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The News Briefly



Patrick and Jill Hart at the Peace Has No Borders Festival. PHOTO: ROSE MATTREY

Jeremy Hinzman, one of the first war resisters to go before the IRB, was denied asylum along with Brandon Hughey and told that the legality of the war cannot be argued in that setting. Here's what their ruling said: "I find that the claimants are not [Geneva] Convention refugees, as they have not established that they have a well-founded fear of persecution for a [Geneva] Convention ground in the US. I also find that they are not persons in need of protection, in that their removal to the US would not subject them personally to a risk to their lives or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that their removal to the US will subject them personally to a danger of torture."

Hinzman and Hughey are currently appealing their decision in Canada's Supreme Court.

The Harts aren't worried, though, because believe they have a better case than some of the other resisters. According to their friend Jeff Millard, who was present at the hearing, "They actually have a lot of mitigating circumstances that a lot of the other resisters don't have, including their son Rian. Also, with Patrick being a non-commissioned officer (NCO) on a third enlistment, he could technically face the death penalty under the Uniform Code of Military Justice (UCMJ), which isn't the case with the other resisters."

They also hope that Jill's testimony of being threatened by the Army and having Rian's health care threatened help them make a case for persecution rather than simple prosecution, an important distinction in such a hearing.

As in other courts, though, the board member in charge of handing down a decision for the Harts is bound by precedent, and right now the precedent is to deny war resisters asylum. Hopefully their additional arguments help their case.

House is confident that they will eventually be successful. "It doesn't really depend on whether Pat or Jill Hart are excellent witnesses," he says. "It more depends on whether we can show that there are systematic violations of fundamental humanitarian law in Iraq. I think we show it, but it's up to the board member to decide that."

While their cases have dragged on, public support has grown for the war resisters in Canada, both amongst the public and in Parliament. The New Democratic Party has been supportive of them, particularly party leader Jack Layton MP and Bill Siksay MP; both have spoken publicly in support of the resisters. It's impossible to tell, however, whether any legislation will be passed to help the war resisters stake their claim in Canada.

In the meantime, Patrick continues his search for meaningful work and the resisters are working to form the first international chapter of Iraq Veterans Against the War (IVAW) in Toronto, with help from IVAW's Millard. "It's given all the resisters other things to focus on," Jill says, "so we don't wallow in what the courts say."

—peter koch

SITTING, WAITING, WISHING

Patrick and Jill Hart await their fate in Canada

Four months ago, this paper wrote about war resister Patrick Hart (see *Artvoice* v5n10, "Brave Hart"), a former Army sergeant and Buffalo native who went AWOL and sought refugee status in Canada along with his wife, Jill, and son, Rian. The story detailed Patrick's difficult decision after nearly 10 years in the Army, as well as the many obstacles the Harts had yet to overcome on their way to successfully being granted refugee status.

The Harts confronted one of their first major obstacles last Thursday when they had their hearing before Canada's Immigration and Refugee Board (IRB). Despite the disheartening precedent set by a handful of war resisters who have already been denied refugee status there, the Harts are upbeat about their situation. "Obviously we won't know for months," Jill told *AV* in a recent phone interview, "but I think the testimony went really well."

The process by which people apply for refugee status in Canada is relatively simple. Someone fleeing persecution in their home country arrives in the country and applies to the Immigration and Refugee Board for political asylum. It takes a long time to be assigned a hearing, generally six months or more. In the meantime, applicants have full access to the Canadian health system and Social Services, and can apply for working visas. When a hearing date is set, the applicant must prove to an IRB board member that his case warrants political asylum under the Geneva Convention. It basically works like a court trial with no jury. Both the claimant and the state are represented by legal counsel, testimony is given, evidence is presented and cross-examinations may be conducted. A neutral Refugee Protection Officer may also cross-examine claimants and their witnesses, or provide his own evidence. All the paperwork is turned in and a decision is made by the board member, sometimes as many as six months later.

