VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PATRICK

MURIEL TAMERA WALDRON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CL15000126-00
	)	
WILLIAM D. SROUFE,	)	
	)	
	)	
Defendant.	)	

MFC

REVISED JUDGMENT AND FINAL ORDER

AMENDED AS PER SECTION 8.01-426(B)

On March 27, 2017, came the parties and counsel and announced that they were ready for trial on pleadings heretofore filed.

Given the projected length of the trial, the Court and the parties agreed that it would be prudent to impanel an additional juror as an alternate so that the trial could go forward in the event a juror became unable to continue service. Whereupon came a jury panel of sixteen and after each side conducted voir dire and struck four jurors, the remaining eight were sworn to well and truly try the issues joined and render a true verdict according to the law and the evidence. Out of the hearing of the jury, the Court chose a juror by lot who was designated as the alternate juror. The Court and counsel agreed to keep this designation confidential until the close of evidence and final arguments.

Plaintiff presented her evidence that Defendant's statements 2, 6, and 7 in Exhibit 15 to the Fourth Amended Complaint were defamatory. Plaintiff declined to go forward on statements 1, 3, and 5 and therefore waived recovery for those statements. At the close of Plaintiff's evidence, Defendant moved to strike the evidence and enter summary judgment in his favor on the grounds that the statements were either true or opinion, and that the statements did not have

the requisite defamatory sting. After hearing argument of counsel, the Court sustained the motion and entered summary judgment on statements 2 and 6, and the trial went forward on statement 7.

Defendant presented his evidence and rested. Plaintiff submitted rebuttal evidence and rested. Defendant renewed his motion to strike and enter summary judgment as to statement 7 because it was either true or opinion, or it lacked defamatory sting. The Court denied the motion.

The Court dismissed the alternate juror.

Counsel for the parties presented closing arguments and the Court instructed the jury. The jury retired to deliberate and after some time returned and announced its verdict in favor of the Plaintiff in the amount of $500,000 and awarded no interest.

The Defendant moved to set aside the jury verdict on the ground that statement 7 was either true or opinion, or lacked defamatory sting and the Court instructed counsel for the Plaintiff and Defendant to prepare written briefs in support of their respective positions on the motion and submit them to the Court for consideration. After considering the briefs of the parties, the Court denied the motion to set aside the verdict for the reasons set forth in the Court's letter of June 6, 2017, as amended on August 2, 2017, which is attached hereto and incorporated herein by reference.

Accordingly, the Court hereby grants judgment to the Defendant on statements 1, 2, 3, 5, and 6, ~~And~~ 2 enters judgment in the amount of $500,000 in favor of the Plaintiff on statement 7.

MFR

It is further ORDERED that Plaintiff recover from the Defendant the sum of $500,000 with interest at the judgment rate in accord with Va. Code section 8.01-382 as well as Plaintiff's costs in her behalf expended in the amount of $344.

There appearing nothing further to do in this case, it is hereby ORDERED that the case be stricken from the docket of active cases in this Court.

The Clerk shall send a certified copy of this Order to counsel of record.

ENTER this 7th day of June, 2018.

Judge

We ask for this subject to the exceptions and objections stated at trial and in Exhibit 1, attached as part hereof:

Roger B. Willetts

Roger B. Willetts, Esq. (VSB #3863)
Edmunds & Willetts, P.C.
P.O. Box 1617
Waynesboro, VA 22980
Counsel for Plaintiff

Seen and objected to for the reasons stated at trial and in Exhibit 2 attached as part hereof:

Jim H. Guynn, Jr., Esq. (VSB #22299)
Guynn & Waddell, P.C.
415 S. College Avenue
Salem, VA 24153
Counsel for Defendant

IN TESTIMONY, that the foregoing is a true copy taken from the records of said Court.
I, Sherri M. Hazlewood, Clerk thereof set my hand and affix the seal of said Court.
This the 12th day of June, 2018
Morgan Booth Clerk
Circuit Court, County of Patrick, VA

Plaintiff's Exhibit 1

Plaintiff agrees with and asks for entry of the final order to the extent that the Court enters judgment favorable to her upon the jury's verdict, and to the extent that the Court makes factual findings and legal conclusions favorable to her based upon the evidence received at trial and consistent with other information and materials contained within the record of proceedings.

Plaintiff respectfully objects and excepts to: (1) the Court's granting Defendant's motion to strike a portion of Plaintiff's evidence and claims regarding statements made by Defendant, (2) certain statements and opinions expressed by the Court in its letter opinion incorporated in the final order in this case to the extent the Court's statements and opinions are based on information or materials outside of the record of proceedings, or otherwise are unfavorable to her, and,(3) for the reasons hereinafter set out:

1. Plaintiff excepts to the Court's opinion as expressed in footnote 7, pg. 8 for the following reasons:

A. The statement, tr. ex.24, is false because the IEP teams did understand and apply the VAAP criteria based on testimony of Defendant's expert, Plaintiff's expert, Plaintiff and Anita Epperly.

B. The one percent cap was not part of the VAAP assessment criteria nor was its application part of the IEP team's responsibility, exhibits 18 and 27, trial testimony of Defendant's expert, Anita Epperly, and Plaintiff. The IEP teams did not apply or otherwise consider any such cap. The IEP teams knew and correctly applied VAAP assessment criteria.

C. Testimony of Defendant and Ann Fulcher, that they did not know what criteria was used and applied by the Stuart Elementary School IEP teams nor did they feel students were improperly assessed.

D. Testimony of Defendant's expert describing the criteria in exhibit 10 & 11 and the information necessary to determine it was understood and applied appropriately.

E. Testimony of Defendant's Special Education Director and her letter, exhibit 9, subsequent testimony of Ann Fulcher, that she did not know the identity of IEP team leaders or members. Anita Epperly who had participated with IEP teams to assess and develop IEP's for the five students still at Stuart Elementary School on Defendant's caseload exhibit 21.

F. Exhibit 18 indicating number of VAAP referrals at Stuart Elementary School in past years and the inferences that there existed no relationship to 1% Cap.

G. Testimony of Defendant and Ann Fulcher that they did not know what actions the IEP teams had taken regarding the students on the caseload exhibit prepared by Ann Fulcher, exhibit 21 and made no investigation to determine who the IEP team members were at Stuart Elementary School or what they considered in making their assessment decisions on the caseload exhibit 21, prior to making the exhibit 24 to the Patrick County School Board.

2. Plaintiff objects and excepts to the Court's opinion in the last paragraph on page 8 of its letter opinion regarding the historic backdrop as not being part of the trial record, or otherwise part of the record of proceedings.

3. Plaintiff objects to the Courts opinion expressed on page 9 of its letter opinion the "VAAP theory is a inflammatory fiction." Without limitation, Plaintiff objects to that opinion based upon the following:

A. Expert for both parties acknowledges students benefit from Least Restrictive Environment as opposed to contained VAAP classrooms.

B. Failing SOL's is not qualifier for VAAP, exhibits 11, 18, 21, 19, 17.

C. Exhibit 17, 19, 18 and 27 make clear a small number of students can make a significant difference in school division AYP scores when moved from the SOL pool, where they fail, to the VAAP assessment where they can receive the highest possible grade as demonstrated in this case by exhibit 17 & 19.

