IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MEANITH HUON,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.: 1: 11-cv-3054**
ABOVETHELAW.COM, et. a.,	)	
Defendants	)	

MR. HUON'S SUR-REPLY BRIEF OPPOSING THE ABOVE THE LAW DEFENDANTS' MOTION TO DISMISS

Plaintiff, Meanith Huon, for his Sur-Reply to the Above the Law ("ATL") Defendants Motion to Dismiss, states as follows:

ARGUMENT

I. THE ILLINOIS SUPREME COURT HAS HELD THAT DEFAMATORY STATEMENTS SHOULD BE VIEWED IN ITS ENTIRE CONTEXT.

The ATL Defendants argue that Plaintiff makes new factual allegations and later admit that Defendants are not raising the innocent construction rule as a defense. Defendants miss the point: Mr. Huon is not making new factual allegations; he is arguing that the statements viewed in their context are defamatory. Even if he were making new allegations, the liberal pleadings standard under FRCP 15 should allow him to amend his complaint. Federal notice pleading requires the Plaintiff to set out, in a Complaint, a short and plain statement of the claim which will provide the Defendant with fair notice of the claim. Scott v. City of Chicago, 195 F.3d 950, 951 (7th Cir. 1999). Plaintiff need not spell out every element and can plead conclusions so long as Defendants are provided minimal notice of the claim so Defendants are

able to understand the basis of Plaintiff's claims. McCormick v. City of Chicago, 230 F.3d 319, 324 (7th Cir. 2000); Walker v. Braes Feed Ingredients, Inc., 2003 U.S. Dist. LEXIS 25108 (N. Dist. Ill. 2003).

The ATLDefendants disregard the Illinois Supreme Court's holding that all of the statements be viewed in their entire context. Tuite v. Corbitt, 224 Ill. 2d 490, 503 (Ill. 2007). The ATL Defendants violate the Illinois Supreme Court's admonishment against straining to find an unnatural innocent meaning for a statement when an innocent construction was clearly unreasonable and a defamatory meaning was more probable. Id. The ATL Defendants take the defamatory statements out of context by charting the words and sentences.

In Tuite v. Corbitt, 224 Ill. 2d 490 (Ill. 2007), the Illinois Supreme Court applied the innocent construction rule to a story on organized crime figures and their activities published by defendants. Statements were made in the story that after plaintiff, a defense lawyer, was retained to represent mob figures, the mob figures believed they were all going to be acquitted. Plaintiff sued defendants alleging that the statements were defamatory because the clear message was that plaintiff was expected to engage in bribery to secure an acquittal. Defendants argued that the statements were capable of an innocent construction to the extent that plaintiff was retained for his legal skills. The Illinois Supreme Court disagreed and held that the clear message of the statements were that plaintiff was expected to fix the case. The Court re-emphasized that the context of the statement is critical in determining its meaning. Defendants wrote or published a series of stories about mafia figures and their activities. The Court said the disputed statements must be viewed in the context of the corruption described in the entire book. The Court

concluded that given the overwhelming focus on corruption in the book, the statements could not reasonably be given an innocent construction. Defendants argued that plaintiff was never explicitly accused of engaging in any criminal conduct. In response, the Court countered that plaintiff's trial skills was never mentioned as the basis of criminal defendants' confidence in their acquittals. The Court concluded that a defamatory construction of the disputed statements is far more reasonable than an innocent construction.

In this case, the ATL Defendants wrote a series of stories back to back with large bold letters "**RAPE POTPOURRI**". The first story opens up with a 15 year old child bring raped—something the ATL Defendants find funny and amusing. The ATL Defendants would like to argue that stories about raping children and bubble gum princesses are some sort of sick self-deprecating humor on a legal blog. The next story is described by the ATL Defendants as being from the "files of the wanton and depraved." What can be more wanton and depraved than a story in a "**RAPE POTPOURRI**" series about raping a 15 year old girl? According to the ATL Defendants, it is "breaking rape coverage" of "attorney rapists near you" who came up with a "little game to meet women" by posing as "talent scout for models". The "game" turns "dastardly, pretty quickly". The "victim" is compared to "bubble gum princesses." The ATL Defendants disseminated the story worldwide on one of the most trafficked blog by lawyers, judges, law students, legal professionals on the day that Mr. Huon was acquitted. For the same reason that the reader cannot disassociate the statements about the defense lawyer from organized crime figures and fixing a trial in a series of stories about the mob in <u>Tuite v. Corbit,</u> the reader cannot disassociate statements about Mr. Huon from bubble gum princesses and accusations of rape in a series of stories back to back titled **RAPE POTPOURRI** in bold and

