

# Findings

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## Paving the Way for the Thought Police

### *Possible Chilling Effect of Hate Crimes Laws on Free Speech*

By Alan Sears



Our people recently faced nearly 50 years each in prison for allegedly inciting a riot. Their crime? Reading Scripture aloud near an event advocating homosexual behavior and

purportedly offending some of the people who attended. But the advocates of homosexual behavior who shouted them down and personally harassed them weren't charged with anything.

Two men are ordered by the government to pay stiff fines and issue public apologies to people of the Muslim faith. Their offense? Holding a seminar to educate Christians about Islamic beliefs and how to lovingly reach out to them across cultural barriers and evangelize.

An elderly pastor of a small Swedish church finds himself before the Swedish Supreme Court facing imprisonment. His crime? Preaching a sermon about God's redemptive love and grace for those trapped in homosexual behavior.<sup>1</sup>

### **Is this Orwellian?**

If this sounds like an Orwellian nightmare to you, or like something out of an Aldous Huxley novel, rest assured, it's not.

The four adults and one juvenile who read Scripture were arrested October 10, 2004, in Philadelphia; the combination of felony counts of criminal conspiracy, riot, and ethnic intimidation (a charge spawned by Pennsylvania's addition of "sexual orientation" to their "hate crimes" law) charged against the adults could have sent them to prison for 47 years each

if convicted. Their emergency appeal was turned down by the U.S. Court of Appeals for the 3rd Circuit. Fortunately, a judge dismissed all criminal charges against them after months of uncertainty.<sup>2</sup>

On December 17, 2004, an agency of the Australian state of Victoria found the pastors holding the seminar on Islam guilty of violating Victoria's Racial and Religious Tolerance Act, a "hate speech"

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law that proscribes public speech that "incites hatred against" another person or class of persons on the basis of race or religious belief. Two Muslims who attended the seminar – held just two months after the law was passed in 2002 – reported the pastors and their ministry to the government, saying they found it "hateful." Oddly, the judge who convicted the pastors cited, as evidence of their "hatefulness," quotations read directly from the Koran.<sup>3</sup>

The particular way in which any of these people delivered their messages is not the issue. These are unnerving events, and they are far from isolated, particularly

if advocates of homosexual behavior in the United States and their legislative allies in Congress succeed in passing "hate crime" legislation. The House of Representatives passed such legislation – H.R. 1592 – on May 3rd by a vote of 237-180. The U.S. Senate is scheduled to debate and vote on the bill very soon.

The co-sponsor of "hate crimes" legislation in the U.S. Senate, Senator Edward Kennedy of Massachusetts, has called sincerely held religious and other objections to homosexual behavior "an insidious aspect of American life,"<sup>4</sup> and dubbed conservatives who thwarted a previous attempt to pass such legislation "reprehensive." Kennedy declared, "We will be back and back again, and we will continue to bring this legislation up every opportunity we can until it's signed into law."<sup>5</sup>

That statement should send chills down the spine of every person reading this article because "hate crimes" legislation isn't really about the underlying or physical crimes that are committed which no one approves of – it's about the perpetrators' alleged thoughts and the selective discrimination in victim classes that is popular for some legislators. All crime against a victim – whether it be assault, or something far worse like rape and murder – is inherently hateful. But given the special-victims status to a group selected by Congress, whether based on God-given differences or behavioral choices, is probably a violation of the premise of the U.S. Constitution's 14th Amendment, which would guarantee equal protection under the law to all victims – regardless of the culture or subculture to which they belong.

More frightening still is what Australia and Sweden have already proven and what

other radical legislators across the globe have in mind: “Hate crimes” aren’t just the kind of acts historically understood by all civilized nations to be crimes, as listed above – this type of legislation extends to speech and actually punishes people for their politically disqualified thoughts and motives.

“Hate crime” legislation doesn’t just stifle free speech or the free exercise of religion – it eventually may well criminalize much of it and could well give one or more groups of people in this country special power to punish those who disagree with them; as has already been done in the Land Down Under. And in a world where preaching and teaching an uncensored version of the Gospel or the Hebrew Scriptures is increasingly being labeled “homophobic” and “hateful,” it’s only a matter of time before the people who preach and teach orthodox faith could well be jailed for speaking biblical and revealed truth not only on public streets and byways, but from their own pulpits to their own congregations.

One only need to look north to Canada’s C-250 legislation to see where this could next be directed in the United States. That measure, which criminalizes as “hate propaganda” any speech that is critical of homosexual behavior, has a feeble religious exemption, but it places the burden on individuals to prove they are exempt from prosecution.

