

Superior Court of the Commonwealth of Massachusetts
County of Middlesex

Walter Tuvell
836 Main St.
Reading, MA 01867
Plaintiff, Pro Se

Case № 1781CV02701

v.

Jack Marshall
2707 Westminster Place
Alexandria, VA 22305
Defendant

COMPLAINT (VERIFIED)

JURY TRIAL DEMAND

INTRODUCTION (INCLUDING JURISDICTION)

¶1 Plaintiff Walter Tuvell, an individual residing at 836 Main St., Reading, Middlesex County, Massachusetts, 01867, complains of defamation (“cyberlibel”) committed against him by Defendant Jack Marshall, an individual residing at 2707 Westminster Place, Alexandria (independent city), Virginia, 22305, and alleges causes of action, as hereby related herein *passim*.

¶2 “Long-arm” personal jurisdiction¹ inheres in this Court, as the Complaint arises out of activities satisfying the due-process doctrines of: (i) “minimal contacts;” (ii) “purposeful availment;” (iii) “express aim;” (iv) “effect;” and (v) “fair play and substantial justice.” *Viz.*,

¹ MGL §223A 3(d). See generally https://en.wikipedia.org/wiki/Personal_jurisdiction_in_Internet_cases_in_the_United_States. Recent Federal case on-point: *Hawbecker v. Hall*, No. SA-14-CV-1010-XR (W.D. Tex., Feb. 19, 2015).

upon knowledge/information/belief:

(i) Defendant: (a) has spent many years of his life as a resident of Massachusetts; (b) has held regular employment in Massachusetts; (c) has been and remains a “lifetime fan of the Boston Red Sox;” (d) is a member of the Massachusetts bar; (e) currently conducts ongoing business in Massachusetts, with Massachusetts residents (<https://ethicsalarms.com/2017/09/11/morning-ethics-warm-up-91117-irma-and-climate-change-hype-democrats-and-anti-catholic-hypocrisy>); (f) operates a long-running, heavily-trafficked, highly-interactive, purposefully-nationwide Internet blogsite (¶5); which (g) reaches and is visited/read by Massachusetts residents (e.g., readers/writers of the Boston Business Litigation Blog, <http://bostonbusinesslitigation.mt4temp.lexblognetwork.com/employment/public-employees-can-lose-their-jobs-over-online-information>); (h) blogs about Massachusetts-specific affairs (e.g., <https://ethicsalarms.com/2012/08/04/massachusetts-a-state-lottery-shows-its-corrupt-and-irresponsible-core>), and about (i) Massachusetts residents (<https://ethicsalarms.com/2012/05/19/the-significance-of-pow-wow-chow>, <https://ethicsalarms.com/2012/09/27/more-revelations-regarding-elizabeth-warrens-alleged-unauthorized-practice-of-law-and-why-this-matters>); and (j) who for the purposes of the instant Complaint actively/specifically/knowingly reached across state lines into Massachusetts (there directly targeting Plaintiff) via email and his blogsite (*passim*); by means of which

(ii) he, personally, intentionally entered into specific dealings/interaction (via email and blogsite) with Plaintiff, personally (*passim*);

(iii) specifically targeting Plaintiff’s civil action (*Tuvell v. IBM*)

and follow-up Judicial Misconduct charge (D.Mass. and First Circuit, both courts and Plaintiff being located in Massachusetts, as Defendant knew, since he self-admits reviewing these matters on Plaintiff's website) (¶4, ¶14·I), while knowing that he and Plaintiff were contemporaries who had graduated from "rival" colleges in Cambridge, Massachusetts (Harvard and MIT, announced in Plaintiff's email of ¶6, later reiterated by a post on Defendant's blogsite (¶5)) (Marshall also has another degree from Hampshire College, also in Massachusetts), and that the fact of Plaintiff's residence in Massachusetts (a widely-perceived "liberal/progressive" state) plausibly (but falsely)[†] imbued Plaintiff with characteristics indicative of "academicism" that he viewed as negative (¶8); with

(iv) tortious/defamatory effect (*passim*); while

(v) Plaintiff is wholly innocent of any wrongdoing in this affair (*passim*); and he has no cognizable dealings with the state of Virginia or its residents apart from this Complaint — beyond which his only contacts with the state have been less than a dozen intermittent/sporadic visits for brief periods (business meetings, visiting friends, camping trips, drive-throughs), totaling less than three weeks' time over his lifetime.

