IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

KASEY SEGRAVES, JASON SEGRAVES and KEVIN SEGRAVES, minors under 14 years of age, by their Guardian ad Litem, KELLY SEGRAVES, WILLIAM DANNEMEYER, MICHAEL D. ANTONOVICH, EUGENE N. RAGLE and CREATION SCIENCE RESEARCH CENTER, Plaintiffs, vs. STATE OF CALIFORNIA, BOARD OF EDUCATION OF THE STATE OF CALIFORNIA, DEPARTMENT OF EDUCATION OF THE STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES, WILSON RILES, KENNETH CORY, JESSIE UNRUH and DOES I through 50, inclusive, Defendants.	) NO. 278978	DEPT. 14

THE COURT: Counsel and ladies and gentlemen, I think and explanation is due because in a case such as this the Court normally would ask for written briefs, engage in its own legal research, and hopefully there would emerge a lengthy written opinion, complete with quotations and footnotes. And, parenthetically, for the benefit of all who would be legal authors, some 40 years ago, when I served on the Board of Editors of the California Law Review, we were told that for an article to appear really learned, there should be a footnote at the end of each point in a sentence one would ordinarily breathe. That's the way I -- you make an article learned.

But, I'm going to forego this privilege in this case because I have discussed this case with counsel, and I have concluded that we know now as much as we can reasonably be expected to know about the law and about the facts in this case. And so I'm going to forego that written dissertation with quotations and footnotes and render the decision now.

Before I begin, however, I want to say that this has been a most interesting and unusual case, apart from the merits, because of the television coverage which we have had. We are most appreciative of the work of the ABC staff who have operated the pool facilities in a manner that I believe was not disruptive, and I think counsel join with me in that view.

Lynn Jones, the producer, Charles Jones and Jeffrey Cree, the engineer technician and camerman, have been most cooperative and were very, very good. I'm grateful, too, to our administrator, Court Administrator Bill Brown, and particularly to Mike Curtis, our Assistant Administrator, because he was the fellow who set this all up.

And I know that the attaches of my court have heard me say so many times before that I am grateful to them. I've said this privately, I want to say this publically, I want to give my thanks to Frances Kramer, my clerk, and Ted Clark, my bailiff, and to all the other people from the Sheriff's Office that have helped us with this endeavor. And, of course, to Cheryl Tschannen, our court reporter, for all of the help that she has given us in conducting our court proceedings, and primarily for the insulation that these fine people have provided for me. I have not been bothered at all, though I have to say I've received a great deal of mail, I'm sure as counsel have, and a number of telephone calls, as well.

Now, not least of all, I was telling the reporters a moment ago, that it's rather interesting that Mr. Turner is an alumnus of the Attorney General's Office, I'm an alumnus of the Attorney General's Office, and, of course, Mr. Tyler is a current member of the Attorney General's Office, so it's almost like a meeting of a club, I suppose. I want to commend them because these counsel have been courteous and gentlemanly and intelligent and thoughtful in the presentation of a most -- most difficult kind of matter.

I -- now, let's turn to the merits of our case. You know, I think that we are almost unanimous in our views, counsel and I, because all the -- although the issues have been narrowed in this case, this is a most significant cause because it does involve religious liberty, which is one of our most cherished freedoms, and even more important, and you both touched on this, this involves the sensibilities of a child. And isn't it truly wonderful that in our country we can seek to invoke the awesome authority of the courts to assuage the feelings of a single child, a child. And in the final analysis, I believe that is what this case is all about.

Now, we are concerned with the constitutional guarantee,

and I think it's worthwhile just to repeat it again, although all of us have heard it and read it many, many times during the course of this case. It is set forth in the First Amendment, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." And some people may say, "Well, that is directed toward the Congress, how does the State of California get involved with this?" Well, the Supreme Court of the United States has held that both clauses are incorporated in the Fourteenth Amendment, which applies to the states, and accordingly the guarantees also apply to state action.

Now, often there is tension between the clauses and at the beginning of that case as we read the pleadings, we really thought that perhaps that was going to be the situation here. And, for example, it could be argued that the use of federal funds to provide chaplains for the Armed Forces might violate the establishment clause, and yet the Supreme Court has said a lonely soldier stationed at some far away out point could complain that a government which did not provide for pastorial guidance was prohibiting his free exercise of religion. This is a classic case of the tensions, the confrontation, if you will, between the establishment clause on the one side and the free exercise clause on the other.

