

Lawyer for US deserters speaks with WSWS

It cannot be irrelevant to a soldier that a war is legal or illegal

Lee Parsons
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Reports of a growing number of desertions from the US military have surfaced in recent weeks, revealing a picture of the state of the morale and support for the war among US forces that differs sharply from that provided by the Bush administration, the Pentagon and the corporate media.

At least a half dozen deserters from the US are now seeking political refugee status in Canada, but the number of deserters in Canada could be far higher. According to the US military over 5,500 personnel have deserted in the past year alone.

In December, Jeremy Hinzman became the first US deserter to ever appear before Canada's Immigration and Refugee Board. Hinzman's appearance attracted the attention of Darrel Anderson, a 22 year old soldier who had served in combat in Baghdad for seven months and received a medal for bravery. According to a report in the *Toronto Sun*, Anderson soon after took the decision to leave his home and family to escape participating in what he considers an unjust war. (See: <http://www.canoe.ca/CNEWS/Canada/2004/02/19/353505-ap.html>)

The flight to Canada of an untold number of deserters threatens to expose the Canadian government's pretense of opposing the decision to invade Iraq. The Canadian government has already intervened in the Hinzman case to try to derail his refugee claim, by arguing that he cannot introduce evidence as to the illegal character of the US invasion and occupation.

The cause of US soldiers seeking refuge in Canada has elicited support from a number of prominent Canadians, including artists, trade unionists, and journalists. They have signed on to "the war resisters support campaign," which is appealing to the Canadian government to grant US deserters refuge in Canada. While such an appeal has little hope of influencing a government determined to mend fences with Washington, it illustrates a growing backlash both within the US and abroad against the predatory military actions of the Bush administration.

Lawyer Jeffry House, who is representing a number of the deserters with cases pending before the refugee board, including Jeremy Hinzman, spoke with WSWS reporter Lee Parsons in Toronto at the end of January.

WSWS: What is the current status of the case of Jeremy Hinzman?

Jeffry House [JH]: He is now waiting for an answer; I have made written submissions in the case and I'm waiting for the response of the government lawyer.

WSWS: And are there other people in similar situations that you're also representing?

JH: Yes... For example the (Toronto) *Sun* yesterday had a client of mine on the front page named Daryl Anderson who is very similar but instead of having been to Afghanistan he had actually been to Iraq.

WSWS: How many then in total are you representing before the refugee board?

JH: Before the refugee board, there's five right now... and there's quite a few more sort of 'out there' in some form or other (including several who are either Canadian or who are married to Canadians) And there are a couple of others here who are just thinking about what they should do. So it's starting to mount up in terms of quantity. I know about a dozen who are for sure absolutely here because I talk to them every week.

WSWS: The *Sun* article said there's an estimate of 5,500 deserters. Do you know where they would have got such a figure?

JH: That figure refers to the number of people who deserted in the last calendar year according to the US army. I think more people did, but that's what they're claiming. I think it's higher. There are various weasel ways they have of not categorizing these people. I'm very interested in somebody doing an actual serious investigation of that. As far as I'm concerned that's a minimum figure.

WSWS: So Hinzman is really a landmark case.

JH: Yeah I think it's the first case; it's going to be an important case. Darrel Anderson's case is going to be very important too because he was in a situation where he was basically being ordered to shoot at civilians.

WSWS: I assume that in that case the defense you would mount would be somewhat different than in Jeremy Hinzman's?

JH: Every case is different. I mean Jeremy's case is unusual because he actually made a conscientious objector application; a lot of the other guys haven't. Some of them have thought of it but the culture of the military makes it difficult to really stand up before your unit and say, 'I object because of reasons of conscience'. A couple of cases where I've heard now, commanding officers have pretty well screamed at their troops—recruits—that none of them are going to make a conscientious objector application. So there are relatively few.

WSWS: My understanding is that the refugee board has ruled that any issue regarding the illegality of the war in Iraq would not be admissible. Was that done solely with the intervention of the government lawyers or was that a stand that the refugee board took independently?

JH: Well I think they were prodded by the arguments of the government lawyers. They didn't invent it themselves as far as I could see.

WSWS: And what's the impact on your case of that position?

JH: Well I think it had a detrimental impact at least initially. Honestly if I think we have to appeal, that's a guaranteed winning scenario. It cannot be irrelevant to a soldier that a war is legal or illegal. That just can't be. It can't be the case that a war is illegal and that it's just to imprison someone who refuses to fight. If illegal means anything it means you can't be prosecuted for refusing to participate. So I think that in the long run it's something that we will win.

WSWS: My understanding again is that there are a number of precedents in international law that would allow that sort of evidence to be introduced in the application for refugee status.

JH: There's one Canadian case that says very clearly that you should never participate in a war that is aggressive in nature.

I certainly use the Nuremberg principles in my argument. The government response is that, "well those were high people." You couldn't prosecute an individual German soldier for crossing the border into Czechoslovakia, even though it was an illegal aggression. And my position is, they might choose not to prosecute such a soldier, but they ought to protect any such soldier who says "no I'm not going to". I mean (if somebody had) when Poland was invaded in 1939, if some German soldier had gotten to England and said, "I refuse to participate in the invasion of Poland" I would hope our response would not be "I'm going to send you back to jail."

WSWS: Why do you think the government has taken that position in this case?

