Commonwealth of Massachusetts
Supreme Judicial Court

FAR №

Appeals Court № 2018-P-1605

Walter Tuvell
Plaintiff/Appellant

v.

Jack Marshall
Defendant/Appellee

On Appeal From A Judgment Of The
Middlesex Superior Court (№1781CV02701)

APPELLANT'S PETITION/APPLICATION FOR FURTHER APPELLATE REVIEW ("FAR")

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TABLE OF AUTHORITIES

Note: This Table is *very minimalistic*, because this Pet-FAR squarely presents only a single simple question.

Cases

REQUEST FOR LEAVE TO OBTAIN FAR

Leave is hereby requested for the SJC to grant FAR for the Appeals Court's Oct 31 2019 opinion in this case. Our request, filed pursuant to MRAP (Mar 1 2019) §27.1(a), is "founded upon a substantial reason affecting the public interest and the interests of justice," seemingly unaddressed by the SJC heretofore.

The "public" and "justice" rightly expect/trust legal consistency: well-known long-established ***nation/state-wide*** **precedents of law should be honored by *Massachusetts* courts.** That reliance was abridged in this case. It was error, which needs to be reviewed and corrected.

This PetFAR is *very minimalistic,* squarely presenting just a single simplified/focused **question** (QUESTION/ISSUE PRESENTED FOR FAR *infra*), **clearly presented and ripe** for straightforward adjudication by the SJC.

STATEMENT OF PRIOR PROCEEDINGS

The events involved in this defamation case all occurred during Sat Aug 26 – Wed Aug 30 2017, in an Internet **blogsite** ("Ethics Alarms") maintained by Defendant, witnessed by a large audience. Plaintiff demanded retraction/correction from Defendant, but received none.

Plaintiff filed Complaint **(Comp)** on Sep 13 2017. With *Milkovich* in mind (see ***Milkovich* Material Falsity,** *infra*), Comp is couched in terms of **DGIMF** = "Disputed Genuine Issue of Material Fact" (i.e., **direct** fiction/falsehood/lie, in the context of defamation), and **CTXDEFIMPL** = "Contextually Defamatory Implication" (i.e., **indirect/implicatory** fiction/falsehood/lie).

Defendant filed Motion to Dismiss **(Diss)** on Oct 16 2017, including therewith exhibits containing the blog's **About** page (abridged, edited version) and **Policies** page.

Plaintiff filed Opposition **(Opp)** to Diss on Oct 25 2017, including therewith an exhibit appendix **(OppExhA)** containing the complained-of underlying defamatory blog communications (entire, verbatim).

Oral Argument was held on Jun 7 2018, transcribed with annotations in **OATAnn.**

The Court's Opinion **(Op)** granting dismissal, annotated in **OpAnn,** was issued on Aug 13 2018.

On Appeal, the Appellant's Brief **(ApltBrief),** with

Appendix **(AplApx),** was filed on Dec 17 2018. It included a newly prepared Table of Defamations **(TblDefam)** which reformatted the ~57[1] claims of defamatory statements in Comp into more convenient tabular format.

Appellee's Brief **(ApleBrief)** was filed on Feb 26 2019.

Appellant's Reply **(ApltRply)** was filed on Mar 7 2019.

The Appellate Opinion **(AplOp)**, upholding Op, was filed on Oct 31 2019. (Attached hereto.)

Appellant's Motion for Reconsideration or Modification **(MotReconMod)** was filed on Nov 4 2019. It was denied on Nov 6 2019.

This Petition/Application for FAR **(PetFAR)** now follows.

1· The "~" notation indicates some overlap/duplication amongst the claims. Of the ~57 incidents of defamation, ~29 indicated *direct* falsehoods, while ~32 *implied* false facts.

STATEMENT OF FACTS RELEVANT TO FAR

Our recitation of facts is *minimalistic,* with fully complete details contained elsewhere in the record.

Over a remarkably brief period of only five days in August 2017, the Plaintiff was defamatorily attacked on by the Defendant on the latter's blogsite, https://EthicsAlarms.com. Marshall's attacks were: (i) wholly unprovoked/unwarranted; (ii) entirely based on Defendant's **own factually false** statements (DGIMF), and his **opinions based upon and implying them** (CTXDEFIMPL); (iii) personally over-the-top/vicious; and (iv) provoked an in-kind "lynch-mob" mentality/reaction (which Marshall intended) by the blog's other commenters.

