

**THIRD PARTY SUBPOENAS AND U.S. GOVERNMENT  
RESPONSE, BELANCE V. FRAPH**

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

ALERIE BELANCE, Plaintiff

SUBPOENA IN A CIVIL CASE

v.

CASE NUMBER:

FRONT POUR LAVANCEMENT ET LE

Misc. No. \_\_\_\_\_

PROGRES HAITIEN (FRAPH), an  
unincorporated  
association

(Civ. No. 94-2619 S.D.N.Y.)

association

TO: The Hon. Warren Christopher, Secretary of State

YOU ARE COMMANDED to appear in the United States District Cour  
at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specific  
below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See schedule A attached to this subpoena

PLACE	DATE AND TIME
Kilmaski, Miller & Smith 1899 T <sup>h</sup> St., N.W., Suite 1250 Washington, DC 20036	April 3, 1995 10.00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed or the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Attorney for Plaintiff	

**ISSUING OFFICER'S NAME ADDRESS AND PHONE NUMBER**

Beth Stephens, Esq., Center for Constitutional Rights  
666 Broadway, New York, NY 10012, Tel. 212-614-6424

**SCHEDULE A**

**STATEMENT AS TO NATURE AND RELEVANCE OF INFORMATION SOUGHT**

This subpoena seeks information that will produce or lead to evidence relevant to establishing plaintiff Alerie Belance's claim in a civil law suit for compensatory and punitive damages for gross violations of her internationally protected human rights. The lawsuit seeks to establish that responsibility for the October 16, 1993, kidnapping, torture, and attempted murder of Belance in Haiti lies with the Front Pour l'Avancement et le Progres Haitien (Front for Advancement and Progress of Haiti) (hereinafter, FRAPH), an unincorporated association formed in August or September 1993 to block the return of democratic rule in Haiti. FRAPH served as paramilitary support for army commander-in-chief, Lieutenant General Raoul Cedras and the military government of Haiti.

Upon defendant's failure to appear at the preliminary hearing, United States Magistrate Judge Marilyn Dolan Go granted plaintiff leave to file a Motion for Default Judgment, instructing plaintiff to address the question of the Court's jurisdiction pursuant to the Alien Tort Claims Act. The documents requested by this subpoena concern the attack upon Alerie Belance, human rights abuses or alleged human rights abuses by FRAPH, and the financial and professional relationship between FRAPH and the following individuals: Emmanuel Constant, President of FRAPH, Lieutenant General Raoul Cedras; Emile Jonassaint, President of Haiti; and Michel Francois, Police Chief of Port-au-Prince. These documents are relevant to establishing that FRAPH was acting under color of official authority when it carried out the torture of Alerie Belance, and therefore violated international law, giving the Court jurisdiction under the Alien Tort Claims Act. These documents are also relevant to establishing FRAPH's extreme culpability and wantonness, factors relevant for establishing punitive damages.

**ALTERNATE PRODUCTION**

In lieu of producing the requested documents at the place designated in the subpoena, you may have true copies of such documents delivered by the date and time specified to:

Beth Stephens  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway, 7th Floor  
New York, NY 10012

This will be deemed to constitute compliance with the subpoena subject to any questions that might arise as to the completeness or correctness of the copies.

**DEFINITIONS AND INSTRUCTIONS**

The following definitions and instructions are intended to clarify the nature and scope of the documents requested by this subpoena.

1. Documents. "Documents" shall include all written, printed, recorded, or graphic matter, however produced or reproduced, whether recorded by mechanical, photographic, phonetic or electronic means, including matter recorded on microfilm, audio and video tapes and disks, and matter recorded on computer tapes and disks.

2. Time Period. You are required to produce all documents in your possession or control which are responsive to this subpoena and which were generated after September 1, 1991.

3. Abbreviations. The following abbreviations and shorthand expressions are used in this subpoena:

A. Abbreviations

- a. FRAPH
  - Front Pour L'Avancement et le Progres Haitien
- b. E. CONSTANT
  - Emmanuel Constant
- c. CEDRAS
  - Lieutenant General Raouil Cedras
- d. JONASSAINT
  - President Emile Jonassaint
- e. FRANCOIS
  - Police Chief Michel Francois
- f. BELANCE
  - Alerie Belance
- g. STERLING
  - Lyonel Sterling

B. Shorthand Expressions

- a. "Including" means "including but not limited to"
- b. "All" and "any" shall each mean "any and all."
- c. "And" and "or" shall each mean "and/or."
- d. "Concerning" or "concern" includes regarding, respecting, referring to, touching upon, relating to, connected with, discussing, showing, indicating, evidencing, reflecting, describing, commenting on, analyzing, criticizing, establishing, embodying, or constituting.

**CLAIMS OF PRIVILEGE OR OTHER PROTECTION FROM DISCLOSURE**

If any document which is responsive to this Subpoena is withheld in whole or part from production on the ground that the whole or a part thereof is subject to a legally recognized privilege or is protected from disclosure by reason of its classification in the interest of national security, state as to such document:

- a. the basis on which protection from disclosure is claimed;
- b. the nature, source, and general subject matter of the document; and
- c. the names of the author or authors and the recipient or recipients of the document.

