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PROFILES

STEVEN FORESTER

Steven Forester arrived in Miami without a car on the Fourth of July, 1979. Before the weekend was through, he had visited the home of an Immigration and Naturalization Service (INS) official seeking the release of a Haitian refugee. Forester recalls the INS official was surprised and amazed to see him. Now, almost fifteen years later, Forester continues to work on behalf of Haitians seeking political asylum. INS officials may continue to be amazed by Forester's intensity and persistence, but they should no longer be surprised.

In 1978 Forester, a native San Franciscan, earned his J.D. from the University of California at Davis and passed the California bar. He was considering work either there or in Washington, D.C. when Ira Kurzban, one of this country's most effective advocates for Haitian political asylum applicants, invited him to work as an attorney at the Haitian Refugee Center (HRC) in Miami.

Although Forester knew little about the Haitian situation when he began his work, he quickly realized that he was in the middle of one of the larger issues of our time. He thought the United States government's policy toward victims of political repression in Haiti was inhumane, unjust, and racist. As a first generation American Jew, Forester knew the results of official disinterest: the Nazis had killed 12 members of his father's family, a fate his parents barely escaped. He felt there were obvious comparisons between the treatment of Haitians and the plight of Jewish refugees back in the 1940s. He realized that his personal efforts on behalf of asylum applicants could make a real difference in the lives of many people, and he gladly devoted all of his time and intelligence to their cause.

Over the next four and a half years, Forester represented hundreds of Haitian asylum seekers in immigration, appeal and habeas corpus proceedings. In addition to representing individual clients, Forester became a tireless organizer, engaging in extensive fundraising, networking, and public speaking on refugee issues. He prepared numerous press releases. He testified before the United States Congress, the Organization of American States, and federal courts. He lectured on asylum and habeas proceedings and became so knowledgeable about preparing asylum petitions and appeals that he began advising attorneys nationwide.

To address this, Forester and his colleagues amassed evidence of chronic discrimination against Haitian refugees. Though Congress and the courts give the Executive Branch wide discretion to administer the immigration laws of this country there is a general requirement that the laws be applied fairly and evenly to all groups. Unlike Cuban refugees, who were hailed as heroes and given automatic asylum, Haitians were not welcomed to the United States. INS guidelines placed a heavy burden of proof on any aliens fleeing non-Com-

munist countries.

Forester noted that Haitian refugees were sometimes pressured by the INS into signing deportation papers they could not read. HRC attorneys found that the INS routinely violated its own regulations by holding "pro-forma" deportation hearings at which refugees who had just arrived were told they had two choices: "Go back to Haiti or spend an indefinite time in jail." Sworn statements made by refugees regarding past activity were altered or fabricated.

Systematic abuses such as these prompted the HRC to bring several class action suits to force the INS to comply with their own rules. One of the most important class actions was *Haitian Refugee Center v. Civiletti*.¹ Plaintiffs alleged that the widespread abuse of discretion by the INS was part of a documented Department of Justice "Haitian Program" designed to expeditiously deport large numbers of Haitians in violation of their rights. Forester was a supporting attorney in the *Civiletti* litigation. He compiled background materials and found several useful witnesses. His work contributed to a finding that the INS had engaged in illegal practices and policies with respect to Haitians. Federal Judge James Lawrence King held that Haitian deportation hearings had been fundamentally unfair and ordered the INS to redo all of its negative asylum decisions.

The *Civiletti* decision focused nationwide attention on the deficits of the asylum process, forcing the INS to reform the way it considered those claims. It further encouraged HRC to press related claims in subsequent hearings. Haitian asylum applicants had to demonstrate a well-founded fear of persecution based on their political beliefs or membership in some specific group before they could succeed on their claim. Unfortunately, hearing officers at that time refused to consider any background material about violent political conditions in Haiti. Immigration judges denied admission of any evidence that did not specifically identify or name the particular applicant. Most Haitian refugees were unable to document their own alleged persecution with the required specificity, so nearly all of them were denied asylum.

HRC argued that denying asylum applicants the chance to give contextual information about conditions in their countries of origin was effectively denying them the chance to fully and fairly present their claims. HRC prevailed on this point in *In re Exame*, one of its many appeals.² That case established the right of asylum applicants to introduce background information as evidence which could help them establish whether or not they had a well-founded fear of political persecution.

The Board of Immigration Appeals (BIA) in *Exame* expressed the hope that interested parties could devise a mechanism for ensuring that sufficient background evidence could be made available to both the INS and the asylum applicants.³ Forester acted upon this "hope." To help insure that country-con-

¹ 503 F. Supp. 442 (S.D. Fla. 1980), *modified*, *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023 (5th Cir. 1982).

