17 MS. LAU: We're going to play it with no sound.

18 Your Honor, permission to publish to the jury and to  
19 the witness.

20 THE COURT: Okay. Do you have an objection?

21 MR. HALEY: I'd like to be heard.

22 THE COURT: I think I need to see you at sidebar on  
23 this one.

24 **SIDEBAR:**

25 THE COURT: So the question was has he ever seen it

1 and --

2 MS. LAU: The question was has he ever seen a KOREGA T  
3 shirt.

4 THE COURT: Yes. So if this somehow demonstrates that  
5 he saw one, like if it's off his phone, but I don't have enough  
6 information to know what the context of the video is.

7 MS. LAU: The context is, this is in Les Irois, a  
8 bunch of T shirts --

9 MR. HALEY: So we don't have the date. It could have  
10 been last month while he was here in the United States, someone  
11 has a KOREGA T shirt.

12 THE COURT: Or that he saw it. Did that come off his  
13 phone or anything?

14 MS. LAU: No, Your Honor, it did not come off of his  
15 phone. I think this is an absolutely permissible impeachment  
16 video, Your Honor. It directly has a banner at the opening  
17 that says "KOREGA Les Irois." It scans the other banners, then  
18 it goes to a man in a KOREGA T shirt with the logo.

19 THE COURT: It could certainly be appropriate  
20 impeachment material, but the question was has he seen it, so  
21 that has to do with -- like, was he there at the timing of the  
22 video? If you want to show him the video and ask if he's ever  
23 seen any of those banners, you can. But unless you can show  
24 that you somehow look in the center of town and he was there,  
25 you can impeach him, but I don't know where that is, when it

1 is.

2 MR. HALEY: Also, do we know when the video was taken?

3 MS. LAU: I don't have that information.

4 THE COURT: So she can show it to him and ask him if  
5 he's seen it.

6 MR. HALEY: It must have been sourced someplace,  
7 though, right? Usually videos have a date on them or it's part  
8 of something else. So I mean, if it's a video from 2015 or  
9 2016, I think it's fine to tell the court and me that's when it  
10 was.

11 MS. LAU: I actually don't have the information with  
12 me. Sorry.

13 THE COURT: It's fine. You can show it to him. Just  
14 be careful of the questions that you ask because you don't want  
15 to bake into the question that there was KOREGA banners and T  
16 shirts -- just ask has he seen the banners or the shirt  
17 depicted in the video. Keep it generic.

18 (End of sidebar.)

19 BY MS. LAU:

20 Q. Mr. Viliena, we're going to show you a video right now.

21 THE COURT: The jury is not going to see this. It has  
22 not been admitted at the moment.

23 (Video played.)

24 Q. Have you ever seen the T shirt at the end of the video?

25 A. You're asking me if have I ever seen that T shirt?

1 Q. A T shirt with that logo.

2 A. I've never seen that in Les Irois.

3 Q. Have you seen the banner at the beginning of the video?

4 A. I've never seen that in Les Irois.

5 Q. Have you ever seen the logo depicted in that banner?

6 A. No, I don't know it.

7 Q. Mr. Viliena, Maxime Roumer, he is a member of KOREGA,  
8 correct?

9 A. I've always heard that he's a member of KOREGA, but I  
10 never had that discussion with him.

11 Q. But you are aware that he is a member of KOREGA?

12 A. I heard that's what they say.

13 Q. And you never asked him if he was a member of KOREGA?

14 A. No.

15 Q. You communicate with Maxime Roumer via Facebook messages,  
16 correct?

17 A. Correct.

18 Q. Thank you. And you communicate with Maxime Roumer via  
19 WhatsApp messages?

20 A. On WhatsApp, I don't really remember. Messenger, I  
21 remember that.

22 Q. Did you testify truthfully and accurately at your  
23 deposition?

24 A. Yes.

25 Q. Can you please turn to page 114 of your transcript. I'm

1 at line 5. I asked you at your deposition, "And can you  
2 confirm that you spoke to Mr. Roumer using WhatsApp messages?"  
3 Answer, "Yes, I believe we have had the communication through  
4 WhatsApp." Did I read your testimony accurately?

5 A. I can't remember. I told you. I can't really remember.  
6 So if I said that, yes, I did.

7 Q. And you communicate with Maxime Roumer via email; is that  
8 correct?

9 A. Yes.

10 Q. Did you email Maxime Roumer a copy of the United States  
11 complaint that was filed against you in this litigation?

12 A. Yes.

13 Q. And did you work with Maxime Roumer in order to release  
14 your quote "friends," meaning your father and your cousin, from  
15 jail?

16 A. No. I spoke with him with regards to getting a lawyer.

17 MS. LAU: Permission to approach?

18 THE COURT: Yes.

19 Q. Mr. Viliena, I'm sharing with you a copy of your Facebook  
20 messages with Maxime Roumer. Do you recognize this document?

21 MR. HALEY: Your Honor, could I get a copy of what  
22 counsel is showing to the witness?

23 THE COURT: Yes.

24 Q. And did you testify about this document at your  
25 deposition?

1 A. Yes.

2 Q. I'd like you to turn to page 218 of your transcript. And  
3 in your deposition we were talking about Bates number 183 of  
4 your third supplemental production of documents.

5 INTERPRETER: Your Honor, may the interpreter ask for  
6 repetition.

7 MS. LAU: Oh, I have forgotten when I said. At the  
8 deposition we were talking about page 183.

9 THE COURT: I can repeat it.

10 MS. LAU: Thank you, Judge.

11 THE COURT: I'd like you to turn to page 218 of your  
12 transcript in your deposition. We were talking about Bates  
13 number 183 of your third supplemental production of documents.

14 Q. And in your Facebook message with Mr. Roumer, which we  
15 were talking about, I asked you at deposition, and I asked you  
16 the question, "In the middle of that page Maxime says, 'We did  
17 everything we could for the release of friends. I do not go  
18 one day without continuing the pressure.'"

19 And then I went on to ask the question, "What is the  
20 release of friends that he is referring to?" And your answer  
21 was, "I believe he was referring to my father Marc Arthur and  
22 also any other people who were kept in jail and who were not  
23 involved in what happened."

24 Did I read your testimony correctly?

25 A. Yes.

1 Q. As the mayor of Les Irois, you enacted reforms, you wanted  
2 to modernize the city; is that right?

3 A. Yes.

4 Q. And you said you, quote, "tried to contribute" as much as  
5 you can; is that right?

6 A. Yes.

7 Q. And there was this new radio station in Les Irois; is that  
8 right?

9 A. It wasn't the first. There was another one already.

10 Q. And this new radio station, this second radio station,  
11 this was an important development for Les Irois; is that  
12 correct?

13 A. Yes.

14 Q. And the radio station was located in Nissage Martyr's  
15 house; is that right?

16 A. Yes.

17 Q. And community members in Les Irois, they listened to the  
18 radio station?

19 A. I believe they did.

20 Q. Did you listen to the radio station?

21 A. Yes, I listened to it.

22 Q. What did you listen to?

23 A. I cannot remember what I used to listen to, but I used to  
24 listen to it sometimes.

25 Q. Were there political discussions on the radio station?

1 A. I cannot really say. There was a big political debate on  
2 the radio.

3 Q. Were there any political discussions on the radio station  
4 that were critical of you as the mayor?

5 A. Yes, they used to have that.

6 Q. I'd like to turn now to April 8, 2008. You were the mayor  
7 of Les Irois at that time, correct?

8 A. Yes.

9 Q. And you were physically present in Les Irois on April 8,  
10 2008?

11 A. Yes.

12 Q. Prior to that date you say that you never threatened to  
13 destroy the radio station?

14 A. No.

15 Q. And you say that you never attacked the radio station on  
16 April 8, 2008?

17 A. No.

18 Q. You say that you never went to the radio station at all on  
19 that day?

20 A. No.

21 Q. You claim that you never beat Juders Ysemé on that day?

22 A. No.

23 Q. You claim that you never beat or tortured Nissage Martyr  
24 on that day?

25 A. No.

1 Q. In fact, you claim that you never even saw Nissage Martyr  
2 that day?

3 A. No.

4 Q. And instead you say that on April 8, 2008, you were at the  
5 public high school and there was this student that brought a  
6 gun to school; is that right?

7 A. Yes.

8 Q. And you said you left the school to go get the police; is  
9 that right?

10 A. Yes.

11 Q. But before you left the school, you did not take the gun  
12 away from the student?

13 A. No.

14 Q. You didn't put the student with the gun in detention?

15 A. I'm not the police. I couldn't do that, and I didn't know  
16 the student intention. I couldn't do that.

17 Q. And you didn't ask another teacher or another adult to  
18 supervise the student before you left?

19 A. Before I left the school, I made sure that the school  
20 ended before I went to get the police.

21 Q. You say that you searched for the police for a long time  
22 in two different cities, right?

23 A. Yes.

24 Q. You searched for hours?

25 A. Yes.

1 Q. But you never got the police?

2 A. No.

3 Q. What time did you return to Les Irois?

4 A. When I came back to Les Irois it was 4:00. I don't really  
5 remember when exactly, maybe 4:00, 5:00 p.m. in the afternoon.

