THE LEGALITY OF STREET SPEAKING

*The following document arrived on our desk from **Stephen Green** of*
***Christian Voice**, PO Box 739A, Surbiton, Surrey KT6 5YA*
(web : christianvoice.org.uk e-mail : info@christianvoice.org.uk)

*It examines the legality of street preaching, yet is applicable for all activists, including those who find themselves speaking politically at hustings, or in the street. It is reprinted with permission and slightly abridged from **Christian Voice**, Dec 2002. It is the law in England and Wales, but the same general principles apply in Scotland.*

*This article was published in the January 2003 issue of **Sovereignty**.*

SUMMARY

Preaching in the street is lawful, even if it is contentious, unwelcome or provocative, and **police officers may not ask preachers to be silent**, according to a landmark ruling made in the Supreme Court in July 1999 as detailed here. This is the law of the land in England and Wales.

In the case of a threatened breach of the peace, the police must ask themselves **where the threat is coming from**. Disproportionate behaviour from a crowd will not allow a presumption that the preacher is responsible for the threat.

Street preachers wrongly arrested or convicted may be able to claim damages from the Crown Prosecutor or the Police.

Regarding the use of amplification, the holding of placards, and alleged obstruction when preaching or giving out tracts, the key test is reasonableness.

Many council bylaws and police instructions used against preachers may be unlawful, but will only be tested when someone is arrested and convicted and appeals to the High Court.

WAKEFIELD CATHEDRAL

In 1997, **Alison Redmond-Bate**, a member of a Leeds church organisation called ***Faith Ministries***, was preaching with others from the steps of Wakefield Cathedral. **They had an agreement with the police** that they could do so from time to time. During one such mission, Alison Redmond-Bate refused to stop preaching when three of them, all women, were asked to do so by a police constable. She was arrested and later convicted by Wakefield Magistrates of obstructing a police officer in the execution of his duty. She appealed to the Crown Court, and lost. She appealed then to the Queen's Bench Divisional Court (part of the Supreme Court). This paper carries an account of **the judgment in her favour** handed down by **Lord Justice Sedley**, Mr Justice Collins agreeing. The Director of Public Prosecutions did not appeal further, **so the Divisional Court judgment is the authoritative expression of the law as it stands in England and Wales.**

THE CIRCUMSTANCES

According to Lord Justice Sedley: "On Thursday 2nd October 1997, not long after midday, the three women were preaching from the steps of Wakefield Cathedral. An unidentified couple complained about them to PC Tennant, who was on uniformed foot patrol. He went to the Cathedral steps. No crowd had gathered, and **he warned the three women not to stop people**. Since they were not doing so, he left.

"Twenty minutes later he returned to find that a crowd of more than a hundred had gathered. One gang of three youths were chanting and swearing and had to be moved off. They were asked by PC Tennant to move on and did so.

"Another of the women was now preaching, and some of the crowd were showing hostility towards them. **Fearing a breach of the peace**, PC Tennant asked the women to stop preaching, and **when they refused to do so arrested them all for breach of the peace.**

"Alison Redmond-Bate was subsequently **charged with obstructing a police officer in the execution of his duty**. She was convicted, and her appeal to the Crown Court was dismissed."

THE LAW

Lord Justice Sedley said: **"Section 89(2) of the Police Act 1996 makes it an offence wilfully to obstruct a police constable in the execution of his duty. Among the duties of a constable is the prevention of breaches of the peace. A member of the public who fails to comply with a reasonable request properly made by a constable to this end is therefore guilty of obstructing the constable in the execution of his or her duty.**

"The test of the reasonableness of the constable's action is objective in the sense that it is for the Court to decide, not whether the view taken by the constable fell within the broad band of rational decisions, but whether in the light of what he knew and perceived at the time the Court is satisfied that it was reasonable to fear an imminent breach of the peace. Thus although reasonableness of belief, as elsewhere in the law of arrest, is a question for the court, it is to be evaluated without the qualifications of hindsight.