Plaintiff had "discovered" Defendant's blogsite, and thought it might be a good place to discuss various Judicial Misconduct (ethics-related) issues, as laid out on his own website (http://JudicialMisconduct.US). Preparatory to that (in an effort to learn if his topic would be appropriate/welcome), Plaintiff sent an innocent email (which Marshall admits was "polite") to Defendant Marshall, ***privately,*** politely inquiring about the perceived "design-vs.-implementation mismatch" of his blogsite (that is, "studious/serious ethicist vs. political/partisan hack," though without evaluation/condemnation of "which is 'better,' Right or Left"). But Defendant never replied. Instead, he falsely "slimed" Plaintiff ***publicly***

(on the blogsite), crazily launching an insane rant, lying/accusing Tuvell of being some kind of “liberal academic” (which Marshall obviously hated).

Marshall’s “poisoning” led to an escalation by his acolytes, from which Tuvell tried mightily to extricate himself, by (among other things) pointing to his own website, which explicitly carried the disclaimer/description, “This nonpolitical/nonpartisan/nonideological website” on its Home/landing page (http://JudicialMisconduct.US). But extrication proved impossible, because of the “gaslighting” (“false-fact”) nature of the blogsite mob’s attack-team.

QUESTION/ISSUE PRESENTED FOR FAR

In defamation cases, must Massachusetts Courts honor the *Milkovich* (1990) standard (the "*Milkovich* Material Falsity" portions thereof) promulgated by the U.S. Supreme Court? Or, may they continue to cite conflicting long-outdated pre-*Milkovich* Massachusetts-only cases, out-of-step with the rest of the USA?[2]

2· In *Lyons* (1993), the SJC held that Massachusetts pre-*Milkovich* precedents were consistent with *Milkovich* only in the special case where the defamatory statements are of **"pure opinion" based upon disclosed true facts** (hence non-actionable). We agree. But in the case-at-bar, the complained-of defamatory statements are different: **"purported opinions" which are factually false or based upon undisclosed facts, or implied/conveyed so** (later becoming known as **"*Milkovich* Material Falsity"**). *Milkovich* addresses this situation; Massachusetts pre-*Milkovich* precedents contradict it (argued herein); and it seems this aspect of *Milkovich* has never be addressed squarely by the SJC heretofore.

ARGUMENT/REASONS FOR FAR

In this section we articulate the lower courts' errors in this case, as well as the correct course of action they should have taken, always with an eye towards the "public interest" and "interests of justice." (That is, the principles articulated here have applicability to all defamation cases in general, not just to ours.)

Our argumentation here is *minimalistic,* with fully complete details contained in the record.[3]

Massachusetts Court Rulings In This Case

The (erroneous, that is, anti-*Milkovich*) rulings of the Massachusetts Superior and Appellate Courts in this case may be **fairly paraphrased/summarized** as follows (in four prongs):[4]

> (i) In defamation cases, **Internet blogs**[5] enjoy an ***a priori*** **"'opinion privilege' pre-exemption"** —— i.e., they comprise a type of **"broad context" forum/milieu** wherein all published utterances (even those which posit **false facts and implications**) are **automatically "mere opinion/commentary" (i.e., neither true nor false), hence non-actionable as defamation.**

3· For the details, it is suggested that perhaps a "bottom-up" approach might be most efficient: begin by looking at MotReconMod, followed by ApltRply and ApltBrief, etc.

4· This paraphrase reads like a caricature, but it isn't. Its faithful accuracy can be verified by reference to Op and AplOp (and to ApltBrief, ApltRply, MotReconMod).

5· And seemingly numerous other communications media. (Measurable criteria are never articulated.)

(ii) Audiences treat blog contents **always as mere opinion, never with any truth/falsity value associated to them.**

(iii) Courts **need not examine** any actual challenged defamatory statements themselves for truth/falsity.