**DOCUMENTS REQUESTED**

1. All documents concerning the torture of BELANCE by FRAPH or by any member or agent of FRAPH.

2. All documents concerning the relationship between JONAS SAINT, CEDRAS, FRANCOIS, E. CONSTANT, and the members of FRAPH, including all documents concerning the formation of FRAPH, the establishment of overall FRAPH policy, the making and carrying out of decisions concerning the torture, beating and summary execution of individuals by FRAPH or its members and agents, the making and carrying out of decisions regarding the making of day-to-day decisions by FRAPH.

3. All documents concerning the organization of FRAPH including:

- a. the location or location(s) of its headquarters office and other offices in Haiti and the United States;
- b. the name and function of its president;
- c. the members, officers and functions of its directorate;
- d. the members, officers and functions of its militia command;
- e. meetings of the militia and command including agenda, persons attending and minutes or other records of discussions or actions;
- f. the members, officers and functions of its strategic command;
- g. meetings of the strategic command including agenda, persons attending, and minutes or other records of discussions held or actions taken.

4. All documents concerning the communication of FRAPH headquarters policy and orders to subordinate commands.

5. All documents concerning the finances and funding of FRAPH including the names and locations of the banks or other financial institutions in which FRAPH had accounts, the names in which such accounts were held and the account numbers, and all statements or other records of such accounts and communications concerning them.

6. All documents concerning human rights abuses or alleged human rights abuses carried out by FRAPH.

7. All documents concerning communications or meetings between representatives of the U.S. Department of State, the U.S. Department of Defense, the Central Intelligence Agency, or the U.S. Embassy in Haiti with E. CONSTANT, CEDRAS, JONASSAINT, FRANCOIS, or any other representatives of the Haitian government, military or police with respect to the formation, mission, and functions of FRAPH.

8. All documents concerning Lyonel Sterling, a representative of FRAPH, conducting business on behalf of FRAPH in New York.

U.S. DEPARTMENT OF JUSTICE  
UNITED STATES ATTORNEY  
DISTRICT OF COLUMBIA

Judiciary Center  
555 Fourth St. N.W.  
Washington, DC 20001

JOB: WMNNEBEKER  
March 27, 1995

Beth Stephens, Esq.  
Center for Constitutional Rights  
666 Broadway  
New York, New York 10012

Re: *Belance v. FRAPH*, 94-2619 (S.D.N.Y.,  
Objections to Inspection And Copying, pursuant to Fed. R. Civ. P.  
45(c).

Dear Ms. Stephens:

This letter is in response to the subpoena served upon the Department of State on March 6, 1995, in connection with the above-referenced litigation. We appreciate your agreement to allow us the additional week to serve this response.

Your subpoena requests that Department of State documents falling in a number of broad categories be produced to the attorneys for the plaintiffs at the office of Klimaski, Miller & Smith in Washington, D.C., or alternatively, at the Center for Constitutional Rights' New York office, by no later than April 3, 1995.

As you are aware, the Department of State is not a party to the litigation out of which this request for document production arises. On July 24, 1992, regulations entered into force governing the production of official State Department records in connection with litigation. Those regulations (also known as "Touhy Regulations") may be found at 57 Fed. Reg. 32896 (1992) (codified at 22 C.F.R. Part 172).

Section 172.8 of the regulations sets forth the factors the Department is to consider in determining whether to comply with a demand or request for testimony and/or the production of documents. In this regard, Schedule A attached to the subpoena calls for the production of "all documents concerning" eight categories of requested documents and, under several categories a number of subcategories of documents and information, relating to events that occurred after September 1, 1991. Pursuant to the Department's policy regarding the retirement of documents that have been stored in active files for two or more years, many State Department documents, including those requested by the subpoena, are likely to have been retired to a Department document storage facility.

The Department of State has carefully considered this request for the production of documents in light of the considerations set forth in Section 172.8 of the regulations. Pursuant to that review, the Department has concluded that it is not appropriate to comply with the request as it is presently framed. A major difficulty is that compliance with the request would be "unduly burdensome," and indeed virtually impossible within the time frame called for in the subpoena, particularly in view of the competing demands on Department employees in connection with their official responsibilities. A search of this magnitude, even with some further narrowing of the parameters of the request, would take considerably more time than your subpoena permits. The request therefore raises serious questions regarding the "need to conserve the time of Department employees for the conduct of official business" and the "need to avoid spending the time and money of the United States for private purposes." The request also appears to fall within the scope of other pertinent considerations set forth in Section 172.8, including, *inter alia*, the issue of whether compliance would reveal information properly classified in the interest of national security. The Department of State therefore objects to your subpoena on these grounds.

Notwithstanding the foregoing observations, the Department of State seeks to be as cooperative as possible, within the framework of the Touhy regulations, when presented with requests for production of documents in connection with private litigation. However, in the absence of a substantial narrowing of the scope of the instant request and a significant enlargement of time within which to respond, the Department would have serious difficulty in complying with this request. See Section 172.5(b) of the Department's regulations.

We wish to emphasize that we are not seeking to withhold documents that may be properly released. As you are also aware, these documents are separately discoverable under the Freedom of Information Act ("FOIA"). This decision concerns only whether it would be appropriate for the Department of State to take the necessary steps to respond to a request of this scope in the time set forth in your subpoena.

Should you have further questions concerning this matter, including discussions aimed at narrowing the scope of this request and enlarging the time to produce documents, you may contact Assistant United States Attorney W. Mark Nebeker, who can be reached at (202) 514-7230.

Sincerely,

ERIC H. HOLDER, JR.  
United States Attorney

By: W. MARK NEBEKER  
Assistant United States Attorney