6 Q. So you spent hours looking for the police even though  
7 there was a student on the loose with a gun in your town?

8 A. Yes. Yes, I had to look for the police. I had to go get  
9 the police to come help me to manage that student because I  
10 couldn't manage the student by myself, the student with the gun  
11 and stay there and not go get help.

12 Q. And the student's name is Josie Ysemé, correct?

13 A. Yes.

14 Q. And in fact, you later claimed that then the student with  
15 the gun went to the radio station; is that right?

16 A. Yes.

17 Q. But then you never went to the radio station that day?

18 A. No, no.

19 Q. Even though Josie was supposedly there with the gun?

20 A. No.

21 Q. Even though there was this attack where four people were  
22 injured in your town?

23 A. No.

24 Q. In fact, you said you had no interest in going to the  
25 radio station that day?

1 A. No.

2 Q. You didn't help to investigate the radio station attack?

3 A. No, I didn't help have an investigation.

4 Q. So you're the mayor of Les Irois, these horrible  
5 atrocities occur, and you did not try to investigate the radio  
6 station attack?

7 A. My role as a mayor is not to lead an investigation or have  
8 an investigation. The situation happened, the Justice of the  
9 Peace is responsible to take care of that and start an  
10 investigation and file a report. My role, I can help, I can  
11 ask for help and I can write a letter to a minister of justice  
12 for help.

13 Q. Mr. Viliena, my question was, yes or no, did you  
14 investigate the radio station attack?

15 A. I did not investigate. I wrote a letter to the Department  
16 of Interior to let them know what happened in Les Irois.

17 Q. You also say that you never ordered your associates to  
18 attack the radio station on April 8, 2008?

19 A. I don't have associates and I never ordered to attack the  
20 radio station.

21 Q. You said a few times that that you have partisans; is that  
22 right?

23 A. As a mayor I have partisans, people who voted for me.  
24 After the election, regardless of who needed help in the city,  
25 I would help.

1 Q. Have you ever ordered your partisans to attack the radio  
2 station and specifically on April 8, 2008?

3 A. No.

4 Q. You say you don't know if any of your partisans went to  
5 the radio station on that day?

6 A. No, I don't know.

7 Q. And you don't know because you didn't ask your partisans  
8 if they went to the radio station that day.

9 A. No, I didn't ask them that.

10 Q. You didn't have to ask your partisans because you already  
11 knew the answer?

12 A. Is that a question?

13 Q. Yes.

14 A. Can you please repeat your question.

15 Q. You didn't ask your partisans if they went to the radio  
16 station because you already knew the answer.

17 MR. HALEY: Objection.

18 THE COURT: Basis?

19 MR. HALEY: Not a question.

20 THE COURT: Overruled.

21 A. Can you please repeat the question for me? I'm sorry if I  
22 have to ask again.

23 Q. You did not ask your partisans if they went to the radio  
24 station that day because you already knew their answer.

25 A. I don't have -- I don't have -- I don't have answers for

1 you because I don't understand the question. I'm sorry. Can  
2 you please repeat the question. Sorry, I have to ask again.

3 Q. We can move on, Mr. Viliena.

4 The student with the gun, Josie Ysemé, he's dead now,  
5 right?

6 A. Yes.

7 Q. So Josie, he can't corroborate your alibi?

8 MR. HALEY: Objection.

9 THE COURT: Basis? Overruled.

10 Q. Mr. Viliena, sorry.

11 A. What is the question?

12 Q. Mr. Ysemé, Josie Ysemé, he's not available to corroborate  
13 your alibi?

14 A. Well, he's dead.

15 Q. Earlier you testified that partisans of OPL, quote,  
16 destroyed the election in 2006. You have never seen David  
17 Boniface with a weapon, correct?

18 A. No.

19 Q. And you've never seen David Boniface harm one of your  
20 supporters?

21 A. No.

22 Q. You've never seen Juders Ysemé with a weapon?

23 A. No, I never seen him with a weapon.

24 Q. And you've never seen Juders Ysemé harm one of your  
25 supporters?

1 A. He doesn't hurt any of my partisan, but people from the  
2 population have reported that he had hurt them.

3 Q. I'd like you to turn to your deposition, page 173, please.  
4 And you testified truthfully and accurately at your deposition,  
5 correct, Mr. Viliena?

6 A. Yes.

7 Q. At 173, lines 4 through 9, I asked you the question, "So  
8 you have never seen Juders harm one of your supporters,  
9 correct?" Answer: "I -- no, I have not seen him. If I  
10 mentioned him in the report, it's the information that I have.  
11 But myself, I don't used to see him."

12 Did I read that correctly?

13 A. Yes.

14 Q. You've never seen Nissage Martyr with a weapon either,  
15 have you?

16 A. No.

17 Q. And you have never seen Nissage Martyr harm one of your  
18 supporters?

19 A. No.

20 Q. You have lived in the United States while continuing to  
21 serve as mayor of Les Irois; is that right?

22 A. In 2009, when I came to the U.S., I had given deputy mayor  
23 the right of signature.

24 Q. My question was -- actually, let me re-ask my question.  
25 Did you receive payments as the mayor of Les Irois even while

1 you were living in the United States?

2 A. While I live in the U.S. I wasn't getting paid.

3 Q. Please turn to your deposition transcript at page 184.

4 A. Excuse me, I'm not done yet. It's when I came back in  
5 2012, then I got paid because my checks, they were blocked or  
6 they were held, so they had paid then.

7 Q. So to confirm, you collected payment for the entire time  
8 that you served in Les Irois even for the periods that you were  
9 living in the United States?

10 A. Yes.

11 Q. At the time that you traveled to the United States in  
12 January 2009, you claim that you didn't know whether there were  
13 active Haitian criminal proceedings pending against you.

14 A. No.

15 Q. Did you know or did you not know?

16 A. I didn't know that I was being -- I had any lawsuit  
17 against me.

18 Q. Weren't you jailed for that criminal proceeding?

19 A. Yes, I got arrested. I went to prison.

20 Q. And you traveled back and forth between the United States  
21 and Haiti multiple times between 2009 and 2017 while these  
22 criminal proceedings in Haiti were moving forward, correct?

23 A. I was arrested September 27, 2008. And on that day, on  
24 September 27, 2008 a judge came to my house. He asked for a  
25 lift to go to the police station. And when I arrive at the

1 police station, he pulled out his warrant arrest from his  
2 pocket.

3 Q. Mr. Viliena, I asked a different question. I'm now moving  
4 to the time when you lived in the United States. Between 2009  
5 and 2017, did you fly back and forth from Haiti and the United  
6 States several times?

7 A. Yes.

8 Q. Mr. Viliena, you said you were married in 2003?

9 A. Yes.

10 Q. What's your wife's name?

11 A. Marie S. Louis.

12 Q. And you said you've been separated?

13 A. Yes.

14 Q. When did you separate?

15 A. We've been separated about a year and a few months.

16 Q. And before you were separated, did you live together in  
17 Malden?

18 A. Yes.

19 Q. And was one of those addresses 218 Summer Street?

20 A. Yes.

21 Q. Mr. Viliena, in the course of this case, you responded to  
22 questions from counsel, my team; is that right?

23 A. Yes.

24 Q. And those questions, you answer them and then you verify  
25 and sign them under penalty of perjury, correct?

1 A. Yes.

2 Q. And in answer to Interrogatory number 14, which asked you  
3 to identify your real property, bank accounts, trusts and other  
4 assets, did you identify a UNA bank account in Haiti?

5 A. Yes.

6 Q. And did you identify a Middlesex Federal Savings account?

7 A. Yes.

8 Q. And a Bank of America account?

9 A. Yes.

10 Q. And a Metro Credit Union Account?

11 A. Yes.

12 Q. And do you have a parcel of land in Divino, Haiti?

13 A. Yes.

14 Q. And do you have a parcel of land in Matador, Haiti?

15 A. Yes.

16 Q. And do you have a parcel of land in Carcasse, Haiti?

17 A. Yes, yes.

18 Q. And you have a 2007 Honda vehicle?

19 A. Honda CRV.

20 Q. Did your wife recently purchase a home?

21 A. No.

22 Q. She did not purchase a home?

23 A. I don't know, no.

24 MS. LAU: Permission to approach.

25 THE COURT: Yes.

1 Q. Mr. Viliena, I'm --

2 MR. HALEY: Your Honor, can I see a copy of what's  
3 been handed to the witness?

4 MS. LAU: Yes, I'm bringing you one, Peter. Don't  
5 worry.

6 Q. Mr. Viliena, I'm handing you a quitclaim deed for a  
7 purchase of a property of a woman named Marie Louise who listed  
8 herself as at 218 Summer Street in Malden, Massachusetts. Does  
9 this look like your wife?