The bad news for the war resisters is that everyone who has received a decision has been denied. Their lawyer, Jeffrey House, explains: "There are two elements to every one of these cases. First, the argument is that the war in Iraq is illegal. The second is that the war in Iraq is not illegal, but there's nonetheless a systematic violation of human rights in Iraq such that a soldier is justified in not participating. We were told by precedent in the Hinzman case that we couldn't argue the first point, so we argued the second point."

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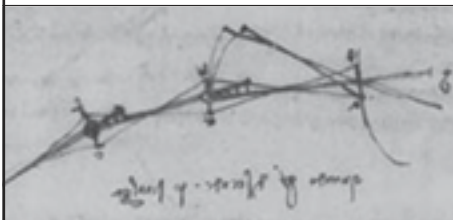
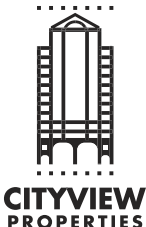
Leonardo da Vinci was an artist and an inventor. He was born in 1452. His sketch-books were filled with diagrams and notes explaining his inventions and experiments. Leonardo's scientific and technical drawings have captured the imagination for centuries, and this exhibition focuses on 16 drawings – first reproducing Leonardo's drawings on graphic panels and also realizing the idea in model form. Originally developed by the IBM Corporation, this interpretive exhibit encourages visitors to explore these concepts, in many cases through hands-on experiences with working models. The exhibit includes modular furniture, graphics, and models.

Leonardo was among the first to understand – why and how a machine works is more important than what it does – and that all machines, no matter what their specific function, are dependent on a limited number of mechanisms. By studying and improving his understanding of the component parts of machines (gears, pulleys, springs), Leonardo was able to come up with general rules for inventing machines for all sorts of jobs. Most people of the time thought that each machine was different because it did a different job, and Leonardo's usual master of machinery seemed almost like magic.

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O ALBANY!

The Court of Appeals throws same-sex marriage to the legislature

On July 6, the New York State Court of Appeals ruled that the state's constitution does not guarantee gay couples the right to get married. Because the plaintiffs—44 couples in four lawsuits—raised no federal issues, there can be no appeal to the US Supreme Court. So the issue, as noted by Judge Robert Smith in the 17-page majority opinion, becomes legislative.

"The New York Constitution does not compel recognition of marriages between members of the same sex," Smith wrote on behalf of the 4-2 majority. "Whether such marriages should be recognized is a question to be addressed by the Legislature."

The crux of the lawsuits was how one defines a "fundamental right," and Smith's opinion cited the US Supreme Court's definition as one that is "deeply rooted in this Nation's history and tradition."

"The right to marry someone of the same sex, however, is not 'deeply rooted'; it has not even been asserted until relatively recent times," Smith wrote. "The idea that same-sex marriage is even possible is a relatively new one. Until a few decades ago, it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex. A court should not lightly conclude that everyone who held this belief was irrational, ignorant or bigoted. We do not so conclude."

"To say that discrimination is 'traditional' is to say only that the discrimination has existed for a long time," wrote Judith S. Kaye in a sharp-toned, 27-page dissent. "A classification, however, cannot be maintained merely 'for its own sake.'"

The ruling was met with mostly timid approval from the defendants and with statewide demonstrations by supporters of same-sex marriage. In Buffalo more than 100 people gathered that same evening, July 6, at the corner of Bidwell and Elmwood to protest the court's decision and urge Western New York lawmakers to take up the issue themselves.

At the demonstration, State Assemblyman Sam Hoyt, a long-time supporter of same-sex marriage, promised that he would do exactly that.

"I was disappointed because I'd waited two years since this court action was initiated and I really thought the court was going to do the right thing," Hoyt said. "To me, it just seems like the sensible thing. That said, if we have to act legislatively to change the law the law so that we can allow gay marriage, I'm going to lead the charge to make that happen."