JH: Well at this point I'd just say that I think that it's the Board that decided it. But I think it's convenient that there never be an adjudication about the Iraq war. I mean the Canadian government refused to participate in the war and I believe they have a legal opinion from their justice department saying that the war was illegal, but they may not really want Canadian courts to be making decisions such as that, which will then be trumpeted world-wide, I presume. So you know, it's easiest to say, "well you know it's really a little different" and so on and so forth. In fact, it goes totally contrary to our precedent. There's a Canadian case in which a guy (in the Iraqi army) didn't want to invade Kuwait. And it's very clear, the court of appeal says "you shouldn't have to."

WSWS: And you'll be citing that precedent?

JH: Oh yeah. I cited it and they distinguished it on a fairly unconvincing basis. It so happened that the person who did that was not a citizen of Iraq, he was a citizen of Yemen, who was recruited into the Iraqi army. So they said here in Hinzman's case, well it doesn't apply ... But that's not something that can legitimately distinguish the case.

WSWS: How do you expect the ruling to go?

JH: I think there's a fair chance that they'll say no. There were three grounds originally for his application. One the war in Iraq is illegal. Now we can't argue that. Second that the war in Iraq violates international humanitarian law. That they allowed and the basic idea there is that, for example if the general in Iraq said "OK shoot every Iraqi baby you find," we would agree that that would violate international humanitarian law, because it was indiscriminately shooting at civilians for no reason. So we said that ... in Iraq, there are many violations of international humanitarian law, such as the rule against torture, which was violated across the board with Abu Ghraib and twenty other places. For example, Hinzman's unit, the 82nd Airborne, participated in two, I would call them massacres. You could call them shooting at unarmed demonstrators if you want...In one of them twenty demonstrators were killed and an unknown number injured. So we say that there are sufficient atrocities of that nature. That the war in Iraq is one that people shouldn't be obliged to participate in. And the government response to that is, "well there are atrocities but they are not sufficiently systematic to make the war unconscionable"... And from my point of view, I don't know what that standard means. I mean how systematic is systematic? In fact you have in the United States' case, they're saying that the Geneva Conventions are obsolete—they've kind of retreated from that now—but when Jeremy Hinzman was making his decisions, at the very highest level of the US government they were saying that the Geneva Conventions are obsolete.

WSWS: What was the third basis for your application?

JH: The third was that his application for conscientious objector was treated in a biased and inappropriate way that did not adequately conform to international standards... He made a claim to conscientious objector status and they just kind of tossed it out. It wasn't very serious.

WSWS: I'm sure you understand that this case is being viewed by those who oppose the war as a test case. And they are very much looking to see

what the outcome will be and the position of the government. Have you had explicit support or statements from political groups in regard to your case?

JH: No political party or anything like that. No, nobody has said anything. I believe for example that when Brandon Hewey (another deserter seeking refugee status) was in Victoria, British Columbia, or maybe Vancouver, an NDP (New Democratic Party) Parliamentarian spoke to him and said "You're doing the right thing and I'd be glad to help you if I can." At that level yes. But has (federal NDP leader) Jack Layton come out and said anything? ... I talked to Bruce Cockburn for example, who's a well-known singer, he's supporting and sending money and things like that.

WSWS: What are the parallels that can be drawn between this situation and the Vietnam War?

JH: Well I mean, first of all during the Vietnam War, Canada accepted draft dodgers but also deserters. And those deserters, some of them had signed up without any doubt. So they had volunteered and they came to have a different view of the war after they saw it on the ground. I think from my point of view, the biggest parallel is the fraudulent nature of the reasons for the war. The weapons of mass destruction and Iraq is supporting Al Qaeda, both of which have turned out to be pretty unfounded, and I remember that in the time of Vietnam, that the fraudulent nature of the war really had a huge impact psychologically on people, because they couldn't accept that the government would lie to them about why they were supposed to risk their lives. And I think that's a really strong feature here, because I hear it from soldier after soldier, "Well you know they said it was because of weapons of mass destruction that threatened the US and then it turns out to be baloney. Well what are we doing there?" And some of them say, "it's for oil and others of them say because Saddam insulted George Bush's father." They don't know why. But they don't think it's enough to cause them to lose their lives or their legs.

WSWS: Do you think that this case ... has the possibility of shifting public perception of the war?

JH: I think the cases overall might have that effect. Obviously a lot depends on what actually happens in Iraq. I'd say seventy-five percent depends on that. If you read though what my client Darrell Anderson said in the *Sun*, I didn't even know they were running the story, but it's hard to read that story and not say, "well the guy is right". Because he tells about an occasion in which he was at a road block and his commanding officer ordered him to fire on a vehicle which was advancing and he didn't feel threatened by it, although it wasn't stopping exactly at the point where it was supposed to and he's being ordered to shoot. He didn't and then they go up and investigate and there's two parents and two little children in the car. And he said, "What's my country doing to me that they're ordering me to kill little kids like this?" And so he said, "I'm not going back to Iraq and be in the situation where my commander is threatening me if I don't pull the trigger." For me, it's really hard to say, oh geez, you definitely should go over there and be ordered to commit atrocities and just accept it.

WSWS: Just finally, what are the implications if this goes against you?

JH: Well the ultimate implication is that a number of very decent people would be sent to jail. That's the ultimate implication. I think Canada would be giving up its soul. Like Jeremy Hinzman, you couldn't ask for a more decent, more moral, more conscientious person. And if he's going to have to go to jail because he rightly thought the war in Iraq was illegal, I think it makes Canada look pretty bad, pretty supine.

WSWS: Do you think that this sort of publicity would affect how the United States government might treat Hinzman?

JH: It could. They could treat him as someone who is unrepentant and of course what that means is that they are punishing him for his political views. I think it's certainly conceivable that he could get more time

because he hasn't just sort of slinked away or something.



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