

TESTIMONY OF

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Before the

SELECT COMMISSION
ON IMMIGRATION AND REFUGEE POLICY

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TESTIMONY OF IRA J. KURZBAN, ESQ.
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For the past seven years, since the first group of Haitian boat people arrived in this country in search of political freedom and human dignity, several myths have surrounded their plight. Pernicious in their nature and purpose, these myths have been used to distort the refugees' dilemma and to encourage opposition to their quest for political asylum. More importantly, these myths have formed the theoretical basis for our government's improper treatment and unfavorable characterization of Haitian refugees. The four major myths which I wish to address and dispel are:

1. That Haitians seeking asylum in the United States are "economic refugees," and not "political refugees;"
2. That Haitians are immigrating to the United States in large numbers and any grant of asylum to Haitian refugees who are presently here would encourage mass migration to the United States from Haiti;
3. That Haitian refugees who are presently in the United States are taking jobs away from United States citizens and permanent residents; and
4. That Haitian refugees pose a novel legal problem for the Immigration Service.

I. HAITIANS ARE POLITICAL REFUGEES

Any analysis as to whether or not Haitian refugees can remain in the United States because they are "political" and not "economic" refugees cannot proceed only upon a factual presentation of the conditions in Haiti and the fate of refugees who are deported to Haiti, but also requires an understanding of how the terms - economic and political - are defined in law. The use of the terms "economic and political" are largely misleading, particularly when considered in light of the applicable immigration laws and judicial precedents.

The Courts, for example, recognized long ago that economic deprivation alone provides a sufficient basis for granting refugee status. See Dunat v. Hurney, 297 F.2d 744 (3rd Cir. 1962), Kovack v. INS, 401 F.2d 102 (9th Cir. 1969). In Dunat, the Court granted political asylum under Section 243(h) to a Yugoslav citizen who was deprived of his right to a livelihood. In doing so the Court found that:

"Economic proscription so severe as to deprive a person of all means of earning a livelihood may account for . . . persecution."

Dunat, 297 F.2d at 753.

Likewise, the Courts have recognized that "illegal departure" from the country of origin or "the seeking of asylum" are sufficient grounds for granting political asylum. See Sovich v. Esperdy, 319 F.2d 21 (2nd Cir. 1963), In the Matter of Janus and Janek, I.D. No. 1900 (July, 1968).

Thus, the juxtaposition of "economic" and "political" refugees may have more to do with Weberian ideals or political symbolism than the careful analysis of those conditions sufficient to sustain an application for asylum.

More importantly, the actual conditions of Haitian refugees in fleeing Haiti and the fate of those refugees who have been forceably returned to Haiti after seeking asylum in this country, establish unequivocally a compelling legal and moral justification for granting the Haitians refugee status. Included with this paper are thousands of pages of documents, newspapers articles and testimony transcripts as to the political conditions in Haiti and the fate of those Haitians who have been forceably deported or otherwise returned to Haiti from the United States.

This testimony and documentation establishes that:

1. All Haitians who are deported or returned from the United States are placed in the Casserne Dessaline and other political prisons in Haiti (testimony of Ray Joseph and testimony of Sept. 23rd, pp. 70-100)
2. Returning refugees are arrested by and on the order of the Haitian secret police and the Duvalier family. (testimony of September 23rd, pp. 25-49, pp. 70-100).

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3. Some of the persons arrested solely for the "crime" of fleeing Haiti or claiming political asylum abroad, have died in these political prisons (testimony of Marc Romulus, and Patrick Lemoine)
4. Many of the refugees who were returned have disappeared (Affidavit of Michele Bogre, page 48 supplementary documents)
5. As recently as February, 1979, there were Haitian refugees in the National Penitentiary in Haiti, whose only crime was their flight to the United States and their deportation back to Haiti (testimony and transcript at pp. 70-100).
6. The Duvaliers have instituted new restrictions on the press in the past two months which were denounced by the Inter American Press Association as making "freedom of the press impossible in Haiti," (Article from Haiti observateur at page 153 of documentary supplement)
7. Haiti's new censorship law makes it a crime to "insult" Jean-Claude Duvalier, his mother or other Haitian authorities (N.Y. Times 12/12/79) The attempt to seek asylum in the United States by Haitians can be considered an "insult" to the Duvaliers under this law.
8. Less than one month ago, on November 9th, 1979, a peaceful human rights demonstration was violently broken up by members of the Haitian secret police and an American diplomat was beaten up (Washington Post, article of 11/11/79 at page 150 of documentary supplement)
9. On November 13th, 1979, Duvalier fired eight of his fourteen cabinet ministers and replaced them with military personnel and old line loyalists of his father, Francois Duvalier. This is the first time that military personnel were placed in the cabinet. (Washington Post, article of 11/15/79 at Page 151 of documentary supplement).

