

To Unidentified Recipients:

Smalkowski Case Settled in Federal Court in Oklahoma

From: Edwin Kagin, National Legal Director for American Atheists

To: The Board of Directors and the Membership of American Atheists.

Date: October 30, 2008.

It is my distinct professional and personal pleasure to announce that the lawsuit filed in the United States District Court for the Western District of Oklahoma, at Oklahoma City, by American Atheists against the Hardesty, Oklahoma public school and certain named officials has been dismissed as settled. The order was filed yesterday, October 29, 2008. It is now part of history.

I am not at liberty to make public the terms of the settlement agreement, but both the monetary considerations, and the assurances provided by the defendants, were satisfactory to American Atheists, were approved by the past and present Presidents of American Atheists, Frank Zindler and Ed Buckner, and were of such a character that I recommended that American Atheists accept the settlement.

This case arose out of what we alleged was a denial of civil rights, and a conspiracy to violate civil rights, by state actors in Oklahoma against members of the Smalkowski family and other members of American Atheists. The Smalkowski family has made its own separate settlement with the defendants. Our lawsuit was based on the denial of civil rights to Atheists in the Oklahoma school, using the treatment of the Smalkowskis as evidence for this claim, and seeking redress for Atheists.

This case was filed just over two years ago. The history of what happened is contained in the following writings, that have previously appeared nationally, regarding the events that formed the cause of action for the Federal lawsuit. The factual background is a matter of public record.

A special "thank you" goes to attorney Richard Rice of Oklahoma City who served as local counsel on this case. Rick is a Christian. He made that clear to me from the outset. And he believes in the rights secured by our Constitution. And he fought for them. Without his most competent and professional assistance, the result announced today could not have been achieved. On this issue, we are in the same line.

We thank the Smalkowski family for their praise of our efforts on their behalf and we wish them well in their future undertakings.

Edwin Kagin
National Legal Director
American Atheists, Inc.
PO Box 666
Union, KY 41091
Phone: (859) 384-7000
Fax: (859) 384-7324
E-mail: ekagin@atheists.org

=====

SMALKOWSKI FOUND NOT GUILTY ON ALL COUNTS

Web Posted: June 26, 2006

American Atheists Magazine

Chester (Chuck) Smalkowski, a member of American Atheists living in Hardesty, Oklahoma, has been found Not Guilty on all counts by a twelve person jury in Guymon, Texas County, Oklahoma.

Chuck, together with his family, is featured on the cover of the current issue of American Atheist Magazine. At the 2006 Annual Convention, the Smalkowski Family was presented the American Atheists Award for Valor, now prominently displayed on the wall of their home.

The Smalkowski case attracted national attention after Nicole Smalkowski was kicked off of the girls' basketball team after refusing to stand in a circle with her teammates on the gymnasium floor of the Hardesty public High School and recite the "Lord's Prayer." After school officials learned that she and her family were Atheists, lies were created about her as grounds to take her off of the team.

When her father Chuck discovered conclusively that public school and law enforcement officials had lied to him about his 15 year old daughter, he and Nicole and her mother Nadia went to the home of principal Lloyd Buckley to attempt to discuss the matter with him. Outside of his front fence, the principal struck Chuck, who blocked the blow. Both men fell to the ground and Buckley sustained minor injuries, the provable origins of which were strikingly contrary to his under oath trial testimony. Buckley then took out misdemeanor criminal assault charges against Chuck. After Smalkowski rejected the offer to drop the charges if he and his Atheist family left the state, the charges were raised to a felony. Chuck called American Atheists for help.

On June 22, 2006, after only a little over two and a half hours of deliberation, a span of time that included dinner, the jury found Chuck "Not Guilty" of the felony charge of assault and of two lesser included misdemeanor assault charges.

Edwin Kagin, National Legal Director for American Atheists and his wife Helen drove from Kentucky to Guymon, Oklahoma for the five day trial. Edwin had become registered as an attorney in Oklahoma for the purpose of assisting Tim Gungoll, Chuck's attorney from Enid, Oklahoma. Mr. Kagin conducted the voir dire of the prospective jury, gave the opening and closing statements in the case, cross examined the Superintendent of the Hardesty public schools, David Davidson, and conducted the direct examination of the defendant Chuck Smalkowski. Tim cross examined the other prosecution witnesses and conducted the direct examination of Nicole and Nadia Smalkowski.