10 A. I don't recognize the paper.

11 Q. So you don't know if your wife purchased a home on October  
12 27, 2001 for the value of 379,000?

13 A. You are informing me of that.

14 Q. Now I'd like to ask you some questions about the night of  
15 October 29, 2009. And you were still the mayor of Les Irois,  
16 correct?

17 A. Yes.

18 Q. And you loved the Les Irois community, correct?

19 INTERPRETER: I'm sorry?

20 Q. And you loved the Les Irois community, correct?

21 A. A lot. Although they make me feel, from what I heard now,  
22 the services I rendered to the people of Les Irois, I shouldn't  
23 have done them.

24 THE COURT: Hold on a second. How much more do you  
25 have left?

1 MS. LAU: I have two pages, Your Honor.

2 THE COURT: I need minutes.

3 MS. LAU: Probably two minutes, three minutes.

4 THE COURT: So because they're due for their lunch  
5 break, do you want to --

6 MS. LAU: May I have three minutes?

7 THE COURT: Okay.

8 Q. You wanted to protect your constituents and your neighbors  
9 in Les Irois, correct?

10 A. Yes.

11 Q. And you spoke with many different people on the night of  
12 the arsons, correct?

13 A. Yes.

14 Q. And they warned you that houses were being set on fire in  
15 Les Irois?

16 A. Yes.

17 Q. And you spoke with those people on October 29, 2009, on  
18 your cell phone, correct?

19 A. Yes.

20 Q. And you were concerned when you learned that homes were  
21 burning in Les Irois that night, correct?

22 A. A lot.

23 Q. And you were the mayor, you wanted to protect your people.  
24 You wanted to stop what was happening, correct?

25 A. Yes.

1 Q. And you said you tried to get the police to come to Les  
2 Irois by speaking to the regional police officer, correct?

3 A. Yes.

4 Q. But you can't remember the name of that regional police  
5 officer that you spoke to?

6 A. No.

7 Q. In fact, you can't remember any of the people that you  
8 talked to that night, correct?

9 A. The one person that I spoke with was the new Secretary  
10 General that I had put in office.

11 Q. At your deposition, you were unable to recall any name of  
12 any person that you spoke to that night, correct?

13 A. No, I couldn't remember.

14 Q. You can't even remember how many people you talked to on  
15 that night, correct?

16 A. No, I can't remember.

17 Q. Your father is Lissage Viliena, correct?

18 A. Yes.

19 Q. And so after you learned about the fires going on in Les  
20 Irois, you called him to warn him about the fires, right?

21 A. No, I didn't talk to him to tell him that, to alert him  
22 that there was a fire in Les Irois.

23 Q. So you never talked to your dad that night?

24 A. I spoke with my dad.

25 Q. You did speak with your dad?

1 A. Yes.

2 Q. Can you please open your deposition to page 155. And you  
3 testified truthfully during your deposition?

4 A. Yes.

5 Q. I asked you, "Mr. Viliena, did you speak with your father  
6 Lissage Viliena on the evening of October 29, 2009?" Answer:  
7 "No, I did not talk to him."

8 Did I read that correctly? Page 155, lines 6 through 8.

9 A. The question, please?

10 Q. Did you think it was important to call and warn your  
11 father about the fires that night?

12 A. No, I did not talk to him about that that night.

13 Q. And you weren't concerned that your father's house might  
14 be burned down?

15 A. It did not cross my mind.

16 Q. And you weren't concerned about his physical safety?

17 A. Yes, I was worried about his personal safety. That's why  
18 I was trying to reach the police for everyone's safety at Les  
19 Irois.

20 Q. You didn't call your father that night because you already  
21 knew he had nothing to worry about.

22 A. It's not that I wasn't worried, but it's not just the  
23 safety of my father but the safety of everyone in Les Irois.

24 Q. Your home was not burned down that night in the mass  
25 arson?

1 A. No.

2 Q. The home your father lives in was not burned down that  
3 night in the mass arson?

4 A. No.

5 Q. You cannot identify a single home belonging to a MODEREH  
6 or KOREGA supporter that was burned down that night?

7 A. I cannot identify them.

8 Q. You say you weren't involved at all in the mass arson,  
9 correct?

10 A. No, never.

11 Q. You say that you never directed any of your associates to  
12 carry out the mass arson?

13 A. I never ordered nor did I ever tell anyone to set a fire.

14 Q. To this day you do not know who directed the arsons?

15 A. Up until now I did not -- well, the justice system in  
16 Jérémie had decided to make a decision who is it that was  
17 involved in some mass arson.

18 Q. 36 homes were burned down in the town where you are mayor  
19 and you have no idea who is responsible?

20 A. Like I said before, the justice system in Jérémie said  
21 that those are group of people who actually was involved in  
22 this.

23 Q. And the group of people that was involved, your father,  
24 Lissage Viliena, he was arrested in Haiti in connection with  
25 the mass arson, correct?

1 A. Yes, he was arrested while he was home.

2 Q. And your uncle, Pierre Viliena, he was arrested in  
3 connection with the mass arsons?

4 A. Yes, he was arrested.

5 Q. And your cousin, Marc Arthur Conte, he was arrested in  
6 Haiti in connection with the mass arsons?

7 A. Marc Arthur Conte was not my cousin. We act as we are  
8 related to one another but not really my cousin. Yes, he was  
9 arrested that night.

10 Q. You claim you had no involvement in directing the mass  
11 arson of 36 homes in Les Irois?

12 A. No, I have nothing to do with that.

13 MS. LAU: Thank you. I pass the witness.

14 THE COURT: Are you going to have redirect?

15 MR. HALEY: Yes, Your Honor.

16 THE COURT: Okay. Let's take the lunch break. Little  
17 bit after quarter of 1:00, okay?

18 (Jury exits the courtroom.)

19 THE COURT: We're going to get you a verdict form  
20 sometime in the next hour or so. We've done it differently  
21 than you all did it. I know you didn't have any specific  
22 objections, just the same objections. I'm worried about the  
23 way you did it sort of overlapping damages. So we've done all  
24 the liability questions and then all the damages questions at  
25 the end. The way it's set up now the punitive damage question

1 is just the last question, and it goes to all of them.

2 And the reason I did that was because there are  
3 punitive damages against him not sort of individually, on  
4 behalf of them. But think about whether you have an objection  
5 to that. We'll get you the draft.

6 MS. LAU: We'll confer and get back to Your Honor.

7 THE COURT: I think the rest of it is rearranged but  
8 pretty well in line with what you want to do. I'm not going to  
9 break up the punitive damages by claim, but I could break it up  
10 by defendant if you wanted to. I'm not really sure since  
11 they're assessed -- it's against him not really -- just think  
12 about it. I'm not sure what the right answer is to that.

13 So see you all after lunch.

14 MR. HALEY: Your Honor, I understand that the  
15 defendant and I can't talk about his testimony, but I was going  
16 to accompany him to the cafe for lunch.

17 THE COURT: Well, you can talk to him about his  
18 testimony because he's about to have redirect, right?

19 MR. HALEY: Right.

20 THE COURT: They will be able to ask him if you talked  
21 about his testimony over lunch.

22 MR. HALEY: Understood.

23 THE COURT: So you can either talk about it and they  
24 can cross on that, but you are definitely welcome to have lunch  
25 with him.

1 MR. HALEY: Thank you.

2 (Recess 12:16 p.m. - 12:55 p.m.)

3 (Jury enters the courtroom.)

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

5 THE COURT: When you're ready.

6 MR. HALEY: Thank you, Your Honor.

7 REDIRECT EXAMINATION BY MR. HALEY:

8 Q. Mr. Viliena, during your cross-examination counsel asked  
9 you about being arrested originally in Haiti. You were  
10 acquitted of those charges, were you not?

11 A. Yes, in Haiti any trial that I went to, I was found  
12 innocent of all charges.

13 Q. And with respect to your assets, the land that you own in  
14 Haiti, how much is that worth, in your opinion?

15 A. In my estimation, it might be worth 1,000 U.S. dollars.

16 Q. The 2007 Honda, how much do you think that's worth?

17 A. Now it might be 3,000 to 4,000 U.S. dollars.

18 MR. HALEY: I don't have anything further at this  
19 time, Your Honor.

20 MS. LAU: No recross, Your Honor.

21 THE COURT: No recross.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Haley.

24 MR. HALEY: The defendant rests, Your Honor.

25 THE COURT: The defendant rests.

1 Ms. Lau, whoever's speaking.

2 MS. LAU: Yes. We have a rebuttal case, Your Honor.

3 MS. ADEMOLA: Your Honor, we're going to call Brian  
4 Concannon for our rebuttal case. I just need to --

5 THE COURT: I'd give you a break between his case in  
6 chief and the rebuttal case but since we've only been here for  
7 two minutes, we are going to forge forward.

8 MR. HALEY: Your Honor, can I just get some materials  
9 out of the --

10 THE COURT: Yes.

11 MR. HALEY: Thank you, Your Honor.

12 THE COURT: I spoke at this breakfast this morning.  
13 They do these Federal Bar Speaks once a month and they rotate  
14 the judges through. Somebody reminded me of a story I often  
15 tell but I haven't told in a while so I'll tell you while  
16 they're getting organized.