Finally, careful analysis of the claims of Haitians seeking political asylum in the United States reveals that the vast majority have fled Haiti not because of poverty but rather because of political repression. Two recent cases are revealing.

On October 11, 1979, Edouard Franck an accountant for HASCO - the major Haitian sugar company - fled Haiti. He fled because he was a member of the Christian Democratic Party - a party now outlawed by the Duvalier family. Franck was arrested by the S.D. (secret police), mistakenly released, and then sought again by the S.D. He managed to leave the country before being recaptured. Other members of the party were not as fortunate. Sylvio Claude, the president of the party was arrested on August 29, 1979, His whereabouts or whether or not he is presently alive is unknown.

A second case is that of Hubert Lubin, a school teacher in Haiti. Lubin fled Haiti in March, 1978 not because of his economic status - which by prevailing standards in Haiti was comfortable - but rather because he was beaten in front of his students by members of the Ton-Tons Macoutes when he made certain statements which were critical of the Duvalier family.

II. THE NUMBER OF HAITIAN REFUGEES SEEKING ASYLUM IN THE UNITED STATES IS INSIGNIFICANT IN COMPARISON TO OTHER REFUGEE GROUPS.

Any assertion that Haitian refugees have sought asylum in the United States in significant numbers is clearly contradicted by the number of refugees in proceedings before the INS. There are approximately nine thousand refugees presently seeking asylum in proceedings before the INS. Although these numbers may not directly reflect the actual number of Haitian refugees in this community they can be assumed to closely approximate the Haitian refugee population, because of the INS' previous policy of issuing work permits. From

December, 1972 to January, 1978, approximately three thousand refugees fled Haiti and arrived in South Florida. By the end of June, 1978, another fifteen hundred refugees had arrived in the United States as a result of their forced expulsion from the Bahamas. When the forced expulsion ended the Haitians' mass migration from the Bahamas ended.

Further, between November, 1977 and August, 1978, the INS instituted a policy of issuing work authorizations to any Haitian who appeared at the INS offices. This resulted in the number of Haitians known to INS increasing from approximately forty-five hundred to eighty-five hundred by October/November, 1978. As the numbers changed dramatically during this short period, and as the issuance of the work authorizations was understood by the refugee community to mean they could stay in the United States, it can be assumed that most, if not all, the Haitians who were not known to INS came forward at that time. Thus, the nine thousand figure may accurately approximate the actual number of Haitian refugees in South Florida.

However, even the highest approximation of Haitian refugees in South Florida-over twenty-five thousand - is still insignificant in comparison to all other refugees who have been admitted to this country. For example, from 1972 until the present - the time frame during which Haitian refugees have fled to the United States - approximately two hundred and thirty thousand Indochinese refugees have been admitted into the United States and given a full panoply of social services. Moreover, over six hundred thousand Cubans refugees have been given lawful status in the United States.

Further, in one month of this year, July, 1979, approximately six thousand Nicaraguan refugees arrived in South Florida and it is

estimated that well over thirty thousand Nicaraguan refugees are presently in the United States.

However, the spectre of the "open floodgates" has been raised against Haitians by the Immigration Service. It is assumed by many that South Florida will be flooded by a new wave of Haitian refugees if those who are presently here are granted political asylum. This assumption, though, rests upon the mistaken belief that flight from Haiti is determined by U.S. immigration policy. This clearly ignores the physical and financial limitations which Haitians must overcome to get to the United States. The journey is over eight hundred miles in rough seas under difficult weather conditions.

