

WITNESS[†]

JUSTICE BLACKMUN'S QUERY SAID IT ALL: REFLECTIONS ON HAITI, REFUGEES, AND THE U.S. SUPREME COURT

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On March 2, 1993 I attended oral argument at the U.S. Supreme Court.¹ The case argued concerned the policy of forced, direct repatriation of Haitian refugees begun under the Bush administration and continued in earnest under the Clinton administration. As I sat absorbing the procedures of the Court, I reflected on the crisis in Haiti, the plight of Haitians I interviewed in Haiti who had been viciously persecuted, and the inhumane, if not illegal, policies now executed by the Clinton administration.

The Chief Justice first invited the President's Assistant Solicitor General, Maureen Mahoney, to offer her remarks. The Clinton administration's attorney implored everyone present to concede that forced repatriation is tantamount to a life-saving policy, preventing death at sea. All I conceded was that a sovereign people were denied the right to flee illegal arrest, beatings and death.

Listening intently to the government's counsel, I vividly recalled my two trips to Haiti in May and December 1992 as a member of civilian human rights observation delegations. During that time I met scores of Haitians in hiding from the military, brutally separated from their homes and families. I specifically remembered a group of approximately 35 Haitians who I met clandestinely one evening as they readied a boat for their exodus. The moonlight above exposed several scars about one man's ears and legs caused by the military's thirst for vengeance against those who dared vote for, and advocate, the presidency of Jean-Bertrand Aristide. Although uttered in hushed tones for fear of the omnipresent militia, I recalled how one woman wished to die at sea rather than return home where her father's bullet-riddled body still lay on the kitchen floor, compliments of the military's campaign of terror.

Haitians with whom I have spoken since, some whose chests still heave from the weight of batons, whose eyes have been bludgeoned by rifle butts or whose eyes have cried innumerable tears for the thousands executed, represent those that the Assistant Solicitor General is "saving" by forced repatriation. Unfortunately, they are also the same Haitians who now have no means

[†]"Witness" is a regular opinion feature of *Hybrid*. Although this particular article contains endnote references, we in no way wish to imply that potential submissions for this or any other section of this journal require citations.

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of escaping their persecutors.

The counselor continued her argument before the Court, offering Haitians the possibility of applying for refugee status at the U.S. Consulate in Port-au-Prince upon their forced repatriation. She also mentioned that State Department officials would venture into the countryside to speak with those too afraid to make the trip to Port-au-Prince. To the untrained ear, Ms. Mahoney's words sounded reasonable, if not generous.

Unfortunately, counsel clearly had never experienced the horror of hearing a woman and her children screaming, "The Haitian soldiers will kill me. They will kill my children," as all were dragged from the U.S. Coast Guard cutter onto Haitian soil. Perhaps never had counsel been threatened with death by U.S. State Department Officials on the scene for attempting to photograph this incident. I doubt that counsel knows of the anguish some Haitians experience on their sojourn aboard the U.S. Coast Guard cutters as they are handcuffed and deprived of food beneath the hot Caribbean sun. Indeed, the scene I and many others have observed at the docks in Port-au-Prince since the recent policy of direct forced repatriation of Haitian refugees is tantamount only to cruelty and inhumanity.

Furthermore, the values espoused before the Court by our government are nonexistent at the U.S. Consulate in Port-au-Prince. Although the government's attorney painted a picture of an open door for refugees, a reinforced steel gate effectively bars all. To the pleas for entry by repatriated Haitians, nearly drowned out by the jeering and taunting of soldiers from a nearby police station, only time and persistent pounding on the U.S. Consulate door guarantee possible entry. I discovered that even a U.S. passport in hand moves very slowly; once again, the thick steel gate.

Once inside the U.S. Consulate, refugees reveal incalculable suffering and desperation. Incredibly, over 15,000² applicants now wait for months, (despite promises from the Clinton administration to expedite refugee processing in Haiti), in virtual hiding with few resources, simply to hear whether the cycle of arrest, beating, expropriation, and torture they experienced are sufficient enough to earn a ticket to the United States. For those who wish to apply for refugee status from points in the countryside, it is known that several U.S. civilian observation delegations, including those of which I have been a part, have been confronted by dozens of military checkpoints and roadblocks which tightly control all movement in rural areas at which searches, interrogations, and beatings are the daily norm. Simply put, the Clinton administration's offer of asylum processing to those living in the countryside is unworkable and invites military retaliation upon the helpless asylum applicant.

The Assistant Solicitor General next struck fear into the pocketbooks of all in the court room by asserting that without forced repatriation the United States would be inundated by thousands of Haitians seeking jobs and entitlement. Setting aside our obligations under international³ and domestic⁴ law to never seize and return a political refugee to his/her persecutors, and overlooking that well-known but obsolete phrase chiseled on the Statue of Liberty,⁵ the government's counsel failed to mention the work of numerous religious organizations nationwide who have already resettled thousands of recent Haitian refugees and have provided them with *pro*

bono counsel at virtually no cost to the U.S. government. The Assistant Solicitor General also neglected to tell the Court that as many as 142,000⁶ refugees permitted by U.S. law arrived in the United States last year from throughout the world without devastation to the national economy. As I listened to Ms. Mahoney I wondered how much this endless litigation, complete with three long rows filled with U.S. Attorneys, was costing the U.S. taxpayer.