"But a judgment as to the imminence of a breach of the peace does not conclude the constable's task. The next and critical question for the constable, and in turn for the Court, is where the threat is coming from, because it is there that the preventive action must be directed. Classic authority illustrates the point." His Lordship turned to the legal authorities:

LEGAL AUTHORITIES

"In *Beatty v. Gilbanks (1882) 9 QBD 308* this Court (*Field J. and Cave J.*) held that a lawful Salvation Army march which attracted disorderly opposition and was therefore the occasion of a breach of the peace could not found a case of unlawful assembly against the leaders of the Salvation Army. **(They had) the liberty to march peacefully, albeit in large numbers and with much noise through public streets.**

(Mr Justice) Field J., accepting that a person is liable for the natural consequences of what he does, held nevertheless that **the natural consequences of the lawful activity of the Salvation Army did not include the unlawful activities of others, even if the accused knew that others would react unlawfully.**

"By way of contrast, in *Wise v. Dunning [1902] 1 KB 167* a Protestant preacher in Liverpool was held by this Court (*Lord Alverstone CJ, Darling and Channell JJ*) to be liable to be bound over to keep the peace upon proof that he habitually accompanied his public speeches with behaviour calculated to insult Roman Catholics. The distinction between the two cases is clear enough: the reactions of opponents would in either case be unlawful, but while **in the first case** they were the voluntary acts of people who could not properly be regarded as objects of provocation, **in the second** the conduct was calculated to provoke violent and disorderly reaction."

His Lordship then considered *Duncan v. Jones [1936] 1KB 218* -- in which the appellant was about to make a public address in a situation in which the year before a disturbance had been incited by her speaking.

Lord Justice Sedley said: "Mrs. Duncan, ... like the present appellant, was charged with police obstruction, raising the question not directly of the quality of her conduct but of the reasonableness

of the constable's apprehension of it. **What the constable had to evaluate however, in that case as in this, was the reality of the risk of a breach of the peace."**

THREAT TO PUBLIC ORDER

Lord Justice Sedley said: "Where this case differs from *Duncan v. Jones* and resembles *Beatty v. Gilbanks* is in the source of the threat to public order: in the former case, on the Justices' findings, it was the appellant herself.

"The critical difference between the two classes of case -- those where **the defendant is responsible for the threat to the peace and those where somebody else is** -- emerges in the contrast between two other recent decisions.

"In *R. v. Morpeth Ward Justices, ex parte Ward (1992) 95 CAR 215*, a bind-over was upheld on people who had noisily and turbulently disrupted a pheasant shoot; whereas as in *Percy v. DPP [1995] 3 All ER 124* a bind-over on a woman who kept climbing over the perimeter fencing into a military base was quashed because **there was no sensible likelihood that trained security personnel would be provoked by her conduct to violence.** I stress the words **'to violence'** because it is common ground that **this is what provocation amounting to a breach of the peace must instigate: noise or disorder are not enough."**

HUMAN RIGHTS DIMENSION

Lord Justice Sedley was of the opinion that the facts and the case law were sufficient for him and Mr Justice Collins to deal with the case, but he still looked at the human rights dimension. At the time of the Redmond-Bate judgment, Parliament had just enacted the Human Rights Act 1998, "requiring every public authority, including the police and the courts, to give effect to the scheduled Convention rights unless statutory provision makes it impossible to do so."

His Lordship said that it was now accepted that the common law should seek compatibility with the values of the Convention insofar as it does not already share them. **Executive action which breaches the Convention could put the United Kingdom in breach of the Convention and make it liable to proceedings before the European Court of Human Rights.**

"There is therefore, and has been for a long time, good reason for policing and law in this field to respect the Convention."