The Atheist and Christian attorneys worked together effectively for the cause of justice and to vindicate an Atheist falsely accused.

The true significance of this trial is that this is the first case we know of in American jurisprudence where Atheism has been directly used in as a defense in a criminal trial.

Edwin introduced himself to the jury as National Legal Director for American Atheists and asked the prospective jury in the Oklahoma panhandle if they could accept the testimony of an Atheist over that of a professed Christian. When the jury looked at him blankly, the judge asked the prospects if they understood the question. One woman spoke for many in the group by asking "What is an Atheist?" Edwin explained that an Atheist was a person who did not believe in a god or gods or in a supernatural world, and that the defendant and his entire family were such persons. Many of the prospects said they could not believe such a person over a Christian and were struck for cause. To their credit, many members of the jury panel, including two ministers' wives, told the judge they could not be fair to an Atheist in such a situation and were excused.

Edwin also told the prospective jurors that his co-counsel Tim Gungoll believed Jesus Christ to be his personal savior and that Tim was a practicing Roman Catholic who asked if the jury might feel him a

hypocrite to his faith for defending Chuck. Ultimately a jury of twelve was seated who had sworn that they could believe the testimony of an Atheist over that of a Christian.

In closing argument, Edwin told the jury that it really should not be necessary for an Atheist to tell them it is wrong to lie under oath, as he reminded them the Christian school officials and the police had done in their sworn trial testimony. "Thou shall not bare falsewitness against thy neighbor. Ninth Commandment. Eight if you are Roman Catholic," Kagin said.

The jury believed the Atheists. Unanimously.

The night of the verdict, tornadoes of unusual violence descended on the panhandle of Oklahoma. The home of the Principal who had brought the false charges against Chuck Smalkowski was severely damaged.

This fact has no relationship whatsoever to the verdict.

A civil lawsuit in Federal Court, with the Smalkowski Family and American Atheists as Plaintiffs, is contemplated.

JUST ANOTHER SALEM

by Chester Smalkowski

Web Posted: July 8, 2006

American Atheists Magazine

From the AANEWS <<http://www.atheists.org/aanews>> Editor: Below, we are reproducing, "as is" and un-edited, the account circulating on the internet and the democraticunderground.com web site penned by Chester Smalkowski and aptly titled "Just Another Salem."

It is his personal story about the ordeal he and his family have been swept up <<http://www.atheists.org/flash.line/smalko1.htm>> in after their daughter, Nadia, refused to join a prayer circle during a basketball game at their local high school. Nadia, instead, recited the "godless" Pledge of Allegiance.

From there, events went out of control. Chester Smalkowski and family members attempted to hold a conversation with the high school principal. That turned into a physical altercation, Mr. Smalkowski was arrested under a battery of charges, and the authorities offered to dismiss the case if the Atheist family fled the state.

<http://www.atheists.org/catalogue/special.html> American Atheists joined in the subsequent criminal case, and Chester Smalkowski -- battling incredible "Bible Belt" odds in the courtroom -- was found innocent of the charges.

News of that can be found on the American Atheists web site.

<<http://www.atheists.org/flash.line/smalko1.htm>>

Edwin Kagin (ekagin@atheists.org <[MAILTO:ekagin@atheists.org](mailto:ekagin@atheists.org)>), National Legal Director for American Atheists, is preparing a federal action which will touch on a number of issues in the Smalkowski case including violations of this Atheist family's civil rights.

Chester Smalkowski vented his thoughts about this experience on a blog.

AANEWS is reproducing this story for the benefit of our readers, unedited and in its original format. This conveys the honest, emotional, "from the heart" sentiments of Mr. Smalkowski, and constitutes one man's recollection of an agonizing experience due to religious intolerance and fanaticism.

American Atheists welcomes support so that we may continue our efforts on behalf of Chester Smalkowski and his family.

There are lessons to be learned. Perhaps the most important, though, is that "it can happen here," in America, in the year 2006.