D. Plaintiff did not argue the school division's accreditation was ultimately helped by the VAAP move, only that preliminary numbers gave the division "great gains", exhibit 33. Obviously after reassignment the grades were adjusted downward. The "VAAP for Glory" as labeled by the Court produced two results, both bad; first Defendant got a positive news release, exhibit 33, based on preliminary results, before reassignment, (which was not corrected after the grades were reassigned) and, second, students improperly moved to VAAP lost touch with their peers in the general education population, exhibit 11 and the testimony of Defendant's expert, John Eisenberg and Plaintiff's expert, Michelle Davis.

E. Plaintiff introduced affirmative evidence of the existence of what the Court characterizes as the "VAAP theory," or, "VAAP for Glory,"or, "VAAP for higher SOL scores," or, "the VAAP scheme."

4. Plaintiff objects to the Court's opinion as expressed on pg. 10 "VAAP for Glory" doesn't work, because the record of proceedings does <u>not</u> support the Court's opinion, and Plaintiff presented affirmative evidence of the existence of what the Court characterizes as "VAAP for Glory."

5. Plaintiff excepts to the Court's opinion in paragraph two (2) of the letter opinion pg. 10, the VAAP for higher SOL scores did not work for the following reasons:

A. Plaintiff did not allege the "VAAP for Glory" worked beyond a preliminary upward move of AYP scores for the Patrick County School Division.

B. Exhibit 27 by the VDOE states a small number of students VAAP'd can have a significant impact.

C. Plaintiff is not required to prove the scheme worked, she was, however, entitled to present evidence that it existed.

6. Plaintiff objects and excepts to the Court's conclusion Plaintiff was required to prove the VAAP scheme improved final scores. Testimony supports the existence of the scheme. For example, based upon preliminary scores which do boost AYP scores before reassignment, exhibit 17, 19, 27, trial testimony of Dee Owens indicating her AYP scores adjusted downward after reassignment exhibit 33, "Great gains" which was based upon preliminary scores.

7. Plaintiff objects and excepts to the Court's opinion in paragraph three (3) pg. 10, Plaintiff failed to prove : "VAAP for Glory" scheme worked based on research outside of record. Further, Plaintiff not required to prove the scheme worked.

8. Plaintiff objects and excepts to Court's opinion Waldron was defending "her way of assessing them". The record of proceedings does not support this opinion. The Court also appears to contradict that opinion based on paragraph 1 of pg. 2, and paragraph 3, page 10 of the Court's opinion.

9. Plaintiff objects to the Court's conclusion the statement, exhibit 24, was opinion, without limitation, for the following reasons:

A. Anita Epperly testified the Stuart Elementary School IEP teams understood the VAAP criteria exhibit 10 & 11. The 1% CAP was not part of the VAAP criteria nor did it involve IEP teams, exhibit 27. Defendant and Ann Fulcher testified that she and Sroufe did not know what criteria were used.

B. Anita Epperly testified the Stuart Elementary School IEP teams applied the VAAP assessment criteria correctly. This assertion of fact was not disputed by Defendant or Ann Fulcher. Plaintiff's expert testified, after a thorough review of the students' records and other pertinent information, the IEP's used the proper criteria and applied it correctly. Further Plaintiff testified she and Anita Epperly audited the files of each student on the caseload, exhibit 21 and determined the correct criteria was used and it was applied correctly. More important was the fact the criteria had not changed over the past 9 years, a fact not disputed by the Defendant.

C. Anita Epperly testified the individual student IEP teams agreed, without dissent, with the SOL as a proper assessment based on the long established criteria for each individual student identified by Defendants special education director, exhibit 21.

D. The Court incorrectly charges Plaintiff with arbitrarily narrowing the statement to focus on a subset of students. The facts in evidence are exhibit 21 prepared by Defendant's special education director identifies a list of the "students on the caseload in question....". This list was given to the Defendant before he went to the school board. The Defendant testified he made no further investigation or inquiry before going to the school board.

E. Defendant concedes he made no inquiry or policy change until after Defendant stated to the Patrick County School Board the IEP teams did not understand the VAAP criteria. The jury obviously concluded Plaintiff did not fail and the Defendant was negligent in his investigation or, in fact, Defendant did no investigation. Plaintiff could not anticipate any new Sroufe administration policy in April of 2014 before its introduction in April of 2015. The Ann Fulcher letter uses "moving forward"

while the Defendant charges pre existing failure with no investigation or support from Ann Fulcher for IEP actions the previous year.

F. Exhibit 24, 9 and 21 are the basis for Defendant's charge made with no information or investigation beyond the caseload students IQ.

G. The, exhibit 24, statement is not about the one percent cap. No evidence exists to support any conclusion that Defendant's statement referred to any such cap; the Defendant's contrary position is a post-event contrived fiction.

10. Plaintiff objects and excepts to the Court's opinion the statement exhibit 24 lacks the required "sting" for the following reasons:

A. The Court ruled this statement, if false, was defamatory per se. It was obviously damaging to her reputation with the Patrick County School Board and relied in part, by them to accept Defendant's recommendation she be demoted after twenty six years as an educator. The other points in the letter as described by the Court were "window dressing" letter, pg. 3, for a hidden agenda, letter pg. 6, "seven bullet point failures cobbled together in the discharge letter containing minor vocational shortcomings", letter pg. 8, (emphasis added). The VAAP criteria application is the job of the IEP team. The criteria is spelled out in exhibits 10 & 11.

B. The statement charges Plaintiff with responsibility for wrongful assessment of special education, intellectually disabled children under her charge.

C. Both experts testified wrong or inappropriate assessments could be damaging to intellectually disabled students.

D. The Patrick County School Board is responsible for the students, particularly intellectually disabled students. The charge a career educator has failed to do her job causing harm to special education students resulted in her demotion immediate removal carries a "sting".

E. Per se is equivalent to "sting" in the context of this case.

F. The Court's opinion the charge of numerical manipulation by the Patrick County School Board is "horrible". The removal and demotion of Plaintiff as a result of a false statement carries the requisite "sting".

G. Plaintiff does not concede that Virginia law requires that a defamatory per se statement carry a "sting," however, to the extent the law may so require, the Defendant's statement about Plaintiff carried the requisite level of "sting."

11. Plaintiff objects and excepts to the Court's opinion (pg. 15), to the effect that the Defendant's statement is not defamatory for the reasons set forth herein, and, as determined by the Jury based on the evidence at trial.

12. Plaintiff excepts and objects to the Court's characterization of the VAAP theory as unfair and unconscionable as unsupported by the record of proceedings, and, without limitation, based upon the following:

A. Numerical manipulation exists. For example, Exhibits 17 and 19 indicate clearly the benefit to a preliminary AYP score of numerical manipulation prior to reassignment of scores. Exhibit 33 based upon numerical manipulated VAAP'd students allows "great gains" headline as a direct result of the numeric manipulation. The Defendant did not publish a follow up article about AYP scores after reassignment. The Jury was entitled to draw their own conclusions from the evidence presented to them on this malice and motive-related matter.