In Alberta, Catholic Bishop Frederick Henry’s right to freedom of religion and speech was threatened when a complaint was filed with the Alberta Human Rights Commission against him. His offense? Sending a letter to his diocese to express opposition to legislation that would create same-sex “marriage.”

Bishop Henry responded to the complaint by saying,

*My rights to freedom of religion and free speech have been violated. Those that support same-sex marriage want to shut the churches out of this important debate. Those who favour same-sex marriage have been given full opportunity to state their views on this issue. But now they are saying that anyone who speaks out against same-sex marriage is discriminating toward homosexuals... If the Human Rights Complaint is successful, it will prevent me from expressing my views and the position of the Roman Catholic Church. It prevents me and other Church leaders from speaking*

*out freely in opposition to same-sex marriage. It also prevents me from outlining the position of the Roman Catholic Church to those who attend church in my diocese.*<sup>6</sup>

That is exactly what the radical advocates of homosexual behavior have in mind. In an article on the website [www.samesexmarriage.ca](http://www.samesexmarriage.ca), two advocates wrote:

*We predict that gay marriage will indeed result in the growth of acceptance of homosexuality now underway... But marriage equality will also contribute to the abandonment of toxic religions, liberating society from the prejudice and hatred that has polluted culture for*

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*too long, thanks to Fred Henry and his kind.*<sup>7</sup>

“Hate crime” legislation is another vehicle that many among the radical left and their sympathizers would like to use to completely silence the Christian church and Orthodox Jewish leaders.

This scenario was played out in Sweden at the trial of Pastor Ake Green. Pastor Green had preached a sermon at his small church in Borgholm, Sweden. His sermon concluded with a strong message of God’s love and grace for those trapped in sexual confusion. He said,

*What these people need, those who live under the slavery of sexual immorality, is an abundant grace. It exists. Therefore, we encourage those who live in this manner to look at the grace of Jesus Christ. We cannot condemn these people. Jesus never belittled anyone. He offered them grace.*<sup>8</sup>

The sermon was published in a local newspaper and very shortly thereafter Pastor Green was prosecuted under Sweden’s “hate crime” law for “causing offense” to

the homosexual community. The prosecutor said, “One may have whatever religion one wishes, but this is an attack on all fronts against homosexuals. Collecting Bible citations on this topic as he does makes this hate speech.”<sup>9</sup>

Pastor Green was convicted by a lower court, but his conviction was overturned by an appeals court. Sweden’s attorney general, at the urging of homosexual advocates, appealed that decision to the Swedish Supreme Court in an attempt to punish Pastor Green and send a message to others who might preach the uncensored Word of God.

A spokesperson for another Swedish national “gay and lesbian” association added, “Hatred and defamation is not to be accepted just because it’s based on religious beliefs or religious scriptures. You have some limits when it comes to freedom of speech.”

### **Alliance Defense Fund**

The Alliance Defense Fund sent chief counsel, Benjamin Bull, to Europe to help Pastor Green and his attorney prepare for the Swedish Supreme Court trial (which is an actual trial, different from U.S. Supreme Court oral arguments). Ben attended the trial and reported:

*Pastor Green’s trial before the Swedish Supreme Court was one of the most remarkable things I’ve ever seen... It was like a cross between George Orwell’s 1984 and a Soviet show trial. It was hard to believe that was happening in a “developed” Western country... The prosecutor made amazing arguments. He repeatedly mocked the Word of God. He ridiculed biblical texts on homosexual behavior. The prosecutor asked Pastor Green what version of the Bible he was using... When Pastor Green politely replied that he used the New International Version, the prosecutor replied that Pastor Green was using a “bad translation” and to “get a new Bible” – one that does not question homosexual behavior... It was like a pastor telling the government that they need to use another law book... The prosecutor demanded that the court convict Pastor Green so he would be an example to deter other pastors from preaching what the Bible says about homosexual behavior.*<sup>10</sup>

Fortunately, the Swedish Supreme Court, in a unanimous decision, acquitted Pastor Green of the charges. This was a

major victory for religious freedom, as a loss would not only have sentenced Pastor Green to jail, but also set an international precedent that advocates of homosexual behavior would use to legally silence the uncensored preaching of the Gospel worldwide. And with the increasing reliance upon “international law” by several justices of the United States Supreme Court, it was possible that such a precedent would be used in America against pastors and people of faith here.<sup>11</sup>

### Special Victim Status

The legislation that passed the U.S. House, and the legislation presently pending before the U.S. Senate would create a new federal crime for people allegedly injuring others because of their “actual or perceived race, color, national origin, religion, gender, sexual orientation, or disability” and allows agencies of the federal government to get involved in investigating such incidents.<sup>12</sup> In other words, ultimately, the Federal Bureau of Investigation and other federal agencies could be called in to investigate even the most local jurisdictional matter if it involves someone who happens to be a Christian lodging a legal complaint against someone who happens to consider himself or herself homosexual, even if, in truth, that person’s sexual behavior had nothing to do with the complaint.

