

**Send Them Back**



# Send Them Back

Irwin P. Stotzky

UNIVERSITY OF MIAMI SCHOOL OF LAW



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*To my sons  
Jacob and Joshua  
For the happiness with which they infuse my life and for  
the promise they bring the world*

*To Audrey  
For her love and support  
To the Haitian people for the hope of a better life*

*To Ira J. Kurzban  
For his struggle on behalf of the Haitian people*



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# Prologue: Send Them Back\*

*Irwin P. Stotzky\*\**

As this book nears publication, I am sitting in my dark house, which has lost power because of Hurricane Irma.\*\*\* With flashlight in hand, I am trying to edit another draft of this book. This exercise without electric power is a metaphor for the way Haitians and Haiti have been treated by the international community—powerless and in the dark. Hopefully, this book will bring some light to the attempt to move Haiti in a positive direction! As I am editing the book, I also wonder how we, all the lawyers and Haitian advocates, endured and spent the last four decades working on litigation to stop the government from discriminating invidiously against Haitian refugees in violation of our most sacred principles and laws.

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A more accurate title and description of the government's position on Haitian refugees is the following: LET'S SEND THOSE POOR, BLACK, SURE TO BE PERSECUTED REFUGEES RIGHT BACK TO HAITI! This was the United States government's position, which it acted on, during the past four decades. During this period, some of the most repressive dictatorships in Haitian history, including the brutal Duvalier regime, controlled all aspects of Haitian life and terrorized the Haitian people. Moreover, the United States government was clearly aware of the consequences of sending refugees with viable asylum claims back to Haiti.

\*\* Professor, University of Miami School of Law.

\*\*\* Hurricane Irma hit Miami on Sunday, September 10, 2017. My home was without power from Friday, September 8, 2017, through Thursday, September 21, 2017.

## How Did All of This Litigation Begin?

It was another hot and humid fall day in Miami. The year was 1977 or 1978 and I was sitting in my office diligently preparing for my Constitutional Law class when I heard a knock on my closed door. I shouted for whoever knocked to come in. The door opened, and I saw before me a short, somewhat disheveled but cheery faced young man, about my age. He was wearing bell bottom pants and platform shoes. He entered, introduced himself in a strong Brooklyn (more specifically Sheepshead Bay) accent and then proceeded to describe why he came to see me. He was then a graduate student at Berkeley in their PhD program in Political Theory and was about to graduate from their law school. He had come on a mission to enlist help for refugees, specifically Haitian refugees who were starting to flee to Miami to escape persecution. He represented the National Emergency Civil Liberties Committee based in New York City. Since I was the founder of the National Lawyers Guild Chapter in Miami, he naturally decided to speak to me. I was immediately intrigued by the plight of the Haitians. He convinced me to help organize students and other interested parties to help. Four decades later, Ira Kurzban has evolved into one of the most prominent immigration lawyers and experts in the country, and I am still actively involved in working to help Haitians overcome their difficult pasts and move forward from authoritarianism to democracy.

Working on these cases with Ira and other lawyers led me to be privileged to become an attorney and advisor to Jean-Bertrand Aristide, the first democratically elected president in the then almost 200 year history of Haiti, and an advisor to his successor, President René Préval. Unfortunately, the December 1990 election of Aristide did not lead to peace and prosperity. Even before Aristide took his oath of office, and during the first several months of his term, military and paramilitary forces, with the outright support of other corporative and anti-democratic forces, challenged the legitimacy of his election in a series of unsuccessful coup attempts. In September 1991, they finally succeeded in overthrowing him. The coup was not only successful, it also resulted in a three-year reign of terror that left approximately 5,000 people dead, tens of thousands brutalized, and the country in financial ruin. President Aristide went into exile, first in Venezuela and then in the United States. It was at this point that I was asked to help him. My job was to help him stay relevant to the Clinton Administration and thus help him to be reinstated as President of Haiti. In this role, I organized visits for him to lecture at academic institutions such as Dartmouth and Yale, and conferences on Haiti.

The steps toward restoring democracy to Haiti were slow in coming. After almost three years of unsuccessful, frustrating international efforts to negotiate

the restoration of the Aristide government, President Clinton made a televised address directly threatening the Haitian military that it must relinquish power or be forced out of Haiti. He then sent a delegation consisting of former President Jimmy Carter, Senator Sam Nunn, and General Colin Powell to Haiti to negotiate the departure of the military coup leaders. Backed by the threat of military intervention, the coup leaders agreed to leave and allow Aristide to return. While the agreement was certainly controversial, it did lead to the departure of these leaders and the arrival of approximately 20,000 United States troops and a smattering of troops from other nations—the Multi-National Force. On October 15, 1994, Jean-Bertrand Aristide returned to power as Haiti's leader.