B. Plaintiff excepts and objects to the Court's statement both parties made genuine attempts to settle this matter. Prior to the trial the Court asks each party if they would be interested in mediation. On each occasion, Plaintiff by counsel expressed a willingness to participate. The Defendant, on each occasion declined. After the Jury verdict, Plaintiff, again, offered to participate in settlement conference with the chief judge. After the preliminary meeting, Defendant declined further efforts.

13. Plaintiff excepts and objects to the Courts note 19, pg. 15 for the following reasons:

A. Plaintiff presented three statements to the Jury. The two statements #2 and #6 consumed two thirds of the three day trial and were incorrectly struck by the Court at the close of Plaintiff's case.

Respectfully Submitted,

Muriel T. Waldron

By: Roger B. Willetts

Roger B. Willetts
Counsel

Exhibit 2

Defendant's supplemental objections to final order:

1. Defendant objects to the Court's denial of Defendant's motion to strike Plaintiff's evidence and enter summary judgment made at the close of Plaintiff's evidence and all of the evidence and motion to set aside the verdict made post trial on the grounds that the alleged defamatory statements were either true, opinion, or did not contain the requisite sting to constitute defamation.

2. Defendant objects to the Court's evidentiary rulings at trial allowing admission of evidence of Plaintiff's removal as principal of Stuart Elementary School because the evidence was irrelevant and its prejudicial effect outweighed its probative value as stated by counsel at trial.

3. Defendant objects to the Court's ruling denying his motion to set aside the verdict because the Court based its ruling on its belief that Defendant was the appropriate party to appeal this case because his employer (Patrick County School Board), which is not a party to this case, refused to settle the case.

Jim H. Guynn, Jr.
Counsel for Defendant William D. Sroufe

Twenty-first Judicial Circuit of Virginia

Henry County • Patrick County • City of Martinsville

June 6, 2017

(AMENDED August 2, 2107)

Roger B. Willets
Attorney at Law
110 N. Wayne Avenue
Waynesboro, VA 22980

Jim H. Guynn, Jr.
Guynn & Waddell, P.C.
415 S. College Avenue
Salem, Virginia 24153

RE: Muriel Tamera Waldron v. William D. Sroufe
Case #CL15-126

Mr. Willets and Mr. Guynn:

In the movie *Network,* Peter Finch's character, Howard Beale, famously encourages his listeners to stand at their windows and shout: "I'm as mad as heck, and I'm not going to take this anymore."[1] In his *Nicomachean Ethics*, Aristotle writes: "Anybody can become angry. That is easy, but to be angry with the right person and to the right degree and at the right time and for the right purpose, and in the right way—that is not within everybody's power and is not easy." This case, *Waldron v. Sroufe*, illustrates how thoroughly difficult it is to reconcile these two sentiments.

[1] Because this is a court opinion, I have eliminated the mild profanity in the actual quote.

There is very little dispute about the legal framework that applies to this matter. [2] The lawyers and I agree that the statements made by Superintendent Sroufe to his school board regarding Ms. Waldron, a school principal under his direct supervision, are subject to a qualified privilege.[3] *Larimore v. Blaylock*, 259 Va. 568 at 572 (2000). We agree that in order to prevail in this matter, the plaintiff has to demonstrate that the defendant's statements were false, and further, prove by clear and convincing evidence that the statements were made with malice. *Id.* at *576.* We also agree, and instructed the jury without objection, that Dr. Sroufe, as superintendent, had the legal right to remove Ms. Waldron as principal of Stuart Elementary School and reassign her to another job. Section 22.1-297, 1950 Code of Virginia, as amended.

Though it is a backward approach from a jurisprudential perspective, I believe that it is enlightening to first examine the question of malice in this case, inasmuch as—in my estimation—it colors and informs the entirety of the plaintiff's half-million-dollar verdict. Without question, an objective juror could find—and in this case, obviously did find—malice on the part of the defendant. The manner in which Ms. Waldron was suddenly and dramatically removed from her job for failures that are at best hypertechnical and mundane clearly provides the evidentiary predicate for this element of her claim.

MALICE

As a threshold matter, it is important to note that Ms. Waldron was fresh off a positive December performance evaluation, praising her "great work" as principal of Stuart Elementary School when she was removed from her position in the spring of 2015. (Transcript p. 378) The defendant was aware of this positive report. (Transcript p. 617) Yet, at the defendant's direction, Ms. Waldron was given a variation of a perp-walk from the school building at noon on Friday, April 24 for *de minimis* vocational failures, none of which were in the least time-sensitive. (Transcript pp. 615-617) Ironically, the VAAP failure at the heart of this case existed primarily because of an erroneously established policy dictated to Ms. Waldron by a former special education director and the school system itself. This misunderstanding of VAAP criteria persisted as correct policy for years and in fact until just months before this forced reassignment. (Transcript p. 511) This removal as principal was done in stark violation of the school

[2] The plaintiff did not object to the jury instructions. The defendant's objections were essentially pro forma and were intended to preserve motion to strike arguments.

[3] While there was no request to so do, in retrospect, I was perhaps remiss in not instructing the jury as to exactly what "privilege" means in the context of this case. The use of the term, without guidance that it means "legally protected," might well cause a layperson to think that he or she is being instructed that the defendant is for some reason better than or superior to the plaintiff, a misunderstanding that would be inflammatory given the David-versus-Goliath atmospherics in this trial.

system's own administrative guidelines—Ms. Waldron was entitled to be given notice and placed on a corrective plan, but the defendant completely ignored this requirement.[4] (Transcript pp.113-114; 616)

Additionally, Dr. Sroufe was needlessly overbearing and intimidating during the conversation communicating Ms. Waldron's removal. (Transcript pp. 116; 554-555) In fact, when quizzed by the school's resource officer—a police officer—about Ms. Waldron's high-profile departure, Dr. Sroufe admitted: "If I had it to do over, I would do it different." (Transcript p. 185) Moreover, it is uncontradicted that Dr. Sroufe approached the school board with his complaints of poor performance and plans to relocate Ms. Waldron before he actually delivered a window-dressing letter detailing her alleged workplace failures and transfer to her. (Transcript pp. 70-71; 78; 134)

These factors are certainly adequate for a jury to find malice. That said, there were three other pieces of evidence that are perhaps even more persuasive in terms of establishing spite, bad faith and ill will. First, Ms. Waldron, a career educator with an excellent performance review history, was transferred from the largest, flagship elementary school in the county to the Quest School, an alternative program which is located behind chain-link fence topped with barbed wire and serves four students—all suspended from traditional school placement—who regularly questioned Ms. Waldron as to why she—same as they—was exiled and being punished. (Transcript p. 124) The students even shared a bathroom with Ms. Waldron at the school. (Transcript pp. 622-623) Off the record and outside of the jury's hearing, I remarked to both lawyers that evidently the Russian Front, Red Onion and Elba were unavailable as transfer options.