17 So this robe, this is like pure polyester. And when  
18 I started, the judge next door, he's actually the guy with the  
19 hands over there, lent me his chair. I don't know what it was  
20 made of but also extremely slippery. So one of my first court  
21 appearances, I come out, I have my new robe and I sit down in  
22 the chair and I just slide right off the chair and onto the  
23 floor. And I am like howling with laughter. This is pretty  
24 funny in my book. And I stand up and nobody in the courtroom  
25 is laughing. That's what happens when you become a judge. It

1 was my first introduction to the fact that I wasn't in Kansas  
2 anymore.

3 Are you ready or would you like me to come up with  
4 another one?

5 MS. ADEMOLA: Brian's here. We're ready.

6 THE COURT: While you're walking, I'm going to remind  
7 you that you're still under oath. And I'm guessing that's  
8 somebody else's water. So don't drink it. But the water in  
9 the pitcher is clean.

10 BRIAN CONCANNON, Previously sworn

11 REBUTTAL DIRECT EXAMINATION

12 BY MS. ADEMOLA:

13 Q. Mr. Concannon, today you've heard testimony about the  
14 Haitian proceedings regarding the defendant Viliena.

15 A. Yes, I have.

16 Q. Okay. And you're familiar with those Haitian court  
17 proceedings from your expert opinion work in this case,  
18 correct?

19 A. Yes, I am.

20 Q. And as a part of your preparing your expert report, did  
21 you review any records of those proceedings in Haiti?

22 A. I did, yes.

23 Q. And did you review proceedings related to all three events  
24 that we've been discussing in this case?

25 A. Yes. By "all three events" I mean the assassination of

1 Ecclesiaste Boniface, the attack on the radio station and the  
2 arson.

3 Q. And could you tell us what the ultimate result was in  
4 those proceedings in Haiti?

5 A. For the arson, there was a trial and people were convicted  
6 but Mayor Viliena was not mentioned in the trial. So he was  
7 not convicted.

8 For the cases of the radio station attack and the  
9 Ecclesiaste Boniface assassination, those were combined into one  
10 case and there was a trial in 2015 in which several people were  
11 convicted. Mayor Viliena was named in that case but he was not  
12 present. So at the end of the trial, the judge started what  
13 they call in Haiti a par contumaces, which are in absentia  
14 proceedings.

15 Q. So let's first talk about the proceedings that you  
16 mentioned that involved the 2015 trial for the killing of  
17 Ecclesiaste Boniface and the radio station attack. You  
18 mentioned that there was a criminal complaint filed in Haiti  
19 related to those events?

20 A. Yes. There were complaints -- there were separate  
21 complaints that were done shortly after each of the incidents.  
22 They were made to the chief prosecutor in the City of Jeremie.

23 Q. And are you familiar with the concept of an investigating  
24 judge in Haiti?

25 A. Yes, I am. An investigating judge, it's unusual, at least

1 from the American perspective, because the investigating judge  
2 does things that in the U.S. is done by a prosecutor. When the  
3 prosecutor gets a complaint, you know, in the U.S. the  
4 prosecutor kind of does everything they need to prepare the  
5 case. In Haiti the prosecutor takes a look at it, decides if  
6 it merits further investigation. Sometimes they can do their  
7 own investigation, but typically what they do is they send it  
8 off to the investigating judge, who does most of the  
9 investigation for the case. The judge can do -- can subpoena  
10 people to -- summon people to court, can have hearings, can do  
11 interviews with witnesses, with defendants, with plaintiffs.  
12 It can ask the police to do scientific or other investigation.  
13 Pretty much anything that's done to prepare the facts for a  
14 case is done by the investigating judge. And along the way,  
15 the investigating judge has the right to issue arrest warrants  
16 if he or she thinks that the information that's come to light  
17 justifies it.

18 Q. And there was an investigating judge assigned to this case  
19 in Haiti?

20 A. Yeah. I believe there were at least two. There was one  
21 who started and then there was another one who finished it.

22 Q. And what action did those investigating judges take in  
23 response to Defendant Viliena?

24 A. With respect to Defendant Viliena, shortly after the  
25 investigation started there was an arrest warrant issued and in

1 September of 2009 Mr. Viliena was arrested.

2 Q. Were you here earlier today when Defendant Viliena  
3 testified about coming to the United States in January 2009?

4 A. Yes, I was. I need to correct my last statement. He was  
5 arrested in September of 2008, not 2009. Sorry about that.

6 Q. And after Defendant Viliena came to the United States in  
7 January 2009, did the Haitian court proceedings continue?

8 A. Yes, they did.

9 Q. Could you tell us what happened in those Haitian court  
10 proceedings after Defendant Viliena came to the United States?

11 A. Well, first there was a trial in the City of Jeremie.  
12 Then that was appealed by some of the people who were convicted  
13 in person. The appeals -- the Supreme Court heard that appeal  
14 and then sent it on back to the City of -- to the court in Les  
15 Cayes, another city, and then they had the hearing -- the trial  
16 in 2015.

17 Q. And what was the result of that 2015 trial in Les Cayes?

18 A. So there were several defendants who were in custody and  
19 were at the trial. They were all convicted and sentenced for  
20 the incidents.

21 Mayor Viliena was not there. And as is typical in Haitian  
22 cases when a defendant in a case is not there, the judge at the  
23 end of the trial started the in absentia proceedings.

24 Q. Could you tell us what in absentia proceedings are in  
25 Haiti?

1 A. Sure. "In absentia" in Latin means "in the absence of."  
2 So it's a type of proceeding that it's a way that the justice  
3 system reacts to someone who has accusations against them but  
4 is not present to be tried.

5 In Haiti, what they do is they provide notice -- they  
6 declare the person a fugitive, which happened in the 2015 case  
7 in Les Cayes. And once they declare the person a fugitive,  
8 they post notice on their last -- the last known residence that  
9 they're required to show up in a period of time. Usually it's  
10 about two weeks. And if the person does not show up in time,  
11 the court can have another hearing, at which time the court  
12 examines the evidence, makes a decision as to whether there's  
13 enough evidence to create a presumption that the person is  
14 responsible, and then will pronounce a verdict, either guilty  
15 or not guilty in absentia.

16 Now, in absentia convictions are not permanent. If  
17 someone is convicted in absentia and then they come back,  
18 they're allowed to challenge that conviction and there's no  
19 presumption as a result of the conviction. They basically get  
20 a new shot at a trial.

21 Q. And Mr. Concannon, just to confirm, in the July 2015  
22 trial, the court indicated that Defendant Viliena was a  
23 fugitive?

24 A. Yes, the court did.

25 Q. Mr. Concannon, can you remind us when the complaint was

1 filed in this action?

2 A. In the U.S. action?

3 Q. Correct.

4 A. I believe that was March of 2017.

5 Q. And so just to confirm, from your review of the Haitian  
6 court proceedings, from the date that the Defendant Viliena was  
7 released from prison in Haiti until the filing of the complaint  
8 in this action, to your understanding, did the Defendant  
9 Viliena participate in the Haitian criminal proceedings?

10 A. And I read a lot of documents. In none of the documents  
11 did I see any sign that Mayor Viliena participated in any  
12 proceedings in Haiti from the time he left in 2009 until the  
13 time the case was filed in this court.

14 Q. And that includes the July 2015 trial resulting in five  
15 convictions?

16 A. Yes. At that trial it was said he was not there.

17 Q. And from your review of the court records in Haiti, did  
18 there come a time when the Defendant Viliena attended the  
19 Haitian court proceedings?

20 A. There was another trial in 2018 and, according to the  
21 records, he participated in that one.

22 Q. And what kind of proceeding was that?

23 A. So this was a -- you know, it was a trial in the two --  
24 two combined cases. So the Ecclesiaste Boniface murder, and the  
25 attack on the radio station. It was a trial on those charges.

1 Q. And just to confirm, did you review the records of that  
2 April 2018 trial?

3 A. I did, yes.

4 Q. And how long was the record of those proceedings?

5 A. That particular trial, it was three pages.

6 Q. Were there any witnesses at the April 2018 trial?

7 A. The only person who testified was Mayor Viliena. None of  
8 the plaintiffs were there, and no other witnesses were there.