Though supporters of same-sex marriage despair of pushing a bill past the Republican majority in the State Senate, Hoyt suggested that it was possible; he argued that both the Assembly and the Senate have come a long way in recognizing gay rights. "I think that popular opinion is moving more and more toward acceptance and openness about gay marriage and full equality for gay and lesbian people. I think we will prevail. Do I predict it will be in the

next six months? Absolutely not. But this will draw attention to the fact that the ball is in our court."

Hoyt has been far and away the most outspoken supporter of same-sex marriage among Western New York's state delegation, though State Senator Marc Coppola said that if a well-tailored bill came before him, he would be inclined to support the right of same-sex partners to be married and have their marriages recognized in New York State.

"I understand that this is a hot-button issue with the people in my district, and I wouldn't want to disenfranchise them," Coppola added. "But sometimes there are



Assemblyman Sam Hoyt at the June 6 rally.

decisions you just have to make."

Antoine Thompson also expressed his support for—well, something. Asked if he supported same-sex marriage in New York State, he replied, "I support legal rights for all adults in New York State." Asked if he would vote for a bill that extended marriage rights to same-sex couples, he said, "I would support any bill that provides legal rights for all adults regardless of race, class, gender or sexual orientation." Asked to clarify, he added, "I would support expanding legal rights for all couples."

He managed to utter the word "gay" just once in a 15-minute interview. Then, perhaps trying to explain his reluctance to be specific, he said, "Once you allow open discrimination in one area, there is no limit to where discrimination will begin or end. [Thursday's] rally said to me that we can't allow discrimination in America."

"What seems like a century ago, I was out in demonstrations and marches for the rights of people of color," said Marilyn Bell-Schwede on Thursday evening. "I was out in demonstrations and marches for the rights of women, primarily over issues that affected straight women much more than they affected me. Now I've got to do it again—and, you know, it's time we put an end to all of this stuff. All I can think of is that great quote from the Civil Rights Movement: 'I'm sick and tired of being sick and tired.' And we've got to do it one more time—at least. At least."

"There are too many reasons we've given people to flee this state," Hoyt said. "Let's look for easy ways to bring people into the state. If New York State became the first state in the union to officially accept and put into statute gay marriage laws, you would see people flocking to this state, as opposed to the young people who are leaving. To me it's a no-brainer. I'd like the City of Buffalo to be known as the city of openness, the city of fairness, the city of tolerance. I we did that, I think thousands of people would come here."

—geoff kelly & matthew holota



Eco-warriors stand on E. Otto State Forest's grand old trees.
From L: Don Shelters, Roger Tredo, Turiyah Mistretta, Albert Brown and their two sons.
PHOTO: PETER KOCH

NOT SO FAST

Still not happy with the DEC's management plan for Zoar Valley

Three weeks ago Friday—the day after the New York State Department of Environmental Conservation (DEC) released its draft unit management plan for Zoar Valley—the *Buffalo News* published an article under the headline “Zoar Valley's ancient trees protected.” Countless readers no doubt breathed a sigh of relief, happy in the knowledge that WNY's most significant ecosystem would remain intact. To a few readers, however, namely Albert Brown, Turiya Mistretta and Roger Tredo—all members of environmental group Friends of the Ancient Forest (FAF)—the *News'* declaration was premature.

One week after the article ran, Brown was on the phone with AV. “[DEC] is leaving the majority of the uplands open for logging, and that's a whole lot of land.” In fact, it's nearly half of the land that comprises the Zoar Valley State Multiple Use Area—1,404 of its 2,927 acres. While the *News* was correct that the draft plan would protect the gorge and put 300-foot-wide buffers along its edges and 200-foot-wide buffers on trails leading to the gorge, it failed to mention that almost half the preserve would still be open to “management.”

Brown, the president of FAF, had seen what the DEC's idea of “management” meant two miles away in the East Otto State Forest. He invited AV to take a look.

Two days later, Brown stood in the parking lot of the Country Faire convenient store in Springville, spreading a map of Cattaraugus County across the hood of a beat-up Jeep. “Which road is closed, though?” he asked. With pregnant clouds crowding the horizon, we had to get to East Otto pronto.