Still, most damaging, in my opinion, was the so-called "winkie" testimony. This puzzling bit of evidence and the explanations—or non-explanations—from the stand had the feel of an episode of *Survivor* crossed with a Carl Hiaasen novel, a story of various plotting factions devising ways to quietly sabotage each other. As trial judges, we often wonder how testimony and witness demeanor will translate to a black-and-white page, and we worry because a juror's scowl or a headshake doesn't appear in a transcript. Even in a dry, typewritten format, however, this trial exchange between Dr. Cyndi Williams, the county's assistant superintendent for instruction, and plaintiff's counsel certainly comes off as evasive, elliptical and suggestive of a hidden agenda on the part of Dr. Sroufe:

Q. So did you send Dr. Sroufe a copy of that note, of that email? Does it show a copy to him?

A. Yes.

Q. And then do you remember getting this reply from Dr. Sroufe at 9:42?

A. Uh-hmm, that's what it has right here in the email. That's on the email.

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[4] There was never any explanation at trial as to why the defendant felt this relocation was so absolutely urgent, nor was there any explanation as to why Ms. Waldron was denied the job protections and remedial opportunity the school board had mandated for principal improvement.

Q. It is on the email?

A. Uh-hmm.

Q. Now, what does that wink mean? Is that the way that you and Dr. Sroufe communicate or what's the meaning? How did you take it?

A. I put smiley faces on lots of my emails.

Q. That's not a smiley face; that's a wink.

A. Well . . .

Q. Is there a difference in your view?

A. Well, I guess the difference between a colon and a semicolon.

Q. I'm talking about a wink. Isn't that the symbol for a wink?

A. Yes, that could be.

Q. Could be. What did you think it was?

A. I really didn't pay any attention to it because we put smiley faces in our emails.

Q. You do?

A. Uh-hmm.

Q. So he - - he replies one minute after you send it out with a wink?

A. Okay.

Q. And then your reply to the wink is: "Uhm, I thought the email was appropriate. Was it okay with you?"

A. Uh-hmm.

Q. What was it about that email that you felt like you needed to get his response?

A. I just reminded them, I said, "I look forward to seeing you tomorrow. Bring your laptop. Thanks again for working together. I'll be in there to learn with your teachers." That would have been the part of the facilitator program - -

Q. I understood what the program is. My question is what about your email did you want to know was

appropriate with him if you hadn't talked about it before?

A. Because sometimes we follow up with our team. You can send emails that someone might interpret differently.

Q. What would you interpret differently about your email?

A. I don't know. I just said, "Thanks again for working together." The goal was to bring the principals and teachers together.

Q. So you thought that was hard for your people, maybe they could misunderstand that?

A. Well, I also said I know it's a sacrifice because we're pulling them out of schools, so I hope that was okay.

Q. Okay. Now, and what was his reply? Is this his reply here?

A. Yes, it was. It was, but there was an underlying message.

Q. What was the underlying message?

A. There was no underlying message. It was an expectation.

Q. But what is he talking about when he says, "Yes, it was, there was an underlying message?"

A. I guess you would have to ask him.

Q. Did you ask him?

A. No.

Q. Why didn't you follow-up and say, "What are you talking about?"

A. I didn't follow-up.

Q. I mean, but you cared enough to send it to him to see what he thought, you get the wink back, and you say, "Uhm, I thought it was okay. What do you think?" And then you follow-up and say, "What do you think?" And he says, "There was an underlying message at," weren't you curious as to what the message was?

A. No, the email showed a professional expectation for - -

Q. But was a wink part of a professional expectation?

A. No.

Q. Were you not interested in what Dr. Sroufe thought the underlying message was?

A. No, I didn't ask him.

Q. I mean, you weren't interested enough to ask him?

A. No.

(Transcript pp. 387-391)

E-winks and "underlying messages," when the e-mail in question was sent at 9:42 PM on the night before the plaintiff was being asked to attend a meeting the next morning, certainly reinforce the idea that the defendant and his immediate staff are not being transparent and dealing in good faith.[5] This sense of a hidden agenda is reinforced by trial testimony that is evasive and then completely unhelpful.[6] The "winkie" situation worsened for the defendant when he, too, claimed, implausibly, that he had "no idea" what the underlying message was or why he was E-winking at Dr. Williams's message and her management of this meeting. (Transcript p. 620)

Finally, the appearance that Ms. Waldron's removal was contrived and a rushed, put-up job was further reinforced by the outright impeachment of special education director Ann Fulcher. Her relevant testimony appears below:

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[5] The plaintiff's failure to attend this meeting and/or send a representative was cited by the defendant as a reason for her removal as principal and was one of the three defamation statements initially at issue before the jury.

[6] This halting and discursive segment of testimony stood out because Dr. Williams was a bright, articulate, composed, impressive and knowledgeable witness in all other areas of her trial testimony.

BY MR. WILLETS:

Q. Is that right? Ms. Fulcher, the letter [which admonished Ms. Waldron about the one-percent VAAP cap] was written on the 10th, is that correct?

A. Yes.

Q. And did Dr. Sroufe direct you to write that letter?

A. No.

Q. Are you sure?

A. I'm sure.

Q. Okay. If he says he directed you to write it.

A. I don't recall him directing me to write the letter.

Q. You don't, okay. Okay. And did he proof the letter after you wrote it?

A. I don't recall taking it to him. That doesn't mean I didn't.

Q. Okay. But did you have any - - my question is, in that timeframe, before you sent the letter out, did you have any discussion about, well, the school board said we could remove Ms. Waldron?

A. I didn't. I'm not a part of that discussion. I was not.

(Transcript pp. 519-520)

When questioned on this topic, Dr. Sroufe flatly contradicted his own witness, which left the impression that there was a toxic combination of dishonest testimony, manipulation of Ms. Waldron's evaluation by Ms. Fulcher, and an effort to conceal the superintendent's involvement:

Q. Okay. But fast forward, you don't tell Ms. Waldron, you direct Fulcher to write a letter to Ms. Waldron on the 10th of April?

A. I don't believe I directed Ms. Fulcher to write a letter.

Q. You said so in your deposition.

A. Okay. If you say I did.

Q. I'll get it.

A. I believe you.

Q. And I asked you why you directed her, you know, what was your purpose, and you said you wanted documentation.

A. Well, we document everything when we speak to people.

Q. I understand that. But your interest and focus was not on getting to the bottom of the issue, it was documenting something to protect you going forward from the school board, you had already been to the school board, you already made a decision?

(Transcript pp. 576-577)

Later in his testimony, Dr. Sroufe read aloud his admission that—despite Ms. Fulcher's emphatic denial—he was behind her sending this April 10 letter to Ms. Waldron:[7]

Q. Okay. And what do you say here in the first paragraph?

A. "I called a four p.m. meeting with Ms. Waldron to discuss a number of issues. The first issue involved the director of special ed, Ms. Ann Fulcher. Ms. Fulcher was directed by me to send a letter." So I did say that.

(Transcript p. 590)

By the end of three days of testimony and evidence, this jury did not believe—nor did I—that Principal Waldron was removed from her position because of her competence, her leadership, her integrity, her overall knowledge of her vocational duties or her commitment to her children and their well-being. Nor could any objective observer truly believe that she was dismissed owing to the seven bullet point "failures" cobbled together in a discharge letter that surprised her on a Friday afternoon.