9 Q. And from your review of the records, was Defendant Viliena  
10 questioned at the April 2018 trial?

11 A. Yes, he was questioned pretty lightly. The whole  
12 questions and the answers were less than a page.

13 Q. Approximately how many questions was he asked?

14 A. I believe it was ten.

15 Q. And did the judge or the prosecutor ask any questions  
16 about the specific facts of the underlying charges?

17 A. No, they didn't. The questions -- there weren't many to  
18 begin with and the questions that were asked were softball  
19 questions. He was not confronted with any facts. There were  
20 no follow-ups, no efforts to ask him to explain anything. And  
21 not only were they softballs, they were also irrelevant  
22 softballs. All the questions were asked about things other  
23 than -- other than the attack on the radio station and the  
24 killing of Ecclesiaste Boniface. In fact, you know, the killing  
25 of Mr. Boniface was a big part of this case and had been

1 processed by the justice system, you know, at this point for  
2 close to ten years. There was not -- in the whole record of  
3 the trial, there's no -- the word "Ecclesiaste" does not appear.  
4 The word "Boniface" does not appear. I don't believe the word  
5 "radio" appears either. Juders Ysemé and Nissage Martyr,  
6 they're mentioned but there's no mention in the entire  
7 transcript of any of the details of the attacks or of any  
8 evidence that was created by the courts over a decade.

9 Q. After asking about ten questions at the trial, what was  
10 the judge's conclusion?

11 A. So after -- you know, after -- the judge asked his  
12 questions, but also I guess reviewed the record, the whole  
13 record. The judge made a conclusion that Mr. Viliena was not  
14 guilty.

15 Q. Did the judge provide any reasoning for his decision?

16 A. No, he didn't, which is, I guess, remarkable. The  
17 judge -- I mean you had ten years of investigation, you had  
18 many prosecutors, many judges concluding that, you know, these  
19 bad things happened. The judge either dismissed or ignored  
20 that whole record. The judge just simply did not address any  
21 of the evidence that had been generated in over a decade, did  
22 not explain that he found that evidence credible or not  
23 credible. All the judge just said was that Mr. Viliena is not  
24 responsible.

25 Q. And based on your years of experience with the Haitian

1 court process, what is your ultimate conclusion about the April  
2 2018 trial?

3 A. The trial is highly consistent with a corrupt verdict. I  
4 mean, it just doesn't make sense as an effort to get to the  
5 truth. It makes a lot of sense as an effort to not get to the  
6 truth.

7 Q. You mentioned a lack of references to Ecclesiaste Boniface  
8 or specific questions about the radio station. Was there  
9 anything else in the record that you happened to notice?

10 A. What they do ask -- I mean, they ask about an issue at the  
11 school. That's kind of what the questions seem to go on. It's  
12 talking about an incident at the school.

13 Q. But did they reference any investigation of the underlying  
14 facts?

15 A. They very quickly made a reference to some of the  
16 documents in the case, but no real -- they didn't at all  
17 reference any of the underlying facts of either of the two  
18 incidents.

19 Q. And Mr. Concannon, just a couple of other quick questions.  
20 From your review of the court records, were there any  
21 proceedings in Haiti related to the 2009 arson?

22 A. Yes, there were.

23 Q. Did you see anything indicating that Defendant Viliena was  
24 exonerated for that arson?

25 A. No. In the -- he was not named as a defendant in the

1 trial of the arson, and, you know, not named as anybody who was  
2 convicted or acquitted. He was just not named as a participant  
3 in the trial.

4 Q. And Mr. Concannon, what's your ultimate conclusion about  
5 the proceedings in Haiti?

6 A. The proceedings are an accurate reflection of what happens  
7 when you have very committed people trying to get justice  
8 against a powerful person, that you have both -- some, you  
9 know, promising advances. You have some judges and prosecutors  
10 who are doing what they're supposed to do and the cases make  
11 some progress.

12 But ultimately, as has seemed to be inevitable over the  
13 last 20 years, the case hits a wall. And when it hits a wall,  
14 it proceeds no further against the powerful defendant. You  
15 know, for example, the lower level people were able to be  
16 convicted in the Les Cayes trial and some of them did serve  
17 sentences, but once the case started heading towards the  
18 powerful person, Mayor Viliena, all of a sudden you get very  
19 curious things happening in the justice system that aren't  
20 explainable by having a fair process. And then the efforts to  
21 go after the powerful person get completely stalled.

22 Q. And Mr. Concannon, I just wanted to ask you a few  
23 questions about civil damages in Haiti.

24 A. Sure.

25 Q. In your work in Haiti, have you ever been involved in

1 efforts to recover civil damages for human rights victims?

2 A. Yes. In several cases we've made some effort in that  
3 regard with varying success.

4 Q. And how often do plaintiffs in human rights cases in Haiti  
5 get to the trial stage?

6 A. That's pretty rare. I would say a handful or less in the  
7 27 years I've been working on Haiti those kind of cases  
8 actually get to trial.

9 Q. And in which case are you thinking where they did get to  
10 trial?

11 A. The one -- the most -- the one that I'm most -- was most  
12 closely involved in, we spoke about this yesterday, was the  
13 Raboteau massacre trial, which we got to a trial in the year  
14 2000.

15 Q. And in that one case you were involved in that did make it  
16 to trial, were damages awarded?

17 A. Yes, they were. The court ordered 1 billion Haitian  
18 gourdes to the defendants. I mean, sorry, to the plaintiff.  
19 There were over a hundred plaintiffs. And 1 billion gourdes  
20 was at the time 34 million dollars U.S.

21 Q. And of that 34 million dollars, how much money did the  
22 victims of the Raboteau massacre actually recover?

23 A. From the Haitian proceeding, not a single dollar.

24 Q. What efforts did you take to collect that money?

25 A. We had a couple lawyers working on it. That was the prime

1 thing they were working on for at least months. We went to --  
2 we served papers in almost every courthouse in Haiti. We went  
3 through a whole bunch of different hoops to try to move the  
4 case forward to the point where we could collect that money.

5 Q. And Mr. Concannon, could you just remind us how long  
6 you've spent working on human rights cases in Haiti, how many  
7 years?

8 A. Actually working on cases, since 1995. So I guess that's  
9 27 years.

10 Q. Sure. Us lawyers don't like math. That's fine.

11 In your about 27 years of experience, are you aware of any  
12 victims successfully collecting on a judgment from a human  
13 rights case in Haiti?

14 A. In a Haitian court proceeding, no, not a one.

15 Q. And from your review of the Haitian court proceedings  
16 related to this case, were the plaintiffs here awarded any  
17 damages for the murder of Ecclesiaste Boniface or for the radio  
18 station attack?

19 A. Were the plaintiffs awarded any damages?

20 Q. Did the judge ever indicate that they were entitled to  
21 damages?

22 A. Yes, they did.

23 Q. And from your review of the record, did they ever collect  
24 on those damages?

25 A. No, they did not.

1 Q. And Mr. Concannon, from your review of the record, have  
2 the plaintiffs in this case ever been awarded any civil damages  
3 for the 2009 arson in Haiti from the Haitian courts?

4 A. Yes, they have.

5 Q. And same question from your review of the record. Were  
6 the plaintiffs ever successful in collecting any of that money?

7 A. No, they were not. They have not been.

8 Q. And just related to arson, Mr. Concannon, yesterday you  
9 testified about the elements for arson under Haitian law, and  
10 you also discussed the availability of civil damages against  
11 anyone responsible for the arson. Could you please explain  
12 what that means?

13 A. Sure. The law that allows plaintiffs to collect damages  
14 says that anybody who's responsible for the wrongful acts  
15 can -- is liable for damages. If you look at other parts of  
16 the Haitian -- of Haiti's penal code, there's three types of  
17 people that can be liable. The first is authors. The second  
18 is accomplices. And the third is conspirators.

19 For authors, the code talks about two different types;  
20 material authors and intellectual authors. A material author  
21 is someone who did it. As an example from the Raboteau case,  
22 we had witnesses who testified that police officers trashed  
23 their house and shot at them. Those people were authors  
24 because they were actually involved in doing the acts on the  
25 ground. Intellectual authors are people who may not have been

1 there but gave an order or run a criminal organization that  
2 perpetrated the act. So in the Raboteau case example, the  
3 military high command, they were -- we had no witnesses saying  
4 that any of the top generals were on the scene. We didn't have  
5 any direct evidence of an order. But what the courts ruled was  
6 that there was circumstantial evidence of an order. They  
7 looked at how guns were transferred to the garrison, how troops  
8 were transferred. And they said, well, this is circumstantial  
9 evidence that there has been an order. And they also looked at  
10 the fact that the Army had been systematically repressing  
11 dissidents and had other attacks against dissidents and it said  
12 they're running a criminal organization that is doing this kind  
13 of thing. Even if they didn't give an order, they are running  
14 the organization that's creating these kinds of results. So  
15 the court found the high command members guilty as intellectual  
16 authors.

17 MR. HALEY: Objection, move to strike.

18 THE COURT: Which part of it?

19 MR. HALEY: All of it. It's not rebuttal testimony.

20 THE COURT: Your response to that. Because he may  
21 well be right.

22 MS. ADEMOLA: Your Honor, we were discussing the  
23 proceedings related to the 2009 mass arson. Then we're also  
24 discussing the elements for arson related to those proceedings.  
25 Mr. Concannon is providing additional information about the

1 scope of liability for those potential damages.

2 MR. HALEY: Those weren't things the defendant  
3 testified about.

4 THE COURT: Okay. Hold on. Well, it's not just --  
5 all right. I'm going to read the part I'm going to allow in,  
6 and I'm going to strike the rest of it.