-- Conrad Goeringer,

AANEWS - American Atheists

JUST ANOTHER SALEM

The bailiff took the piece of paper from the foreman of the jury and handed it to the Judge. He opened the paper and while staring at it he nodded. The courtroom was silent and the jury stared straight ahead.

I have been in many situations where my life or limb were on the line but I was still in the game and had a hand to play. But not here, here I just sat waiting for the verdict.

Though I worried about being sent away for five years on bogus charges, my dread was the Christian mob. They knew I must be found guilty in order to slow or stop the civil case being filed in Federal court. Since the start of my daughter's stand against the public schools disregard for the law of the land, it was imperative to run us out of the county to make any civil action non valid. With me in jail for five years running my family out would be a whole lot easier, or so they might have thought.

The courtroom was packed for it is the Bible belt. There was no love in this courtroom.

The loving Christians brought their children to hear the verdict. They brought the town. They brought ministers. I even saw another Judge in the back of the room. The Judge who in an earlier hearing while slapping an inch thick stack of papers on his bench saying with a list of witnesses this big you had better be a good boy. It was lies then, it was lies now and the DA knew it! (She was later forced to hand over a written statement she denied for over a year existed!) People prayed openly for a conviction. Many holding their bibles. During the trial the Prosecutions side of the courtroom was packed. Only my son and Edwin Kagin's wife, Helen sat behind me, but now there was not enough room in the whole courtroom.

Yet now the so-called victim, the 325 lbs victim, the ex Marine, hurrahs, was nowhere to be found. Neither was the woman assistant district attorney anywhere to be found. Whose vindictive, bogus case this was from the start.

What sort of place is this?

Well this is not the place for a little debate in a coffee shop with the sweet salt air rolling up from San Francisco bay. This is a place where the children write on their schoolbooks the south will rise again. This is a place where they say that black people caused slavery! Where they burn rock CD's. Mormons are the tools of Satan. That my daughter is gay cause only homosexuals vote for Kerry and Christians vote for Bush. Atheists worship Satan! Where religious fanaticism is fused with political rhetoric and political leaders pander to this madness. This place has a sickness, a malignant disease and it is spreading. Edwin saw it first hand.

There has not been many a trial with a Not Guilty verdict in this county for years. The head DA is good friends with the self-righteous in the courtroom and greets them all by name. You know the type.

Many old women in the courtroom are taking notes. Others have been taking notes at every hearing for the past year and a half! They strain to listen not wanting to miss one juicy word. With the pens and pads they write continuously. The pads shaking with every push of the pen. Even writing down what my children spoke amongst themselves.

Blue gray haired old Christian spinsters bitter for wasting all those fruitful years now just waiting for those pearly gates. These are truly the

wicked. You have seen them before. With their bogus self-righteousness they strut and sneer. How far we have not come.

Others had walked out into the hall and warned a police witness saying that justice must be served, that justice better be served. The judge called a hearing on the threat.

He warned the crowd that if it happens one more time he would have no choice but to throw out the case. He was between a rock and a hard place. He knows my lawyers are watching and the loving Christians are out for my blood, and they are watching too. The law, elections and politics were all in play. The Judge left the court for his chambers and stayed away for a quite awhile.

The Christians, the loving Christians! Praying to a God whose wings are dripping in the blood of innocent men, woman and children down through the ages. Truly hypocrisy is one of their commandments and the blood of the innocence one of their sacraments!

Christian against Christian, Christian against Moslem, Christian against Mormon. Basically Christian against anyone or anything that challenges their pathetic little fairy tale.

Go to any Indian reservation and see the lies and broken promises by a country with "Under God" in their pledge.

I assume I need not have to explain about the loving hymns sung in church on Sunday and beatings of black slaves on Monday. But on Monday night the good old Master has a little tippy toe over to slave huts for a little brown sugar. While the queen of the manor is in the master bedroom past out on an opium tonic. Praise the Lord!

Well that was then but now the court was about to hear the verdict. There was a feeding frenzy about to begin with the dirty little atheist and his family put in their place with him in jail and the family run out of town. Like the teacher told my daughter "This is a Christian country and if you don't like it get out!"