In sum, much like Howard Beale, this jury had plenty to be as mad as heck about. They were presented with an experienced educator, who only four months before her removal from a leadership position was given high praise for her job performance. They saw her removed—blindsided—in an unnecessarily dramatic, embarrassing and rushed fashion. Her hasty removal violated the school's own employee guidelines and denied her an administratively mandated improvement plan for no reason. She was effectively transferred and compromised by the defendant speaking to his board weeks before he gave her a *pro forma* transfer letter detailing her several minor vocational shortcomings. Many of her failings were routine, often subjectively rooted, highly technical, and disputed, and her swift, take-no-prisoners dismissal was clearly not proportionate to her missing a meeting to tend to more pressing business or failing to budge from her understanding of VAAP criteria, criteria the county's expert had established and mandated for years and communicated to her. The jury heard a police officer state that the defendant admitted mishandling Ms. Waldron's transfer, and Dr. Sroufe never challenged this testimony. She was fired by a superior who intentionally arranged chairs so as to sit knee to knee with her in an awkward and deliberately intimidating exchange. She was exiled to a dreadful, punitive position where she was surrounded by barbed wire. The defendant was exposed discussing "underlying messages" and E-winking about it, and the explanations for these e-mails were unconvincing and discursive. The defendant and *his own witness* were in complete conflict regarding a critical point, and he was impeached or could not "remember" or "recall" repeatedly during his testimony. (Transcript pp. 563, 564, 565, 567, 568, 569, 575, 576, 579, 583, 584, 588, 590, 598, 613, 616) A $500,000 verdict in this small, rural county speaks volumes about how dismayed the jury was upon hearing this evidence and discovering Ms. Waldron's ham-fisted treatment.

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[7] Ironically, as will be discussed later, the crux of the letter was important and accurate: Stuart Elementary was misapplying the VAAP criteria and did not correctly understand the one-percent cap.

Finally, before leaving this topic, and though it is not a part of this record and will not be considered by the Supreme Court, it is also important to highlight some historical backdrop. This case was heard after years of persistent turmoil in the Patrick County public school system, and it came not too far behind other court actions related to the school system, administrative rebukes by the commonwealth to the school system for educational failures, and founded claims of misconduct on the part of the former superintendent. This past dysfunction has been much in the media and was much scrutinized and debated in the community. There was no *voir dire* questioning of jurors by either side, but it is difficult to imagine that the seven very capable citizens who heard this matter were not aware of this prior upheaval, especially when, without objection, the jurors heard a state expert testify in this trial that the commonwealth had, in the past, investigated Patrick County's special education program and found it was not applying criteria correctly. (Eisenberg transcript p. 59)

THE VAAP THEORY

Given that Ms. Waldron and her attorney[8] had the factual goods to show her mistreatment by the defendant, they still needed to offer some trial explanation as to why this had happened, why there was some animus or ill will toward the plaintiff. To fill in this blank, Mr. Willets artfully introduced the VAAP theory of the case, and he ably saturated every moment of the trial with this notion, starting with his opening statement. (See, e.g., transcript pp. 44-46; 313-315) Again and again, he spun the argument that innocent and undeserving Patrick County children were being improperly dumped into a Virginia Alternative Assessment Program, the VAAP—and ruined for life—in an effort to boost the county's SOL scores and put a shine on the superintendent's performance. (Transcript p. 86) Stated differently, according to the plaintiff, under the defendant's watch, and on his order, unfortunate kids were being improperly routed into a program that would end any chance for meaningful academic progress so that the heartless Dr. William D. Sroufe could take credit for the improved numbers and crow about it to his board and the public. Ms. Waldron, however, so the argument went, was a lone champion of these special-needs students, and she refused to kowtow to the superintendent and fought the conspiracy to ruin these youngsters, "kiddos" as she called them. Because of this vocal and courageous stand, she, according to her lawyer's argument, was removed from her job. She was, he posited, fired for doing right by her kids and speaking truth to power.

This theory of the case, while catnip to a jury already incensed by the plaintiff's ugly removal from her post at Stuart Elementary, is essentially no more than a clever, inflammatory fiction. The record is devoid of any actual evidence that these intellectually disabled[9] students who had already failed the SOL test three times, in the third, fourth and fifth grades, had any realistic chance of ever passing the test, even with "accommodations." (Transcript p. 61) In fact, the plaintiff's own Exhibit 19 reveals that two of five Stuart special education students from an "exceptional" group highlighted by the plaintiff were doing worse from year to year and were not even scoring three hundred, much less the four hundred needed to pass, that one child stayed the same from year to year, consistently a hundred points away from a minimum passing score, that another child was in decline and mired in the mid-to-low three-

[8] I only learned that Mr. Willets is Ms. Waldron's father on the first day of trial when he announced this to the jury.

[9] Dr. Sroufe volunteered that these students were formerly labeled as "mentally retarded." (Transcript pp. 548-549.)

hundreds, and that the very best student had a slight uptick and remained far under the pass threshold. Indeed, Ms. Waldron conceded these children were failing the test and testing in "the three-hundred range."[10] (Transcript p. 62) They were *not even taught* the subject matter that is contained on the SOL tests, rendering their testing prospects somewhat akin to mine if I sat today for board certification in neurosurgery. (Transcript p. 500) The educator in charge of special education services for the entire commonwealth testified that it would be "probably unlikely" that these students would ever pass the SOL tests and earn a standard diploma. (Eisenberg transcript p. 24)

Moreover, as the experts and veteran educators testified all through the trial, evaluating the children who are on the margin between VAAP and SOL testing is subjective in some areas and often as much art as science. The plaintiff herself conceded that reasonable people can disagree on the need for a VAAP. (Transcript p. 150) Additionally, it was established at trial that no school's accreditation was improved by children being moved to VAAP, and no school was moved up on the state-wide ranking scale because of VAAP decisions. (Transcript pp. 407-409)

Assuming arguendo that such a plan really did exist[11] and was formulated by the defendant, he—and any school administrator with even a casual knowledge of how SOL pass rates are calculated—would surely understand that there is a limit as to how many students can be VAAPed and not count as a failed SOL. (Transcript p. 552; plaintiff's exhibit 18) In fact, it is apparent that the superintendent and his staff would know, based on enrollment figures, exactly how many VAAP students could be held out of the SOL calculation, and there is no numerical or performance incentive whatsoever to route more than that number into the VAAP. The evidence at trial indicated that 16 Stuart students were VAAPed [12] the year after Ms. Waldron's departure, an increase from six the year before, hardly a floodgate number, and that the district-wide number rose to twenty-seven, *but only 15 of those students can be removed from the SOL calculus.* (Transcript pp. 403; 512; 528; 606-607) Succinctly put, the "VAAP for Glory" scheme doesn't work because the state anticipated just this kind of numerical manipulation and imposed a one-percent cap on SOL opt-outs. [13] This would be quite the harebrained conspiracy by the defendant Sroufe—adding a handful of kids to VAAP and removing them from SOL numbers changed nothing for him or the district, nor could it be expected to given the safeguards the state has in place.

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[10] This isn't altogether accurate. Two children were under three hundred, one was right at three hundred, and two were in the lower three-hundreds. Perhaps the five scores combined might *average* three hundred.