7 The law that allows plaintiffs to collect damages says  
8 that anybody who's responsible for the wrongful acts can -- is  
9 liable for damages. If you look at other parts of Haitian's  
10 penal code, there's three types of people that can be liable.  
11 The first is authors, the second is accomplices, and the third  
12 it conspirators. For authors, the code talks about two  
13 different types; material authors and intellectual authors.  
14 Material author is someone who did it. And everything after  
15 that -- well, hold on. Intellectual authors are people who may  
16 not have been there but gave an order or run a criminal  
17 organization that perpetrated the act.

18 So in other words, I'm cutting out everything that he  
19 gave as an example about the Raboteau case. Okay? Go ahead.

20 MS. ADEMOLA: No further questions at this time.

21 REBUTTAL CROSS-EXAMINATION

22 BY MR. HALEY:

23 Q. Mr. Concannon, you testified in response to questions now  
24 as part of your rebuttal testimony that you reviewed the  
25 records of the civil damages awarded to the plaintiffs in this

1 action. Is that correct?

2 A. That's correct, yes.

3 Q. And that was in the Haitian court?

4 A. Yes.

5 Q. And those were against parties -- the damages were awarded  
6 against parties other than Mr. Viliena, correct?

7 A. That's correct. Mr. Viliena was not a participant in any  
8 of those trials.

9 Q. And wasn't found responsible for the damages?

10 A. There was no -- yeah, he wasn't found not responsible.  
11 There was just no determination of his responsibility in either  
12 of those cases.

13 Q. With respect to the damages, David Boniface was awarded  
14 17,496, Mr. Martyr Nissage was awarded \$15,905 and \$14,315; is  
15 that correct?

16 A. I'm not sure -- that seems consistent with what -- but I'm  
17 not sure of those exact amounts.

18 MR. HALEY: May I approach, Your Honor?

19 THE COURT: You may.

20 Q. I'm showing you Mario Joseph, the lawyer for the  
21 plaintiffs', affidavit and directing your attention to -- it's  
22 the top of page 4, paragraph 9. It starts on 3, though.

23 A. So just read that paragraph 9?

24 Q. Yeah, that would be great.

25 A. Okay. I'm finished.

1 Q. The damages awarded to David Boniface were what?

2 A. So 1,100,000 Haitian gourdes, which he calculated as  
3 \$17,496 U.S. dollars.

4 Q. And then the damages awarded to the others?

5 A. Nissage Martyr and Juders Ysemé 1 million gourdes, which  
6 he calculated as \$15,900, and 900,000 gourdes for the attack --  
7 wait a minute -- I'm not sure what the other 900,000 gourdes  
8 is. But those three numbers, the 15,000 -- oh, never mind.  
9 Okay. So those two -- Nissage Martyr got a million gourdes or  
10 \$15,905 and Juders Ysemé got 900,000 gourdes or \$14,315.

11 Q. When you say "he," that's Mario Joseph?

12 A. That's Mario Joseph's declaration.

13 Q. Your team member, right?

14 A. Yes.

15 Q. And how long did it take you to get to Haiti to attend the  
16 hearing that you've been testifying about on April 30, 2018?

17 A. I didn't testify. I testified that I reviewed the record  
18 of that.

19 Q. So you didn't actually go to the hearing?

20 A. I did not, no.

21 Q. Didn't you testify the other day that the records are  
22 frequently inaccurate?

23 A. Yes.

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

25 THE COURT: You're excused.

1           You were through with him?

2           MS. ADEMOLA: Yes.

3           MS. LAU: Your Honor, the plaintiffs rest.

4           THE COURT: The plaintiffs rest. The defendant's  
5 rested. So we've concluded the presentation of evidence in the  
6 case.

7           Monday is charge after closings. It can be a long  
8 day, because you sit and you listen to lawyers, in which I  
9 include myself, talk at you for, you know, at least a couple of  
10 hours. Super important part of the case, but it can be a long  
11 day.

12           So I have the first part of the charge ready to go,  
13 which is sort of the general instructions about how the jury  
14 conducts themselves. It's probably like, I want to say like  
15 15, 20 minutes. I would like to give you that half of the  
16 charge today so that on Monday morning you just hear the law  
17 and closings, which I think will make Monday a little bit  
18 easier for you all. But I'll leave it up to you, if people  
19 would rather do it all on Monday.

20           JURORS: Today.

21           THE COURT: Okay. So I'm going to give the first half  
22 of the charge today. I'm going to do it right now. Do you  
23 need a break? Do you want to stretch before I do it?

24

25

## 1 JURY CHARGE

2 THE COURT: Again, you're going to have a copy of the  
3 written charge in the jury room. There will be a copy for each  
4 one of you. Because I'm giving you a copy, what I say to you  
5 now needs to be pretty much the same thing as what's on the  
6 pieces of paper. So I will try to be interesting as I go  
7 through this but it is largely a reading exercise. All right.

8 I am now going to instruct you on the law. As you  
9 deliberate, you will have a written copy of these instructions.  
10 Nonetheless, please listen very carefully to the instructions  
11 as I give them now.

12 In defining the duties of the jury, let me first  
13 explain the general rules.

14 It is your duty to find the facts from all of the  
15 evidence in the case. I will describe the law to you, and you  
16 must apply the law to the facts as you find them. You must  
17 follow the law as I describe it, whether or not you personally  
18 agree with the wisdom of the law. This is a fundamental part  
19 of our system of government by law. It is your duty as jurors  
20 to decide the case fairly and impartially, regardless of any  
21 personal likes or dislikes, opinions, prejudices, bias, or  
22 sympathy for one party or another. You must make your decision  
23 based solely on the evidence before you, and according to the  
24 law.

25 In following my instructions, you must follow all of

1     them and not single out some and ignore others. They are all  
2     equally important. The lawyers are allowed to comment both on  
3     the evidence and on the rules of law in their opening and  
4     closing statements. But if what they will or have said about  
5     the evidence differs from your memory, let your collective  
6     memory control. If what they will or have said about the law  
7     seems to differ in any way from my instructions, you must be  
8     guided only by my instructions.

9             You must not read into these instructions, or into  
10     anything that I may have said or done during the trial, any  
11     suggestions from me as to the verdict you should return.  
12     Whatever opinion I might have as to what your verdict should be  
13     is utterly irrelevant. The verdict is yours, and yours alone,  
14     to decide as the finders of the facts. While I intend to be as  
15     helpful as I can in providing you with the knowledge of the law  
16     that you will require to render an intelligent and informed  
17     verdict, the law commits this case to your sole determination  
18     as the judges of the facts.

19             You should consider and decide this case as a dispute  
20     between persons of equal standing in the community, of equal  
21     worth, and holding the same or similar stations in life.

22             "Plaintiff," you will recall, is the name we give to a  
23     person or entity who brings a lawsuit. The plaintiffs in this  
24     case are David Boniface, Nissandère Martyr and Juders Ysemé.  
25     We refer to the party sued as the "Defendant." In this case,

1 the defendant is Jean Viliena.

2 The plaintiffs bear the burden of proving their claims  
3 by what is called a preponderance of the evidence. To prove  
4 their claims, the plaintiffs must prove certain "elements,"  
5 which I will describe later in these instructions on Monday.  
6 Plaintiffs must prove each element of a legal claim by a  
7 preponderance of the evidence; if you find that the plaintiff  
8 on a particular claim has failed to prove any element of that  
9 claim, you should find for the defendant as to that claim.

10 As I explained earlier in my preliminary instructions,  
11 a preponderance of the evidence is a lower standard of proof  
12 than that of "proof beyond a reasonable doubt," which is the  
13 very high standard we apply in a criminal trial. In a civil  
14 case like this one, a plaintiff does not need to prove his case  
15 to any degree of mathematical certainty. Rather, the  
16 plaintiffs must produce evidence which, when considered in the  
17 light of all of the facts and evidence in the case, leads you  
18 to believe that each element of the claim you are considering  
19 is more likely true than not. To put it another way, if you  
20 were to put the plaintiffs' evidence and the defendant's  
21 evidence on opposite sides of a scale, the plaintiffs would  
22 have to make the scale tip in their direction for you to find  
23 in their favor on any claim. On the other hand, if you find  
24 that the credible evidence on a given issue is evenly divided  
25 between the parties, that it is as equally probable that one

1 side is right as it is that the other side is right, then you  
2 must decide that issue against the party having the burden of  
3 proof -- in this case, the plaintiffs.

4 Your verdict must be based solely on the evidence and  
5 the applicable law. In reaching your decision as to whether a  
6 plaintiff has sustained his burden of proof, it would be  
7 improper for you to consider anything that is not in evidence.  
8 You may not base your verdict on bias, prejudice, or sympathy.  
9 While you might sympathize with one party or other, your  
10 verdict must not be based on that sympathy, or influenced by  
11 it. Again, you must decide the case solely on the evidence and  
12 according to the law.

