



## Frequently Asked Questions

### *Jean v. Dorélien*

#### **What is this case about?**

CJA represents two courageous individuals who have brought a human rights civil lawsuit against former Haitian colonel Carl Dorélien. The plaintiffs accuse Dorélien of torture, extrajudicial killing, and crimes against humanity committed during the period of *de facto* military rule in Haiti from 1991 to 1994. The case was originally filed in 2003.

Dorélien was part of the military high command during the brutal military dictatorship that was in power in Haiti from September 1991 through October 1994. The dictatorship came into power after the overthrow of democratically-elected President Jean Bertrand Aristide. Throughout the military dictatorship, the Haitian Armed Forces, led in part by Colonel Dorélien, used repressive and violent tactics on a massive scale to intimidate the civilian population and reinforce the illegitimate government's control over the country.

#### **Who is Carl Dorélien?**

Carl Dorélien joined the Haitian Armed Forces in the 1970's under the repressive regime of Duvalier ("Papa Doc"). He rose through the ranks of the military until he eventually became Assistant Chief of Staff G-1 in 1992. As a member of the high command of the Haitian Armed Forces during the period of military dictatorship in Haiti, Dorélien was responsible for all discipline of military personnel. Despite widespread atrocities that were visited upon the civil population by the military, virtually no members of the military were ever held accountable while Dorélien was in command. Dorélien fled Haiti shortly after the restoration of the democratically elected government in October 1994.

In 1995, Dorélien came to live in the U.S. In 1997, in a surprising development, Dorélien won \$3.2 million in the Florida lottery. From 1997 through 2003 he collected approximately \$180,000 annually from his winnings.

Dorélien eventually got in trouble with immigration authorities and was placed in immigration detention. He continued to collect his lottery winnings until he was deported to Haiti in 2003 based on his record of human rights abuses committed against the people of Haiti.

During the period of democratic government in Haiti, some strides towards accountability for human rights abuses were made with the prosecution of former members of the Haitian military and FRAPH. Dorélien was tried and convicted *in absentia* (without being present in Haiti) for his role in human rights abuses committed during the military dictatorship including the infamous Raboteau Massacre of 1994.

Upon return to Haiti in 2003, authorities arrested Dorélien and jailed him based on the *in absentia* conviction. Dorélien chose not to exercise his right to a new trial and remained in prison.

Dorélien had been in Haiti for one year when President Aristide was ousted from office for the second time. The day that Aristide was ousted, February 29, 2004, Dorélien was released from prison. He remains at large in Haiti.

### **What is the Raboteau Massacre?**

The Raboteau Massacre is one of the worst examples of the atrocities that were committed against the civilian population in Haiti while Dorélien was part of the high command. On April 22, 1994, the Haitian military, along with members of the paramilitary organization known as FRAPH, stormed the seaside neighborhood of Raboteau in the city of Gonaives. People were pulled from their homes, beaten, and others were shot as they fled the neighborhood and attempted to escape by sea. It is unknown how many people were killed since many of the bodies washed away at sea.

### **Who are the Plaintiffs?**

Lexiuste Cajuste was an elementary school teacher who supplemented his income by driving a minibus or a tap tap (as they are known in Haiti). In 1986 he helped form Haiti's first public transportation drivers union. In 1989, he became the Secretary General of Haiti's largest union, CGT, an umbrella group representing workers from various sectors of Haiti's economy. Despite the severe repression that union organizers experienced under the military regime that was in power from 1991 through 1994, Mr. Cajuste and his colleagues were public in their opposition to the military dictatorship and sought the return of democracy.

On April 23, 1993, Mr. Cajuste was detained by Haitian military forces and severely beaten and tortured. On the brink of death, he was kept in a small cell without medical attention or even water for three days. Miraculously, he survived the beating, but was kept in a military hospital without adequate treatment for a month.

After his release, Mr. Cajuste eventually received asylum in the US and now lives in Florida with his wife and children. Fourteen years after his ordeal, he still suffers severe physical disabilities related to his torture.