[11] The defendant denied such a plan existed. (Transcript p. 552) Dr. Williams denied such a plan existed. (Transcript p. 407) Ann Fulcher denied such a plan existed. (Transcript p. 486) The only hint of such a plan came from Mr. Willets's sleight of hand with the numbers above and a disputed claim by Dr. Karen Wood that she heard Williams and Fulcher—not the defendant—discussing "looking at the VAAP" to get scores "where they need to be." (Transcript p. 637) However, as discussed above, they could look at VAAP scores until the cows came home, but were strictly limited in terms of how much VAAPing could impact overall SOLs.

[12] Not surprisingly, the number of VAAP students also rose after Ms. Waldron's departure because she—and the entire system—had been misapplying the one-percent cap for many years. (Transcript p. 489)

[13] As Dr. Williams noted in her testimony: "Just because you have an increase in VAAPs doesn't mean that it's going to raise your SOL pass rates." (Transcript p.396)

Also, if there were some sinister effort to improperly direct students into VAAP status so as to eliminate their numbers from SOL scores, the defendant and his co-conspirators were doing a darn poor job of execution. Smaller districts such as Patrick County are eligible to apply for an exemption to the one-percent cap—it is telling that Patrick did not do so, did not ask for the cap to be lifted so as to perhaps VAAP additional children. (Transcript p. 532)

Still, the most compelling proof that the VAAP scheme is smoke and mirrors comes from *the evidence we did not hear.* In a trial awash with charts, numbers and enlarged exhibits, one critical fact was never proven by the thoroughly prepared plaintiff: There was never any evidence that this small increase in VAAPing actually improved final SOL scores. The jury saw all grades of charts and graphs and heard plenty of innuendo about VAAPing for higher SOL results, but the record is absolutely empty when it comes to addressing and proving this particular allegation. The Supreme Court's language in *Health Insurance Corporation v. Newcomb*, 197 Va. 836 at 842 (1956) seems instructive here: "If a party to an action has available competent proof to establish a fact . . . material to [her] success and fails to produce it, the legal presumption is that if produced the proof would not sustain [her] claim for relief."

Indeed, the Virginia Department of Education data confirm the inference that the plaintiff didn't tackle this important issue because the truth and hard numbers are not helpful to her theory of the case.[14] Ironically, Patrick County's overall SOL scores improved much more—by 27 points— from 2013-2014 to 2014-2015, *id est*, before the alleged improper VAAPing, than they did following the increased VAAping in the period from 2014-2015 to 2015-2016, when they increased by only 12 points. One testing area stayed exactly the same pre- and post increased VAAPing. On a micro-level, Ms. Waldron's former school, Stuart Elementary, saw a dramatic rise in science scores post increased VAAPing, but suffered *declines* in other subjects following the additional VAAPs, including an eleven point fall in history and social studies.

Lastly, the event chronology and the exchanges between Ms. Waldron, Dr. Sroufe and the special education director, Ann Fulcher, prove that the issue of VAAPing children was from the outset a technical policy dispute born of Ms. Waldron's clinging to the rule she had been erroneously given years before. (Transcript pp. 486; 511; defendant's exhibit 4) While the evidence revealed that Ms. Waldron was an engaged and committed principal, it's not as if, prior to her removal, Ms. Waldron was forced to stand in front of a classroom door and beat back the invaders from the administration who wanted to drag out kids and steal their educations. Quite the opposite, the VAAP issue was a proxy battle for a bitter personal feud between the plaintiff and Dr. Sroufe, Dr. Williams and Ms. Fulcher. Ms. Waldron was not so much defending her students as she was defending *her way* of assessing them. (Transcript pp. 114-115)

THE DEFENDANT'S LEGAL ARGUMENT REGARDING MALICE

[14] Again, I realize that my research and this score information is not a part of the record proper and will not be considered by our Supreme Court, though the *inference* one can draw from this lack of evidence is properly taken into account. However, given that Ms. Waldron has leveled such a horrible charge against the school system and the defendant, and in light of the keen community interest in this matter, I feel constrained to include these scores.

The defendant's persistent objection throughout this trial, and an objection which touches on most of the malice evidence, can be distilled as follows: Because the defendant had a statutory right to remove and transfer the plaintiff, nothing that transpired during or is connected to that legal removal can be used to demonstrate malice in the case at bar. (Transcript pp. 100-101; 103-107) As Mr. Guynn noted: "If I am exercising a right that I legally have, it can never be malicious." (Transcript p. 106)

The illogic of this position is highlighted by the transcript exchanges in the pages cited above. Under this theory, Dr. Sroufe or any defendant with a statutory transfer power or a *Bowman* discharge power could curse, belittle, racially slur and/or physically threaten an employee, and that conduct would be shielded from use in a subsequent action. Under this defense, Dr. Sroufe could have confessed that he was transferring the plaintiff because he hated her personally, or because she refused to wash his car on company time, or he could have spit on her, and none of this conduct would be available as evidence in subsequent, freestanding actions.

This isn't the law in Virginia. "Every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue, is relevant, and if otherwise admissible, should be admitted. Evidence that is relevant and admissible for one purpose, but not for another, even though it may have some incidental prejudicial aspect to it, should be admitted together with a limiting or cautionary instruction to the jury." *Jennings v. Commonwealth,* 20 Va. App. 9 at 17-18 (1995); *The Law of Evidence in Virginia, Seventh Edition,* Friend and Sinclair, "Relevance and Admissibility," Section 6-2[h], p.350. In this case, motive and animus evidence that was not relevant or admissible in an employment context—Dr. Sroufe could legally transfer Ms. Waldron even if he held bad faith motives—was nevertheless probative and relevant as to the question of his attitude toward her and whether he had malice when he offered his comments to the board. And, in accord with the law as stated above, the jury was given a clarifying instruction on this subject.

THE TRUTH OF THE STATEMENT

While the plaintiff's case benefits from an abundance of malice evidence, it suffers—and ultimately fails—because of the legal requirement that the statement at issue be proven demonstrably false by the greater weight of the evidence.

The statement before the jury in this case fails to be actionable for three reasons. First, according to the plaintiff's own evidence, the statement at issue in this case is simply opinion. Statements are only actionable "if they have a provably false factual connotation and thus are capable of being proven true or false." *Cashion v. Smith,* 286 Va. 327 at 336 (2013). At first blush, and as I initially ruled, it would seem that the statement in this case is either true or false. Dr. Sroufe said of Ms. Waldron: "You failed to ensure that IEP teams understand the VAAP participation criteria and apply them when considering students with disabilities for the VAAP. Your actions will result in students being required to take SOL assessments who, under a correct interpretation of the criteria, should not have been required to do so." Yet, the plaintiff herself testified as follows:[15]

[15] Despite passing the bar in 1984, I'll be the first to concede that I do not understand all the nuances of *Massie v. Firmstone,* but these clear, unequivocal statements, made by a party/witness with first-hand knowledge of and

Q. Well, the children that were raised as a question by Ms. Fulcher did not have the Appendix D filled out in their IEP files, isn't that true?