A short run over rolling country lanes brought us to Traffic Street in East Otto, and where the pavement ended, “Road Closed” barriers ended our drive. Don Shelters, a concerned conservation officer for the Zoar Valley Paddling Club, arrived just ahead of us. Shelters, who lives only a mile from the state forest and is intimately familiar with the land there, is mad as hell. “I understand logging, and in sustainable logging you don't kill the entire forest. When you take out this much forest, the floor is going to die. The sun comes through and dries it out. That moss regulates the moisture and helps prevent erosion and flooding...there are a billion

reasons what they're doing down here is wrong.” As we reach the edge of the forest, Shelters utters a telling declaration: “This was an awesome hike.”

From there on in, the East Otto State Forest tells its own story. Gnarly, mud-choked skid roads are gouged deep into the forest floor. The forest isn't clear-cut, but it might as well be. The understory has been butchered; trees that are only three and four inches in diameter lay in heaps on the ground, where they'll no doubt rot, since they have little commercial value. The woods were completely silent, and there was no sign of animal life whatsoever. Few of the stumps that we encountered indicated cutting of any valuable trees. At the same time, few of the trees that remained were significant, either. There seemed little rhyme or reason to the logging. (Vic Anderson, DEC's head forester for that project, didn't return AV's phone calls.)

Additionally, the ecologically sensitive riparian zones along the numerous feeder streams that crisscross the forest on their way to Cattaraugus Creek were chopped, leaving exposed slopes that would doubtless increase erosion.

At the edge of the cutting, the small trees gave way beneath huge cherries and towering maples. As we stepped into the mature forest, birds started singing. As we wrapped up our hike a half-hour later, we passed the loggers' sulking skidder truck. A bumper sticker plastered on the driver's side door adequately summed up DEC's management of the East Otto State Forest: “Timberjack—Logging first.”

FAF are concerned that the Zoar Valley uplands will receive the same treatment under DEC's draft unit management plan. And, as time passes, the chorus seems to be growing behind them. Albert Brown is not a small man, and when he's passionate about something, it sometimes manifests itself as bullishness. He speaks loudly, and tends not to back down when the red cape is waved at him. That's good news for Zoar Valley.

FAF was founded in 2003 around the Zoar Valley issue, when the DEC was conducting its last series of public scoping sessions for the management plan. “Bruce Kershner asked [DEC Region 9 head forester] Wayne Cooper about the Lake Erie Gorges Study, and he said he didn't know anything about it. That's when we realized they were lying to us.” The Lake Erie Gorges Study

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that Brown refers to was conducted by the New York Natural Heritage Program, a partnership between the DEC and the Nature Conservancy, to inventory the ecological resources of the gorges in Western New York's Lake Erie watershed. That study said some significant things about Zoar Valley. Here are some outtakes:

"The Zoar Valley and the watershed of Cataraugus Creek has the highest number and concentration of rare plants in the Lake Erie Gorges Region."

"This forest apparently has a long list of superlative measurements associated with it at multiple scales. As of June 2002, they have officially documented 'champion trees' (i.e., the tallest examples of a species for a given geographic area) for 14 species..."

"That study resulted in the discovery of four significant ecological community occurrences, one rare animal, and six rare plants within the Zoar Valley MUA."

"Zoar Valley was chosen as an important site in the TNC portfolio for the Great Lakes Basin, and it is one of the most outstanding and impressive natural features within the study area."

It is for exactly these reasons that Brown and company are so adamant that all of Zoar Valley remain pristine. "We didn't ask for a piece of Zoar Valley," Brown says. "We didn't ask for it to be divided. We asked to protect all of it. Just because they give us a little piece of it, they think that we'll take it and go away. But that's not gonna happen."

