



**IF YOU ARE NOT CORRUPT, ARREST THE CRIMINALS:  
PROSECUTING HUMAN RIGHTS VIOLATORS IN HAITI**

A CASE STUDY PREPARED BY

**KEN BRESLER**

**FOR THE PROJECT ON JUSTICE IN TIMES OF TRANSITION  
HARVARD UNIVERSITY**

**Spring 2003**

**If You Are Not Corrupt, Arrest the Criminals:  
Prosecuting Human Rights Violators in Haiti**

*“If you are not corrupt, arrest the criminals.  
We demand they be judged, those murderers, judge them!  
Don't you hear us?”*

*– Protest song sung by the Raboteau Victims' Organization.*

---

Haitian Army soldiers and their paramilitary allies charged into Raboteau, a community on Haiti's coast, on April 22, 1994 and began attacking civilians. They broke down doors and burst into homes. They seized people inside buildings, ambushed them on the streets, and chased them toward the harbor. Soldiers and paramilitaries beat civilians, pushed them into open sewers running through the streets, and threatened to kill them.

The attack was not random. The military high command and the paramilitary FRAPH (Front Révolutionnaire pour l'Avancement et le Progrès Haïtiens / Revolutionary Front for the Advancement and Progress of Haitians) had targeted Raboteau. Opposition in Raboteau to the military dictatorship and support for exiled President Jean-Bertrand Aristide was active and organized.

To punish and intimidate Raboteau's citizens, the military and paramilitary forces stole and destroyed the meager property of proud but destitute people. The soldiers and paramilitaries arrested and later tortured some citizens. And they killed at least seven people that day.

Perpetrators did not let relatives of the victims claim all the bodies. Paramilitaries buried some victims in shallow graves, where animals dug up the corpses and ate them. Some corpses floated out to sea.

The total number of people killed in the Raboteau Massacre is unknown. Brian Concannon, an American lawyer who helped prepare a case against Army and paramilitary defendants, estimates that the death toll was between 10 and 20.

Ultimately, Concannon helped draft a complaint against dozens of defendants, alleging that they had caused eight deaths, seven on April 22, 1994, and one death three days earlier, during, in effect, a rehearsal for the massacre.

Years later, Concannon sensed that it was time to leave Haiti. Haiti had entailed years of hard work, which had been frustrating and rewarding, professionally and personally. Haiti had been particularly rewarding personally, because it was in that country that Concannon had met his wife. His wife, an American, was living in the United States while Concannon continued working in Haiti. As he prepared to leave Haiti, or as he prepared to decide when to leave, he weighed whether he had helped

improve Haiti's justice system. Had he had achieved anything real and lasting? Would his cases and efforts continue when they were no longer his?

Concannon first arrived in Haiti in 1995. Before arriving, he had practiced law in a big American law firm, which he found unsatisfying, and then worked in his family's small law firm while he planned his future. He ultimately decided to work in Haiti for a joint mission of the United Nations and Organization of American States (OAS). (It was called MICIVIH, which stood in French for "Mission Civile Internationale en Haiti. In English, it was the "International Civilian Mission in Haiti.") During his nine months with MICIVIH, Concannon became familiar with a human rights legal office called BAI.

In 1995, about 10 months after the Raboteau Massacre and soon after being restored to power, President Aristide's government formed and funded the Bureau des Avocats Internationaux (BAI). In French, its name means "Office of International Lawyers." Its responsibilities included and still include to end impunity in Haiti; to represent victims of human rights violations in Haitian courts; and to pressure, assist, and ultimately improve the Haitian justice system from the outside. Working from outside means two things for BAI: (1) using lawyers from outside Haiti to (2) reform the system from outside.

BAI is funded by the Haitian government, but it is not a government agency. It has received some resources from non-governmental sources, but it is not an NGO (Non-Governmental Organization). Its mission is flexible but not in writing. It reports to President Aristide through an American lawyer in private practice in Miami, who serves as the general counsel for Haiti in the U.S., and who frequently flies to Port-au-Prince, the Haitian capital.

BAI's responsibilities, including representing victims and improving justice, are related. Human rights victims need a functioning justice system before they can receive justice. And by vigorously seeking justice for victims in court, BAI pressures the justice system to function effectively. A well-prepared and well-presented trial in the Raboteau case could obtain justice for the victims and demonstrate what a fair trial can look like.

Despite massive problems that nearly incapacitate Haiti's justice system, it has an advantage that BAI could exploit: Crime victims have legal standing in criminal cases. Under the system that Haiti inherited from France, its former colonizer, a crime victim can claim civil money damages against a criminal defendant, and become a civil party (*partie civile*). Crime victims or their private lawyers can present evidence, question witnesses, and make closing statements in the same trial in which government prosecutors are seeking criminal convictions.

In contrast, common-law systems (such as those in Great Britain, the United States, and other English-speaking countries) do not grant legal standing to crime victims. For example, in the most publicized trial in the United States in the 1990s, state prosecutors charged O.J. Simpson with murdering his former wife and her friend, Ronald Goldman. During the trial, Goldman's relatives sat in the courtroom audience with no

official role. Only after Simpson's criminal trial ended did Goldman's family sue Simpson in a separate civil trial for money damages.

If the United States had Haiti's justice system, Goldman's family could have become a civil party to the criminal prosecution. The family could have had lawyers in the courtroom, assisting the prosecutors with evidence and arguments that the family's lawyers had developed, prodding the prosecutors if they became lax, compensating for any of the prosecutors' deficiencies, and emphasizing facts and arguments that the prosecutors did not.

That's the role that BAI saw it could play and one reason it was founded. It could assist Haiti's overworked prosecutors by researching, investigating, and preparing the Raboteau case. It could pressure reluctant prosecutors and coach willing ones. And if the prosecutors turned out to be incompetent, uncommitted, corrupt, intimidated, or overwhelmed, BAI's lawyers could compensate for the prosecutors by arguing the victims' cases. They could piggyback the victims' civil case onto the criminal prosecution. In pursuit of money damages for the victims' families, BAI could pursue a goal that was more important to the families: justice.

BAI is not a large organization. In its first year, 1995, high-profile lawyers from New York and Miami flew to Haiti and worked, part-time, sometimes with an American lawyer. At the beginning of 1996, BAI had one full-time American lawyer and one full-time American investigator living and working in Haiti. A human rights lawyer occasionally traveled from New York to BAI.

In the summer and fall of 1996, BAI's staffing changed. The full-time lawyer and investigator left. A French lawyer arrived in the fall, worked mostly on a case that arose in Cité Soleil, and stayed for two years. In the summer, two other lawyers arrived and were assigned to prepare the Raboteau case. Despite the "Internationaux" in "Bureau des Avocats Internationaux" only one of the two lawyers on the Raboteau case was a foreigner.

Brian Concannon, a 1989 graduate of the Georgetown University Law Center in the United States, began working at BAI in June 1996. He was 32. He had worked three-and-a-half years at a big law firm in Boston, and had first arrived in Haiti in 1995 to work for the United Nations. He is the son of two lawyers.

A month later, Mario Joseph, then 33, arrived at BAI. He had graduated in 1990 from the law school at the State University in Gonaïves. Joseph practiced law, and also taught math in the small private school that he owned and ran. His father is a farmer and an electrician who can sign his name; his mother is illiterate.