In addition, the Hate Crimes Reporting Act of 1990 mandated that the FBI include crimes perceived to be motivated by “hate” – including “intimidation” – in its annual statistics, which have yielded some interesting patterns over the years. The results from 2000 show the following:

- Of every 20,000 murders that year, only four were even reported to allegedly be “hate crimes” against people identified as engaging in homosexual behavior (.02 percent).
- Of every 20,000 robberies, only two were reported to allegedly be “hate crimes” against people identified as engaging in homosexual behavior (.01 percent).
- Of every 20,000 aggravated assaults, only four were reported to allegedly be “hate crimes” against people identified as engaging in homosexual behavior (.01 percent).
- Of every 80,000 rapes, less than one

was reported to allegedly be a “hate crime” against a person identified as engaging in homosexual behavior (.00125 percent).<sup>13</sup>

But here’s the interesting spin: nearly half of the alleged “hate crimes” in the FBI’s figures are in the “intimidation” category – something that is purely speech, meaning no weapon was used, no bodily injury occurred, and the victim was not in fear for his life. Such a broad-brush definition changes things, and suddenly we see incredible numbers of so-called “hate crimes” happening. The passage of the “hate crimes” bill – with a definition that could be amended every time a new group gains enough political clout to do so – could actually mean that victims of violent crimes such as rape and murder (acts reported upon frequently by the

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mainstream media) wouldn’t receive as much protection as a 240-pound bodybuilder who engages in sodomy and was allegedly offended by someone’s speech – someone who had the audacity to say from the pulpit or over the airwaves that the bodybuilder’s self-destructive behavior is sinful.

Unfortunately, even without the passage of a “hate crimes” bill, we’ve already seen this principle in action. Few can forget the media sensation following the tragic 1998 murder of Matthew Shepard, (namesake for current legislation) a Wyoming college student who died five days after being severely beaten and left tied to a Wyoming fence by Russell Henderson and Aaron McKinney. Without knowing the full facts, some friends and acquaintances immediately began speculating that Shepard had been targeted because of his alleged homosexual behavior. And when the national advocates of homosexual behavior got wind of such speculation, they swooped down on Laramie, Wyoming, turning the 21-year-old murder victim

into the national figure for “hate crime” legislation and using his death as grist for their political agenda. Members of the media attacked major ministry leaders such as Dr. James Dobson of Focus on the Family for creating a “climate” of hate – even though Henderson and McKinney were two irreligious thugs who most likely had never heard of Dr. Dobson or Focus on the Family. The event captured the nation’s attention – and when Henderson and McKinney were sentenced, it was to a double-life sentence without the possibility of parole for each. (How much more time would a hate-crimes enhancement provide? None).<sup>14</sup>

Interestingly, Henderson told ABC News’ 20/20 in his first interview in November 2004 something that prosecutors had said all along: That he and McKinney were bingeing on crystal methamphetamine for days and targeted Shepard because they thought he was wealthy. They wanted to rob him to buy more drugs – not because he practiced homosexual behavior.<sup>15</sup>

What was the response to this truth from groups advocating homosexual behavior, like the Gay and Lesbian Alliance Against Defamation (GLAAD) and their media allies? They generally were silent or dismissed the self-confessed and convicted murderer as someone whose credibility was “highly dubious” and slammed 20/20 for producing a piece of “reckless journalism.” If “hate crime” legislation were to become law, these sorts of speculative conclusions are exactly what we can expect to see more of in the future, but with the power of an enhanced jail sentence as the punishment.<sup>16</sup>

Because of the media juggernaut that followed, everyone remembers the name of Matthew Shepard. But has anyone ever heard of Cindy Dixon?

Dixon was Russell Henderson’s mother. In January 1999 – just a little over three months after Shepard’s murder – she was found dead. She had been forcibly raped, and much like Shepard, she had been horribly beaten and left in the snow on the outskirts of Laramie to die.

