

## NO REMEDY FOR JAILED BRITISH "HERETICS"

Los Angeles, California--(10/16/2008)--Two jailed writers who were convicted in Britain of Internet hate speech on a U.S.-based website will be forced to remain in special asylum proceedings with no right to a bail hearing, a Los Angeles Immigration Court judge ruled October 14, 2008.

"That is a very bad blow to their hopes of freedom in the near future, and indeed to all asylum seekers and defenders of free speech in the United States," said Paul Ballard from the United Kingdom, coordinator of a legal defense fund for the pair known as the "Heretical Two" (based on the website [www.heretical.com](http://www.heretical.com)).

The pair, Simon Sheppard and Stephen Whittle, have since July 14 been in the custody of the U.S. Department of Homeland Security in a Santa Ana, California contract detention facility, after disembarking that same date from a plane at Los Angeles International Airport, where they immediately asked for political asylum. They fled Britain after being convicted July 11 in a Leeds courtroom of inciting racial hatred for publishing writings such as "Don't Be Sheeple" and "The Holohoax," including some published on Sheppard's website operated from a server in Torrance, California.

Ballard noted that British law since 1986 allows for criminal conviction for speech if the subject speech is "likely to result" in the "stirring up" of racial hatred. A conviction requires no proof of violence or intent. During the trial competing expert witnesses were called to testify as to whether Jews, an offended group, were a "religious" or "racial" group, since British law does not criminalize stirring up religious hatred.

The Heretical Two, who consider themselves political satirists and nonviolent gadflies, are the first persons to be prosecuted in Britain for Internet speech made on a Web server in another country, says Ballard. They were charged under Britain's Public Order Act of 1986 and are subjected to penalties enhanced by the British Prevention of Terrorism Act of 2000.

Since that time, Britain has arrested another man, Frederick Toben, an Australian, for speech denying "the Holocaust," based on a German arrest warrant issued for Toben. Toben was taken into custody October during a layover at Heathrow Airport.

"These two alarming cases are related in that both of them are attempts by the British Crown to criminalize speech regardless of where it takes place and whether it is legal in the place where it was made," noted Bruce Leichty, a San Diego County attorney who was retained in September to represent the Heretical Two.

The October 14 Los Angeles Immigration Court decision in the Sheppard and Whittle cases leaves the two in need of the remedy of habeas corpus (literally: we have the body), a process which federal legislators in the U.S. have made more difficult and costly for immigrants in recent years, according to Leichty.

Leichty said the actions of the U.S. government to date have added insult to injury. "Here are two British individuals who published speech that was legally protected in the United States, for which they were criminally prosecuted in Britain," said Leichty, "and now the case has taken an even more Kafkaesque turn since the one country that should be protecting them from imprisonment in Britain has instead thrown them into U.S. jail for

an indefinite period of time, based only on the fact that they requested political asylum.

"Refugees are protected by international treaty; no country should treat political refugees like these two have been treated, particularly where they enter the host country legally."

Leichty notes that Homeland Security admitted in its Immigration Court brief that the two were admitted to the United States under the U.S. Visa Waiver Program, and that until they made their request for political asylum at Los Angeles Airport DHS had no reason to suspect or detain them. Once the two told their story to airport officers, however, DHS attempted to revoke its decision admitting them to the U.S. and to declare the two "inadmissible" on the ground that they entered with the intent to stay in the U.S. as immigrants, which Leichty says is both preposterous on the facts of the case and in any event not within the powers of airport officers.

"It is well established that an asylum claimant does not give up his nonimmigrant status simply by telling his host country that he needs the protection of political asylum."

The special type of proceeding that the two were put into, called an "asylum-only proceeding" where immigration judges do not have the authority to release the alien from detention, is used in connection with the Visa Waiver program only for asylum applicants who are not already admitted into the country, or those who have overstayed their authorized periods of stay--neither of which applied to Sheppard and Whittle when they sought asylum. But Leichty says that Immigration Judge Rose Peters turned a deaf ear

to these points and ruled that DHS officers had "discretion" to issue the notices that put the two into the special proceedings.

