

Baltimore Jury Returns Defense Verdict in Public Official Media Defamation Trial

By Chad R. Bowman, Maxwell S. Mishkin, and Emmy Parsons

A Baltimore jury returned a defense verdict at the end of a two-week, in-person trial against Sinclair Broadcast Group and its investigative reporter Chris Papst, in a media defamation and false light invasion of privacy case over a series of broadcast news reports. *Freedom & Democracy Public Charter Schools Northwood Appold Community Academy, Inc. v. Sinclair Broadcast Group, Inc.*, Case No. 24-C-20-118 (Md. Cir. Ct. 2021).

The Plaintiffs were Freedom and Democracy Charter Schools Northwood Appold Community Academy, Inc. (“NACA”) and its executive director, the Reverend Dr. Cecil Gray. They served as the “operators” of two troubled Baltimore public charter schools. The Baltimore City Board of School Commissioners shut down one of those schools in January 2019, and the other the following year. Their defamation action challenged several news reports that were part of WBFF-TV’s national award-winning “Project Baltimore” series about the public education system in Maryland, reports that raised questions about NACA.

The claims survived motions to dismiss and for summary judgment, but steadily narrowed as the trial progressed. Baltimore City Circuit Court Judge Shannon E. Avery granted a motion to dismiss all claims by NACA during pre-trial motions, leaving Dr. Gray as the sole plaintiff. Following the close of Dr. Gray’s case and argument on a defense motion for directed verdict on eight statements challenged in the Complaint, the Court granted the motion except as to a single statement—an alleged false implication that Dr. Gray had failed to pay his *personal* taxes. That statement alone ultimately went to the jury.

Deliberations proceeded for portions of three days, became heated—shouting was audible in the courtroom and juror notes came at a rapid clip—and appeared close to deadlock. However, on Friday, October 1 the jury returned its unanimous verdict for Defendants.

Deliberations proceeded for portions of three days, became heated—shouting was audible in the courtroom and juror notes came at a rapid clip—and appeared close to deadlock.

Background

Plaintiffs

Dr. Gray, pastor at the Northwood Appold United Methodist Church in Baltimore, founded and leads NACA, a nonprofit that operated two schools within the Baltimore City Public School System (“City Schools”): an elementary school, known as “NACA I,” and a middle-and-high school, “NACA II.”

The schools and their leadership became troubled. City Schools officials sent a series of written warnings and reprimands to NACA and Dr. Gray in 2017 and afterward, citing a failure to comply with system policies or other deficiencies. In January 2019, the Baltimore City Board of School Commissioners voted not to renew NACA I's charter. The vote followed a public presentation that described NACA I as having "a pattern of Title I noncompliance which places the entire district's Title I award at risk" and its operator as having "a history of non-compliance in meeting district and contractual obligations" and having "violated Human Capital requirements and the Family Education Rights and Privacy Act." NACA appealed that decision to the State Board of Education, which upheld the non-renewal.

The following year, the Board of School Commissioners voted to close NACA II as well, following a public presentation that described the school as "Not Effective" in "Academic Performance" and "Financial Management / Governance" and that noted its "operator has had a myriad of issues related to Title I management, Human Capital concerns, and has needed supplemental funding/loans to meet staffing requirements."

Project Baltimore

In March 2017, Sinclair Broadcast Group's Baltimore station WBFF-TV launched an independent investigative reporting team called "Project Baltimore" to focus on long-term investigations of major issues facing the Baltimore region and Maryland, with a first look at education. Project Baltimore in four years has received numerous accolades and awards, including 21 Emmy awards and national awards from groups like Investigative Reporters & Editors (IRE). The team has also received formal recognition from the Maryland House of Delegates and the Maryland State Comptroller for making an outstanding contribution to the betterment of Maryland's education systems. Mr. Papst has been the lead reporter for Project Baltimore since its launch.

From August 2017 through September 2019, WBFF broadcast several news reports about the NACA schools among its hundreds of investigative reports during this time. Five of these news reports were later identified in Plaintiffs' Complaint.

In the [first report](#) at issue, broadcast on August 2, 2017, WBFF explained that "a months-long Project Baltimore investigation has raised serious questions about how NACA II is being run and how students there are graduating." The other four reports at issue were all broadcast in 2019—on [May 6](#), [May 8](#), [May 29](#), and [Sept. 2](#)—after City Schools voted to close NACA I. They reported on the incongruity of the closure compared with a prestigious grant that NACA had recently received from the federal Department of Education—an award of \$1.5 million, just one of 17 such merit awards given to charter schools across the country in 2017. The news reports all raised questions about NACA, and Mr. Papst regularly solicited comment from NACA and Dr. Gray.

By the end of the trial, only a statement in [the May 29, 2019 news report](#) remained at issue. That report noted that NACA's related organization, Northwood Appold United Methodist

Church, was three years in arrears in federal taxes and the subject of a federal tax lien, even as NACA received a significant federal grant. *Id.* The broadcast included an image of the relevant court document, but Dr. Gray argued that readers could understand an online version of the news report as referring to his personal taxes rather than the lien against his church.

Proceedings Prior To Trial

In January 2020—a year after the official vote to close NACA I, and just days before the official vote to close NACA II—Dr. Gray and NACA filed their Complaint in Baltimore City Circuit Court. Defendants moved to dismiss on various grounds, including the fair report privilege. A motions judge denied the motion without prejudice in May 2020.