For a short time, Concannon and Joseph were BAI's only lawyers (their titles were simply *Avocat*, French for "Lawyer"), and they were wary of each other. Concannon thought that Joseph had the benefits of having rapport with poor Haitians and not being corrupt, but didn't pay enough attention to detail, analyze factual and legal

issues adequately, or perform written work well enough. Concannon suspected that Joseph considered him to be an “imperialist jerk.”

Actually, Joseph considered Concannon to be worse than that. For around six months, he suspected that Concannon worked for the CIA, was gathering intelligence against President Aristide, and was in Haiti to help topple Aristide’s government.

Joseph was suspicious and defensive because of the history between Haiti and the United States. (For example, after Haiti became the second republic in the Western Hemisphere in 1804, the United States, the oldest republic in the hemisphere, refused to recognize it for six decades. Haiti had been born of a slave revolt, which was threatening to the United States, a slave-holding country. The United States occupied Haiti from 1915 to 1934, and backed the notorious dictators François Duvalier and his son Jean-Claude Duvalier, who serially ruled from 1957 through 1986.)

Earlier in the 1990s, USAID (Agency for International Development) had tried to help reform Haiti’s legal system. But the program hired Haitians who had been affiliated with the Duvalier regimes. USAID hired a private contractor to help reform the justice system; the contractor hired a lawyer who had been disbarred in California for committing felonies, including defrauding the American government. Joseph said that he had no example of an American who was in Haiti to do good.

Nor was Joseph impressed with Concannon’s language skills. Concannon had studied French in college, and had spent his junior year in France. (French is one of Haiti’s official languages, but only about 10% of the population, generally the elite, speak it. All Haitians speak the second official language, Creole.) Concannon had picked up Creole, or so he thought. As far as Joseph was concerned, Concannon knew no Creole and “his French wasn’t that good.” (Joseph had first learned French in the Protestant mission schools he had attended.)

Even if Joseph and Concannon could develop a working relationship, they had to contend with the overwhelming problems in Haiti’s justice system, including:

*Haiti’s judges and prosecutors are too often incompetent, corrupt, and/or intimidated.* Concannon said it’s difficult to differentiate among the categories. A prosecutor who mishandles a case might be unskilled – or might have been bribed. A lackadaisical judge might have been bribed or intimidated – or both. He might have received a message along the lines of, “Take this bribe or we’ll burn down your house.” A few judges told Concannon about this phenomenon (although not in the context of the Raboteau case). “They want to be honest, but have limited protection,” Concannon said, “so sometimes they take an offer they can’t refuse.”

At one point in the Raboteau proceedings, the prosecutor in Gonaïves who had been in office during the military dictatorship testified that he had been obligated to prosecute the case, but explained why he had not done so. He invoked a Creole proverb: “The Constitution is paper, bayonets are steel.”

*Haiti's justice system isn't necessarily about justice.* Concannon pointed out that because Haitian trials have been historically about guns, money, and influence (in other words, threats of violence, bribery, and who's politically connected and protected), they were not about evidence. And to mask that trials were not about evidence, lawyers argue about procedure and make long and loud speeches in French. Concannon said that one skill that Haitian lawyers develop is how to slow down a trial.

*Haiti's justice system isn't necessarily a system.* “The basic rule in Haiti is that there are no rules,” said Denis Racicot, engaging in hyperbole. Racicot is a lawyer from Quebec who is the Principal Justice Specialist for the Organization of American States in Port-au-Prince. As an example, he cited one Haitian trial in which the defense lawyer argued that his client had an alibi – but argued it for the first time during his closing argument. In most countries, a closing argument is supposed to summarize evidence that has already been introduced in court. But in this trial, the defense lawyer had presented no evidence about an alibi. In the closing stages of the trial, the judge reopened it – and then postponed the trial to give the defense time to locate an alibi witness.

Concannon related that during breaks in one trial, he saw a defense lawyer openly chatting with jurors.

*Instability leads to timidity.* Lawyers in Haiti were traditionally “worried about making enemies because they don't know who'll be on top next time,” Concannon observed. “Based on Haitian history, it has been a fair bet that there'll be a coup on a fairly regular basis.” When Concannon spoke, Haiti had had five Ministers of Justice in the previous seven years. A prosecutor can be reluctant to press a defense lawyer too hard, Concannon said, for fear of antagonizing next week's Minister of Justice.

*Haitian statutes are outmoded.* Haiti's statutes are based on the Napoleonic Code as it was in 1835, Joseph said; they are not well-adapted about such things as military and paramilitary forces massacring civilians.

*The courts favor French speakers.* For centuries, Haitian legal proceedings and documents have been in French, which only about 10% of Haitians speak. (The 10% estimate is rough and hard to verify in a country without population surveys or a recent census.) Even after the 1987 Constitution of Haiti recognized Creole *and* French as the country's official languages, almost all legal proceedings and documents have been exclusively in French.

When he had been a first-year law student, Mario Joseph began frequenting Peace Courts (the lowest trial courts in Haiti, presided over by Justices of the Peace) to help peasants informally with their cases. In his self-designed clinical program, one of Joseph's important functions was to translate French documents into Creole for peasants, to keep them from being defrauded.

If Joseph and Concannon took the Raboteau case to trial, they would have to help make the process accessible to Creole speakers; they would have to be part of a larger national attempt to “Creolize” justice. Raboteau victims, victims’ relatives, and witnesses generally did not speak French. And if BAI wanted to demonstrate to Haitians what an effective criminal trial looked like, the trial could be broadcast on radio and television – but a large portion would have to be in Creole.

*The physical infrastructure of justice is crumbling.* When Joseph and Concannon started working on the Raboteau case, the local courthouse in Gonaïves (Raboteau is a neighborhood in Gonaïves) was in shambles. Even though Gonaïves is Haiti’s third largest city, its courthouse had no electricity, toilets, or telephones. (Cellphones didn’t come to Haiti until 1999, and in 2003, cellphone coverage was still not country-wide.) Concannon recalled sitting in a trial and being able to follow arguments in the appeals court one floor down – by looking through the holes left by missing floorboards.

If Concannon and Joseph were to participate in what could be a mass trial, it probably couldn’t happen in the Gonaïves courthouse.

*Many, if not most, Haitians don’t trust courts and look to alternatives.* Poor people don’t go to judges, said Michèle Montas, director of Radio Haiti Inter. (And 75% of Haitians are poor, maybe more.) Instead, many poor people take their disputes to Roman Catholic priests to settle, or to *oungans*, voodoo priests. (In English, the word “voodoo” can connote “hocus pocus” and even “sham.” Although most Westerners consider voodoo as superstition, it is a religion, one with roots in Africa and Roman Catholicism. It is the religion that helped unify Haitian slaves from disparate African tribes, first into a revolt and then into a nation.)

Richard Morse leads RAM, a band in Port-au-Prince, which draws on the drumming rhythms of voodoo ceremonies and other Haitian musical traditions. Morse, an American whose mother and wife are Haitian, has incorporated into his music the drumming and words from a justice-seeking ceremony. Although he is unfamiliar with the larger ceremony, Morse translated its words from Creole: “There is a state, but there is no justice. Lend me a chair so I can sit and watch them. It’s their country. They’ll do what they want.”