(iv) **Audience members themselves** (not publishers or courts) have the **responsibility** to **"undefame"** victims, by conducting their **own personal (Internet) research** into the truth/falsity of statements and making up their own minds.[6]

In support of its ruling, the Superior Court cited to *Scholz,* which was futile *dictum,* because *Scholz* was decided on other grounds (in compliance with *Milkovich,* namely, it dealt only with **true disclosed facts,** unlike our case). The Appellate Court cited to *Disend, Myers, Pritsker,* and *Aldoupolis,* but those anti-*Milkovich* citations are improperly futile (*Disend* rejected the proposed argument, while the others were pre-*Milkovich*, hence **invalidated** by *Milkovich).*

As shown in this PetFAR, these defamation standards employed by our Massachusetts courts are the **opposite** of the *Milkovich* standards used everywhere else in America.

6· If this point (iv) were viable, there would be no merit in, e.g., the multiple ongoing Alex Jones *Infowars* Sandy Hook defamation suits (clearly "monstrously stupid lies" by Jones, trivially debunked by research); but there *is* merit (none has been dismissed on this basis).

U.S. Supreme Court Precedent: *Milkovich*

The U.S. Supreme Court's (correct) precedent for defamation cases is *Milkovich,* which may be **fairly paraphrased/summarized** as follows (in corresponding prongs):

> (i) In defamation cases, **there exists no such thing as "opinion privilege"** —— in any sense, but especially not in any sense of *a priori* pre-exempted "broad context," nor regarding false/undisclosed facts.
>
> (ii) People know that **all communication mechanisms** are capable of conveying/implying truth/falsity value; what matters is, not the "syntactic medium," but the "semantic meaning/implication"[7] of communicated statements themselves.
>
> (iii) Courts **must scrutinize each/every statement individually** —— thoroughly, solicitously, conscientiously[8] —— for actionable defamatory **Material Falsity.**
>
> (iv) The **responsibility for avoiding defamation** lies with the **publishers of statements,** not with the audience/receivers of the statements, and courts must hold publishers accountable.

The lower courts in our case refused to apply these *Milkovich* universal standards, preferring instead pre-*Milkovich* Massachusetts-specific standards (preceding

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7· This is the criterion established by *Milkovich,* which later became known as ***Milkovich* Material Falsity: statements' *potential to imply/induce* defamatory false facts into the minds of audience members.**

8· The very strong language here comes from *Milkovich* itself. Low-level **"immediate context"** should/must be consulted to **help determine "meaning" of utterances,** but high-level **"broad-context"** forum/milieu cannot be of such help.

section). That was error, which needs to be corrected.

D.Mass. Ratification For State Applicability

As an further illustration of how far out of the defamation mainstream our Massachusetts courts are, we cite a recent decision by the D.Mass. District Court, *Green v. Cosby,* which (correctly) ratified the *Milkovich* standard for state judges' usage. This was a very high-profile defamation case, involving plaintiffs from California and Florida, and defendant from Massachusetts, hence the court was careful to "get it right." In thoughtfully ratifying *Milkovich* for use in State courts (esp. Massachusetts), the court paraphrases/summarizes *Milkovich* in agreement with our paraphrase/summary *supra,* in the following language (emphasis added):

> Before delving into the state-specific analysis, the court considers the Supreme Court case law applicable to defamation cases in which the parties dispute whether a statement contains **actionable statements of fact or protected statements of opinion.** In ***Milkovich v. Lorain Journal Co.,*** the Supreme Court reviewed the history of the tort of defamation and development of constitutional protections to ensure the tort does not interfere with "the freedom of expression guaranteed by the First Amendment." 497 U.S. 1, 21, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990). The Court reviewed existing constitutional [freedom of speech] requirements, including that plaintiffs must (a) establish the requisite level of fault on the part of a defendant and (b) allege a statement that can "**'reasonably [be] interpreted as stating [or implying] actual facts'** about an individual." *Id.* at 20, 110 S.Ct. 2695 (quoting