The parties then proceeded through discovery. Plaintiffs served written requests but opted not to depose Mr. Papst or any other WBFF employees. Following the close of discovery, Defendants moved for summary judgment, principally on the grounds that (1) Plaintiffs could not prove that the challenged reports were substantially false and (2) Plaintiffs are public officials and they failed to establish that Defendants published the challenged reports with actual malice fault. Plaintiffs argued that actual malice could be inferred by clear and convincing evidence from the news reports themselves.

A different motions judge heard oral argument by remote video conference on the summary judgment motion in August 2021, and denied that motion in its entirety from the bench. The case was then set for trial the following month.

Pandemic Trial Issues

In the weeks before a scheduled September 20, 2021 trial date, Defendants filed various motions *in limine*, including a motion to bar claims by NACA given that it was of asserting a defamation claim over its functions operating a public school, and therefore acting as an arm of the state. Baltimore trial co-counsel for Defendants also entered appearances.

However, the logistics for the trial—and, indeed, whether it would proceed on schedule—were not clear until several days beforehand, when Judge Avery was assigned on the afternoon of Thursday, September 16. During a pre-trial telephone conference on Friday, September 17, the judge explained that she would start with jury selection on Monday morning, then take up pending motions, before opening statements.

Due to COVID-19 capacity restrictions in the courtroom, potential jurors would be brought into the courtroom in small groups, for successive rounds of voir dire by the court based on party submissions. Strikes for cause would be handled at the bench at the end of each round, with preemptory strikes coming at the end of the day.

Everyone in the courtroom, including jurors, lawyers, and witnesses, were required to wear masks throughout the proceedings. Plastic barriers surrounded the witness box.

Everyone in the courtroom, including jurors, lawyers, and witnesses, were required to wear masks throughout the proceedings. Plastic barriers surrounded the witness box. The combination of masks and barriers—as well as a circular courtroom—made sound difficult. Microphones were mounted in the witness box, at the bench, and at counsel table (a table shared by both plaintiff’s counsel and defense counsel) and loudspeakers were pointed to the gallery, where six jurors and two alternates sat in socially distanced, assigned seats. Jurors regularly sent notes complaining when witnesses or lawyers sat too far from microphones, or spoke too quickly. One witness was given a paper mask after she was unable to be heard clearly through a thick cloth mask.

The Trial

Jury selection began on September 20, 2021 and took a full day. During a hearing the next morning, the Court heard argument on the motion to dismiss NACA and—following a demand for additional time to respond by counsel for Plaintiffs--adjourned the hearing for 24 hours and allowed a supplemental written response. After additional oral argument on Wednesday morning, Judge Avery granted the motion, deferred remaining evidentiary motions *in limine* for resolution when they arose during trial, and called in the jury for opening statements.

Counsel for Plaintiff then called a series of former NACA students—including Plaintiff’s daughter—and other community members as witnesses to testify to their positive impressions of the school and warm feelings towards Dr. Gray personally. Notably, none of the student witnesses had attended the NACA schools during the time period on which WBFF reported. Dr. Gray did not call any faculty or administrators from the school to testify.

Dr. Gray testified last, after which Defendants moved for a directed verdict. The court granted that motion in part, narrowing the case to the one challenged statement.

The second week of trial began with Mr. Papst’s testimony about his reporting. He was followed by former NACA teacher, a former principal of NACA II (who was later named Maryland’s principal of the year for her work in her subsequent role, and indeed [featured](#) on the *TODAY* show during the first day of trial) and a senior City Schools official who was closely involved in the recommendation to close the NACA schools. Defendants then unsuccessfully renewed their motion for directed verdict, the parties delivered closing arguments, and the jury was instructed and received the case on Wednesday, September 29.

The six-person jury proceeded to deliberate through Wednesday afternoon and all day on Thursday, with a steady stream of jury notes that on Thursday began to ask questions about hung juries. (Under Maryland law, the verdict must be unanimous unless both parties agree to a majority verdict.) At times, shouting and raised voices from the jury room could be heard in the courtroom, through multiple closed doors. While specific words could not be made out, it was clearly that jurors were engaged in a spirited discussion. The Court commented during one discussion of the response to a jury note: “I understand it’s hot in there.”

Deliberations on Friday morning became “confrontational,” and the Court called in a deputy and recalled the jury to instruct them. When asked if they were able to continue, one juror suggested a deadlock but the jury foreperson, after consulting the other four jurors, asked for deliberations to proceed. Shortly afterward, the jury unanimously determined that the one remaining challenged statement—the alleged implication that Dr. Gray failed to pay personal taxes—was not published with actual malice. The Court entered judgment for the defense.

Plaintiffs did not file either post-trial motions or notice an appeal.

Trial counsel for defendants were Chad R. Bowman of Ballard Spahr LLP and Christopher C. Jeffries and Amy E. Askew of Kramon & Graham, P.A. in Baltimore, supported by Maxwell S. Mishkin, Emmy Parsons, and trial paralegal Ryan Relyea of Ballard Spahr. Plaintiffs were represented by F. Joseph Gormley of FJGormley LLC.



BOARD OF DIRECTORS

Chair: Randy Shapiro

Jonathan Anshell, Adam Cannon, Lynn Carrillo, Carolyn Forrest,
Benjamin Glatstein, Ted Lazarus, David McCraw,
James McLaughlin, Regina Thomas

DCS BOARD OF DIRECTORS

President: Robin Luce Herrmann,
Rachel Matteo-Boehm,
Toby Butterfield, Brendan Healey, Robert Balin

STAFF

Executive Director: George Freeman
Deputy Directors: Dave Heller, Jeff Hermes
Staff Attorney: Michael Norwick
Production Manager: Jake Wunsch
Administrator: Elizabeth Zimmermann
Assistant Administrator: Jill Seiden