13 In determining whether any fact in issue has been  
14 proved by a preponderance of the evidence, you may consider the  
15 following: The testimony of all witnesses, regardless of who  
16 may have called them; all of the exhibits received in evidence,  
17 regardless of who may have produced them; any deposition or  
18 prior sworn testimony played during the trial; and all facts  
19 that may have been admitted or stipulated to by the parties.  
20 In reaching your verdict, you should give to the evidence  
21 whatever weight you deem proper.

22 Again, your verdict must be based solely on the  
23 evidence and the applicable law. In reaching your decision as  
24 to whether any or all of the plaintiffs have sustained their  
25 burden of proof, it would be improper for you to consider

1 anything that is not in evidence. It would be improper for you  
2 to base your verdict on speculation, guesswork or your  
3 imagination. You also may not base your verdict on bias,  
4 prejudice, or sympathy.

5 Before I turn to the applicable principles of law,  
6 which I will do on Monday, let me first briefly review for you  
7 what is and is not evidence in a civil case.

8 Again, the evidence in this case is comprised of the  
9 sworn testimony of live witnesses or through the presentation  
10 of deposition testimony, on both direct and cross-examination,  
11 the exhibits that were admitted during the trial, and the  
12 stipulations which are set forth in Exhibit 6. The numbers  
13 assigned to the exhibits are for convenience in order to ensure  
14 an orderly procedure. You should draw no inference from the  
15 fact that a particular exhibit was assigned a particular  
16 number.

17 Certain things are not evidence and should have no  
18 influence on your verdict.

19 Arguments and statements by lawyers are not evidence.  
20 What the lawyers have said over the course of the trial you may  
21 find helpful, even persuasive, but the facts are to be  
22 determined from your own evaluation of the testimony of the  
23 witnesses and exhibits, and from any reasonable inferences that  
24 you choose to draw from the facts as you find them.

25 Questions by lawyers to the witnesses are not evidence

1 and may only be considered to the extent that they give context  
2 or meaning to a witness's answer.

3           Objections by lawyers are not evidence. Attorneys  
4 have a duty to their clients to object when they believe that a  
5 question is improper under the rules of evidence. You should  
6 not be influenced by the fact that an objection was made. If I  
7 sustained the objection, you should ignore the lawyer's  
8 question, and any assertion of fact it might have contained.  
9 If I overruled the objection, you should treat the witness's  
10 answer like any other.

11           Testimony or anything else that I excluded, struck, or  
12 which I instructed you to disregard is not evidence. If you  
13 heard an answer to the question or saw a document or part of a  
14 document before my ruling sustaining an objection, you are to  
15 disregard it. That answer or document or piece of a document  
16 is not evidence. Over the course of the trial, I also provided  
17 limiting instructions to you indicating that certain testimony  
18 or exhibits should only be used for a specific purpose. This  
19 mostly concerned statements that I told you could be considered  
20 for some purposes but not for the truth of the matter asserted.  
21 You must abide by these instructions and not use such testimony  
22 or exhibits for any purpose that goes beyond the scope of my  
23 limiting instructions.

24           You should also ignore editorial comments made by the  
25 attorneys -- I'm not sure there were any here, but if there

1 were -- during their presentations, particularly those intended  
2 to characterize the testimony of witnesses. Whether or not a  
3 witness's testimony was believable on any particular point is a  
4 determination that only you can make.

5 Notes, if you have kept them, are not evidence. They  
6 are a personal memory aid to be used to refresh your  
7 recollection of the evidence during the deliberations.

8 Finally, anything you may have seen or heard outside  
9 the courtroom, and I hope there isn't anything like that,  
10 during the course of the trial is not evidence. You must  
11 decide the case solely on the evidence received at trial.

12 There are two types of evidence: Direct and  
13 circumstantial. Direct evidence is direct proof of a fact,  
14 usually presented through the testimony of a person who claims  
15 to have been an eyewitness to an event or a participant in a  
16 conversation. When you evaluate direct testimony, your  
17 decision is fairly straightforward. Do you believe that what  
18 the witness has told you is accurate?

19 Circumstantial evidence, on the other hand, is the  
20 proof of a chain of circumstances or a set of facts from which  
21 you could infer or conclude that another fact is true, even  
22 though you have no direct evidence of that second fact. Here's  
23 an example. You come home, and you see your kid eating a  
24 chocolate chip cookie. That is direct evidence of the fact  
25 that your kid has eaten a chocolate chip cookie. On the other

1 hand, you come home, the cookie jar is empty. There is  
2 chocolate smeared all over your kid's face. That is  
3 circumstantial evidence of the fact that the kid ate the cookie  
4 even though you didn't actually see the kid eat the cookie.

5 Although you may consider only the evidence presented  
6 in the case, direct and circumstantial, you are not limited to  
7 the plain statements made by witnesses or contained in the  
8 documents. You are also permitted to draw reasonable  
9 inferences from the facts, if you believe those inferences are  
10 justified in light of common sense and personal experience. An  
11 inference is simply a deduction or conclusion that may be drawn  
12 from the facts that have been established. Any inferences you  
13 draw must be reasonable, and based on the facts as you find  
14 them. Inferences may not be based on speculation or  
15 conjecture.

16 You all have experience in your everyday affairs  
17 drawing inferences based upon circumstantial evidence. Okay.  
18 Cookie jar is empty, you come home, your kid hates chocolate,  
19 and the dog is looking slightly distressed. In that case, a  
20 better inference might be that the dog ate the cookies and not  
21 your kid. As I said, inferences may be drawn only if it is  
22 reasonable and logical, and not speculative or based upon  
23 conjecture. In deciding whether to draw an inference, you must  
24 look at and consider all of the facts in the case in the light  
25 of reason, common sense, and your own life experience.

1           Neither type of evidence, direct or circumstantial, is  
2 considered superior or inferior to the other. Both types of  
3 evidence may be considered in reaching your verdict and may be  
4 given whatever weight you as the finders of fact deem that  
5 particular evidence to be worth.

6           Most evidence at this trial was offered through the  
7 testimony of witnesses, either live or by deposition. As the  
8 jury, you are the sole judges of the credibility of these  
9 witnesses. If there are inconsistencies in the testimony, it  
10 is your function to resolve any conflicts and to decide where  
11 the truth lies. You are not required to believe the testimony  
12 of any witness simply because that witness was under oath. You  
13 may choose to believe everything that a witness said, only part  
14 of it, or none of it. It is your job to determine the  
15 credibility of each witness and then reach a verdict based on  
16 the believable evidence in the case.

17           Often it may not be what a witness says, but how he or  
18 she says it, that might influence whether or not to accept his  
19 version of an event as believable or credible. You may  
20 consider factors such as: A witness's character; his demeanor  
21 on the witness stand; his frankness or lack of frankness in  
22 testifying; whether the witness was contradicted by anything  
23 that he said before the trial; whether his testimony is  
24 reasonable or unreasonable, probable or improbable in light of  
25 all the other evidence in the case; how good an opportunity the

1 witness had to observe the facts about which he testified; and  
2 whether his memory seems accurate.

3           In deciding whether to believe a witness, you may  
4 specifically note any evidence of hostility or affection which  
5 the witness may have towards one of the parties. Likewise, you  
6 may consider evidence of any other interest or motive that the  
7 witness may have in cooperating with a particular party,  
8 including an interest in the outcome of the case. It is your  
9 duty to consider whether the witness has permitted any such  
10 bias or interest to color his testimony. If you find that a  
11 witness is biased, you should view that witness's testimony  
12 with caution, weigh it with care and subject it to close and  
13 searching scrutiny. Keep in mind, however, that it does not  
14 automatically follow that testimony given by an interested  
15 witness is to be disbelieved. There are many people who, no  
16 matter what their interest in the outcome of the case may be,  
17 would not testify falsely. It is for you to decide, based on  
18 your own perceptions and common sense, to what extent, if any,  
19 a witness's interest has affected his testimony.

20           In deciding whether or not to believe a witness, keep  
21 in mind that people sometimes forget things, get confused, or  
22 remember an event differently. Memory is not always reliable,  
23 and when someone recounts a story twice, it will seldom be  
24 identical in every detail. Even a truthful witness may be  
25 nervous and contradict herself. In considering how much

1 significance to give to a discrepancy in testimony, you should  
2 consider whether a discrepancy pertains to a fact of importance  
3 or only to a trivial detail; but a willful falsehood always is  
4 a matter of importance and should be considered seriously. It  
5 is for you to decide, based on your total impression of the  
6 witness, how to weigh any discrepancies in his testimony. You  
7 should, as always, use common sense and your own good judgment.

8           The weight of the evidence does not necessarily depend  
9 on the number of witnesses testifying for one side or the  
10 other. The law does not require any party to call as witnesses  
11 all persons who may have been present at any time or place  
12 involved in the case, or who may appear to have some knowledge  
13 of the matters at issue at this trial. Nor does the law  
14 require any party to produce as exhibits all papers and things  
15 mentioned by the witnesses in the case.