We thought, as I said, that this was that kind of case because of the Pleadings, and this problem arises where free exercise is threatened so that accommodation is necessary, but the accommodation of -- itself may violate the establishment clause. Let me give you some examples of that. Release time for religious instruction presents such a problem. An accommodation in which religious instruction was given in the public schools that was held to be an unconstitutional and forebidden accommodation was when the children had religious instruction in the public schools. That was forbidden by the constitution, but on the other hand, the Supreme Court of the United States has held that the

release time program which -- in which children were allowed to leave the public school in order to receive religious instruction elsewhere was a permissible accommodation.

The play between establishment on the one hand, in terms of accommodation, and free exercise on the other. Now, fortunately, -- I say, "fortunately," because I'm the fellow that has to make the decision -- the issues have been narrowed here to the point where we are not faced with such a dilemma, and thus there is no contention here that evolution should not be taught in the public schools. I think you've heard me say on several occasions that if there were, it would be rejected as an impermissible accommodation, for that battle was fought and resolved by the Supreme Court of the United States in Epperson versus Arkansas.

Now, moreover, the Plaintiffs have disclaimed any interest in an accommodation which would require the teaching of special creation in the public schools. And I might say, in -- and of course, this is what they call, "dicta," this is not part of the decision in this case, but this is my -- my view -- that it was appropriate that they do so, for I have no doubt, whatever, that such a accommodation would be held to be violated with the establishment clause, and forbidden. I think this is so, as a matter of law. It was basically held to be such in the -- in the opinion of the California Attorney General in 58 Attorney General Opinions, 262. And, of course, it was held in the decision of Daniels versus Waters in the Sixth Circuit, which was referred to during the course of our trial.

Now, the issues, simply stated, accordingly, is whether or not the free exercise of religion by Mr. Segraves and his children was thwarted by the instruction in science that children had received in school, and if so, has there been sufficient accommodation for their views?

I must say, first of all, there can be absolutely no doubt of the sincerity of the Segraves family. I'm particularly

impressed with the young man who has been seated here during this trial listening to all these dull proceedings. He's an outstanding young man. And the Court also has been truly impressed with the outstanding people who have made contributions and are making contributions to our public schools, people who have appeared here as witnesses, just tremendous people.

And, further, the Court is prepared to find that the State Board of Education has acted throughout in good faith, just as the Court finds the Plaintiffs herein have acted throughout in good faith. The Court, in addition, is prepared to find and does find that the science framework, as written, and if qualified by the policy of the Board exemplified by Exhibit N, does provide sufficient accommodation for the views of Plaintiff. This is so, in my judgment, even if, as was alluded to by Mr. Turner, there is some problem about whether that was ever officially adopted as a policy by the Board because the fact is now that by virtue of the statement of the representative of the Board, more than one, not only the Attorney General but the representatives of the Board, that is current Board policy and shall remain as current Board policy until a Board changes it. So, I think we have to assume that this is so. In effect, it is stipulated and agreed that this is Board policy, but this is not, of course, the end of the story.

The Court is prepared to assume that, and it's -- it's quite an assumption, I know, but that all teachers are of the professional caliber of Mr. Horn and Miss Alexander. I think all teachers -- I hope all teachers endeavor to follow the Code of Ethics and the administrative regulation that we have read, 80130 of Title Five. Mr. Horn and Miss Alexander are, indeed, truly outstanding people. I think their pupils were very lucky to have them as teachers. But nevertheless, all of us conclude, and I conclude, myself, sometimes are needed -- we need to be reminded of our responsibilities. It seems to me that what has happened here has developed

from a lack of communication from the Board to the school to the classroom teacher. I think it is the emphasis, the emphasis on tolerance and understanding that should be communicated as a fundamental policy of the State Board of Education. This is true not only in science, but it's true throughout the entire public school system.

I was most interested in Miss Alexander's testimony because she said some things that I found to be very true. The child who is a Jehovah's Witness should not be made to feel guilty because he cannot salute the flag. The student who is a Seventh Day Adventist should not be scorned because he cannot participate in his school car wash because it is held on a Saturday, his Sabbath. The Jewish child who cannot participate in Easter and Christmas celebrations should not be made to feel rejected. And, parenthetically, I -- I must add that it seems to the Court, also, that persons seeking tolerance and understanding must practice it, also. Only in this way can all of us enjoy the religious liberty which is our fundamental right.

Mr. Turner has already quoted from the concurring opinion of Justice Stewart, and Sherbert versus Vernor. I think it's worth repeating because those are resounding and beautiful words where he said, "I am convinced that no liberty is more essential to the continued vitality of the free society which our constitution guarantees than is the religious liberty protected by the free exercise clause explicit in the First Amendment and embedded in the Fourteenth." I think Justice Stewart has spoken well.