Years after Concannon first started preparing the Raboteau case, he facetiously wondered about investing resources in the justice-seeking functions of secret voodoo societies. With a laugh, he said that resources would at least go into a system “that works and that people respect.” It was a comment, not only about secret societies, but also about public courts.

In addition to seeking justice under the auspices of voodooism and Roman Catholicism, Haitians have created ad hoc courts at least once. After the fall of Jean-Claude Duvalier (also known as “Baby Doc”) in 1986, a half dozen or so villages established popular tribunals to prosecute Tontons Macoute, members of the Duvaliers’ presidential militia. Some villages sentenced Tontons to community service, Montas

recounted. Other villages were “happy to air out their feelings,” she said; catharsis was sufficient.

The popular tribunals were short-lived, Montas said. After three months, the Army, which still existed then, dissolved them.

A justice system that barely functions and Haitians’ lack of faith in it almost certainly contributes to vigilantism. After Jean-Claude Duvalier fled, Haitians attacked and killed perhaps 100 Tontons Macoute around the country. Mobs killed about 10 Tontons in the streets of Port-au-Prince, Michèle Montas reported.

Of course poor Haitians are not the only ones who have lost faith in the justice system. Montas, who is well off and well educated, maintained, “Let’s do to the judicial system what we did to the army. Abolish it. Do away with it,” she said, “and start from scratch.”

One goal of a Raboteau trial, if it happened, was to restore or create at least a scintilla of trust in the criminal justice system. But for Joseph and Concannon, a scintilla of trust was almost a prerequisite to the trial too. If victims, their families, and witnesses had no trust in the justice system, they had no reason to work with Joseph and Concannon.

Concannon had to contend with yet another feature of Haiti that permeated its justice system: It is an oral society that relies more on memory than paper. As an American-trained lawyer, Concannon trusted information recorded on paper more than he trusted information retrieved from people’s memories. He was comfortable with relying on and introducing documents into evidence.

But Concannon was preparing for a trial in Haiti. As Charles Arthur wrote, “Haiti remains a country where most people cannot read or write, and consequently a rich and expressive oral culture has developed....[W]hen the sun goes down, relatives and neighbors often gather around the cooking pot and the lantern to tell riddles, jokes, and stories.”

(Illiteracy is hard to measure, even in developed countries, because it is hard to define precisely. Illiteracy is especially hard to measure in Haiti because an oral society does not facilitate collecting data and because Haiti hasn’t conducted a census in decades. So estimates of illiteracy in Haiti range widely, from 50% to 80% of the people.)

If the Raboteau case went to trial, Concannon would not have to worry about illiterate jurors, because jurors must be able to read. But even literate Haitians, Concannon noticed, prefer to process information by hearing it. He and Joseph had both been reading for the same number of years, ever since they were boys. But with one minute of preparation, Joseph could talk for 15 minutes, with his presentation organized into paragraphs, Concannon said. In contrast, Concannon could organize his writing more easily than his speaking, and more easily than Joseph could organize his writing.



Concannon would have to work with Joseph, prosecutors, judges, and juries who were educated, literate – and steeped in an oral tradition. He could either learn to process and present information as they did, or demonstrate to them the power of documents and the written word. (This is not to say that documents were unimportant in the Haiti legal system. Land cases rely heavily on paper.)

If one goal of a Raboteau trial was to restore or create a scintilla of trust in the justice system, Concannon and Joseph first had to weather the fallout from a ruinous trial that BAI was involved in, the Malary case.

Guy Malary, the Haitian Minister of Justice, was assassinated in October 1993. Two defendants went to trial in July 1996, the month that Joseph arrived at BAI. Concannon had arrived one month earlier and had worked a little on the case.

Concannon watched most of the trial, in which the defendants were acquitted. Concannon did not consider the evidence presented against the defendants to be strong, so the verdict was reasonable in his view. After the trial, a lot of finger-pointing went on, including fingers pointed at BAI, Concannon said, and the fingers were right.

Concannon tried to identify problems in the Malary case, including BAI's mistakes, so that he and Joseph could avoid them in the Raboteau case. One problem was that BAI's team on the Malary case didn't have a Haitian lawyer. Joseph's recent arrival rectified that problem.

Another problem was that the Malary prosecutors relied too heavily on eyewitness accounts. Concannon thought they should have introduced more documents into evidence. Concannon also felt that the chief prosecutor did not care about the Malary case, and signaled his indifference to the jury in his closing argument. Concannon resolved that before the Raboteau case went to trial, he would make sure that the chief prosecutor, whoever it would be, had bought into the case. Concannon planned to work with the prosecutors, even pressure them. But he didn't want the prosecutors to think that the *blancs* (Creole for "foreigners" or "Americans," pronounced with a silent "c" and "s") had forced the case on them.

The jury pool in the Malary case consisted of wealthy people, who often sympathized with the dictatorship and Army more than with poor victims. Concannon decided that jury pool for the Raboteau trial needed to be broader.

BAI's role in the Malary case consisted of developing evidence for the prosecutor, and Concannon wasn't impressed with how well BAI had done it. BAI's role in developing evidence also meant that it did not represent Malary's family at the trial. The family had no lawyers at the trial, and Concannon concluded that BAI needed to make victims an integral part of the Raboteau trial strategy.

As Concannon and Joseph began preparing the Raboteau case, not everything was dismal. Despite the setback from the Malarly case – to BAI and to high-profile criminal prosecutions in Haiti – the lessons from that case increased the chance of success in Raboteau.

Concannon and Joseph could console themselves with a thought that made the challenges (including the challenge of working together) tolerable: they estimated that it would take three months to prepare the case for trial. After that, thought Joseph, the overbearing Concannon would be gone. He thought that Concannon wouldn't last longer than three months.

Haiti had two advantages over many other countries that have wanted to prosecute human rights violators. One was that Haiti had demobilized its army in 1995. (Some people describe the army as “abolished,” but the Haitian Constitution still recognizes it and the Constitution has not been amended.) Former soldiers might disrupt trial preparations or try to stop a trial, but a military *institution* would not do so.

Haiti's second advantage was that after democracy was restored, only a limited amnesty had been granted to human rights violators. (Here is the historical context needed to understand the amnesty: In December 1990, Jean-Bertrand Aristide was elected president. In September 1991, eight months into Aristide's presidency, the military overthrew him. For three years, the military and its paramilitary allies ruled the country and brutalized its people – such as by committing the Raboteau massacre in April 1994. In September 1994, the United States, backed by the United Nations, restored Aristide to power. In 1994, the government granted amnesty – but it covered only the coup itself in September 1991, not the three years of abuses that followed.)

Finally, the Raboteau case itself had at least one advantage that increased the chance of a successful prosecution: the massacre had been investigated and documented soon after it happened. The day after the massacre, the local justice of the peace, who lived in Raboteau, walked through the neighborhood and documented damage to houses. As residents who had fled returned to their homes, the justice of the peace interviewed them. These interviews became extremely useful, including establishing that the massacre in fact occurred.

A Roman Catholic priest from France, working with the Church's Justice and Peace Commission, took witness statements and preserved medical records. The justice of the peace and the priest who took statements, and the victims who gave them, did not know whether the military dictatorship would ever be ousted. They had no way to know that the military would be ousted a mere five months later. And they had no way to know whether the soldiers and paramilitaries would ever be charged. But the work of the justice of the peace and of the priest (along with some documentation that MICIVIH, the UN/OAS mission, conducted in 1994) helped Joseph and Concannon begin working on the case more than a year later.