Leichty said that, although the recent and more notorious arrest of Frederick Toben in London involves a German extradition request, he is not aware of any request by the U.K. for the extradition of Sheppard and Whittle, and in any case the United States typically does not extradite persons who are convicted of crimes which are not crimes in the U.S.

"It is clear that obsessive security apparatuses in two different countries have now run amok, by respectively making criminals out of dissidents and by locking them up even though they are not criminals. One does not have to share the views or style of the Heretical Two to appreciate the threat posed by this type of case to individual rights and liberties."

"The laws under which Sheppard and Whittle were prosecuted could just as easily be used to subject nonconformist American publishers to criminal penalties in Britain."

Sheppard has described his website as a mixture of "blasphemies, heresies, and scientific and general interest material" established to promote his ideas on subjects such as politics, race and gender relations. He holds an Honors bachelor's of science degree in mathematics from the University of Sussex and published two medical scientific papers prior to becoming a publisher and web developer. Whittle is a First Class Honors B.A. graduate in languages and linguistic science from the University of York, and has written numerous books.

Sheppard says he and Whittle were prosecuted based on the

charge that their writings could be viewed by persons in England and Wales, and not even on any evidence that the writings had actually been viewed by anyone other than a police officer who downloaded material for the purpose of bringing charges.

"Both men state that they were living peaceably and civilly in Britain until the police disrupted their lives by raiding their flats and seizing their papers and property," says Leichty. The British press has repeatedly referred to them as the "race hate pair."

"There are people who want to criminalize 'hate speech' in the U.S., too," noted Leichty. "But as officers of the court, attorneys should remind people that even speech perceived as hateful deserves protection. One man's 'hate' may be another man's passion or critique, or even another man's creed. The United States should lead the way in showing disapproval of those nations who have sought to restrict the nonviolent expression of opinion and belief.

"The Heretical Two are no more criminal than many of our American forebears who fled repression to settle this country--and no doubt they may say repugnant things just like other blogging Americans. Ignore or despise them or ridicule them if you wish, dialogue with them if you dare, but don't imprison them."

In choosing Los Angeles as their destination, the pair had hoped to visit with other dissidents at the Institute for Historical Review, Costa Mesa, one of whom had been designated by the defendants as an expert witness in their British case on the historicity of various standard Holocaust accounts, said Leichty.

Ballard says the U.S. imprisonment of the two, and the legal costs associated with their defense, caught British nationalist activists by surprise. Asylum claimants are on their own in the U.S. unless they can afford attorneys. "This is such an important case with such far-reaching implications that my colleagues and I could not simply let Simon and Stephen languish in detention without counsel," Ballard said.

Ballard is spearheading the Legal Defence Fund that has been set up in the U.K., which he says is accepting contributions in all currencies addressed as follows: Croydon Preservation Society, P. O. Box 301, Carshalton, Surrey, SM5 4QW, United Kingdom.

"The need for American participation in legal defense costs is critical," he urged. "American interests are at stake here, too."

In a letter from prison, Sheppard wrote: "Detention is stressful and disorienting. [We] appear before the Immigration Court shackled hand and foot....[We] have no access to the legal material and evidence which is stored in the baggage [we] carried on arrival....[We undertook our action to seek asylum] as a matter of principle, as a political gesture to protest an iniquitous British law which inhibits free speech and the democratic process."

To win political asylum in the U.S., claimants must prove that they have a well-founded fear of persecution in their homeland, on one of several grounds including political opinion. While U.S. courts have frequently stated that "prosecution" does not equate to "persecution," there are cases where confinement and prosecution under repressive laws have been held to constitute persecution, says Leichty.

Leichty is best known previously for representing Ernst Zundel, an internationally known Holocaust revisionist and publisher who in 2003 was arrested in Tennessee, taken away from his U.S. citizen wife, and deported to Canada on the pretext that he had missed an INS (Immigration and Naturalization Service) appointment. After Leichty was hired to succeed Zundel's first Tennessee immigration lawyer, Zundel won the right to a hearing in Knoxville federal court, but his initial bid to overturn his deportation on habeas corpus grounds was rejected in an unpublished decision of a federal court of appeals in Cincinnati, and Leichty says he and Mrs. Zundel are now prosecuting Zundel's remaining claims in Knoxville.