The other plaintiff is a woman who lost her husband and the father of her two young children during the infamous Raboteau Massacre. Her husband was gunned down by Haitian military officers as he fled a raid on their seaside neighborhood. Our plaintiff has never given up her quest for justice for the murder of her husband.

### **What role did Dorélien play in the human rights abuses committed against the plaintiffs?**

Under the well-established law of command responsibility a commander is legally responsible for human rights committed by his subordinates if he knew or should have known that abuses

were being committed and he failed to prevent them or punish those who were responsible. Dorélien was one of the most powerful members of the military regime and was in a position to prevent the abuses committed by the Haitian military, but he failed to do so. As a member of the high command, he is responsible for the torture of Mr. Cajuste and the many that were killed during the Raboteau Massacre. In addition, Dorélien was the Chief of Personnel G-1 of the Armed Forces General Staff. In that role he was responsible for discipline. He failed in his duties to punish despite the fact that he knew or should have known about the abuses committed by members of the Haitian Armed Forces. Human rights abuses were well documented at the time by international human rights organizations and the Haitian and international press.

### **What do the plaintiffs and CJA hope to achieve with this case?**

The plaintiffs are seeking justice, first and foremost. They seek official acknowledgement by a court of law that Dorélien was responsible for the abuses committed against them. They seek to set the record straight about the massive scale on which the abuses were committed during the military regime. They know they speak for many others who cannot themselves speak out - either because they were killed, or cannot talk about the terrible things that were done to them or that they witnessed because they fear retaliation against them or their family members who still live in Haiti.

The suit plays a key role in CJA's strategy to seek accountability for human rights abusers whether through civil suits, criminal prosecutions, deportations or extraditions. CJA works to ensure that the United States will not be a safe haven for torturers and war criminals. All victims of severe human rights abuses have a right to redress. As in all lawsuits, CJA also hopes to uphold that right by recovering a measure of compensation for the victim's suffering.

### **What outcome do you expect?**

This case will be going to trial in Miami on February 20, 2007. The evidence, including eye witness testimony and expert witness testimony will be presented to a jury. Dorélien has chosen not to participate in the trial but he will have an attorney present who will argue his side of the case.

We anticipate that after hearing the evidence in the case, a jury will hold Dorélien liable for torture, extrajudicial killing and crimes against humanity. We hope that the jury will award a significant amount of damages for the plaintiffs in order to send a strong message of deterrence that will be heard in Haiti and beyond.

### **What is the legal basis of the suit?**

The Alien Tort Statute, adopted in 1789, gives non US citizens survivors of serious abuses committed anywhere in the world the right to bring suit in U.S. federal courts against perpetrators who are in the United States. Since 1980, the law has been used successfully in cases involving torture, extrajudicial killing, crimes against humanity, war crimes, genocide, and arbitrary detention. The law was upheld in 2004 by the Supreme Court in the case of *Sosa v. Alvarez-Machain*.

The Torture Victim Protection Act, passed in 1992 and signed into law by President George H.W. Bush, gives similar rights to U.S. citizens and non-citizens alike to bring claims for torture and extrajudicial killing committed in foreign countries. Under both laws, the perpetrator ordinarily must be served with the lawsuit in the United States in order for the court to have jurisdiction.

These statutes reflect a commitment to the growing international movement toward universal jurisdiction. Under this principle, certain crimes, such as torture and genocide, are acknowledged to be so abhorrent by the international community that their perpetrators may be tried in any country in which they are found.

### **How does this trial relate to the case against Emmanuel “Toto” Constant?**

This trial comes on the heels of winning a \$19 million judgment against Emmanuel “Toto” Constant for his role as the leader of Haiti’s most brutal paramilitary organization known as FRAPH. Constant’s FRAPH was active during the same period of military dictatorship, 1991 to 1994, that will be discussed during the trial against Carl Dorélien.

During the evidentiary hearing in the case against Constant, a federal judge in New York heard evidence about how the Haitian Armed Forces used Constant and his thugs in FRAPH to do much of the dirty work of the Haitian military. FRAPH members were among those who perpetrated the Raboteau Massacre.