Despite those similarities, Cindy Dixon didn’t become known as a martyr for anything. The national media took little interest in her death, the activist groups were generally uninterested, and in comparison to the Shepard case, the justice system didn’t appear to bother all that much either. The man who killed her pled guilty, not to murder, but to manslaughter; the same judge who sentenced Henderson

to two life sentences without parole sent his mother's killer to jail for four to nine years. He's been free since 2003.<sup>17</sup>

It is untenable to say Dixon's killer committed his brutally vicious act without hatred, yet those insisting upon new "hate crimes" laws have not done much insisting on extra or special punishment for him. Their motives are clearly shown when their screams for additional sentencing or process come only when people who engage in certain forms of sexual behavior they favor suffer harm. Apparently, to them, it is a given that not all men — or women — are created equal.

### Resulting Consequences

In such a confused national environment, it's easy to see how "hate crimes" legislation could be forced on the public, despite the fact that almost every form of such laws may well facially violate the original intent of the Constitution and the Bill of Rights, and no unbiased evidence exists to suggest that victims of what would be labeled "hate crimes" are currently receiving any less protection under the nation's criminal law than others. When someone's hurt feelings or personal offense could become a federal offense, the justice system suffers from several deleterious effects:

- Violation of the concept of equal protection under the law.
- The further politicization of criminal law—pressuring police to use more resources on some crimes because the victims fall into a certain politically powerful classes, to the detriment of investigations of other crimes and/or victims.
- The involvement of federal resources in truly non-federal matters.
- Confusion for investigators—"hate" is a nebulous motive that may be clear in some instances but not others. It also puts the burden on prosecutors to prove this motive in court and creates opportunities for criminals to escape on technicalities.
- Lack of certain standards—the essence of fairness in American law is that the common person and lay jurors can clearly understand what is lawful and what is forbidden. "Hate crime" laws

are another step away from this clarity.

Furthermore, as noted above, "hate crime" legislation has a chilling effect on free speech by punishing people for politically unpopular ideas. If two followers of a Muslim sect attending a Christian seminar in Australia can succeed in having two Christian pastors who read directly from

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**Let us not forget that freedom of speech and the press are among the most basic principles upon which our nation was founded – Our First Liberty. Freedom of religion is so intertwined with free speech and a free press—things that countless people have fought and died to secure and protect over the last 230 years—that it is now incumbent upon all Americans to do their part to preserve these precious gifts of liberty.**

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the Koran convicted of "hate speech," or a pastor in Sweden has to go all the way to the Swedish Supreme Court to be absolved of engaging in "hate speech," how long would it take homosexual advocates in the U.S. to walk into churches and synagogues nationwide and have pastors, rabbis, or lay people arrested for reading from Scripture and asserting its relevance if a "hate crimes" bill were to become law in America? My guess is, not too long.

### What We Must Do

Let us not forget that freedom of speech and the press are among the most basic principles upon which our nation was founded – Our First Liberty. Freedom of religion is so intertwined with free speech and a free press—things that countless people have fought and died to secure and protect over the last 230 years—that it is now incumbent upon all Americans to do their part to preserve these precious gifts of liberty.

Two more observations about the homosexual legal agenda: first, in their push for same-sex "marriage" three years

ago, such activists may finally have overreached their grasp, with the result being that much of the American public has now finally caught on to their attempts to re-organize our society. The public is pushing back. As stated earlier, constitutional amendments affirming marriage as between one man and one woman have been passed by overwhelming margins in 27 states. If all that has happened in the first years of this decade doesn't send a clear message to the U.S. Congress, it's something that we can remind them of, over and over again. A strong majority of people in this country stand for traditional values, not the radical extremism of the homosexual agenda. And most Americans want equal protection under the law for all Americans, not the kind of preferential, special treatment that comes as a result of mind-reading, subjective "hate crime" legislation.

Second, all advocates of homosexual behavior in this country are not in complete agreement about every jot and tittle of public policy.<sup>18</sup> But you'd never know it from listening to them, because they realized early on that they could not afford the luxury of much publicized in-fighting. Despite their differences, they're publicly singing off the same song sheet on almost all of the things that truly matter to them, using homogenized talking points to move their agenda forward. That's the only way they've been able to accomplish so much, despite the vast majority of public opinion being against them.