ARTICLES 9 AND 10 OF THE CONVENTION:

"Article 9 : Freedom of Thought, Conscience and Religion
"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

"2. Freedom to manifest one's religious beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

"Article 10 : Freedom of Expression
"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of

broadcasting, television or cinema enterprises.

"2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

LIBERTIES vs RIGHTS

Lord Justice Sedley drew a distinction between a freedom (or a liberty) and a right. Freedoms, or liberties, were what we used to have under Common Law; rights are the language of today. His Lordship described this (correctly but dramatically, in this author's opinion) as "a constitutional shift." The old order, he said, was crystallised in Lord Hewart CJ's (Chief Justice's) opening remarks in his judgment in *Duncan v. Jones (1936)*: "There have been moments during the argument in this case when it appeared to be suggested that the court had to do with a grave case involving what is called the right of public meeting. I say 'called' because **English law does not recognise any special right of public meeting for political or other purposes.** The right of assembly, as Professor Dicey puts it [*Law of the Constitution* , 8th Edition, page 499] is nothing more than a view taken by the court of the individual liberty of the subject."

His Lordship said: "**A liberty**, as A P Herbert repeatedly pointed out, is only as real as the laws and bylaws which negate or limit it. **A right**, by contrast, can be asserted in the face of such restrictions and must be respected, subject to lawful and proper reservations, by the courts."

BREACH OF THE PEACE

Furthermore, the European Court of Human Rights in the case of *Steel and others v. The United Kingdom (Case No. 67/1997 185111058,* judgment given on 23rd September 1998*)*, and following its decision in *Benham v. United Kingdom*, had accepted that the Common Law concept of breach of the peace in English law complies with the Convention.

It is confined to persons who cause or appear to be likely to cause harm to others or who have acted in a manner "the natural consequence of which was to provoke others to violence".

In *Steel* and others, five applicants were before the court, of whom two had obstructed the lawful activities of others (in one case, grouse shooting, in the other civil engineering) and three had peacefully handed out leaflets and manifested their opposition to arms sales in a public place. The first two were held to have been victims neither of a violation of Article 5 nor of Article 10 of the Convention; the other three were held to have been victims of breaches of both. Additionally the court held that the arrest and detention of the latter three protesters (the prosecution had been dropped) had been disproportionate to the aim of preventing disorder or of protecting the rights of others.

CROWN COURT WAS WRONG

The Crown Court (in *Redmond-Bate*) said "Lawful conduct can, if persisted in, lead to conviction for wilful obstruction of a police officer." Lord Justice Sedley said: **"This proposition has in my judgment no basis in law. A police officer has no right to call upon a citizen to desist from lawful conduct. It is only if otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence which, though unlawful, would not be entirely unreasonable that a constable is empowered to take steps to prevent it."**

"The question for PC Tennant was whether there was a threat of violence and if so, from whom it was coming. If there was no real threat, no question of intervention for breach of the peace arose. If the appellant and her companions were (like the street preacher in *Wise v. Dunning*) being so provocative that someone in the crowd, without behaving wholly unreasonably, might be moved to violence he was entitled to ask them to stop and to arrest them if they would not. **If the threat of disorder or violence was coming from passers-by** who were taking the opportunity to react so as to cause trouble (like with the Salvation Army in *Beatty v. Gilbanks*), **then it was they and not the preachers who should be asked to desist and arrested if they would not.**

INSULTING OTHERS

His Lordship said, "If the public promotion of one faith or opinion is conducted in such a way as to insult or provoke others in breach of statute or common law, then the fact that it is done in the name of religious manifestation or freedom of speech will not necessarily save it. It may forfeit the protection of Articles 9 and 10 by reason of the limitations permitted in both Articles (provided they are necessary and proportionate) **in the interests of public order and the protection of the rights of others."**

SPEECH MAY BE PROVOCATIVE

"But turning to the facts of this case," he went on, "I am unable to see any lawful basis for the arrest or therefore the conviction. PC Tennant had done precisely the right thing with the three youths and sent them on their way. **There was no suggestion of highway obstruction. Nobody had to stop and listen. If they did so, they were as free to express the view that the preachers should be locked up or silenced as the appellant and her companions were to preach.**