I could hear my heart beat in my ears and I dreaded the cheers from the righteous mob that were about to begin. The pain of having my family being in the front row to witness this swirling cesspool of hatred come to its inevitable end with my head on a pike, sucked the air right out of my lungs.

It was truly just another Salem. Different time and place. Same characters with new names. Oh, no gallows or big oak tree this time. But if they could they surely would. How far we have not come. I know, I already said that but do you really understand what a tragedy it means? The whole universe is ours if we want it but instead we must gravel in the dirt having to debate the obvious.

I have been standing against injustice most of my life. It is my nature. I am a child of the 60's and proud of it. But what of my poor family? They stood so proud and strong. They are tougher than I will ever be. I had told them do not cry. Do not give these bastards any satisfaction. I told my wife if I see you cry I will surely loose it. I said it is in the Federal courts we will set things right and send that wall higher than it has ever been. On the wall behind us was a painting of the signing of the Declaration.

The judge handed the verdict to the clerk. The only sound was the paper. The paper in the clerk's hands with the hand written words that spelled my doom, my family's fate and the inevitable cheers from the Christian mob.

With my guts in my throat and no air to breathe. The court clerk read the decision of the jury.

We the jury find the defendant:
On the charge of Aggravated Assault and Battery:
Not Guilty!

On the charge of Assault and Battery:

Not Guilty!

On the charge of Assault:

Not Guilty!

On the charge of Battery:

Not Guilty!

Not a word, not a sound. The lynching had been cancelled. I took my first free breath in almost two years. I looked at the jury and mouth the words thank you. I gazed at the floor as floodgates opened, I dared not move my head that others might see. Charley don't cry, but free air has its effects.

With all their praying, lies, crooked cops, warning that justice better be done, packing the courthouse with their followers, Even a teacher on the jury who had taught at the Hardesty School. (Our motion to take her off the jury denied.) Not guilty was still the outcome. The evidence was obvious. This was a bad case. And 12 men and women had the guts.

From the start of this legal fight my lawyers said Atheism must be kept out. That it was a no go in the Bible belt. I was just adamant that Atheism be brought in. For it is the reason. It was the motive for all the lies and hate. I felt it was about time that this dirty little secret of hate, persecution, Christian madness and hypocrisy is brought out into the light of day. When I told my lawyers this they all gave me the same bewildered stare.

So one by one, I dropped one lawyer then two. Then I had a hard time in finding another one. My third lawyer was still trying to convince me to keep my atheism out even up till the day of the trial. I still said no. Somewhere along the line I talk to the ACLU out of San Francisco. Who let me know my first civil lawyer was not telling me the whole story. I was advised by them and many others to complain to the Bar about him.

You see he never told me that the prayer in itself is illegal. That the schools in this area were not following the state and federal funding guidelines. When I asked him after finding out from the ACLU. He said yes it is against the law.

I told him I want to have it stopped. He told me he would not for he was a Christian and he believed there should be school prayer. His statement floored me for it bordered on madness. I said what you believe and what you do for a client is two different things and that you took an oath. He still refused.

It did not matter to him that I had already given him \$10,000 dollars. He knows we are not rich. So I wrote a letter to him to complain about his refusing to take my daughters civil case where it should have gone from the start. And I asked for my money back. He sent me a bill for another \$5000 saying it was the charge for reading my letter and wasting his time.

In my search for a civil attorney it became clear that no one would touch this case. In all of Oklahoma I could not find an attorney. My criminal attorney said he would look at it but only after I paid him his \$15000 for the criminal case. He sent me a letter that the funds for the criminal were coming too slow and suggested that I seek other counsel for the civil matter. But even after he got his \$15000 he would only take it if I paid him more. (Now that I have won the criminal case he wants on the civil. Suffice to say he is off the civil!)

Eventually I contacted the American Atheist, which was referred to me by Edward Tabash, who was referred to me by a Mr. Robert Tierman. I told them my problem in finding an attorney willing to take church and state case in which the people are blatantly breaking the law. Yet no one will take it. American Atheist, being out of another state, could not refer me to anyone. But they said they would try to help. The ACLU out of Oklahoma City refused.

They sent me some standard letter. It really hurt that I did not even rate a return call or a reason. I felt betrayed, lost and confused.