### **Why wasn't the case filed in Haiti?**

Although constitutional order has been restored to Haiti following the elections of 2006, the current government has not yet pursued legal accountability against those who have evaded justice since the period of military rule.

Today there is ongoing violence and no effectively functioning judiciary in Haiti. Therefore, bringing suit in the U.S. may represent the only opportunity for many Haitian survivors to achieve justice for the abuses suffered in their home country.

During the period of constitutional rule in Haiti from 1995 to 2004, some measure of accountability for human rights abuses was achieved. However, every human rights abuser who had been tried and convicted during this period was released during or after the armed insurrection that forced Aristide from power.

### **What is CJA?**

The Center for Justice and Accountability (CJA) is an international human rights organization dedicated to ending torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress.

CJA uses litigation to hold perpetrators individually accountable for human rights abuses, develop human rights law, and advance the rule of law in countries transitioning from periods of abuse.

CJA recognizes that the need for justice is an integral component of a torture victim's recovery process and that healing cannot take place when the perpetrator continues to live without consequence. CJA has pioneered a survivor-centered approach to the quest for justice that combines legal representation with medical and psycho-social services to both empower and heal torture survivors and their communities.

### **Who is the legal team?**

The CJA trial team includes legal director Matt Eisenbrandt and staff attorney Moira Feeney. CJA is joined by co-counsel Dwayne Williams, a partner of the Miami firm Holland & Knight, LLP.

### **Can you give examples of other, similar trials?**

The first civil lawsuit brought against a foreign-born human rights abuser under the ATS was *Filartiga v. Peña-Irala*. In 1976, the family of a young man who had been killed in Paraguay in police custody discovered that the responsible Paraguayan police was living in New York City. They called the immigration service which arrested him for overstaying his visitor's visa. The family sued the police chief, and in 1980, the court of appeals in New York upheld their claims, opening the way for other cases using the Alien Tort Statute.

One of the most publicized cases was the suit against former Philippines President Ferdinand Marcos. After he was voted out of power, he moved to Hawaii. Eventually, a U.S. court ordered his estate to pay nearly \$2 billion to his victims.

In 2004, CJA won a landmark case against an architect of the assassination of Archbishop Oscar Romero of El Salvador. Archbishop Romero was one of the most important voices for peace, justice and equality in the twentieth century.

CJA has also won multi-million dollar judgments against a Bosnian war criminal, a Mayor of Beijing, two Salvadoran Ministers of Defense, a Salvadoran Vice-Minister of Defense, a Honduran Chief of Military Intelligence, a Chilean death squad member, and a Haitian paramilitary leader. Information about these cases, including the complaints and judgments, can be found on CJA's website: [www.cja.org](http://www.cja.org).

### **Are the plaintiffs ever able to gain possession of the defendants' assets?**

CJA recently collected \$300,000 from one of the generals from El Salvador against whom CJA's clients won a \$56 million judgment in 2002. Collection in these cases has proven extremely difficult, especially where the defendant has left the US or actively works to hide his or her assets.

The case against Dorélien represents a real possibility for collecting if we win a favorable judgment. Ironically, Dorélien won the Florida State Lottery. As he collected on a yearly basis, we were able to freeze the remaining winnings in 2005 when we filed a fraudulent transfer motion after he tried to sell off the remaining money. We hope that the lottery winnings will soon be able to be passed on to those who suffered so deeply under the military regime in which he was a top commander.

**Why a civil suit? Why not a criminal prosecution?**

Only the U.S. Department of Justice (DOJ) has the authority to initiate criminal prosecutions. The U.S. law that gives jurisdiction to U.S. courts to hear criminal cases of torture wherever committed only addresses torture and only entered into force in November 1994. The DOJ maintains, therefore, that it can only prosecute acts of torture committed after November 1994.

Until just recently, the DOJ had never pursued a criminal conviction for torture under this statute. In December 2006, the US government filed criminal charges against Chuckie Taylor, son of Charles Taylor, for torture committed in Liberia. He currently awaits trial on these charges in Miami.