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 50, 108 S.Ct. 876, 99 L.Ed.2d 41 (1988)). The Court considered whether to create an additional constitutional[9] privilege for **"anything that might be labeled 'opinion.'"** *Id.* at 18, 110 S.Ct. 2695. In **declining to adopt such a privilege,** the Court explained **there is not a clear division between statements of opinion and fact.** "If a speaker says, 'in my opinion John Jones is a liar,' [the speaker] **implies a knowledge of [undisclosed] facts** which lead to the conclusion that Jones told an untruth" and, as a result, such a statement **may imply a false assertion of fact** by failing to state what it was based on or because any facts referenced are incorrect or incomplete. *Id.* **The Supreme Court directs courts to determine "whether a reasonable factfinder could conclude that the [allegedly defamatory actual] statements … imply an assertion [of fact]" and whether that assertion [not its broad-context "forum/milieu"] "is sufficiently factual to be susceptible of being proved true or false," rather than simply determine whether a statement expresses an opinion or asserts a fact.** *Id.* at 21, 110 S.Ct. 2695. At this stage of the litigation, the court's concern is whether **any fact contained in or implied by** an allegedly defamatory statement is **susceptible to being proved true or false** [this later became known as the ***Milkovich* Test for Material Falsity**]; if so capable, **Defendant cannot avoid application of defamation law by claiming the statement [or its broad-context "forum/milieu"] expresses only opinion.**

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9 · Left open is the possibility of *states* enacting (constitutionally compliant) *statutes* supporting some "opinion privilege." Massachusetts has not done so.

CONCLUSION

All modern (post-1990) precedent on defamation in America agrees: The controlling standard is *Milkovich* and its progeny, not Massachusetts.

In the case-at-bar, the lower courts wrongly dismissed the case, based completely and exclusively on their erroneous criteria stated in the section on Massachusetts Court Rulings In This Case *supra.* Had they applied the correct criteria stated in the sections on U.S. Supreme Court Precedent: Milkovich and D.Mass. Ratification For State Applicability *supra,* our case could/would not have been dismissed.

That was plain error. We seek correction —— not only for ourselves, but for the "public interest" and "interests of justice" in general. Simply because that's how The Law is supposed to work. The American and Massachusetts public rely on judges to uphold well-known laws as promulgated by the Supreme Court (and the Constitution), and the general consensus of all modern courts who have squarely addressed the issues of *Milkovich* Material Falsity.[10]

10· Exceedingly rare these days is *any* court defamation opinion that doesn't proclaim some variation of the *Milkovich* encomium: **"Any statement (be it labeled 'opinion' or not) that implies/conveys a false defamatory statement of fact (regardless of the communication's 'broad-context' forum/milieu/medium/mechanism) is actionable."** Except, it seems, in Massachusetts.

SIGNATURE & VERIFICATION; CERTIFICATES

SIGNATURE & VERIFICATION

Respectfully submitted, and hereby signed, under the pains and penalties of perjury. (This signature/verification and date also apply to the CERTIFICATES ℘17 *infra.*)

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Nov 13 2019

CERTIFICATES

CERTIFICATE OF COMPLIANCE

Pursuant to MRAP 16(k),20(a),27.1(b) I hereby certify this document is in substantive compliance with all material aspects of the pertinent Rules of Court to the best of my good-faith ability to understand/implement them, such as: Linux; Fedora; LibreOffice; 8½″×11″; DejaVu Sans Mono 11.8; 27 lines/page; maximum line-length 57 characters (see bottom of this page, noting that 5½ inches/line × 10½ chars/inch = 57¾ chars/line); 6 pages (℘10–15). (See also ℘16 *supra.*)

WETwolf

CERTIFICATE OF SERVICE

Pursuant to MRAP 13(d), I hereby certify that I have served notification of and access to this document upon Defendant, via email and first-class U.S. Mail: Jack Marshall; 2707 Westminster Place; Alexandria, VA; 22305; jamproethics@verizon.net; http://JudicialMisconduct.US/sites/default/files/2019-11/MotReconMod.pdf. (See also ℘16 *supra.*)

Editorial error, should read FurtherAppRev.pdf.

WETwolf

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ATTACHMENT:
APPELLATE OPINION (AplOp)

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1605

WALTER TUVELL

vs.

JACK MARSHALL.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This case, which arises out of a series of communications between the parties on and around the defendant Jack Marshall's Internet blog,[1] "Ethics Alarms," requires us to review the dismissal of the plaintiff Walter Tuvell's defamation claims against Marshall. To the extent that we can parse them from his briefing,[2] Tuvell's legal arguments are that (1) the motion judge applied an incorrect standard, and (2) the judge incorrectly

[1] A "blog" is defined as "a Web site that contains an online personal journal with reflections, comments, and often hyperlinks provided by the writer." Merriam-Webster's Collegiate Dictionary 133 (11th ed. 2005).