¶3 All dates cited herein are implicitly understood to occur in the year 2017, unless explicitly specified otherwise. The essential substantive events described herein occurred on Sat Aug 26 - Wed Aug 30. The (superscript) tags "†" and "‡" scattered throughout are explained in ¶17.

STATEMENT OF FACTS

¶4 Plaintiff is a PhD mathematician and software engineer, and is a concerned American citizen deeply interested/involved in Judicial Misconduct, for which purpose he maintains an Internet website, “Judicial Misconduct USA” (<http://JudicialMisconduct.US>).

¶5 Defendant is a lawyer, and a (self-professed) ethicist, exercising specialized expertise in legal ethics. He maintains both: (i) a national national ethics training and consulting firm, “ProEthics, Ltd.” (website <http://ProEthics.com>); and (ii) an Internet “blogsite,” “EthicsAlarms” (<http://EthicsAlarms.com>), which he advertises as “the per-eminent [*sic*] and most visited ethics community blog on the web” (<http://www.Linkedin.com/in/jack-marshall-86a85b8>), claiming more than 3,200 “followers.”

¶6 On Sat Aug 26, Plaintiff conceived an idea of raising/discussing his Judicial Misconduct concerns (primarily, abuse of Summary Judgment) with Defendant — thinking that subject-matter (which inherently implicates questions of legal/judicial ethics) would provide excellent fodder for his EthicsAlarms blogsite. To the end of gauging the feasibility/viability of such interaction, Plaintiff sent to Defendant an initial/exploratory private email (as the general public is invited to do, “for any purpose,” according to the blogsite’s About page, <http://EthicsAlarms.com/about>), inquiring about perceived inconsistencies between: (i) the blogsite’s intended/advertised design/ambitions (as articulated on its About page); and (ii) the substantive content in the blogs and comments actually being posted on the blogsite in practice.

Appropriately, the “subject” header-line of Plaintiff’s email was “I can’t figure you out.”

¶7 Defendant did not reply (directly) to Plaintiff’s private email (¶6). Instead, on Sun Aug 27, Defendant peremptorily responded (indirectly) to Plaintiff’s email publicly, via (the first part of) a blogpost on his blogsite. Defendant neither notified nor informed Plaintiff of that publicly posted blogsite response; nor did he quote any part of Plaintiff’s email; nor did he respond to the substantive aspect of Plaintiff’s email query (*viz.*, About-page vs. content-pages disparity). Instead, Defendant’s wildly off-the-wall “response” seized on only certain (falsely) twisted aspects of Plaintiff’s email — peripheral, “cherry-picked,” paraphrased, out-of-context, and misinterpreted.

¶8 In particular, Defendant’s blogpost (¶7) (falsely) accused/attributed Plaintiff of being an “academic”[†] (considered by some political/partisan activists to be a derogatory attribution; see ¶9). And on that (false) basis, Defendant launched into an unwarranted invective/harangue, applying to Plaintiff (false) negative political/partisan characteristics/traits/motives (“... the entire American Left, along with its sycophants and familiars, the universities, show business and the news media [all this, somehow, crazily, encompassing ‘academics’], have gone completely off the ethics rails since November 8, 2016 ...”), culminating in false attributions of “uniquely un-American ... execrable conduct.” All this for the mere asking of an innocent/polite/private query about clarification-of-purpose of the blogsite.

¶9 On this date (Sun Aug 27) and on later dates, several visitors/readers of the blogsite read[‡] Defendant's (false) blogpost (¶7-¶8), and themselves posted further comments to it and to other comments, similarly (falsely) attacking Plaintiff, with no rationale other than (falsely) believing/crediting[‡] Defendant's (false) lead attack.