1996.

Joseph and Concannon headed to Raboteau to interview witnesses who had been identified and to locate more of them. They were in Gonaïves or its neighborhood of Raboteau on most days in most weeks.

Concannon and Joseph researched Haiti's penal code to determine what defendants could be charged with. They decided to take a "kitchen sink" approach and charge them with everything except stealing the kitchen sink. They researched the liability of criminal accomplices, the offense of attempting to commit a crime (the law of which they learned is not well developed in Haiti), and international law and its relationship to Haiti's penal code. They wrote legal memoranda in French to educate themselves. They gave the memoranda to prosecutors and judges to educate them too.

Joseph and Concannon worked with the Minister of Justice and his prosecutors (the prosecuting system in Haiti is centralized), pressing them to prepare the case and persuading them to believe that it was worth pursuing.

Joseph and Concannon began advocating for a more representative jury pool. They also coordinated BAI's efforts with those of the investigating judges. Under Haiti's system, at least one *Juge d'Instruction* investigates and compiles a criminal case, and if the case merits it, issues an *ordonnance*, which is similar to an indictment. ("*Juge*" rhymes with "huge.")

Most criminal cases have an investigating judge. The first investigating judge in the Raboteau case had already left by the time that Joseph and Concannon started working on Raboteau. Because of the size of the case, two investigating judges working together had replaced the first one.

Three months had gone by since Joseph and Concannon had begun working on the case. Their prediction that the case would take three months to prepare had been optimistic; they found that they still had a lot more to do. Three more months went by. Despite Joseph's initial expectation, Concannon was still at BAI and in Haiti.

Joseph slowly realized that Concannon was useful. When they drafted a *plainte* – a complaint – for the victims to file in court, Joseph had termed Raboteau a "Bidonville," a shantytown. Concannon pointed out that the term was insulting. Joseph agreed and they changed it. The victims filed the complaint, an initial step in their case, in October 1996.

Not all criminal cases entail a *plainte*. The reasons are that not all criminal cases have victims, and in criminal cases that do have victims, the victims don't always file a civil complaint.

An investigating judge can investigate a criminal matter even without a civil complaint, and that's what happened in the Raboteau case. The first investigating judge

had begun compiling evidence in 1995, more than a year before BAI drafted a complaint for the victims.

When an investigating judge amasses enough evidence to establish the rough equivalent of probable cause, he or she issues an *ordonnance*, the rough equivalent of an indictment. An investigating judge does not need to issue an *ordonnance* before issuing arrest warrants. As the judge finds the rough equivalent of probable cause against individual suspects, he or she may issue arrest warrants.

Once an investigating judge issues an *ordonnance*, his or her role in the case is completed. An investigating judge may not preside as the trial judge in the same case.

After an investigating judge issues an *ordonnance*, prosecutors may issue a final charging document, an *acte d'accusation*, French for an “act of accusation.” It is usually the *acte d'accusation* that defendants must defend themselves against in a trial.

A victim’s complaint can influence – but not control – the investigating judge’s *ordonnance* and the prosecutors’ *acte d'accusation*. An *acte d'accusation* may omit charges and defendants that the victims included in their complaint and that the investigating judge included in the *ordonnance*.

Prosecutors must be convinced that charges in the civil complaint and in the investigating judge’s *ordonnance* are strong enough to go to trial. “If the chief prosecutor absolutely doesn’t want the case to go forward, it won’t,” Concannon said. “He’s got plenty of ways of blocking it.” That’s why Concannon and Joseph spent so much time persuading the chief prosecutor and the prosecutor’s superior, the Minister of Justice, that the Raboteau case was worth pursuing and offering BAI’s help.

The case hit one of many snags only months after Joseph and Concannon had arrived at BAI. At the end of 1996 or the beginning of 1997, the Ministry of Justice dismissed the two investigating judges, possibly because they weren’t making progress, but so perfunctorily that the dismissals might have been illegal.

Joseph and Concannon would have to establish a working relationship with at least one more investigating judge, help him or her become familiar with the case, and make sure that he or she was committed to it. Finally, to be thorough, they researched the law to see if the dismissals created an appellate issue that would help potential criminal defendants. (No appellate issue existed, they concluded.)

Not for the first or last time, Joseph and Concannon wondered whether the trial would ever happen.

1997.

Joseph and Concannon continued to spend much of their time in Raboteau, interviewing and locating witnesses. Because the roads between Port-au-Prince and

Gonaïves were bumpy, rocky, full of holes, and sometimes washed out by floods, a one-way trip took between two and four hours. Joseph and Concannon sometimes stayed in hotels and sometimes in the homes of friends. BAI didn't have an office there and often worked at the offices of the UN/OAS mission. When BAI's lawyers interviewed witnesses, they did so in the victims' homes or in a school.

They used laptop computers, running on batteries. They sometimes used the telephones in the UN/OAS office. To communicate with victims and witnesses, Joseph and Concannon usually went to find them by walking, driving, or hiring moto-taxis and riding behind the moped drivers.

Working in Raboteau was necessary, but Port-au-Prince had its advantages, including access to national officials, better telephone service, and more consistent electricity. (Sections of Port-au-Prince receive electricity on a schedule for only a few hours a day. Because BAI's office has a generator, it has air conditioning and desktop computers without batteries. BAI's office has security guards around the clock, not so much to protect its staff and property from people who oppose its work, but to keep common criminals from stealing its computers – and generator.)

Concannon did not fear for his physical safety (but he joked about being kicked out of Haiti, or not being readmitted when he tried to return from the U.S. after a vacation). Remnants of the army and paramilitary, even those who landed in the police force, were not openly hostile to the case. Nonetheless, victims and witnesses of the massacre were often concerned. The few of them who had telephones received anonymous calls with vague threats. One victim received a combination threat and bribe offer.

In Port-au-Prince, Joseph and Concannon worked with officials of the justice system. Perhaps "worked with" isn't the right description. Concannon joked that they harassed judges and prosecutors.

"Judges and prosecutors and Ministers [of Justice] were afraid that this was a really good way to fail publicly. That made people very reluctant to take a chance. In order to get people to take a chance, we had...two strategies," Concannon said. "One, trying to convince people that they could do it, and do it well, and that we would help them to do it well and wouldn't just force it down their throats.

And the second," he said with a laugh, acknowledging the contradiction, "we were going to force it down their throats."

Concannon and Joseph were engaged in a balancing act between not pressuring justice officials enough and pressuring them too much. Concannon reluctantly saw that making enemies was part of his job. Camille Leblanc, one of Ministers of Justice over the course of the Raboteau case, did more than any other Minister to advance it, Concannon said. But Leblanc was at times more angry at BAI than almost any other Minister too.

To convince judges and prosecutors that they could handle the case and do a good job, Concannon and Joseph advised them to break up a daunting case into manageable pieces. They tried to build momentum for the case so that a trial would be inevitable. Yet Concannon sometimes doubted his own advice and strategy. He had broken the case into pieces and was still daunted, and he did not believe that a trial was inevitable.

Concannon extended his time frame: The case would take a total of one year to prepare. He and Joseph put aside other cases. The Raboteau case was gaining momentum, but losing it too.

