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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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