¶10 Shortly thereafter on Sun Aug 27, Plaintiff unilaterally discovered Defendant's blogsite post/response and its subsequent comments (¶7-¶9), and posted a responsive comment thereto (publicly now, since Defendant had demonstrated his refusal to communicate privately), attempting to correct/repair the harm that had been done. Therein, Plaintiff properly/correctly: (i) quoted his original email (¶6) verbatim (in full); (ii) asserted/clarified that he was interested only in "serious ethical guidance" (and certainly not political/partisan "ranting," as Defendant himself self-admits/demonstrates he does engage in, in his own blogpost that very day (¶7)); (iii) repeated his original query concerning "the deviance of the [blog]site's content vs. the wording of its About page;" (iv) mentioned his sole interest in Judicial Misconduct, referring to his own website and ongoing case (¶4).

¶11 The "mob mentality"[‡] pattern of ¶10 — false/negative/unprovoked posts/comments targeting Plaintiff, who responds with corrections/clarifications — continued throughout the day (Sun Aug 27), and carried over to the next day, Mon Aug 28.

¶12 On that day (Mon Aug 28), Defendant (falsely) accused Plaintiff of "choosing [the] precise [divisive] issue/[subthread]"[†] of Left/Right

liberal/conservative democrat/republican partisan politics. Instead, that subthread was in fact started/propagated by others, whereas the Plaintiff consistently displayed curiosity only about the design-vs.-implementation of the blogsite itself (via his interest to engage in an ethical discussion of Judicial Misconduct), repeatedly disavowing any interest whatsoever (“dog in the fight”) concerning the subthread.

¶13 Later on Mon Aug 28, Defendant (falsely) pretended to “defend” his blogsite, by tallying his Right-leaning vs. Left-leaning blogposts for the month of July (which Plaintiff hadn’t seen/read), and purportedly showing they were ideologically “balanced” — unaccountably avoiding, yet again, Plaintiff’s query about design-vs.-implementation of the blogsite. Plaintiff responded, patiently explaining, yet again, that “I don’t care about Left/Right anything! What I care only about is Ethics *per se* ...”

¶14 Finally on Mon Aug 28, Defendant (falsely) “went nuclear”[†] against Plaintiff, (falsely) “banning”[†] Plaintiff from the blogsite (thereby preventing[†] Plaintiff from publicly defending himself against Defendant’s false attacks/accusations), and issuing a rapid-fire sequence of remarkably malicious/vicious/venomous (false) posts,[†] (falsely) enthusiastically stating/asserting/arguing there was “something very bad”[†] (but there wasn’t) about Plaintiff’s posts and other writings (on his website, ¶4), using incendiary (one is tempted to say “crazed/deranged/lunatic/rabid/hysterical”) language[†] such as the following (“meta-comments,” in *{italicized curly brackets}*, are here added for the special purposes of this Complaint, see ¶17):

- A I just banned[†] Walt. ... He's special.[†] *{false: these negative acts/epithets are based solely upon the other false statements in this Complaint (esp. this list), hence are themselves defamatory ("banning" is especially potent in this regard, being the "kiss of death" on the Internet)}*
- B I have already spammed[†] *{i.e., tagged as "spam" and disallowed to be published}* two more posts by the jerk.[†] *{Plaintiff did issue those two (perfectly reasonable) posts, but unfortunately does not retain copies of them, due to the general nature of the blog-posting protocol}*
- C **ATTENTION: Walt Tuvell is banned from commenting here.** ... He sandbagged[†] me *{false: no such "sandbagging" happened, in any sense}*. He submitted nothing but whiny[†] posts *{false: nothing was "whiny," to any reasonable/rational observer}* denying that he had accused[†] Ethics Alarms of being obsessed with partisan political topics *{false: it was a (private, non-public) "observation/query," not an "accusation"}* ... initially with a link[†] in a comment to another commenter *{false: no such link to another comment/commenter was supplied}*, causing[†] me to miss it *{false: presumably this is the "sandbagging" Defendant complains of, but it didn't happen, so "caused" nothing}* ...
- D [He] posted a comment[†] saying that the blog advertised itself as covering judicial misconduct and doesn't *{false: no such comment was submitted}* (there are **dozens** of

judicial ethics posts *{false:† here, Defendant (falsely) confuses Judicial Misconduct with judicial ethics, which are two distinctly/obviously different areas of concern]}* ...

E Walt issued bitching comment after bitching comment[†] ... *{false: none of Plaintiff's comments was "bitching," by any reasonable/rational measure, much less a sequence of them}*

F [H]e finally[†] revealed his agenda *{false (not "finally"):* Plaintiff had already/proactively "revealed"/proclaimed his (never hidden) "agenda," namely, a discussion of the ethics of Judicial Misconduct, in his very first post to the blogsite (§10)} ...