The good news here is that the vast majority of public opinion remains with us, those who oppose radically redefining—even abolishing—marriage and the family, creating special legal privileges for those who choose to engage in homosexual behavior, and creating punishments for those who disagree with it. And we must learn from the advocates of homosexual behavior to lay aside our private differences on smaller issues and present a united front to speak boldly the Truth with which we've been entrusted, and can move and reshape the culture more than any of us have ever dreamed possible.

This is our watch.

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*Alan Sears, a former federal prosecutor in the Reagan Administration, is president and CEO of the Alliance Defense Fund ([www.telladf.org](http://www.telladf.org)), a legal alliance defending the right to hear and speak the Truth through strategy, training, funding, and litigation. He is co-author with Craig Osten of the book *The ACLU vs. America: Exposing the Agenda to Redefine Moral Values* ([www.acluvsamerica.com](http://www.acluvsamerica.com)).*

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## Endnotes

1. See [http://www.akegreen.com/sermon\\_transcript.htm](http://www.akegreen.com/sermon_transcript.htm) for text of sermon. For more information on ADF's role in this case, go to <http://www.telladf.org/news/pressrelease.aspx?cid=3587>.
2. *Commonwealth of Pennsylvania v. Marcavage, Diener, Cruse, and Green*. ADF Senior Counsel Joe Infranco working with allied attorneys Ted Hoppe and Scott Shields represented the defendants.
3. Summary of Reasons for Decision, *Islamic Council of Victoria Inc., v. Catch the Fire Ministries Inc.*, Victorian Civil and Administrative Tribunal, December 22, 2004 (see [http://www.vcat.vic.gov/CA-256903000FE154/Lookup/decisions/\\$file/islamic\\_council\\_of\\_victoria\\_v\\_catch\\_the\\_fire\\_ministries.pdf](http://www.vcat.vic.gov/CA-256903000FE154/Lookup/decisions/$file/islamic_council_of_victoria_v_catch_the_fire_ministries.pdf)) and Paul Gallagher, "Landmark ruling puts freedom of speech in focus," *Christianity Today*, December 22, 2004 (see <http://www.christianitytoday.com/ct/2004/151/33.0.html>).
4. Adam Clymer, "Senate Panel Moves to Block Bias against Gays at Work," *New York Times*, April 25, 2002.
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6. "Human Rights Complaint Filed Against Catholic Bishop for Defence of Traditional Marriage," *LifeSite.com*, March 30, 2005.
7. Kevin Bourassa and Joe Varnell, "Purging Toxic Religion in Canada: Gay Marriage Exposes Faith-Based Bigotry," <http://www.samesexmarriage.ca/equality/toxic180105.htm>.
8. See [http://www.akegreen.com/sermon\\_transcript.html](http://www.akegreen.com/sermon_transcript.html).
9. "Swedish Minister Jailed for 'Anti-Gay' Speech," *Catholic World News*, July 6, 2004.
10. Personal testimony of Benjamin Bull, Chief Counsel, Alliance Defense Fund.
11. For more information on the threat of international law, go to <http://www.telladf.org/issues/religiousfreedom/international-law.aspx?cid=3234>.
12. See The Local Law Enforcement Hate Crimes Prevention Act, H.R. 1592 and S.1105.
13. Timothy J. Dailey, Ph.D., "'Hate Crime' Laws Mean Unequal Protection," *Family Research Council*, <http://www.frc.org/get.cfm?i=IF02F1&v=PRINT>.
14. See Julia Duin, "NBC Flooded with Calls after Couric's Remarks: Family Groups Irked at Links to Death of Gay Man," *Washington Times*, October 16, 1998 and Deborah Mathis, "Many Share in the Hate-Filled Killing of Gay Student," *Orlando Sentinel*, October 15, 1998.
15. "New Details Emerge in Matthew Shepard's Murder," *ABC News*, November 26, 2004 (see <http://abcnews.go.com/2020/stor?id=277685>).
16. "GLAAD: ABC's Hindsight on Matthew Shepard's Murder Far Less Than '20/20,'" *GLAAD*, November 26, 2004 (see [http://www.glaad.org/media/release\\_detail.php?id=3756](http://www.glaad.org/media/release_detail.php?id=3756)).
17. JoAnn Wypijewski, "Justice shouldn't be tilted by 'hate crimes,' tinkering with criminal law is no solution to homophobia" (commentary), *Los Angeles Times*, November 26, 2004 (see <http://www.indybay.org/news/2004/11/1707505.php>).
18. See Marshall Kirk and Hunter Madsen, *After the Ball: How America Will Conquer Its Fear and Hatred of Gays in the 90's* (New York, NY: Plume/Doubleday, 1990).

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