[2] Tuvell's arguments on appeal are difficult to understand and do not satisfy the requirements of Mass. R. A. P. 16, as appearing in 481 Mass. 1628 (2019). Nonetheless, we have carefully reviewed his submissions and address those arguments that we can discern.

applied the law to the allegations in Tuvell's complaint.[3] For the reasons discussed, we affirm.

We review de novo the allowance of Marshall's motion to dismiss Tuvell's complaint, see Santos v. U.S. Bank Nat'l Ass'n, 89 Mass. App. Ct. 687, 691-692 (2016), in order to determine whether Tuvell's complaint stated "factual 'allegations plausibly suggesting . . .' an entitle[ment] to relief." Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557 (2007). Like the motion judge, in conducting our review, we consider not only Tuvell's complaint, but the uncontested copy of the communications and blog postings on which the complaint is based, and on which we conclude Tuvell relied in drafting that pleading. See Golchin v. Liberty Mut. Ins. Co., 460 Mass. 222, 224 (2011) (in framing complaint plaintiff relied on extrinsic documents not excluded by motion judge). We take as true the well-pleaded factual allegations of the complaint, and any favorable inferences that may be drawn from them, see id. at 223, "[h]owever, we do not accept legal conclusions cast in the

[3] Tuvell's remaining contentions do not rise to the level of appellate argument, and we do not address them. See Zora v. State Ethics Comm'n, 415 Mass. 640, 642 n.3 (1993). In any event, "our review of the record shows that none of them has merit." Id.

form of factual allegations." Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000).

Background. We summarize Tuvell's allegations with these parameters in mind. In August 2017, Tuvell contacted Marshall via electronic mail message (e-mail) critiquing Marshall's blog. Marshall posted a portion of Tuvell's e-mail on his blog; the posting did not identify Tuvell by name. Tuvell publicly responded to Marshall's post, identifying himself as the author of the e-mail. Tuvell exchanged public posts with other readers on Marshall's blog, many of which concerned whether and how the readers, including Tuvell, viewed the political or "partisan" tenor of the blog. Marshall engaged with Tuvell on the blog, suggesting that Tuvell was the instigator of any partisanship on the blog; ultimately, on the day after Marshall posted the original e-mail from Tuvell, Marshall "banned" Tuvell from further posts. In the course of these communications with and about Tuvell, Marshall made various observations about Tuvell's being "special," a "jerk," "a few cherries short of a sundae," and "an asshole," and describing his posts as "whiny" and "bitching." Marshall wrote that Tuvell was "not honest," because Tuvell had "sandbagged" him by pretending interest in the subject matter of Marshall's blog while intending to draw attention to Tuvell's own interests and obtain free legal advice. He published a link to Tuvell's website, and, drawing

on the material posted there, wrote that the judge in a case brought by Tuvell "decided that [Tuvell's] case was lousy, and dismissed it," and commented on Tuvell's account of his own "PTSD."

Tuvell filed suit for defamation; Marshall responded with a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), which Tuvell opposed. After a hearing, and in a thoughtful memorandum, the judge allowed the motion. Tuvell filed a timely appeal.

Discussion. To establish a claim for defamation, a plaintiff must prove four elements: (1) the defendant made a false statement to a third party, (2) of or concerning the plaintiff, (3) that was capable of damaging the plaintiff's reputation in the community and caused the plaintiff economic loss or is actionable without proof of economic loss, and (4) that the defendant was at fault. See Ravnikar v. Bogojavlensky, 438 Mass. 627, 629-630 (2003).[4] An allegedly defamatory statement must be assessed in context, and not as isolated words

[4] Despite Tuvell's having injected himself into the public blog forum, we assume without deciding that Tuvell is a private figure, and that any "fault" is assessed using a negligence standard. See Jones v. Taibbi, 400 Mass. 786, 797-799 (1987).

or phrases.[5] See Scholz v. Delp, 473 Mass. 242, 250 (2015). The judge considers factors including "'the specific language used'; 'whether the statement is verifiable'; 'the general context of the statement'; and 'the broader context in which the statement appeared.'" Id., quoting Milkovich v. Lorain Journal Co., 497 U.S. 1, 9 (1990). The judge also takes into account "any 'cautionary terms used by the person publishing the statement.'" Scholz, supra at 251, quoting Lyons v. Globe Newspaper Co., 415 Mass. 258, 263 (1993). Ordinarily, neither an expression of opinion nor hyperbolic statements are actionable. See National Ass'n of Gov't Employees, Inc. v. Central Broadcasting Corp., 379 Mass. 220, 227 (1979), cert. denied, 446 U.S. 935 (1980) ("A simple expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified and unreasonable the opinion may be or how derogatory it is"). See also Scholz, supra at 249-250; Restatement (Second) of Torts § 566 & comment c (1981).