In the final analysis, ladies and gentlemen, counsel, all that Plaintiffs seek, in the Court's view, presently is contained in Board policy. It appears, however, that this Board policy may not have been communicated to all who should know of it, and who should be guided by that policy. As this is a Court of equity, it seems to the Court that an appropriate remedy may be fashioned.

It will be the order of the Court that there shall be disseminated to all the publishers, institutions, school districts, schools, and persons regularly receiving the science framework a copy of the Board policy set forth in Exhibit N. By this, the Court means, insofar as possible, the policies shall -- the policy shall be sent to those who have received the framework in the past. It shall be included in the framework disseminated in the future. It follows that if there are violations of this policy when disseminated it becomes a matter of concern for students and parents to adjust with their local teachers, their local schools, and their local school boards.

Now, the Court has said on several occasions during the trial that it would be presumptuous if it sought to write the content of a framework or of any of these other publications which have been presented to the Court. Although, of course, we are concerned with qualification and accommodation, I was so impressed with the words of Dr. Mayer that I asked the reporter to transcribe them for me, and I would like to read them again to you.

Mr. Mayer said,

> "There is, in the realm of knowledge, a structure we -- we speak of it as epistemology, we learn different things in different ways. This doesn't mean that any of this is wrong. For example, when you look at a mountain and a poet says, 'it's purple mountain majesty.' If a mineralogist looks at a mountain and says, 'it's composed of copper,' same mountain, he's not in error. A geologist may say, 'why, that's a plastic dyke.' Well, so it may be, and he's not in error. Where the problem begins to be confusing is when we begin of mingle epistemological systems and try to make the poet and the mineralogist and the geologist

all look at that mountain the same way.

"Now, when you begin to think of textbooks that talk about belief, now to me belief is not a scientific word. One knows, one accumulates data, one has a comprehension of, one understands, one does a lot of things, but to me belief always, in my situation, has been something I associate with my theology. I would not like to see my theology and my science get mixed. I have never dealt with a scientific process where somebody says, 'I believe.' I have dealt with theological processes where one believes. In short, I think at that point you begin to mix epistemologies, and that's confusing."

And then I said to him,

"But I see, as I comprehend this case, we are talking about the very kind of disclaimer that you have just told us about, that at the beginning of a science textbook should there not be a statement -- because not everyone is a scientist and knows all the background of scientists -- but shouldn't there be a statement saying, 'this does not deal with theology'?"

Dr. Mayer,

"Absolutely. I would -- I would say there should be a clear explanation that perhaps should run through the entire textbook reminding within the student's mind what it is he's dealing with. He's dealing with science. We are not making a pretense to teach him music, art, poetry, theology, or any other discipline. Science does these

things, and outside of that realm, science is not only moot, but might even be harmful." Court, "And, moreover, science is not dogmatic in that it is open ended and there is an absence of preset conclusions?" The witness, "Yes, sir."

I commend this, to the State Board of Education, as a beautiful and pertinent statement of what science is all about, as a layman. Now, there is one additional statement from Justice Stewart -- forgive me if I quote from him often, but our son clerked for him as a clerk, and so I -- I think he's a great man.

Justice Stewart also said in the concurring opinion, and in the Sherbert case, and these are the words that I felt were most pertinent to our case where he said, "And I think that the guarantee of religious liberty embodied in the free exercise clause affirmatively requires government to create an atmosphere of hospitality and accommodation to individual belief or disbelief. In short, I think our constitution commands the positive protection by government of religious freedom, not only for a minority, however, small, not only for the majority, however large, but for each of us." I don't think any of us could really quarrel with that.

As I view this case, accordingly, counsel, I really don't believe that either side has lost. I truly believe that both sides have won. I think that we have all won because hopefully what we have achieved in this case is understanding.

This is an intended decision, pursuant to Rule 232. The Court believes that this case falls within Paragraph c of Section 1032, which allows the Court its discretion as to whether or not costs are allowed, and I particularly invite your attention to page 99 of West's Annotated Code where a number of cases are set forth dealing with injunction, indicating that Paragraph c of Section

1032 is applicable.

Accordingly, the Court will order, subject to whatever complaint either of you may have, that each side will bear its own costs, and each side will bear its own attorneys' fees. However, I will ask Mr. Turner if he will prepare an appropriate order in conformity with the Court's intended decision.

MR. TURNER: Thank you, your Honor.