G [W]hen I finally[†] get the link to the ethics issue he says he wants a reaction to *{false (not "finally"):* it had already been prominently included in Plaintiff's very first post to the blogsite (§10)} ...

H GUESS WHAT? Come on, *guess!* Walt's "issue" is about **his own case,**[†] *{false: Plaintiff's "issue" was/is avowedly/expressly/primarily about Judicial Misconduct in general, and only peripherally "about his own case"}* and the link goes to **his single issue website**[†] *{false: Plaintiff's website (§4) is not "single issue" (by which Defendant means, as just quoted, "Plaintiff's own case")}* ...

I The case is **Tuvell v. IBM,** and skimming his messy post[†] *{false: the case (§4) is not a "messy post," by any stretch of anyone's imagination, instead being an extremely well-*

constructed piece of legal writing} that teeters on the edge of madness,[†] *{false: Plaintiff's website nowhere exhibits any trait remotely characteristic of "madness"}* I discern that the reason Walt is interested in judicial misconduct is the judge decided the case was lousy,[†] *{false: the judge did not "decide the case was lousy," because the judge did not in fact "decide 'the case'" at all — rather, she "decided" a "different" case, one that she illegally/criminally **fabricated/falsified the facts** of}* and dismissed it.

J I was going to, as a favor to Walt, because i [sic] am a nice guy, show my good faith[†] *{false: this wording suggests "bad faith" on the part of the Plaintiff, which is in no way true}* by addressing his issue *even though he didn't have the courtesy or honesty to come right out and say what he wanted.*[†] *{false: Plaintiff did certainly "come right out and say what he wanted," explicitly/proactively, in his very first post to the blogsite (¶10)}*

K Then I read as much of the entry on his blog *{false: Plaintiff's website is not a "blog;" it does not even incorporate a "blogging" feature (yet)}* — which purports to be about judicial misconduct in summary judgments generally but is in fact only about his case[†] *{false: Plaintiff's website is indeed about Judicial Misconduct generally, both at Summary Judgment (¶4) and otherwise, while Plaintiff's case comprises only one of several Case*

Studies reported/researched on the site} — as I could stand ...

- L [I] realized that Walt is, in technical terms ... a few cherries short a sundae.[†] {false: by invoking “technical terms,” Defendant represents/alludes to a scientific/medical/clinical expertise/credentials that he does not possess (which he falsely pretends to “inoculate” as an “opinion”); and even if he did possess the requisite expertise, his conclusion of “a few cherries short of a sundae” is wildly false/insane}*
- M This became clear in this passage[†] [extended excerpt, omitted here, from Plaintiff’s website (and court filing) describing Plaintiff’s (long-term, diagnosed) PTSD (Post-Traumatic Stress Disorder)] ... {false: Defendant here pretends to inextricably link (via his false allusion to medical/clinical expertise, ¶14·L) “a few cherries short of a sundae” to PTSD — which all sane/rational/reasonable people in this day-and-age know (though which some readers of his blog presumably don’t know) to be false incoherent/inciteful stigmatization/bias}*
- N I used to get letters[†] from people like this, long rambling[†] {false: to characterize solid/full/complete/exhaustive documentation/proof of claims/propositions as “long” (when in (false) pejorative combination with “rambling”) is unfair/false; further, nothing at all that Plaintiff submitted to Defendant’s blogsite, nor anything on Plaintiff’s own website, can be fairly characterized as*

“rambling”} things with court cites and exclamation points. I answer phone calls[†] from people like Walt, and try to help them if possible, but it’s usually futile, and often they keep calling and calling[†] until I have to just duck the phone calls. And I get e-mails[†] with long, rambling documents. {false: whether or not Defendant’s invocation of “letters,” “phone calls,” “e-mails” from others are correct, Plaintiff pelted Defendant with none of these, so linking them to Plaintiff is false/defamatory}