Individual pieces of the case may or may not have been manageable, but the number of pieces was growing. Joseph and Concannon started working intensely with forensic anthropologists who were matching DNA from massacre victims with their survivors. The DNA could prove that the survivors were related to the victims and were thus eligible to be civil parties. BAI's lawyers also wanted to counter an anticipated defense that no massacre had ever occurred. In addition, the anthropologists' work could confirm victims' and witnesses' accounts of individual deaths. If the Raboteau case went to trial, it would be the first criminal trial in Haiti to use DNA evidence. (A few paternity cases had used DNA.)

Joseph and Concannon started examining military documents to prove which units were involved in the massacre. And they worked with a new police unit that was assigned to BAI to locate and arrest suspects. The Haitian Constitution required that arrest warrants be in Creole and French, but the forms had been available so far only in French. BAI prodded the investigating judge to issue bilingual arrest warrants, which were among the first constitutionally valid ones in Haiti.

Joseph and Concannon decided that they needed to speak on radio, the best way of mass communication in a largely illiterate country, most of whose newspapers were in French. (The only Creole newspaper, a weekly, stopped publishing in 1998.) On radio, they encouraged Raboteau victims and witnesses to come forward.

Later, they intensified their media efforts. They regularly spoke on a one-hour radio show, frequently spoke on shorter radio shows, and appeared on a television show about once a month.

The ultimate pressure that BAI's lawyers could make on justice officials was to criticize them on the radio. Concannon and Joseph used the technique sparingly. Not only did it create more enemies, Concannon said, but it was inefficient.

At meetings, people often asked Joseph why he had come with Concannon, a *blanc*. Concannon became known from his appearances on television, and fewer people asked that question.

1998.

For a few years, Canada had been repairing or replacing the courthouses in Haiti's 11 provinces. Around this time, Canada built a new courthouse in Gonaïves, which had telephones, bathrooms, and occasional electricity.

This was an obvious step forward that would facilitate a trial, but the case took a step backward too. The Ministry of Justice removed the chief prosecutor in Gonaïves, who been preparing the Raboteau case since 1995. In the prosecutor's office, the case lost continuity, momentum, and three years of institutional memory. What was worse, the Ministry appointed a new chief prosecutor whom the victims and BAI distrusted.

(The origin of the distrust was the paramilitary attack in 1993 on Cité Soleil, a shantytown in Port-au-Prince. The paramilitary FRAPH set fires that led to the destruction of 1,000 homes, and did so supposedly to retaliate for the killing of one of its members the day before. While a local justice of the peace was in Cité Soleil gathering information on the death of one person, the homes of 1,000 families were going up in flames only blocks away. This justice of the peace, who apparently ignored the massive arson, was the person later appointed as the chief prosecutor in Gonaïves.)

In meetings and in letters, BAI urged Ministry officials to replace the new chief prosecutor. The chief prosecutor stayed, because he was politically connected and because it was hard to find a qualified replacement.

"The amount of straight legal work...what a lawyer would do for the victims in an ideal world, was not a tenth of the time that we spent on the case," Concannon said. "Most of the time was spent on...pushing other people or helping other people to do their job."

In Raboteau, the Haitian government set up a logistical support office for victims and witnesses, and Joseph led seminars there. In Gonaïves, Concannon occasionally took prosecutors and the investigating judge to dinner, paid for their meals, and continued to encourage them to press the case. He chatted with them to understand the pressures they were under.

It took two years, but Joseph's prejudice against Concannon as a white American had evaporated. Concannon and Joseph were proving themselves in each other's eyes.

BAI couldn't put aside other cases to concentrate solely on Raboteau. Its lawyers worked to recover \$5 million that Baby Doc Duvalier had embezzled and secreted in a Swiss bank account. They had worked on it for years, and would continue to do so.

BAI got involved in another large project. In 1994, the U.S. military had intervened to oust the Haitian military dictatorship. In 1995, U.S. troops left Haiti and took with them approximately 160,000 documents from Haitian military and paramilitary facilities. Human rights activists, BAI, and Haitian prosecutors and other officials were

certain that these documents could help prove human rights violations. BAI led a coalition in an international campaign to repatriate the documents. It gained the support of 69 Members of the U.S. Congress but was unable to force the U.S. military to return the documents in time for BAI to use them to prepare for trial.

BAI continued to advocate expanding the jury pool. Compiling a jury pool in Haiti starts with the census, at least in principle, but Haiti hadn't conducted one in 30 years. Some people in the jury pool have been long-dead. The jury pool in most jurisdictions disproportionately favors members of the French-speaking and often lighter-skinned elite, who view serving on a jury as a class duty. Local justice officials do not broaden the jury pool because they don't have the time, the jury pool had always been narrow – and/or they wanted to manipulate chances for what they view as desirable verdicts.

Concannon and Joseph considered a new census as the long-term solution. In the short term, they encouraged justice officials in Gonaïves to improve the jury list. The justice of the peace culled the names of dead people from the rolls and added eligible lower-class citizens who would not necessarily be inclined to sympathize with military and paramilitary defendants. (Eligibility includes being able to read and not being a felon.)

The fourth investigating judge assigned to the Raboteau case left. Concannon thought that the judge had done good work with massacre victims, and was smart enough to handle the case. But the judge had been intimidated on another case, had the opportunity to emigrate – and fled the country.

Concannon and Joseph were working to improve the jury pool for a case that might never be presented to a jury, and they knew it.

The police officers assigned to BAI were arresting suspects. Citizens in Raboteau were also making citizen arrests by encircling former paramilitaries whom they recognized on the street. These suspects went to jail and usually stayed there; bail and pretrial release are unusual in Haiti.

Arrestees were languishing in jails waiting for a trial that might never happen. Concannon, a human rights lawyer, knew that prolonged pretrial detention could violate the human rights of defendants, especially when jail conditions were harsh. But when Concannon weighed the prolonged detention of arrestees against the possibility of not going to trial because suspects had never been arrested, Concannon decided that not going to trial was a worse evil.

*1999.*

In addition to radio, another form of mass communication was calling for an end to impunity for human rights violators. Concannon noticed graffiti on Port-au-Prince's



walls and buildings, not necessarily commenting on Raboteau: “*Fok kriminel – yo jije*” [“The criminals must be judged”].

BAI wanted to end impunity, not only for the direct perpetrators of the massacre, but also for the commanders who had planned and ordered it. The UN/OAS mission in Haiti had brought in colonels from Argentina as experts to understand the Haitian military’s chain-of-command and to evaluate the leadership’s responsibility for the massacre. Joseph and Concannon started meeting with the experts.

Joseph and Concannon were approaching the three-year mark of working on the case. Concannon felt disconcerted, as if BAI had been “groping in the dark,” continuously figuring out how to proceed. The private lawyer in Miami who served as Haiti’s general counsel in the U.S., oversaw BAI, but didn’t supervise the Raboteau case day-to-day. The Raboteau victims complained that the case was taking too long, but BAI’s lawyers had no experienced lawyer to tell them if that were true, and if so, whether it was their fault. No one in Haiti had done a case this large and complex.

They passed the three-year mark – and then got assigned another case. Years before, a trash barge had illegally dumped ash, possibly toxic, on a beach near Gonaïves. The President assigned the ash case to BAI, because it was working in Gonaïves. Concannon was reluctant to be distracted, but he and Joseph tackled it. Four months later, the ash was gone, and Concannon and Joseph concentrated on the Raboteau massacre again.