A. That's correct.

Q. And wouldn't you agree that those children were close calls on whether or not they, if the VAAP applied to them?

A. I do not agree with that whatsoever.

Q. And would anyone who held that position be wrong in your eyes?

A. Not necessarily. I mean, ***opinions differ***.

Q. Isn't that one of the things about VAAP that makes it sometimes difficult, that reasonable people can disagree over whether or not it applies to a particular student?

A. ***Reasonable people can disagree***.

(Transcript p.150, emphasis added.)

Later in her testimony, Ms. Waldron repeats and admits again—after some hedging and reluctance—that components of the VAAP criteria are subjective and that reasonable people can reach different conclusions as to whether a child should be VAAPed:

Q. But they are still using the same state criteria that they've used all along?

A. They are using the – they are not following the state criteria.

Q. Okay. What are they not following in the state criteria?

A. They are not following – they are answering to No. 2 yes, these students have a significant cognitive disability.

Q. Isn't that something that reasonable people can disagree on?

A. That's changing their answer due to outside pressure.

Q. That wasn't my question again. My question was isn't that something that reasonable people can disagree on?

A. It's possible.

(Transcript p. 162)

After receiving three days of testimony, it's apparent that significant subjectivity and myriad ad hoc considerations go into every VAAP evaluation. Dr. John M. Eisenberg, the assistant superintendent for special education and student services at the Virginia Department of Education, the expert who actually

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expertise in the subject matter, certainly seem to fit within the ambit of the case's "binding" doctrine. That said, whether or not the statements are binding, they are relevant, compelling and unchallenged evidence.

helped write the VAAP participation criteria (Eisenberg transcript p. 11) testified—without impeachment or challenge—that "there always is" subjectivity involved in VAAP assessments and the various evaluation components that go into the decisions. (*Id.* at 20) He added: "No one person can make the determination." (*Id.*) And, echoing Ms. Waldron, he was emphatic "that people of good faith and reasonable folks can disagree over whether or not a VAAP is appropriate for a student." (*Id.* at 22)

Mr. Willets himself referred to there being a "gray area" in these evaluations (Transcript pp. 160; 517), and the plaintiff's very accomplished expert, Michelle Davis, made it clear that IQ numbers and SOL scores—in other words, demonstrable facts—do not control in VAAP assessments, but instead, the ultimate decisions are subjective and opinion-driven and based on fluid concepts such as "adaptive skills" and "learner characteristics" so as to gain a sense of the "whole child." (Transcript pp. 316; 325-326) In sum, while this statement may appear as if it can be definitively pinned down as to its truth, every witness, including the plaintiff, testified that VAAP assessments are always subjective, always include the evaluators' perspectives and are never based strictly on hard data and test scores. Legally speaking, Dr. Sroufe's statement is an opinion and not actionable. *Chaves v. Johnson*, 230 Va. 112 at 119 (1985).[16]

Assuming arguendo that the statement is not an opinion and is actionable, it is, literally and on its face, completely true as to one of the factually verifiable components of VAAP criteria. Though she was following administration guidance for many years, Ms. Waldron misunderstood the one-percent VAAP criteria.[17] (Transcript pp. 114-115; pp. 148-149) Her own witness, Anita Epperly, admitted that she, too, as the special education teacher under Ms. Waldron's direction and control and a Stuart Elementary IEP team member, misunderstood the one-percent cap. This exchange is fatal to the plaintiff's case: [18]

A. That it wasn't - - that's not my job, though. I didn't misunderstand my job.

Q. I didn't say it was your job. I asked you did you have a misunderstanding about the one-percent cap?

A. About the one percent I did.

Q. Okay. And that's the criteria for VAAP, isn't it?

A. Right, and I - -

(Transcript p. 267)

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[16] In her brief, the plaintiff devotes several pages to the role of the jury as fact-finder. However, as *Chaves* holds: "Whether an alleged libelous statement is one of fact or opinion, it is for the court, not the jury, to decide as a matter of law." *Id.*

[17] It is important to note that while Ms. Waldron was blameless as to this misunderstanding for a number of years 1) it is nevertheless true that she didn't apply this criterion correctly, and 2) when given the chance to correct her erroneous interpretation, she resisted. (Transcript pp. 484; 547-548; 628; defendant's exhibit 4)

[18] Faced with this evidentiary and legal impediment, Mr. Willets argues in this brief that this is somehow impeachment testimony and can't be considered as substantive evidence. Obviously it is not. The additional Epperly testimony mentioned herein is also not impeachment. Ms. Epperly agreed that her prior deposition is true and reconfirmed that it remains "true today." (Transcript pp. 265-266)

Ms. Epperly also detailed how this Stuart Elementary misunderstanding could erroneously route students into the SOL testing, explaining a scenario in which she might have perhaps chosen to VAAP certain students but would not have since she erroneously believed the one-percent cap prohibited it. (Transcript pp. 265-266) This confirms the second part of the Sroufe statement, *id est,* that an erroneous cap application could cause students who should be VAAPed to take the SOL. *Nota bene* that the defendant uses the word "will." There is never any charge that any students *have* been improperly assigned, nor is there any charge that any particular student has been improperly routed into the SOL. This second part of the statement is broad and abstract and refers to future possibilities. Every other witness—including the plaintiff's own expert (Transcript pp. 323-324)—agreed that Ms. Waldron and Stuart Elementary School's understanding of the one-percent VAAP was incorrect, and that is exactly what the defendant accurately told his board.

Faced with this impossible impediment, the plaintiff simply constructed and tried a different case. The plaintiff glossed, reconfigured and intentionally misconstrued the defendant's VAAP statement to make it something it isn't. The plaintiff arbitrarily narrowed the statement and focused on a subset of students at Stuart Elementary School, and while never denying that Ms. Waldron was wrong about the one-percent cap, and never denying that her school misunderstood this component, put on expert evidence that these specific kids were properly evaluated and not VAAPed. (Transcript pp.318-321) As I ruled at trial, this is certainly relevant evidence, but it isn't dispositive or explanatory as to Ms. Waldron's blunder with the one-percent rule, nor does it somehow negate her error. Stated differently, it's certainly relevant that these children wound up in the right academic slot despite the plaintiff's misunderstanding of a basic rule, but it doesn't change the fact that she and her team, as Dr. Sroufe stated, were wrong about a VAAP criterion.