O This is the first time,[†] *{false: characterizing Plaintiff with an “unprecedented” act unduly/defamatorily prejudicial (not to mention that it didn’t happen at all)}* however, someone has abused[†] *{false: Plaintiff “abused” nothing whatever}* Ethics Alarms for a personal agenda.[†] *{false: to the extent that by “personal agenda” Defendant means “undisclosed/secret/surreptitious motive,” Plaintiff did no such thing at any time}* I’m sorry for Walt’s trouble, but he was not honest,[†] *{false: Plaintiff was scrupulously honest}* and misrepresented[†] *{false: Plaintiff misrepresented nothing}* his purpose by the charming device of insulting my integrity.[†] *{false: Plaintiff insulted no one’s “integrity” (in fact, Plaintiff has no idea what this accusation is supposed to mean)}* Obviously,[†] *{false: this is not obvious to any sane person; instead, it’s a false figment of Defendant’s diseased/putrid imagination}* he wanted to

check to see whether my sympathies would be with his cause[†] *{false, to the extent that by “his cause” Defendant here refers to the Tuvell v. IBM case; instead, Plaintiff was only interested in discovering whether the Ethics Alarms blogsite was a suitable forum for (non-political/partisan) discussion of Judicial Misconduct generally, and if so, to learn Defendant’s thoughts relating thereto}* before submitting it for consideration. As I tell all my clients, I can’t be bought,[†] *{false: this language falsely suggests Plaintiff was involved in some sort of bribe/fraud}* and you take your chances. Walt was obviously looking for a cheap,[†] *as in free {false: this language false suggests Plaintiff was trying to get “something for nothing,” whereas in fact there is no fee whatever imposed for anyone posting to Defendant’s blogsite}*, expert opinion[†] that he could use in his crusade against the judge.[†] *{false: (i) on the one hand, even if Plaintiff had wanted/planned/attempted (which he manifestly/emphatically did not) to “use” Defendant’s “expert opinion” in Plaintiff’s “crusade against the judge,” it was LITERALLY IMPOSSIBLE to do so, because at the posture the case was in (Judicial Council/Conference review), no “third party ‘evidence’/filing” (such as “expert opinion” or “amicus brief,” whether or not desired/supported by Plaintiff), was even allowable, by rule/law (28 USC §359(b)), to be injected into the process (as any lawyer, much less a legal ethics*

expert, must know well), unless invited/ordered by the reviewing body, which was never requested/hinted/happened; (ii) on the other hand, Plaintiff cannot even conceive (though it may be conceivable to mentalities similarly compromised as Defendant's, to which he was communicating) of any possible "opinion" that any "expert" (much less an un/self-credentialed pseudo-"expert" like Defendant) could render that would/could have any imaginable value for the Judicial Council/Conference}

P What an asshole! The fact that he may be a desperate asshole[†] {false: there is not the slightest (true) evidence anywhere that Plaintiff was a "desperate asshole," however defined} doesn't justify wasting my time, and others who responded to him and misrepresenting his motives.[†] {false: there is no evidence anywhere that Plaintiff "wasted the time" of anyone, in any sense}

Q For this, Walt earns the ultimate ban.[†] {for the defamatory effect of "banning," see ¶14·A (not to mention that banishment was not "earned" in this case) ...} He will not be re-instated,[†] {... and, "ultimate" ban of "no reinstatement allowed" is especially/emphatically defamatory} and if he submits one more comment having been so warned, I will delete every one of his comments[†] {by "banning," Defendant removes from Plaintiff's reach even the potential/possibility of defending/rehabilitating

himself against Defendant's defamation (because Plaintiff had no way to communicate to the recipients of Defendant's published lies); and by further "deleting" Plaintiff's comments, Defendant even threatened to "cover-up," by destroying the evidence of his tortious defamation (which is why Plaintiff posted no further comments)} so the stench[†] of his abuse no longer lingers here.[†] {being based, as it is, on the preceding false defamatory statements, the negative epithet of "lingering stench" intentionally imparts further over-the-top false defamatory harm}

¶15 On Tue Aug 29, Plaintiff sent an email to Defendant, explaining/clarifying with great patience/reserve/clarity/accuracy the errors of Defendant's posts of the preceding day (¶14). Defendant ignored it, and never responded to it.