In addition, there are political barriers which prevent Haitians from immigration to the United States in great numbers. It is a crime, for example, to leave Haiti without the proper documentation. Further, our own country gives substantial military assistance to Haiti in the form of naval and electronic equipment for border patrol purposes. In 1976, we provided military assistance to Haiti for equipment which could be utilized for border patrol purposes. See Institute for Policy Studies Report. (Vol. II Documents - part VI "X")

We too often forget that the large numbers of Cuban and Indochinese refugees in the United States were attained not simply by the flight of refugees from those countries, but rather by the active assistance, through airlift operations, of our government.

Without arlifts, and with the presence of physical, economic and political barriers to migration, the granting of political asylum to those refugees who are presently in the United States will not increase the flow of Haitian refugees to this country.

III. HAITIANS DO NOT TAKE THE JOBS FROM
AMERICAN CITIZENS

Without belaboring this point, I would simply point to the conclusion of Dade County's Task Force Report on Haitian Refugees, wherein the Task Force concluded:

"Allowing [Haitians] immigrants to seek work . . . does not appear to displace residents in the employment market."

Rather, a policy of permitting Haitian refugees to work would result in:

"Menial, needed work, performed at minimum cost to local employers; a net addition to overall community productivity and an improved quality of community life; residents substantially not prevented from finding acceptable employment; and a significant group of relatively unemployable persons who successfully avoid being public charges."

This position was recently confirmed in a lawsuit brought in federal court in this district. In National Council of Churches v. Egan, the court found:

"The employment of Haitians will not have a negative impact on the employment opportunities for American citizens or permanent resident aliens."

The court, in ordering the INS to return work permits to Haitian refugees found that the government's revocation of the work permits has caused Haitian refugees in South Florida:

"To suffer malnutrition, substantial and overcrowded housing, mental and physical illness and the breakdown of the family unit."

Thus, it appears that the issuance of work permits to Haitian refugees does not have an adverse effect on American workers. Rather, it has an overall positive impact because it provides workers for

jobs that American citizens would not fill and simultaneously permits those who are unemployed or underemployed to avoid becoming public charges.

IV. HAITIAN REFUGEES DO NOT POSE A UNIQUE
LEGAL PROBLEM

Haitian refugees seeking political asylum in the United States do not pose a unique legal problem for the Immigration and Naturalization Service. The statement by immigration authorities that there is no mechanism within the Immigration and Nationality Act for paroling or granting political asylum to Haitian refugees as a group because Congress has not passed any special act for Haitians, as they have for Cuban and Indochinese refugees, is both misleading and incorrect. Between 1959 and 1961, for example, prior to the Cuban Adjustment Act, over twenty thousand Cuban refugees were admitted into the United States without the benefit of a Congressional Act. More recently, the INS, through the Attorney General, has maintained Chilean and Argentine Parole Programs, through which persons fleeing these non-communist countries have obtained refugee status without any special Congressional legislation.

It has also been incorrectly asserted that Haitians are not admissible because the Immigration Act only provides for admissibility of refugees from communist countries. Although the INS under §203(a)(7) does provide for conditional entry to persons fleeing from a communist or communist dominated country or a country in the Middle East, other sections of the Act, principally §212(d)(5) and §243(h) give the Attorney General the express authority to parole or grant asylum to persons irrespective of their country of origin. Further, there exists no limitation in the Act itself under these sections as to the number of refugees that the Attorney General may parole or grant asylum to, or

whether or not he can parole or grant asylum to large numbers of persons simultaneously or individually. Thus, the legal mechanism clearly exists for granting asylum or parole as a group to Haitian refugees in this community.

In conclusion, we are calling upon the Commission to issue an interim report recommending to the President that parole and asylum be granted to all Haitian refugees presently in the United States who seek asylum in this country.

The myths that surround the problems of Haitian refugees must be dispelled. The rule of law must prevail. The only practical solution to the fate of the approximately nine thousand Haitian refugees presently in Immigration proceedings, many of whom have been here as long as five or more years, is to grant them political asylum.