Finally, assuming arguendo that the VAAP statement isn't mere opinion, and assuming further that it is false, an untrue statement that deals with the failure to understand and apply a difficult, highly technical set of state rules and standards about which "reasonable people can disagree" does not carry the requisite "sting" required by Virginia law to establish defamation. To be actionable, "a false statement must have the requisite defamatory 'sting' to one's reputation." *Schaecher, et al. v. Bouffault,* 290 Va. 83 at 92 (2015). The untrue statement must make "the plaintiff appear odious, infamous, or ridiculous, or subject her to contempt, scorn, shame or disgrace." *Id.* at 95. I have reviewed some forty-nine defamation cases, beginning with *Womack v. Circle*, 70 Va. 192 (1877) and ending with *Ekwalla v. Virginia State Bar* from December 2016, and these opinions reinforce what we all intuitively understand—actionable libel and slander are predicated on untruths that are brutally harsh and go to the core of a person's decency, morality or vocational competence. Defamation arises from untruths about adultery, racism, thievery, sexual battery, calling the plaintiff "a lying, cheating SOB," rape, sexual harassment, a doctor "abandoning his patients," bribery and, in the 1940s, having an illegitimate child. The plaintiff's bland, temperate statement, made in a professional context, and

nested among six other true or opinion statements, does not rise to defamation under Virginia precedent. [19]

DAMAGES

Having heard the trial in real time and having read the briefs on the issue, I am still at a loss as to whether Ms. Waldron gave the letter to the newspaper. If ***she*** herself did, her untrue answer in discovery would have fundamentally prejudiced the defendant. If in fact she gave the letter to the local media, Mr. Guynn, as he writes in his brief, surely would have quizzed her on the topic of just how bad it was for her reputation given that she released the information for wider dissemination. He would have prepared and presented a different damages case.

However, the request for admission asks a very limited and precise question. It does not ask about a release by agents or attorneys. It does not include the phrase "at your direction." Yet, my reading and understanding of Mr. Willets's statement to the jury is much like Mr. Guynn's reading and understanding—Mr. Willets seems to twice reference "the things Tammy put in the paper, even if you look at all the things, because she had to." (Transcript p. 675) I specifically mention releasing the *letter* itself to the newspaper, and Mr. Willets immediately confirms by saying: "Well, she did your honor." (Transcript pp. 675-676). If either party is so inclined, I'd be pleased to have a hearing and clarify this for the appeal record.

CONCLUSION

Several facts are clear from this trial: 1) A Patrick County jury determined that Ms. Waldron's removal was mishandled, and while legal, nevertheless revealed bad faith and malice on the part of Dr. Sroufe.[20] I agree with this finding. 2) The school system is struggling with division, discord and personal rivalries that cause workplace dysfunction. Several teachers and administrators are caught betwixt and between various feuding factions, in a slipstream of uncertainty and second-guesses, and these

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[19] The fact that the plaintiff was forced to parse, spin, and spend three days explaining one statement out of six other opinion or accurate statements, is at very best for Ms. Waldron, analogous to pulling a single mildly flawed thread from an otherwise sound tapestry.

[20] It is possible, I suppose, that there were reasons for her removal that were not discussed at trial and not included in her letter, but in light of the "kitchen-sink" nature of her transfer letter, it seems reasonable to infer we've learned all there is to learn.

educators can't do their jobs as they should. [21] 3) The defendant's statement is not, as a matter of law, defamatory, and it will not support a verdict in Ms. Waldron's favor. 4) There is no VAAPing conspiracy designed to penalize innocent students for the personal or professional benefit of Dr. Sroufe. Though she was first provoked and mistreated, Ms. Waldron's use of this narrative as a trial tactic is unfair and unconscionable.[22]

My legal conclusion in this matter comes as no surprise to the plaintiff; the record reveals I stated throughout the trial that I thought the statement in this case was not actionable as a matter of law. It is opinion; if it is not opinion, it is true; and if it is factual and false, it is too mild to be defamatory. However, as I mentioned to Mr. Willets, I have always felt this is a message case, and for that reason—and to provide an alpha-to-omega appeal record—I allowed the plaintiff to have her full day in court, especially after hearing about the circumstances and employer failures surrounding her dismissal.

Throughout this trial, all the parties made genuine attempts to settle this matter. Interestingly, both lawyers, Dr. Sroufe, Ms. Waldron, and Patrick County School Board Chairman Ronnie Terry were fair and reasonable and negotiated in good faith. I was surprised and disappointed when the full board was not able to reach a settlement, despite some productive exchanges between the parties. Remarkably, there was also no interest by the school board in having our chief judge conduct a mediation or settlement conference after a local jury sent the community a half-million-dollar, mad-as-heck message.[23]

While I am virtually certain that this verdict is legally flawed and will not survive appellant scrutiny, I am also aware that seven objective citizens spoke in very loud and very clear terms, and I feel that their verdict is being utterly ignored by the audience that should be the most attentive. More to the point, I am convinced that if I simply set aside this verdict, then there will be a return to business as usual, and that variety of business is the very mischief that prompted the biggest jury verdict in the history of this county. While I understand that the school board has no financial exposure and is operating under the assumption (most likely correct) that this verdict is not legally sound and will be set aside—and therefore is not inclined to address the issue at the heart of this lawsuit—I would hope that my ruling

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[21] For instance, Anita Epperly is everything a teacher should be—smart, concerned, dedicated and experienced, an expert in her area—but this top-notch educator is now being asked unpleasant—and legally ominous—questions about VAAP decisions and no doubt looking over her shoulder at the superintendent's office as well as Richmond, legitimately concerned about her bona fide classroom choices.

[22] Given the seriousness of this accusation, and given the chilling effect it will have on the system going forward, I would respectfully urge the school board to invite the commonwealth to review the 27 VAAP decisions mentioned at trial. This is urgent and imperative. While I think the "VAAP for Glory" narrative is false, and while the SOL numbers do not support it, I could be wrong, and something this important deserves a fresh set of neutral and expert eyes. And, again, if Ms. Waldron created this narrative to 1) cover her own shortcomings and 2) create a trial theory to sell to a jury, then that, too, is fundamentally wrong, as wrong as her dismissal treatment.

[23] One of the benefits of living in a smaller county is that we all know each other. I know most of the folks on the jury, and they are excellent, reasonable and fair-minded citizens.

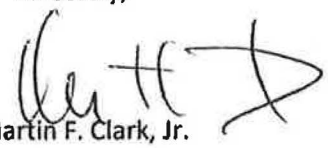
below will give them a chance to explore precisely what went wrong in their system, perhaps via another mediation or a review with a qualified neutral.[24]

This jury indicated it was mad as heck. As Aristotle wrote, and as I mentioned at the outset of this opinion, the jury didn't quite direct its anger in the right way and at the right time legally, but its voice needs to be heard a little bit longer. My hope is that this verdict will be taken seriously and productively addressed in the months ahead while this case is on appeal.[25]

RULING

Accordingly, and in light of the foregoing, and with the full expectation that I will be reversed by a unanimous Supreme Court of Virginia, I hereby affirm the verdict. Mr. Willets will please prepare an order. I enjoyed working with both of you. Your clients received very skilled and professional representation.

Sincerely,



Martin F. Clark, Jr.

[24] I understand that Mr. Guynn and his insurance company will suffer a short-term penalty in this matter. Still, this case, no matter my ruling, is headed to the Supreme Court, and the only difference is that the defendant will be the petitioner and not the respondent. The issues, briefs and costs for each side will be essentially the same.

[25] I also know most of the board members and have considerable respect for all of them. They, too, are fine, thoughtful people. Their job—managing complex academic issues, personnel matters and a thirty-million dollar budget—is difficult and thankless, if not impossible. I am grateful for their willingness to serve, and realize that they are the elected representatives of this county. I truly believe that they are doing their level best to take care of our schools. My assumption is that they have not been able to gain a full picture of this trial and the jury's concerns, and I trust that this opinion will allow them a fuller view.