16           Our system of justice depends on judges like me and  
17 jurors like you being able and willing to make careful and fair  
18 decisions. All people deserve fair and equal treatment in our  
19 system of justice, regardless of their race, national origin,  
20 religion, age, ability, gender, sexual orientation, education,  
21 income level, or any other personal characteristic. You have  
22 agreed to be fair. I am sure that you want to be fair, but it  
23 is not always easy.

24           One difficulty comes from our own built-in  
25 expectations and assumptions. They exist even if we are not

1 aware of them and even if we believe we do not have them. Some  
2 of you may have heard this called "implicit" bias, and that is  
3 what I'm talking about. We judges have the same problem, so  
4 let me share a few strategies that the judiciary has found  
5 useful.

6 First, slow down; do not rush to any decisions. Hasty  
7 decisions are the most likely to reflect stereotypes or hidden  
8 biases.

9 Second, as you start to draw conclusions, consider  
10 what evidence, if any, supports the conclusions you are drawing  
11 and whether any evidence casts doubt on those conclusions.  
12 Double check whether you are actually using unsupported  
13 assumptions instead of the evidence.

14 Third, as you think about the people involved in this  
15 case, consider them as individuals rather than as members of a  
16 particular group.

17 Fourth, I might ask myself: Would I view the evidence  
18 differently if the people were from different groups, such as  
19 different racial, ethnic, or gender identity groups?

20 Fifth, listen to your fellow jurors. They may have  
21 different points of view. If so, they may help you determine  
22 whether you are focusing on the facts or making assumptions,  
23 perhaps based on stereotypes. Of course, your fellow jurors  
24 could be influenced by their own unstated assumptions, so don't  
25 be shy or hesitate to speak up. You should participate

1 actively, particularly if you think the other jurors are  
2 overlooking or undervaluing evidence you find important.  
3 In fact, when you explain your thoughts out loud to other  
4 jurors, you are also helping yourself to focus on the evidence,  
5 instead of assumptions. If you use these strategies, then you  
6 will do your part to reach a decision that is as fair as  
7 humanly possible.

8           You heard witnesses testifying in Haitian Creole.  
9 Witnesses who do not speak English or are more proficient in  
10 another language are permitted testify through an official  
11 court interpreter. If you might know any Haitian Creole or  
12 even some French, you may not rely on your own understanding of  
13 the language, because it is important that all jurors consider  
14 the same evidence. You must accept the interpreter's  
15 translation of the witness's testimony, and disregard any  
16 different meaning or interpretation from any other source,  
17 including your own understanding of either language.

18           You must not make any assumptions about a witness or a  
19 party based solely on the use of an interpreter to assist that  
20 witness or party.

21           The testimony of a witness may be discredited or  
22 impeached by showing that he or she previously made statements  
23 that are inconsistent with his present testimony. If a witness  
24 is shown to have given inconsistent statements concerning any  
25 material matter, you have a right to distrust that witness's

1 testimony in other respects. You may reject all of the  
2 testimony of that witness or give it such credibility as you  
3 may think it deserves.

4           Again, people sometimes make innocent mistakes,  
5 particularly as to unimportant details, and not every  
6 contradiction or inconsistent statement is necessarily  
7 important.

8           If you find that a witness has made inconsistent  
9 statements under oath on an earlier occasion, such as in a  
10 deposition, you may also consider that earlier statement for  
11 its truth or falsity, the same as any testimony at trial.

12           You have heard deposition testimony referred to  
13 throughout this trial and some evidence has been admitted  
14 through deposition testimony. A deposition is simply a  
15 procedure where, prior to trial, the attorneys may question a  
16 witness or an adverse party under oath before a court  
17 stenographer, either as part of pretrial discovery or instead  
18 of having the witness have to actually appear at trial. You  
19 may consider the testimony of a witness given at a deposition  
20 according to the same standard you would use to evaluate the  
21 testimony of a witness actually given at trial.

22           In this case, I permitted Mr. Maguire and  
23 Mr. Concannon to testify as expert witnesses, which means that  
24 they were allowed to express their opinions on matters at issue  
25 in this case and about which that witness has special

1 knowledge, skills, experience or training. Expert testimony is  
2 presented to you on the theory that someone who is experienced  
3 and knowledgeable in the field can assist you in understanding  
4 the evidence or in reaching an independent decision on the  
5 facts.

6 In weighing the opinion testimony of each expert, you  
7 may consider the witness's qualifications, his opinions, the  
8 reasons for testifying, as well as all of the other  
9 considerations that ordinarily apply when you are deciding  
10 whether or not to believe a witness's testimony. You may give  
11 expert opinion testimony whatever weight, if any, you find it  
12 deserves in light of all the evidence in this case. You should  
13 not, however, accept opinion testimony merely because I allowed  
14 the witness to testify concerning his opinion. Nor should you  
15 substitute it for your own reason, judgment, and common sense.  
16 You may reject the testimony of any expert witness in whole or  
17 in part, if you conclude the reasons given in support of an  
18 opinion are unsound, or if you, for other reasons, do not  
19 believe the witness.

20 Again, the determination of the facts rests solely  
21 with you and, in the end, as with all other witnesses, it is up  
22 to you to decide whether you find an expert's testimony  
23 convincing.

24 Some documents and photographs have been received into  
25 evidence. You will have all of them with you in the jury room

1 available for your review. You decide the weight, if any, to  
2 give to each document. That is, you may credit all of a  
3 document, a portion of a document or none of a document. In  
4 evaluating the believability of the statements, assertions or  
5 depictions in a document, you should consider all of the  
6 surrounding circumstances. Among other factors, you may  
7 consider: The author of the document; the believability of the  
8 author; when the document was created; the purposes for which  
9 the document was created; whether the document was created in  
10 anticipation of litigation; whether the statements in the  
11 document are contradicted by anything else; and whether the  
12 statements in the document are reasonable or unreasonable,  
13 probable or improbable in light of all the other evidence in  
14 this case. And as I'm giving this instruction, I'm considering  
15 photographic evidence to be evaluated the same way as a  
16 document.

17           One more. In this case, the parties have stipulated  
18 or agreed to certain facts, which I read to you and which are  
19 set forth in a document bearing exhibit number 6. You will have  
20 the written copy of the stipulations, again Exhibit 6, with you  
21 in the jury room. A stipulation means that the parties all  
22 accept the truth of the information contained in the  
23 stipulation. Since there is no disagreement, you must accept  
24 the stipulation as fact to be given whatever weight you choose.

25           I'm going to stop there for the day. You may all have

1 a chance to criticize, comment or compliment, which no one ever  
2 does.

3 Anything from plaintiff?

4 MS. LAU: Nothing from plaintiff, Your Honor.

5 THE COURT: Defendant.

6 MR. HALEY: Well done, Your Honor.

7 THE COURT: Thank you, Mr. Haley. Ms. Lau feels the  
8 same way, I'm sure.

9 MS. LAU: I do.

10 THE COURT: So you've heard half the instructions but  
11 you haven't been instructed on the law. Now we have this  
12 weekend ahead of us. So keep an open mind until you're all  
13 talking in the jury room together. I know it's tempting now  
14 that you've heard it all to kind of start to figure out your  
15 positions. But you haven't heard the instructions or closing  
16 arguments. Keep an open mind, continue not to talk to anybody  
17 about the case, no extracurricular research you think the  
18 parties should have but did not tell you. Again, I don't know  
19 if there's any media coverage but, to the extent there is, stay  
20 away from it.

21 Have a great weekend. We will see you at 10:00 on  
22 Monday. On Monday -- you might want to talk about it before  
23 you go. Actually, you don't need to. You'll be able to stay  
24 as long as you want. We'll have breakfast and lunch, like we  
25 always do. If you want to work through dinner, you let us know

1 at some point. If you want to knock off, that's fine too.

2 In case I forget to tell you on Monday, which I  
3 sometimes do, you can set whatever schedule you want, but if  
4 you leave for the day, you should tell us before you go so we  
5 don't sit around thinking you're still here. There will be  
6 someone outside your room to communicate with.

7 I don't bring you in -- once you're deliberating, I  
8 don't bring people in in the morning to say hello and I don't  
9 bring you in at night to say goodbye. As soon as everybody is  
10 there, you can start. Don't start until everybody is there.  
11 And when you're all ready to leave for the day, you can leave  
12 for the day. Just make sure you let somebody know. No jury  
13 has ever asked me for dinner, but I'm sure we could make it  
14 appealing if you ever did want to stay.

15 Have a great weekend and we'll see you on Monday.

16 THE CLERK: All rise for the jury.

17 (Jury exits the courtroom.)

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CERTIFICATE OF OFFICIAL REPORTER

We, Kelly Mortellite and Kathleen Silva, Official 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 17th day of March, 2023.

/s/ Kelly Mortellite

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Kelly Mortellite, RMR, CRR  
Official Court Reporter

/s/ Kathleen Silva, RPR, CRR

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Kathleen Silva  
Official Court Reporter