The fifth and final investigating judge issued an *ordonnance* (similar to an indictment). The chief prosecutor followed with an *acte d’accusation* (a charging document). BAI was not completely satisfied with either document. For one thing, Concannon suspected that the chief prosecutor had tried to let off a few culpable people. But the investigating judge issued an *ordonnance de cloture* (an *ordonnance* of closure, roughly similar to a superseding indictment). With that document, BAI thought that the people who deserved to be charged had in fact been charged.

The Raboteau victims didn’t trust the chief prosecutor to prosecute the case vigorously. After 1 1/2 years of dissatisfaction with the prosecutor, the victims called for a new chief prosecutor in open letters and on the radio. Finally, they took to the streets and demonstrated. The Minister of Justice relented and removed the chief prosecutor in Gonaïves. The chief prosecutor’s *acte d’accusation* was his last act.

But who would serve as chief prosecutor? And who would the assistant prosecutors be? The Minister of Justice proposed deputizing Joseph as an assistant prosecutor, but Joseph was steadfast. He wanted to represent victims, not prosecute defendants.

In a meeting in his office, the Minister of Justice reviewed a map of Haiti with Joseph and Concannon. He pointed at the location of each of the 11 trial courts. “He talked about everybody who worked there,” Concannon said. “Some of them were smart

and hard-working but they were corrupt. Others were honest but either had no experience or no motivation or weren't that smart. And...by the time we did the tour of Haiti, we ended up with zero people that could do the case.”

2000.

In the Gonaïves prosecutor's office, an assistant prosecutor who had handled the Raboteau case since 1995, became the interim chief prosecutor. It seemed clear that he would be one of the trial prosecutors. The victims trusted him, but he was not experienced enough to lead the prosecution. The case was complex and important enough that it needed a team of prosecutors, not a single prosecutor. The rest of the team remained unknown.

Around May, a voodoo priestess, a *mambo*, encountered Concannon on the street and told him that people were working hard for both sides; in other words, they were invoking voodoo spells for and against the defendants. Years later, Concannon recalled it and laughed, calling it the “most coherent explanation I've heard” for the delays in the case.

For years, Joseph and Concannon had strongly encouraged the Minister of Justice, whose responsibilities include appointing judges, to name a competent, committed, and honest chief judge in Gonaïves. Then everyone involved, including the judge, would have to hope that any threats against the judge didn't become too intimidating. The logistical support office, which the Haitian government had set up to help Raboteau victims and witnesses (among other functions), could provide the presiding the judge with more secure transportation than most judges had.

The Minister of Justice named a chief judge in Gonaïves, whom BAI found satisfactory, and who, as chief judge, would probably preside over the Raboteau trial, if it happened. Then BAI pressured the Minister of Justice to pressure the new chief judge on how to proceed toward trial and how to conduct it. It wasn't the official chain of command for the Minister of Justice to direct or even suggest to judges how to perform their duties, but it existed. As long as the unofficial chain of command existed, BAI wanted victims to benefit from it.

In August 2000, a major human rights case went to trial in Port-au-Prince. BAI followed it closely but did not participate in preparing or conducting it. The trial's relationship to the Raboteau case was indirect. If the trial were successful, it would increase the momentum for a trial in the Raboteau case and raise hopes and possibly chances that a Raboteau trial would succeed.

The other case arose in a neighborhood of Port-au-Prince, Carrefour-Feuilles (roughly pronounced “Car-foo Fay”). In 1999, police officers in Carrefour-Feuilles had executed 11 people, either gang members or innocent civilians. The trial was exceptional before it started for two reasons. Police commanders, not just the rank-and-file triggermen, were defendants. And active police officers, not former ones, were on trial.

When the defendants entered the courtroom, police officers guarding the courtroom saluted the defendants, many of whom were their superiors.

The judge didn't manage the trial sufficiently, according to Concannon, and the trial became disorganized and unruly at times. Concannon thought that the prosecutors' evidence was not overwhelmingly strong and neither was their presentation of it. In contrast, the defense lawyers presented a good case.

Despite these factors, the Chief of Police in Port-au-Prince was convicted along with three other senior officers. Two senior officers were acquitted.

The rock-bottom sentences disappointed human rights observers and activists: three years in prison, with time served, for multiple murders. (The defendants had been in pretrial detention for a year, so they had to spend two more years in prison.) Nonetheless, the Carrefour-Feuilles trial was a large blow against impunity. Concannon and many others considered it the best complex criminal trial and/or the best human rights trial that had occurred in Haiti. And Concannon was pleased that the jurors apparently based their verdicts on the evidence, not the defendants' status.

Before the Carrefour-Feuilles trial, the Minister of Justice appointed the Raboteau trial team. In August 2000, the Minister appointed a new chief prosecutor for Gonaïves. The interim chief prosecutor, who had worked on the case since 1995, resumed his role as assistant prosecutor. In September, the Minister named the last members of the team: two assistant prosecutors from Port-au-Prince, veterans of the Carrefour-Feuilles trial. Carrefour-Feuilles had been a complex trial, but Raboteau promised to be more complex.

Concannon assessed the prosecutors. Of the four, only one knew the facts of the case; the other three had been assigned too recently. One prosecutor's strength was command of the facts; one prosecutor's strength was command of legal procedure; one was skilled in cross examination; and one was arrogant enough to tangle with the table-banging, loud, speechifying defense lawyers.

The trial was scheduled for the end of September 2002. Concannon felt that he and Joseph were ready, but wondered whether a prosecuting team, three-quarters of whom had just parachuted in, could successfully conduct a long and complex trial starting soon.

If the case went to trial, would it reprise the Malaré debacle or the Carrefour-Feuilles breakthrough? Would it build on Carrefour-Feuilles's achievement, or would it fail, leaving Carre-Feuilles to stand out as an anomaly?

Would the Raboteau trial further strike at the forces for impunity by convicting violators of human rights, or would it embolden the forces of impunity with acquittals all around?

If Haitian prosecutors could not secure convictions, would public opinion blame BAI for foisting a trial on the prosecutors, and overinflating the hopes of victims and the country? Haitians were already ambivalent about the desirability and effectiveness of foreign contributions to the country's justice system, economic development, and public health.

(American officials were skeptical too. Between fiscal years 1995 and 2000, the U.S. provided about \$97 million worth of assistance to try to improve the justice system in Haiti. The U.S. did so mainly through USAID and the Justice Department. The U.S. suspended its assistance in July 2000. In an October 2000 report, the U.S. General Accounting Office stated, "Despite U.S. assistance, the Haitian judicial sector continues to exhibit major shortcomings." The GAO blamed the Haitian government for the shortcomings, accusing it, among other things, for lacking "clear commitment" to strengthen the judicial sector.)

Brian Concannon and Mario Joseph had worked on the Raboteau case for four years. During the last three-and-a-half years, Gonaïves either had a chief prosecutor whose commitment to the case was questionable – or had no permanent chief prosecutor at all. Yet Concannon and Joseph had continued to toil. Now a committed chief prosecutor and assistant prosecutor had been assigned to start the trial on a scheduled date. Concannon may have considered the team to be collectively inexperienced, but he and Joseph wanted the trial to proceed.

•

The trial started on September 28, 2000, not in the courthouse in Gonaïves that Canada had renovated, but in a tent hoisted in the parking lot. Courthouse furniture was moved into the tent, which accommodated the trial's participants and observers, including journalists, better than the courtroom would have.

