

TESTIMONY OF HONORABLE WILLIAM LEHMAN
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW
JUNE 8, 1989

Mr. Chairman, I first want to thank you for holding this hearing today and to commend you for your responsiveness. You had been elected chairman of this subcommittee for perhaps only a few days when I prevailed upon you to attend a meeting with representatives from Dade County to hear of their concerns regarding the treatment of Haitian refugees. We have all been impressed by the way you followed up on that meeting first by going to Miami yourself and now by holding this hearing on how our immigration policies are applied to Haitians.

We all regret that our late colleague Claude Pepper is not here today to add his own powerful and eloquent plea for justice for Haitians who seek refuge in the United States. He was very much concerned about the treatment of Haitians and, as you know, sponsored legislation that he believed would help ensure due process for those interdicted at sea.

Mr. Chairman, those who come before you today want to see our laws applied in a just manner. There will be disagreements as to what constitutes just treatment. Justice can be harsh or it can be tempered with mercy and compassion. We must consider not only what is fair to the individual, but also to the community.

I first became involved in the plight of the Haitian refugees in 1976. At that time it was our policy to routinely deny asylum to Haitians fleeing Duvalier while welcoming all Cubans fleeing Castro. It was at this time I began hearing the term "economic refugee" being used. Attorneys who took up the cause of the Haitians were eventually able to win some legal victories, and the Refugee Act of 1980 at least gave refugees from right-wing regimes theoretically a better chance of gaining asylum. The Mariel Boatlift, which also occurred in 1980, caused a major immigration crisis. Large numbers of Haitians had been arriving in Florida at about the same time and the inequity of our policy towards them was impossible to ignore. Subsequent legislative efforts to cope with the problem of the Mariel Boatlift included provisions for Haitians as well. The category of Cuban-Haitian entrants was created by the Carter Administration. Haitians had achieved some measure of legitimacy.

The arrival of the Reagan Administration in 1981 signalled a change in our policy towards Haitians. Haitians were to be interdicted at sea and those who actually entered the U.S. were to be detained. The numbers of Haitians arriving in the U.S. subsequently decreased, but the flow was by no means stopped. In recent months, the numbers being interdicted or detained have gone up substantially.

Mr. Chairman, the inequities suffered by Haitians became more apparent as our leaders in the Dade County black community sought to focus attention on the problem. I think it is important for you to know that this issue was raised even before the unfortunate violence that occurred in Overtown and Liberty City earlier this year. There was a great deal of concern about the

Haitians in the Krome Detention Center, and this concern turned to outrage when thousands of Nicaraguans arrived in Dade County and were met with offers of assistance rather than rejection and detention.

Whatever legal explanations can be given concerning the difference between deportables and excludables, they ring hollow when confronted with the reality of blacks being imprisoned and others being free to enter the community. What we are faced with may not be so much a legal problem but a moral and political problem. The law may indeed be color blind, but is its application?

As the subcommittee examines this problem, I believe that certain questions merit special attention: the continuing political unrest and human rights abuses in Haiti; the cursory nature of asylum interviews held at sea; and our detention policy towards Haitians.

The political situation in Haiti has deteriorated greatly even in the last few weeks. President Avril may have good intentions, but he clearly lacks the authority to control the right-wing elements that still wield considerable power of their own within the country. The legendary ton-ton macoutes still roam the countryside terrorizing at will. Earlier this year I questioned representatives of human rights organizations about conditions in Haiti during hearings before the Foreign Operations Appropriations Subcommittee. I was told that death squad activity had increased and that bodies of victims of political murders were frequently left in the streets for hours to frighten and intimidate others. There is no reliable system of justice to protect those who are victimized by political violence. The situation in Haiti is dangerous and chaotic.

The volatility of Haiti leads me to question the basis on which interviews are conducted when Haitians are interdicted at sea. These are desperate people, as recent press reports have indicated. So far the Coast Guard has done an admirable job of preventing loss of life, but I fear there is a potential for great tragedy as Haitians increasingly resist U.S. Coast Guard efforts to board their vessels.

It is hard to believe that an accurate evaluation of a person's asylum claim can occur in an interview lasting a minute or less. As your subcommittee learned during the hearing held this Spring on our policy towards Nicaraguan asylum applicants, the advice provided by the State Department is often minimal and of little substantive help in adjudicating individual claims. The interview at sea may be just a preliminary step to determine frivolous claims, but it is crucial to the future of those who are apprehended. The interviewer should have complete and up-to-date information on conditions in Haiti, and we should also be sure that a reliable interpreter is being used. An idea that might be considered is accepting the presence of a representative from the United Nations High Commissioner for Refugees to observe the interviews at sea. If there is to be an interdiction policy, it must allow Haitians a fair opportunity to present their cases. Some would argue that a fair interdiction policy is a contradiction in terms. The burden of proof is on the Administration to show that that is not the case.

Just as we have questions about the fairness of interdiction, we must also question the fairness of our detention policy. We must ensure that detention is not long-term, and we must guard against overcrowding. I understand that a number of women were transferred last month from Krome to Oakdale, Louisiana. Such transfers can cause additional hardship to detainees who may need access to attorneys and community support. We may need to reconsider releasing such persons into the community if some ties to the community can be established. In addition, inasmuch as most of those at Krome were apprehended at the airport because of fraudulent documents, I would support the establishment of some kind of preclearance procedure in Port-au-Prince so that INS could examine documents prior to boarding. It would be much more humane and less costly to stop persons from leaving Haiti with fraudulent documents than to subject them to detention.

Mr. Chairman, I am pleased that your subcommittee is meeting to examine this important issue, and I am sure that we will all learn a great deal today. I look forward to working with you in an effort to ensure justice for all those who seek asylum from persecution, regardless of their country of origin and regardless of color. Thank you for your concern and consideration.