I departed from the Supreme Court incredulous because of the oral argument that had just been completed and also because of the message that had just been uttered in the halls of the Capitol across the street. President Clinton and Secretary of State Christopher had announced their well-considered belief that the policy of forced repatriation was correct, and that to have promised otherwise was erroneous.⁷ Again, a flood of memories overwhelmed me. First, I recalled the several Haitians who told me Mr. Clinton must be elected to save the lives of fleeing Haitians. Next, my own exuberance at hearing candidate Clinton speak of ending the repatriation of Haitians during his nomination acceptance speech, now sparked an uneasy smile. That sentiment was quickly overcome by my recollection of reports I had gathered during my December visits to Haiti of several Haitians' detention and torture due to their public celebration of Clinton's electoral victory. While myself and others freely celebrated the election of Bill Clinton at several Democratic party galas, Clinton supporters in Haiti were persecuted in the mistaken belief that promises would be kept.

Nevertheless, I was encouraged that afternoon to hear that President Clinton would push for democracy in Haiti.⁸ The push, however, now appears to contain the exertion exhibited by a finger, certainly not a hand or a full body's weight. For example, the exiled democratically elected Haitian President Jean-Bertrand Aristide has called for the presence of 3,000 U.N.O.A.S. human rights observers to facilitate the return of democracy.⁹ However, the United States has offered enough financial support to fund only 500 observers,¹⁰ most of whom have not yet been deployed to Haiti.¹¹ Only on March 16 was a special U.S. envoy to Haiti finally appointed.¹² Meanwhile, U.S. civilian observer delegations return weekly to testify to the accelerated cycle of violence and persecution that grips Haiti.

As I prepared to leave Washington, D.C., late that afternoon, I reviewed the written legal briefs on the laws and cases argued that morning at the Supreme Court. These briefs compelled me to conclude that the President's reckless abandon for international refugee law and our own domestic codification of the same sends a clear signal that respect for the letter and spirit of the law is not a priority. Of course, this has been a charge leveled against many presidents. Notwithstanding the commonality of the charge, it does not bode well for a nation when its leadership cunningly reneges on obligations it expressly agrees to accept and fulfill.

In a world where an estimated 17 million persons are refugees,¹³ with the number increasing exponentially as a result of ethnic conflict, is there any doubt that the U.S. has forfeited all leverage and influence over refugee issues worldwide? Have we not abdicated our role as "beacon to the world?" The blockade and illegal seizure of fleeing Haitians in international waters and their deliverance to their persecutors is effectively the turning of the light switch to the off position.

Upon leaving Washington, D.C. that evening, I recalled an evening in Port-au-Prince where I witnessed the execution of a young Haitian man. I watched helplessly from my hotel room as he was pelted with stones. I witnessed two military police strike him with rifle butts and run over his legs with their truck. I saw them leave the body in the open street. I also thought of the irony of Justice Harry Blackmun's final question to the well-informed Assistant Solicitor General Maureen Mahoney, the chief legal representative of the Clinton Administration before the Supreme Court. The Justice asked, "Ms. Mahoney, have you ever been to Haiti?" The reply came quickly and coolly, "No sir, I have not." . . . Perhaps she should.

[Editor's Postscript: On June 21, 1993, the Supreme Court, in an 8-1 ruling, validated the Clinton administration's repatriation policy. Justice Blackmun issued the sole dissent.]

ENDNOTES

1. See *McNary v. Haitian Ctrs. Council*, No. 92-344 (U.S. argued Mar. 2, 1993).
2. See Bill Frelick, *Clinton's Haitian Policy: Same Old Story*, ST. LOUIS POST DISPATCH, Jan. 19, 1993, at C3. Some, however, have estimated the figure at approximately 13,500. See Anne Fuller & Andrew Levin, *U.S. Haitian Refugee Policy--A Brutal 'Alternative'*, CHRISTIAN SCIENCE MONITOR, Sept. 8, 1992, at 19.
3. See *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 19 U.S.T. 6259, 6276 (Article 33.1).
4. See Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 107 (1980).
5. See Emma Lazarus, *The New Colossus*, in 25 THE ENCYCLOPEDIA AMERICANA 637 (Int'l Ed. 1980).
6. See RUTH E. WASEM, HAITIAN MIGRATION TO THE U.S.: ISSUES AND LEGISLATION 10 (1992).
7. See Linda Greenhouse, *Court Is Asked to Back Haitians Return*, N.Y. TIMES, Mar. 3, 1993, at A16.
8. See *Aide Says Aristide Expects Clinton's Help*, CHICAGO TRIBUNE, March 3, 1993, at 10.
9. See *Observers Arrive in Haiti*, HAITI INSIGHT (Nat'l Coalition for Haitian Refugees), Winter 1993, at 2.
10. See Christopher Marquis, *Haiti's Bazin Accepts U.N. and O.A.S. Observers*, PHILA. INQUIRER, Feb. 10, 1993, at A3.
11. See Howard W. French, *Pact on Aristide Return to Haiti Reported Near*, N.Y. TIMES, Mar. 28, 1993, at 17 (noting that only "140 human rights observers have been sent to Haiti").
12. See Gwen Ifill, *Haitian is Offered Clinton's Support on an End to Exile*, N.Y. TIMES, Mar. 17, 1993, at A1, A13.
13. See *United States v. Other Countries, A Summary of Current Amnesty Int'l Human Rights Concerns in Haiti* (Amnesty International U.S.A.), May 1992, at 3.