Was this the United States? Where freedom reigns?

The whole family was under constant stress. Police trying to get search warrants to the property by having ex-employees file false statements. Other cops trying to hire ex-cons to beat me up. The whole town knows of it! The Sheriff trying to have my bond pulled by the bail bondsman when there was no legal way to do it. My kids have been out of school since November. Principal's son saying should he get a gun when he sees my daughter and my son. DA has yet to reply to our concerns. The Department of Human Services comes to my place saying they received a complaint that I starve my kids. It was even obvious to them the charge was bogus.

We have become very good at using back roads. The police follow us around. Traffic tickets that when challenged were dropped in court. Not to mention the stares and whispers, the betrayal from employees, one of my healthy dogs dying. Brush fires starting up upwind.

An FBI agent even said, "You aren't kidding". When it was obvious someone followed us and was watching our meeting out in the middle of nowhere. I was told about a few things. All I can say is that some of the crooks out here now charged with crimes wore badges and guns! But he could not help my family and me. Not without witnesses willing to come forward. One scared witness left the state. The last words she spoke to me were, Chuck I don't want to end up dead in a ditch!

Just what you would expect life to be like out here in the Bible belt!

The roller coaster of emotions we went through every minute, every day. It was truly a hell. There were days we spoke little. Other days we spoke late into the night. You get to a point you become numb, but it doesn't last. For it is all aboard and you are on the roller coaster again.

My poor family. They were standing tall. But they would not even be in this place if it were not for me and my bright idea about centralizing our business. We all missed the desert. The free open Mojave Desert. My family did not ask for this. They deserved better. I saw them all suffering.

Many a night I would sit in the barn alone with a pint of scotch and look at the high beams and the rope on the wall.

Then out of the blue my wife received a call from Ellen Johnson who said they had a lawyer that can help us, an Edwin Kagin who is their legal director. Well I called him up, and our civil case is up and running.

Edwin Kagin also by my request came to my criminal case for the two cases are obviously interrelated. There were also other reasons.

Simply stated without Edwin Kagin, Ellen Johnson and American Atheist I would be in jail now, or worse. Without them, we would have no federal case on separation of church and state. The only group, the only lawyer that would stand with my family and me to protect the wall and not cringe at me wanting to put atheism as part of my defense.

In Edwin's opening statement American Atheist magazine was shown. The crowd almost rioted. He explained that Atheism was not a dirty word and that it was a conclusion. That my family and I are not devil worshippers. We just have no Gods. It was the basis of the case. It was the danger. It was the truth. Yet the only lawyer to go there freely was Edwin Kagin.

In a world where superstition is the norm and those who seek another path are ridiculed or worse. Being an atheist takes guts. Freedom is never freely given. The good fight is always there.

Oh you can hide yourself in the latest sitcom or have one or two more scotch and waters but the good fight is still there. You can run to your malls and buy yourself crazy with credit card frenzy. But the good fight is still there. You can look away and deny allegiance. But the good fight is

still there. These are the times that try men's courage. You can debate till you're blue in the face. It will not change a damn thing.

Our forefathers are on our side in this fight. Trust me. From Adams to Madison to Jefferson and Paine they all knew the dangers of a Theocracy. They wrote the Constitution to assure it. And within the federal courts we can protect this nation from a Theocracy.

The wall between the church and state must stand. But the wall is being battered and cracks now appear. The Christians are at the gate attempting to breach the wall and send us back down the road to an age of darkness, bloodshed and fear. My family and myself are willing to stand and fight the good fight. If we lose some skin, so be it. We have no more else to give. We are financially done. Thanks to American Atheist, Ellen Johnson and Edwin Kagin for the first time we do not fight alone.

Please stand together with us and fight the good fight. The fight that our forefathers began. Lets make the wall so high between Church and State that they who wish to tear it down will know better and be content with staying in their churches.

For freedom has never been free! There can be no freedom for all if the wall does not stand.

The wall must stand.

Chuck, Nadia, Nicole, Czeslaw and Bridgette Smalkowski

Copyright (c) 2008 American Atheists, Inc. <<http://www.atheists.org/>> All rights reserved.