"Mr. Kealy, for the prosecutor, submitted that if there are two alternative sources of trouble, a constable can properly take steps against either. **This is right, but only if both are threatening violence or behaving in a manner that might provoke violence.** Mr. Kealy was prepared to accept that blame could not attach for a breach of the peace to a speaker so long as what she said was inoffensive. **This will not do**," said Lord Justice Sedley. Stopping short of including the blasphemous, His Lordship said: **"Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.** What Speakers' Corner (where the law applies as fully as anywhere else) demonstrates is the tolerance which is both extended by the law to opinion of every kind and expected by the law in the conduct of those who disagree, even strongly, with what they hear. From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas. A central purpose of the European Convention on Human Rights has been to set close limits to any such assumed power. We in this country continue to owe a debt to the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy."

NOT IN EXECUTION OF HIS DUTY

"To proceed, as the Crown Court did, from the fact that the three women were preaching about morality, God and the Bible (the topic not only of sermons preached on every Sunday of the year but of at least one regular daily slot on national radio) to a reasonable apprehension that violence is going to erupt is, with great respect, both illiberal and illogical. **The situation perceived and recounted by PC Tennant did not justify him in apprehending a breach of the peace, much less a breach of the peace for which the three women would be responsible.**

"No more were the Magistrates justified in convicting the appellant or the Crown Court in upholding the conviction. For the reasons I have given, **the constable was not acting in the execution of his duty when he required the women to stop preaching, and the appellant was therefore not**

guilty of obstructing him in the execution of his duty when she refused to comply."

AMPLIFICATION AND OBSTRUCTION

Lord Justice Sedley's ruling in the Redmond-Bate case does not amount to a charter to blast and obstruct. **The key test in amplification is reasonableness, which is difficult to assess.** The use of a small battery-powered amplifier may be reasonable, but using a large one would probably not be, unless it was in a pre-arranged rally. Carrying a small placard should not be unreasonable. Singing and playing -- of course not for money -- would appear to be lawful, but by singing another's song, or playing recorded music, one would breach copyright if the material were less than 50 years old.

Giving out tracts would be lawful, but not obstructing the highway or harassing passers-by. It would be unreasonable not to move from the front of a shop if the owner were to ask, unless being there was part of a demonstration against the shop itself.

It is interesting that the anti-war demonstrator who encamped in front of the Houses of Parliament in 2002 in protest against war with Iraq was handed an injunction against obstructing the highway, but a judge threw it out, saying he had the freedom to express his views and religious beliefs. A policeman requiring a lawfully-acting preacher to stop or move on is not acting in the execution of his duty.

BYLAWS AND POLICING

Some local bylaws forbid 'making excessive noise' or 'displaying an advertisement'. How far these could be used against preachers and placard-holders has in many cases not been tested in court. A bylaw case is however due to commence on "noise", involving **Jennifer Bate** (Alison's mother), in Feb 2003. If it goes far enough up the courts, it will end up authoritative.

Similarly, police may contend with a preacher that certain behaviour is in breach of a Statute (eg the Public Order Act 1986), Police Directions Orders, a Bylaw or even of Common Law (although police misuse of Breach of the Peace has been greatly limited by Lord Sedley).

Only if the preacher carries on, is arrested, charged, convicted and makes an appeal in the High Court, will local authorities and the police be told where their boundaries lie. Such persistence requires God-given courage together with resources of time, energy and money.

Case Reference: *Redmond-Bate v Director of Public Prosecutions [1999] EWHC Admin 732 (23rd July 1999)* **Case no:** CO/188/99 Queen's Bench Division (Divisional Court): Lord Justice Sedley and Mr Justice Collins. Judgment available on the internet at www.bailii.org -- follow the links.