Creole-language radio broadcast the trial live; Creole-language television did so for much of the trial.

While the Carrefour-Feuilles trial had been the first time that police commanders were put on trial, the Raboteau trial was first time that military commanders went on trial, albeit some *in absentia*. Twenty-two defendants were in custody and on trial; 37 more defendants were tried *in absentia*. Some of the missing defendants were in the U.S.

The jury had been chosen from a "wide geographic, economic, and social spectrum," Concannon said. Partly due to BAI's efforts, the jury was more representative of eligible Haitian citizens than most juries had been.

The four prosecutors sat at two adjacent tables near the jury. Opposite the prosecutors sat 10 defense lawyers, near the 22 defendants they represented. Joseph sat at a separate table.

Concannon, who was admitted to practice law in the U.S. but not in Haiti, had no status that permitted him to sit with the Haitian lawyers. He was not allowed into “the well,” an area in a courtroom reserved in criminal trials for lawyers and defendants, and defined by a railing or low barrier in most courtrooms.

Concannon sat in the audience. While the trial was in session, Concannon sometimes passed notes to Joseph. Outside the courtroom, he sometimes assured and conferred with victims and witnesses waiting to testify. During breaks in the trial, Concannon constantly conferred with Joseph, and continued to prod the prosecutors.

In the Haitian system of trials, the trial judge questions witnesses first. Then prosecutors have the chance to question witnesses – whether the witnesses had been called by the prosecution or defense. Next jurors get to question witnesses. Then, lawyers for the victims question witnesses, followed by defense lawyers. Lawyers for the victims and defendants question witnesses only indirectly. They propose a question to the judge, who repeats it, modifies it, or rejects it.

Joseph couldn’t participate in selecting jurors, but could do just about everything else that the prosecutors and defense lawyers could. He called witnesses to testify and introduced evidence. He examined (questioned) and cross examined witnesses.

The defense lawyers included some of the country’s most prominent lawyers. They were perceived to be skillful, Concannon said, but he considered them to be highly theatrical and poorly prepared.

After the first day of trial, the victims were distraught. “They thought we were outgunned,” Concannon recalled. “The defendants had more lawyers, with much more experience, and they were much more successful doing what people have come to expect from lawyers in Haiti,” including “theatrics.” But when the testimony began, the victims “saw our advantage in preparation, and calmed down.”

Yet early on, Concannon was not convinced that he and Joseph had the advantage. To his surprise, Concannon identified with Christopher Columbus.

When Columbus landed in the New World in 1492, it was on the island of Hispaniola, the western third of which is now Haiti. The native population, the Tainos, numbered between 400,000 and 1 million. Within 40 years, almost every single Taino was dead, mostly through Spanish acts of genocide.

“We were outnumbered by defense lawyers,” Concannon said, “and felt like we were explorers in foreign territory....[T]he defense was much more experienced at jury trials and we were trying to do something that hadn't been done before. But...it became clear that our intensive preparation was a huge technological advantage, like the gun over the spear....”

Joseph and Concannon had read, not only the victims' complaint that they had drafted, but the *ordonnance* and the *acte d'accusation*. They had read and cross-referenced the legal documents; statements by victims, witnesses, and defendants; documents that BAI planned to introduce into evidence; and military documents, intelligence reports, and reports by human rights experts. Concannon and Joseph were not certain that the prosecutors and defense lawyers had read the *plainte*, *ordonnance*, or *acte d'accusation*, and were certain that some defense lawyers had not read most of the documents that BAI planned to introduce.

All but one of the defendants presented an alibi defense: when the massacre occurred, they were elsewhere. To rebut that defense, Joseph introduced military records documenting the movement of units and the assignments of its soldiers.

The defense lawyers ignored these and other incriminating documents. At first, Joseph thought that the defense lawyers weren't experienced in countering evidence on paper. But as the trial progressed week after week, Joseph thought that the defense lawyers ignored the documents because they understood how damaging they were.

The prosecutors came to understand the importance of the documents too, and started using them as the weeks went by. But they didn't use the documents as effectively and powerfully as possible, Joseph said. Concannon was frustrated that the prosecutors didn't consistently recognize the power of confronting a defendant with a prior inconsistent statement – demonstrating that the defendant's recent testimony in court contradicted a statement that he had previously made and that had been recorded in a document.

Meanwhile, the jury was assimilating the case better than Joseph and Concannon had anticipated; they could tell from the jurors' questions.

As the defense lawyers made assertions that BAI considered fallacious and misleading, the prosecutors and judge often did not challenge the assertions. BAI's lawyers got nervous. At his table in the well, Joseph compiled lists of followup and cross-examination questions. In the audience, Concannon did the same.

Then the jurors got to ask questions – and their questions often appeared on BAI's lists. One by one, Brian Concannon and Mario Joseph crossed out their own questions and said to themselves, "Yes! Yes!" Years later, Concannon's face lit up and he smiled as he recounted the jurors' questions. Not only did the jurors help BAI's task, but the defendants couldn't easily evade questions from, and issues raised by, jurors. And, Joseph and Concannon knew, the jurors comprehended the victims' case.

Denis Racicot, the OAS lawyer who used to work for MICIVIH, the joint UN/OAS mission in Haiti, saw three days of the trial in Gonaïves and some of the rest on television. He identified two highlights: The testimony of the forensic anthropologists and of the military experts.

One of the forensic experts testified about the remains of three victims, including their injured bones, and the ropes around their necks. One corpse had a key to the house where a victim had stayed, which corroborated a witness's testimony about the victim. A geneticist reported that two corpses' DNA matched those of people who claimed to be relatives of the victims.

The military experts from Argentina had prepared a report concluding that military commanders were culpable for the Raboteau massacre under Haitian and international law. They testified at trial that military commanders at least knew that the massacre was being planned and did try to not stop it.

The trial's turning point, according to Racicot, was the testimony of the former director of the UN/OAS mission in Haiti. The former director testified that repression in Haiti was organized systematically and nation-wide, and that national governmental and military leaders had targeted Gonaïves and Raboteau for repression, Concannon recounted. The former executive director concluded that national leaders had planned and covered up the Raboteau massacre.

After six weeks and the testimony of 24 witnesses against the defendants, the trial ended on November 9, 2000. It had been the longest and most complex trial in the history of Haiti. The jury deliberated for four hours and convicted 16 of the 22 defendants in custody, 12 for premeditated murder and the rest for other serious crimes. (Concannon thought a prior inconsistent statement should have helped convict one of the acquitted defendants.)

The 12 defendants convicted of premeditated murder received the mandatory sentence of life in prison. The other four defendants were sentenced to prison terms ranging between four and nine years.

A week later, the judge convicted 37 more defendants *in absentia* and sentenced them to mandatory life imprisonment. (No absent defendants were acquitted.) If and when they return to Haiti, they have the right to a new trial. (On January 27, 2003, the U.S. deported to Haiti two former colonels who had been convicted *in absentia*.)

The judge awarded the victims and their families civil damages that totaled U.S. \$140 million.

•

Two years later, various observers discussed the impact of the trial. The Raboteau trial proved that the justice system could be just, said Necker Dessables, who holds the nation-wide constitutional office of Protector of the Citizen. But it was an exception, he added.