What DEC actually calls for in the draft unit management plan for Zoar is that all 1,404 acres of uplands be managed. "Management" is a purposefully vague term used by DEC to describe a number of practices. In

some cases it means maintaining an existing field by periodically mowing it, in others it means removing trash or building wood duck nest boxes. In some locations, though, it means building a skid road or logging an 18-acre stand of Japanese larch to return native species. For hundreds of acres, the only plan is to "reinventory and propose management actions." Such hazy language indicates a few things: first, that DEC is creating a management plan without a clear idea or inventory of what it's managing; second, DEC wants to keep the door open on as many management practices as possible.

Interestingly enough, DEC also decided to up the ante on what qualifies as "old-growth" forest. In its first-ever crack at defining old-growth, DEC settled on 180-200 years old, rather than the generally accepted standard of 150 years.

This past Tuesday, DEC stood before the people at a public comment meeting at Bellevue Volunteer Fire Department in Cheektowaga. Things got ugly toward the end, as more and more citizens and environmentalists came around to the same conclusion as FAF: All of Zoar Valley needs to be protected, not just the gorge.

It started out amicably enough, with a few environmentalists—Art Kline of the Sierra Club and Larry Beahan of the Sierra Club and the Adirondack Mountain Club among them—even commending DEC on its unit management plan. They were happy that the gorge was being given such strong protection, the highest level of land protection in the state.

As the meeting wore on, though, more and more questions arose regarding the plan's vague language and DEC's purpose in managing the rest of Zoar Valley, the up-

lands. When asked why they raised the age at which trees are considered old-growth, the DEC's Wayne Cooper responded limply with, "That's what our department has come up with." When asked why they wanted to log the uplands, Cooper's response was: "The reason for the management of the uplands is to create vegetative types that would be native to the area that would be beneficial to the wildlife." Virtually everyone else in the room seemed to agree that those non-native species were going to die out soon anyway, though. When asked for assurances that "management" of Zoar would differ from "management" of East Otto, Cooper's final answer was, "I'd have to look at the plan, but we don't have any thinnings like that scheduled for Zoar."

By the end of the meeting, things had devolved into a feeding frenzy, and Wayne Cooper had become the DEC's unwilling whipping boy. Those who initially reacted favorably to the plan changed their minds. Larry Beahan received a round of applause when he stood up and said, "I said earlier that this was a good plan, but I'm starting to think that this is too much management." Several other environmentalists and naturalists expressed to AV some reasonable reservations about DEC's unit management plan.

Julie Broyles of the Zoar Valley Nature Society—who was quoted supporting the plan in the *Buffalo News* article—is now decidedly against management in the uplands. "Zoar Valley has always belonged in the [state Nature and Historic Preserve Trust]. Zoar Valley is an ecologically, geologically, historically, archaeologically important site, and it should be protected. The splitting of the property I don't think is right. The management of the uplands seems geared toward converting the ecology to suit hunt-

er's needs—creating habitat for deer and grouse." Broyles' other concern is that the DEC hasn't conducted a biodiversity inventory. "They don't know what species are there, and what their relationships are to each other. They've made a plan without even knowing what's there. It seems like they've gone in the wrong order."

Naturalist and old-growth expert Bruce Kershner is concerned with the seemingly arbitrary 300-foot buffer zones at the rim of the gorge called for in the management plan. "The things on the ground are what need to be protected," Kershner says. "You don't draw your line on a map. If they think that the forest is just lines and colors on a map and that's all that it's about, then it shows why we've had a problem with their attitude. It's what's on the ground. In one place it might be a waterfall, in another it might be ancient forest." He also stressed that DEC should not focus on Zoar Valley Multiple Use Area as resources that can be extracted, but rather as natural resources that can be promoted and enjoyed for recreation. "The forester should have a role in what happens at Zoar Valley, but he shouldn't be the manager of the place. They should be promoting recreation and developing Zoar for recreation, not logging."

The bottom line here is that the DEC plan isn't complete. All of Zoar Valley MUA should be protected, and there's still time to submit comments to the DEC. Another public hearing will be held tonight, Thursday, July 13 at Gowanda's American Legion Post 409 at 7pm. Comments can be submitted via e-mail until Aug. 22 at zoar@gw.dec.state.ny.us.

—peter koch

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