We begin by observing that the statements at the heart of Tuvell's complaints were made on a blog, see note 1, supra, a forum generally understood to reflect the personal views of the

[5] A point that Tuvell, whose argument on appeal includes criticism of the motion judge's failure to address individually each of the statements he considers to be defamatory, overlooks.

blog's writer, here, Marshall.[6] With some exceptions, which we address below, the majority of the statements cited as defamatory in Tuvell's complaint can only reasonably be understood as expressions of Marshall's opinion which, regardless of their tone, are not actionable. See Downey v. Chutehall Constr. Co., Ltd., 86 Mass. App. Ct. 660, 663-664 (2014) (determination whether statement is factual assertion or statement of opinion must be decided based on how statement can be reasonably understood). We include in this category Marshall's statements about his determination that Tuvell's conduct warranted his being "banned" from the blog; his communications to Marshall being treated as unwelcome "spam[]"; and his descriptions of Tuvell as "special," a "jerk," and an "asshole" and of his posts as "whiny" and "bitching."[7] There is some overlap in these categories of statements with others, like Marshall's description of Tuvell's post as "teeter[ing] on the edge of madness," that are instances of pure hyperbole, likewise inactionable.

To the extent that Tuvell complains about Marshall's publicizing Tuvell's failed lawsuit and the posttraumatic stress

[6] The "Comment Policies" Marshall established and posted for his blog give Marshall broad discretion in approving, editing, and "banning" writers and their submissions.

[7] This latter category of terms also qualifies as nondefamatory hyperbole.

disorder that Tuvell attributed to it, Marshall's recitation of those facts only repeated information that Tuvell himself gave publicly to Marshall; Tuvell could hardly complain that the facts were false. See Myers v. Boston Magazine Co., 380 Mass. 336, 339-341 (1980).

The closest question is the status of Marshall's statements that Tuvell misrepresented to him the true reason for his interest in Marshall and his blog, and his statement that Tuvell's contact was a means of seeking free legal advice about his failed lawsuit. Ultimately, we conclude that such a statement, even if false, would not be actionably defamatory because in context, it was not likely to "discredit[] the plaintiff in the minds of any considerable and respectable class of the community." Brauer v. Globe Newspaper Co., 351 Mass. 53, 55 (1966). We place particular emphasis on the fact that the statements here were made in a blog, the format and substance of which "implied commentary rather than the statement of objective facts."[8] Disend v. Meadowbrook Sch., 33 Mass. App. Ct. 674, 676-

[8] Marshall's blog provided the content and opinion that Marshall chose to include there, and while Marshall disclaimed any political partisanship, the blog could not reasonably be read as anything but Marshall's own viewpoint on his subject matter. Additionally, with respect to his comment about Tuvell's website and motivation, Marshall provided the link Tuvell had provided to him to allow the blog's readers to see Tuvell's blog for themselves, allowing them to make their own assessment of Tuvell's likely motives.

677 (1992). See, e.g., Aldoupolis v. Globe Newspaper Co., 398 Mass. 731, 733-735 (1986); Pritsker v. Brudnoy, 389 Mass. 776, 778-783 (1983); Myers, 380 Mass. at 338-342. We do not see that Marshall's speculation about Tuvell's motives would "tend to hold the plaintiff up to scorn, hatred, ridicule or contempt, in the minds of any considerable and respectable segment in the community." Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 853 (1975).

To the extent that we have not specifically addressed subsidiary arguments in Tuvell's brief, they have not been overlooked. "We find nothing in them that requires discussion." Commonwealth v. Domanski, 332 Mass. 66, 78 (1954). There was no error in the dismissal of Tuvell's complaint.

Judgment affirmed.

By the Court (Blake, Lemire & Hand, JJ.[9]),

Joseph F. Stanton

Clerk

Entered: October 31, 2019.

[9] The panelists are listed in order of seniority.