¶16 On Wed Aug 30, Plaintiff sent a "demand" letter/email to Defendant, appealing to his senses of ethicality and legality, urging/imploring him to fulfill the requirement that he retract/correct his defamatory claims. Defendant ignored it, and never responded to it (neither to the email communication itself, nor to the "demand" it communicated), even though he has a history of issuing retractions/corrections when he recognizes/acknowledges himself to be in error (<https://ethicsalarms.com/2010/04/08/apology-how-i-became-an-april-fool-and-an-ethics-dunce>).

STATEMENT OF CLAIMS/DAMAGES

CAUSE OF ACTION, COUNT ONE DEFAMATION (“CYBERLIBEL”)

¶17 (See ¶3.) The tags “†” *passim* indicate, with particularity, the Defendant’s (false, defamatory; see ¶18) statements and actions (quoted verbatim or explicitly cited) complained-of herein, together with accompanying explanatory comments (and meta-comments, {...}, in ¶14) inline *in situ*, regarding their (false, defamatory) nature.²

¶18 The Defendant’s statements and actions (¶17) are alleged to be — (i) knowingly/intentionally, and/or (ii) exhibiting reckless/fulsome/excessive disregard for their truth, and (iii) without one iota of reasonable/rational/conceivable grounds for Defendant to believe in their truth — all of the following: (iv) false (indeed, primarily out-and-out lies); (v) published/communicated to third-parties; (vi) malicious; (vii) harmful; (viii) unauthorized; (ix) unprivileged; and (x) made with malevolent intent/effect of significantly injuring/impairing/defaming/diminishing/“sliming” Plaintiff’s reputation/goodwill with shame/ridicule/contempt/scorn/disgrace/distrust/disgust/hatred, both generally and in special respect of Plaintiff’s good standing in his position/job/calling/field as a “champion/crusader/opponent” against Judicial Misconduct, within considerable/respectable segments of the Internet legal/ethical and Judicial Misconduct “communities.”

² The tags “†” indicate that the complained-of defamatory comments were indeed communicated/published to unprivileged others (who were in fact (falsely) influenced by them, negatively towards Plaintiff). These tags are for advisory purposes only; they are not actually required here, because of *a priori* assumption of *de facto* unprivileged publication via the public Internet.

¶19 As immediate/proximate result of Defendant's extreme/outrageous defamatory statements/actions (¶18), Plaintiff has suffered significant material/emotional harm/damage/distress.^{3,4}

PRAYER FOR RELIEF

¶20 Wherefore, Plaintiff hereby prays/requests/demands this Court to render judgment against Defendant, and award Plaintiff: (i) retraction/correction/apology for any/all defamatory statements; (ii) compensatory and punitive damages, in an amount to be determined at trial (which Plaintiff believes to be well in excess of \$100,000); (iii) other relief (such as injunction against further web/blog publication, and all expenses/costs/fees/interest), insofar as it deems just and proper.⁵

DEMAND FOR JURY TRIAL

¶21 A trial by jury is hereby requested/demanded, for all issues properly so tried.

3 Noting that under controlling Massachusetts common law, all defamation/libel is *per se* defamatory (*Sharratt v. Housing Innovations*, 365 Mass. 141 (Mass. 1974)), hence actionable even in the absence of "special [monetary] damages" (claim/proof of economic loss).

4 Noting that under controlling Massachusetts common law, even the *truth* (much less the blatant *falsity* exhibited here), when uttered/published with "actual ['unrelated to any legitimate interest,' sometimes (incorrectly) interpreted to implicate monetary considerations] malice" (a criterion usually applicable only to "public figures," but present here, in the controlling/popular sense of malevolent intent/ill-will), gives rise to liability for a defamation/libel claim (*Noonan v. Staples*, 556 F.3d 20 (1st Cir., 2009)).

5 Noting that under controlling Massachusetts common law, "Summary judgments are disfavored in defamation cases" (*Alba v. Sampson*, 44 Mass. App. Ct. 311, Middlesex County, 1998). {NOTICE: THIS IS ERROR/MISQUOTE, CORRECTED IN PLAINTIFF'S OPPOSITION TO MOTION FOR DISMISSAL, AT Oppø12f17.}

SIGNATURE; VERIFICATION

¶22 Respectfully submitted, and signed, under the pains and penalties of perjury:



Walter Tuvell, *Pro Se*
836 Main St.
Reading, MA 01867
781-475-7254
walt.tuvell@gmail.com

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