² *In re Exame*, 18 B.I.A. 303 (1982).

³ *Id.* at 305 n.5.

dition documentation would always be available for the benefit of Haitian asylum applicants, he edited and assembled over a thousand pages of human rights reports, congressional and federal court testimony, affidavits, and other materials on political conditions in Haiti. This "master exhibit" was then provided to every immigration judge in the United States for their use in individual Haitian asylum hearings.

The Haitian asylum process remained difficult, however, despite apparent legal victories. The INS under the Reagan administration instituted a policy of indefinite detention of asylum seekers. It was a strategy intended to deter potential refugees by delivering a message that the United States was prepared to lock them up and throw away the key. In July 1981, the INS began exclusion and asylum hearings at the Krome Service Processing Center, a federal prison outside of Miami. At the time, Forester was the only attorney representing hundreds of Haitians at Krome. Immigration judges scheduled hearings simultaneously in Krome's three courtrooms, refusing to grant continuances despite Forester's inability to be in three places at one time. He had to literally run between courtrooms. His success became a question of stamina, hustle, and sheer obstinacy. Forester would wake up early, prepare legal motions to be submitted in every case, even if he could not physically be there due to the scheduling, and then appeal them.

In 1985 Forester became legal director of the American Civil Liberties Union [ACLU] of Florida. There, Forester employed his organizing abilities to create panels of attorneys to handle civil liberties work on a pro bono basis, as well as student volunteers in various cities and law schools to help educate people about constitutional issues. Forester helped develop the Florida ACLU as an instrument to focus media attention on civil rights violations. Some of the most notable cases that Forester became involved with were ones which attacked book-banning in public schools, mandatory drug-testing of student athletes, polygraph tests by school officials to ferret out disciplinary problems, and religious services at high school graduations.

Forester entered private practice in 1987. He handled a variety of civil rights cases, but he continued to work primarily with Haitian detainees and asylum-oriented cases. He also served two terms on the HRC's board of directors from 1985 to 1992.

After a violent coup ousted Jean-Bertrand Aristide, Haiti's first democratically-elected president, in September 1991, Forester resumed full-time work on behalf of Haitian refugees. He became the staff attorney at Church World Service in Miami, providing legal assistance and training law students to help with the flood of new asylum seekers. In March 1992 he gave the chief lecture at a Harvard Law School training seminar on Haitian asylum representation. Material from that lecture formed the basis for an extensive article explaining how to conduct an effective interview of a Haitian (and, by analogy, any other) asylum applicant.⁴ This article has received wide distribution and is

⁴ Steven Forester, *Haitian Asylum Advocacy: Questions to Ask Applicants and*

routinely referred to by virtually every law student, pro bono attorney, or legal service agency in Haitian asylum advocacy.

August 1992 found Forester back at the Haitian Refugee Center, this time as supervising attorney. Working out of a converted storefront in Miami's "Little Haiti," HRC is on the front lines of Haitian asylum defense work. Forester and his staff of attorneys and law student volunteers provided most of the legal services for Haitian refugees detained at the U.S. Navy base in Guantanamo, Cuba. In addition to managing this "Guantanamo" caseload, HRC was often the only source of legal assistance for indigent Haitians in south Florida.

Forester and his staff represent asylum applicants at every level of that process. They regularly seek and obtain the parole of Haitians detained at the Krome Service Processing Center. They appear before immigration judges in Miami; they appeal and file briefs to the BIA from unsatisfactory decisions of the judges at Krome and in Miami; and they initiate federal habeas corpus proceedings following certain BIA dismissals. HRC files rebuttals to INS "intent to deny" letters and sometimes moves to reopen cases of previously unrepresented or incompetently represented persons. HRC effectively helps its clients with the details of all their interactions with the INS. In almost all of these cases, were it not for HRC, these people would not otherwise receive legal representation.

Forester's work goes beyond legal matters. Many of his clients have been through shattering physical and emotional ordeals. Forester sees one of his most important roles as helping to maintain his clients' spirits during their detention and assisting their adjustment to their new surroundings. In addition to asylum work, the HRC staff helps many Haitians with work authorization and related problems. From April to December 1993, for example, HRC served about 5,464 non-detained Haitians, or an average of about 607 people each month.