The Clinton Administration and the international community did not help reinstate the democratically elected government out of the “goodness of its heart” or simple altruism. The international community, led by the United States, took these unprecedented steps because of a sincere security concern. It was in the self-interest of every democratically elected government in the region to do so. Anyone contemplating the overthrow of a democratically elected government or the commission of massive human rights abuses anywhere in the region, or indeed in the world, would now have to worry about a strong, unified hemisphere and international response. At this time, the hope was that coups against democratic minded governments would never be allowed to succeed. The international community's success in helping to reverse the coup in Haiti and creating a secure environment was seen as a success for a policy of supporting democracy and security in the world at large.

While the often publicly repeated United States security and policy interest in Haiti was to “restore democracy,” the Clinton Administration had a more sinister and urgent political concern. These officials, particularly President Clinton, wished to eliminate the flow of Haitian refugees to the United States and thus diffuse a potential political problem for Clinton's 1996 presidential re-election bid.<sup>1</sup>

After Aristide's restoration, I organized and led a team of international human rights lawyers to prosecute those who had committed atrocities during the three-year military coup that resulted in the systematic (not random) execution of 5,000 Haitian citizens, the destruction of civil society, and the demoralization of democratic forces. The investigation began the long process

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1. See IRWIN P. STOTZKY, *SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY* (1997) (hereinafter *SILENCING THE GUNS*); see also Irwin P. Stotzky, *On the Promise and Perils of Democracy in Haiti*, 29 U. MIAMI INTER-AM. L. REV. 1 (1997).

of ending impunity for human rights violations that characterized the past four decades (at that time) of Haitian history. This led to the successful prosecution of one of the parties responsible for the political execution of Antoine Izmery, a well-regarded businessman in Haiti who broke ranks with the Haitian elite to openly support democracy at the cost of his life.<sup>2</sup> Our participation led to the first successful human rights prosecution of a government agent for committing a political crime in the long history of Haiti.

The investigation continued for several years. At some point, however, it became clear that a full time staff had to be found because the task of pursuing justice by prosecuting human rights violators was a massive undertaking. The lawyers working on the job could not continue full-time.

In 1995, René Prével succeeded Aristide as president. The investigation into the massive human rights abuses slowed down. Simply keeping Haiti on the path towards democracy, and keeping it functioning as a real nation, became the primary focus of the new government. But that enormous task did not stop the movement to bring the rule of law to Haiti.

In 1995, the United States' legal team, led by Ira Kurzban, helped develop a new organization to combat human rights abuses. They created an organization both with native Haitian lawyers and lawyers trained in the United States to help victims prosecute human rights cases in Haitian courts and in international courts. The Bureau des Avocats Internationaux (BAI) not only prosecuted these cases, but also trained Haitian lawyers and spoke out on justice issues. It evolved into the most important human rights organization working in Haiti. The BAI also produced the most important human rights lawyer in Haiti, Mario Joseph, who has co-managed and managed the BAI since 1996.

President Aristide ran for president again in 2000. He won re-election and gave new hope to the Haitian people that democracy would further develop and defeat the authoritarian forces. But again, on February 29, 2004, he was overthrown by anti-democratic forces and went into exile. At this point, lawyers in the United States created a new, United States based entity to continue this legal work—the Institute for Justice and Democracy in Haiti (IJDH).<sup>3</sup>

Brian Concannon, a United States trained lawyer, became the BAI co-manager with Mario Joseph and served in that position from 1996–2004. In 2004, he became the Executive Director of IJDH and has continued in that position ever since. Mr. Concannon previously worked for the United Nations as a

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2. See Stotzky, Prologue, *supra* note 1 at 12.

3. The founding members were Brian Concannon, Paul Farmer, Laura Flynn, Ira Kurzban, and Irwin Stotzky. The Board has expanded since its founding.



human rights officer in 1995–1996. He also has a distinguished career in human rights.

Directly after its creation, the IJDH joined the BAI, and their legal teams have since worked together on many important cases. The BAI originally received most of its support from Haiti's constitutional governments. Since February 2004, however, it has received most of its support from the IJDH and no support from any political institution. The creation of the BAI has led to legal victories, such as the Raboteau Massacre in 2000, one of the most significant human rights cases anywhere in the Western Hemisphere.

The BAI and IJDH partnership of Haitians and United States human rights advocates has been extremely successful in confronting Haiti's problems. These groups have worked to support the Haitian people in their struggle to achieve universal human rights, access to a just legal system, social justice, a society without violence, and the right to participate fully in selecting the government. The groups, using models such as the United States Civil Rights Movement, are active in the Haitian courts and internationally. They are also active in the streets and poor neighborhoods of Haiti. They also partner with grassroots movements to transform the structural injustices that stand as barriers to stability and prosperity for the majority of Haitians. The IJDH has most recently helped represent the victims of the cholera epidemic.<sup>4</sup>

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4. See Chapter 8 *infra*, notes 43–152; see also FRAN QUIGLEY, *HOW HUMAN RIGHTS CAN BUILD HAITI: ACTIVISTS, LAWYERS, AND THE GRASSROOTS CAMPAIGN* 1, 7–26 (Vanderbilt University Press 2014).