Michèle Montas said, "One Raboteau trial will not do the job." Extrajudicial killings had continued after the trial, and no victim has received any compensation, "so

Raboteau is not a complete process.” As of this case study’s writing in March 2003, the victims have collected none of their civil damages.

The part of the trial that was televised did not educate the public much, in Racicot’s opinion. The TV commentators didn’t understand the trial, he said, and therefore couldn’t explain it to viewers.

At least one resident of Port-au-Prince whom the author interviewed didn’t watch the trial. He assumed that if it were televised, it must be a show trial.

Did the Raboteau trial help improve prosecutors’ offices or the Ministry of Justice, as BAI had hoped? It certainly improved prosecutors’ offices, in Concannon’s assessment. “It raised the bar in terms of what was possible; it forced prosecutors to improve their individual levels of performance. Perhaps the most remarkable is Josué Pierre-Louis, who used the trial to springboard to the job as Chief Prosecutor in Port-au-Prince, and has done far better than any of his predecessors over the last 10 years.

“Two months ago, we met with Josué about a case. He said ‘let’s do this...’ and proceeded to outline a system very close to the way we did Raboteau.” It was harder for Concannon to assess changes in the Ministry of Justice, because of the turnover at the top; Haiti has had three Ministers since the Raboteau trial. “But the bar is raised for them too,” Concannon said, and pointed to demands from judges, victims, and other constituents of the justice system.

One calamity has reversed some of what the Raboteau trial had achieved, a calamity that BAI had no control over. On August 2, 2002, gunmen crashed a stolen tractor through the wall of the jail in Gonaïves, aiming to free the leader of a violent political and criminal gang called the Cannibal Army. (That prisoner ironically had been a target of the army’s search during the Raboteau massacre, for having been then an Aristide supporter.) The leader of the Cannibal Army escaped along with almost 160 other prisoners, including one Raboteau defendant serving a life term for the Raboteau massacre. After the jailbreak, mobs went on a rampage and partially burned the Gonaïves courthouse, in whose parking lot the trial had been held under a tent.

“Any trust in the judicial system that came out of the Raboteau trial is shot,” said Montas. Anne Fuller, a Human Rights Specialist at the OAS in Haiti said that the Raboteau trial had brought “bright hope,” but it was “destroyed” by the jailbreak and the government’s “laissez-faire” attitude toward arresting escapees.

Racicot of the OAS called the Raboteau trial a milestone, stated that more than one such trial was necessary to establish lasting effects – and doubted whether similar trials would happen. “I don’t think this can be redone in Haiti for a very long time,” he said.



“International support has been so strong and determined and motivated and persistent, it may be the key,” he said. “I doubt the resources that were needed could be assembled again.”

Haitians can’t do it alone, Racicot said, and he wasn’t sure that the international community “have left knowledge and skills behind.”

“Brian is still here,” he said, referring to Concannon, “but I’m not sure for how long.” If Concannon leaves, BAI will exist, but not in the same way, he said.

In August 2002, Brian Concannon got married in America to an American woman. Before the wedding, she had returned to the United States. After their honeymoon, Concannon returned to Haiti and BAI. In the end December 2002, Concannon traveled to the U.S. for the holidays and stayed another two months. From the end of December 2002 through the end of February 2003, he worked long distance for BAI.

Concannon expected that in 2003 he would work for BAI, while continuing to travel between Haiti and the United States and while planning his gradual disengagement from BAI. He would have to continue planning with Joseph about how to continue, not just BAI, but its larger efforts to improve Haiti’s justice system.

Should Haitian prosecutors and aspiring prosecutors be offered programs in France to hone their skills? Should they be offered training in the United States at, say, Harvard Law School’s Trial Advocacy Workshops? Concannon was amenable, if the language barrier could be overcome.

Could Haitian-American lawyers, many of them second and third-generation Americans living in Miami, New York, and other places, be enlisted to improve the Haitian justice system? Concannon was more optimistic about recruiting Haitian lawyers and law school graduates, even though he was committed to BAI having at least one long-term foreign lawyer.

Concannon listed three advantages to BAI of foreign lawyers. One, they bring a different perspective to BAI, which can adopt the best features of both Haiti’s and a foreign country’s legal practices. Two, foreigners can make enemies and then leave the country. Being a Haitian lawyer “limits how provocative you can be,” said Concannon. Often, he and Joseph would agree that something needed to be said, such as to an official at the Ministry of Justice, and would also agree that Concannon needed to say it.

Three (and far behind the first two advantages in importance), foreign lawyers “bring their own set of contacts,” such as for foreign law students who intern at BAI during the summer and winter.

Lawyers who were trained in the United States are particularly useful to BAI, because many Haitian human rights defendants end up in the United States and need to be extradited.

Besides Concannon, two foreign lawyers work at BAI; they began in the fall of 2002. One, a Mauritian graduate of British law schools, plans to stay for a year. The other, an American graduate of an American law school, plans to stay in Haiti for the long term. BAI hired them (academic programs in the U.S. pay them) partly to supervise Haitian lawyers and law school graduates at BAI; Concannon and Joseph don't have enough time for that function.

In addition to Mario Joseph, four Haitian lawyers and law school graduates worked at BAI in early 2003; three more planned to arrive in the spring of 2003. As Concannon said, "Creating one Mario every seven years isn't going to do it." Concannon hoped that BAI would serve as a bridge for "progressive people to get from law school to legal practice" in human rights, and also a training ground for prosecutors and judges.

Shortly before Concannon traveled to the U.S. for the holidays in December 2002, two young Haitian lawyers started working at the Bureau des Avocats Internationaux on December 11, 2002. One was Lissa Saint-Louis, who had graduated Catholic Law School of Jeremie (a Haitian city) in July 1999. During and after law school, she had worked for the Sara Lee Corporation as a quality manager.

To become a full-fledged lawyer, Saint-Louis had to write a thesis, and complete a two-year legal apprenticeship. She had chosen to fulfill these requirements at BAI. When asked why, she answered simply, "Because I'd like to be like Brian and Mario."

**Note:** Quotations of Mario Joseph are translations from Creole by Carla Bluntschli.

**Sources:**

“The Year in Review: International Criminal Law,” 35 *International Lawyer* 641 (2001).

Charles Arthur, *Haiti: A Guide to the People, Politics, and Culture* (Interlink Books 2002).

CBS News, 60 Minutes, “Haiti: 5 Years and a Billion Dollars Later,” Nov. 14, 1999.

Brian Concannon, “Beyond Complementarity: The International Criminal Court and National Prosecution, A View from Haiti,” 32 *Columbia Human Rights Law Review* 201 (Fall 2000).

Brian Concannon, “The Bureau des Avocats Internationaux, a Victim-Centered Approach,” chapter 5, *Effective Strategies for Protecting Human Rights*, ed. David Barnhizer (2001).

Christine Cynn and Harriet Hirshon, “Pote Mak Sonje: The Raboteau Trial” (videotape), [two\\_for\\_the\\_road\\_videos@yahoo.com](mailto:two_for_the_road_videos@yahoo.com) (2003).

U.S. General Accounting Office, “Foreign Assistance: Any Further Aid to Haitian Justice System Should Be Linked to Performance-Related Conditions,” GAO-01-24 (Oct. 2000).

Amy Wilentz, *The Rainy Season: Haiti Since Duvalier* (1989).