Forester and his colleagues have sometimes had to refocus their work beyond Florida. In January 1993, the INS detained 300 Haitians who had arrived by boat in Florida. Instead of holding them in south Florida, the INS dispersed them to remote prisons, including five Louisiana parish jails where they were shackled at the feet and handcuffed whenever they were transported. In contrast, the INS had granted immediate parole one month earlier to over forty Cubans who had hijacked a plane to Miami. HRC quickly filed *Haitian Refugee Center v. Reno*,⁵ a class action challenging discriminatory incarceration. This challenge stopped the INS from holding asylum hearings at these distant prisons, far from lawyers and interpreters. By late 1993, HRC intercession had achieved the release of most of these detainees, usually on bond; but the INS still continued to incarcerate eight non-criminal Haitian

Notes on Interviewing and Representation, 10 N.Y.L. SCH. J. HUM. RTS. 351 (1993). A version of this article first appeared in IMMIGR. NEWSL. (Nat'l Immigr. Project of the Nat'l Lawyers Guild) June - Aug. 1992.

⁵ No. 93-00800 CIV (S.D. Fla. 1993).

asylum seekers in a Louisiana parish prison.

HRC maintained constant pressure on behalf of these eight Louisiana detainees, faxing reports of deplorable prison conditions to journalists and colleagues, lobbying the 40 members of the Congressional Black Caucus, and enlisting aid from sympathetic friends. The HRC eventually bonded out two of the Louisiana Haitians in December 1993. Five of the six remaining detainees were finally freed in early January 1994, and the sixth in late January, after a Louisiana immigration judge reopened his case. In a much publicized display of support, filmmaker Jonathan Demme, actor Danny Glover, producer Edward Saxon, and others contributed over \$10,000 to pay the newly-set bonds.

Forester believes that the best solution to the Haitian refugee problem is restoring that country's rule of law. He tries to share as much information as he can with the news media, hoping that such publicity will make people more aware of the brutally cruel conditions in Haiti.⁶ He also participates in lobbying efforts on behalf of beleaguered Haiti and its refugees. He has recently been helping to marshall the Congressional Black Caucus in demanding support for the reinstatement of President Aristide. He is hoping that political leverage might provoke the changes in American policy towards Haiti that legal and moral arguments could never accomplish.

Repression in Haiti, which has always been severe, intensified after the United Nations failed to enforce an October 1993 peace agreement. The military rulers have been terrorizing the populace with impunity. Anyone suspected of opposing the government is liable to be killed or tortured. Thousands of Haitians are in forced hiding inside the country. Health and economic conditions are abysmal.⁷

In addition to all published accounts of brutality, Forester hears stories from clients about murders of their sons or brothers by paramilitary forces. Since November 1993, people have been coming into his office with such stories up to two or three times each week. Meanwhile, the U.S. Coast Guard continues to interdict Haitian refugees on the high seas, forcibly repatriating them without any asylum screening whatsoever. The Coast Guard hands these persons over to the Haitian police, in what the U.S. embassy in Port-au-Prince admits is "a 'fishing expedition' for persons considered troublemakers by the police and probably designed to intimidate the returnees."⁸

HRC continues to provide legal help to Haitians who survive this gauntlet and finally arrive in the United States. Forester knows Haitians will continue

⁶ See, e.g., Pamela Constable, *Black Caucus Hits Haiti Policy*, BOSTON GLOBE, Mar. 24, 1994, at 9; Larry Rohter, *With Haitians, Rights Groups Fault Decision*, N.Y. TIMES, June 22, 1993, at A1.

⁷ See, e.g., Constable, *supra* note 6, at 9; Tim Weiner, *Key Leaders Said to Have Been in the CIA's Pay*, N.Y. TIMES, Nov. 1, 1993, at A1, A5.

⁸ Telegram from American Embassy, Port au Prince, to Secretary of State, Washington, D.C., Sept. 22, 1993 (on file with the *Boston University Public Interest Law Journal*).

to seek refuge as long as repressive conditions persist. Meanwhile, the terror that has plagued Haiti has gripped Miami as well. Four Haitian exile activists have been killed in "Little Haiti" in the last three years. Three of those killed were closely associated with HRC. There have also been numerous death threats against Haitian members of HRC.⁹

In the face of such brutality, Forester says he reflects on an exhortation by the prophet Amos that our work strive to "let justice roll down as waters, and righteousness as a mighty stream." He feels these words reflect his mission as an attorney. He hears them as a clarion call to people who revere the Constitution and democracy, who passionately believe in justice, who feel compassion and love for people. Despite the difficulties and the dangers, he considers the opportunity to help relieve injustice and to aid the defenseless to be both his privilege and his solemn responsibility.

Stephen F. Armbruster

⁹ See generally *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028, 1034 (E.D.N.Y. 1993) (citing U.S. Coast Guard statistics showing that the refugee problem is directly related to the repression).