large letters. The first story is about a 15 year old girl who is raped. The second story is about an attorney rapist near you who came up with a dastardly game to meet girls and lure them and rape them. Defendants' attempt to argue that the comment about meeting bubblegum princesses has nothing to do with rape stores of 15 year old girls is facetious and meritless. The second story ends with a consent form for Mr. Huon to carry around for his "chronic loneliness" to use so long as he is not having sex with "barnyard" animals. Defendants answer the question as to what can be more wanton and depraved than raping 15 year old girls and bubble gum princesses? Having sex with "barnyard" "animals." The consent defense was barred in the official proceedings. Thus, Defendants never provided a complete and fair summary. How can a reporter provide a fair and complete summary if he only reports on opening statements after the trial is over and the defendant has been convicted? That would be like reporting on a victory by America over Japan and Germany by reporting just the story on attack on Pearl Harbor.

The ATL Defendants cannot give an innocent construction. In fact, Defendants admit that it is not raising this defense and scold Mr. Huon for spending pages advising Defendants on how they should raise a defense and what the law is. So the Defendants respond with a weaker argument that Mr. Huon now alleges new facts. In doing so, Defendants admit that Mr. Huon can allege new facts to state a cause of action. Why not just allow him to amend his complaint to add the new facts recognized by Defendants, under the liberal pleading approach of FRCP 15? Boatwright v. Walgreen Co., 2011 U.S. Dist. LEXIS 22102 (N.D. Ill. 2011).

II. THE ATL DEFENDANTS ADMIT THERE WAS NO NEWS ARTICLE.

The ATL Defendants are website operators and bloggers who contend that they commented on a news article whose existence Defendants have not established. Relying on this

unproven hyperlinked news article, Defendant argues that the fair reporting privilege applies—although the privilege applies to reports of an official proceeding, not a news article. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 588 (Ill. 2006). Defendants have the burden of proving that the privilege applies. Lowe v. Rockford Newspaper, Inc., 179 Ill.App.3d 592 (2nd Dist. 1989). On page 2-3 of Defendants' Reply brief, Defendants argue that Mr. Huon cannot prove the existence of the news article and, thus, Defendants admit that the hyperlinks to a news article do not exist.

Mr. Huon attached a screenshot from Lawyergossip.com as Exhibit K to the Second Amended Complaint. On information and belief, Lawyergossip.com is the only other website that falsely called Mr. Huon a serial rapist of multiple victims before the ATL Defendants posted its blog. The ATL Defendants didn't comment on a news article, because no news article called Mr. Huon a serial rapist or a rapist. This reference to multiple victims is not contained in the official proceedings, since there was only a single complainant. Thus, the ATL Defendants either commented on a blog post or the ATL Defendants invented a fiction. The privilege does not apply to a blog of a blog by website operators.

III. THE FAIR REPORT PRIVILEGE EXTENDS ONLY TO REPORTS OF AN OFFICIAL PROCEEDING.

The ATL Defendants argue that Mr. Huon misstate the law, when Mr. Huon relied on cases cited by Defendants: The fair report privilege has two requirements: (1) the report must be of an official proceeding; and (2) the report must be complete and accurate or a fair abridgement of the official proceeding. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 588 (Ill. 2006). Defendants ignore the language that the report must be "of an official proceeding." Defendants initially argued that the blog post was about a news article: "Above The Law's

commentary on the news article". (Page 1 of Defendants' Memorandum; page 5 of Doc. No. 49.) Where is this news article? Defendants now argue—and, thereby, admit—that the existence of the hyperlinks to a news article cannot be proven. e.

The Illinois Supreme Court in Solaia Tech., LLC held that "a court must determine if the sting of the defamatory statement in the [official] proceeding is the same as the sting of the defamatory statement in the [news] report." Solaia Tech., LLC, 221 Ill. 2d at 590. The Court concluded in that case that the privilege did not apply, because "There is no innocent construction for this statement. The natural and obvious implication of this statement is that the plaintiffs committed a crime." Solaia Tech., LLC, 221 Ill. 2d at 594.

In this case, the facts are more egregious. The natural and obvious implication of this statement is that Mr. Huon committed a crime and committee several crimes against women, including bubble gum princesses. First, the defamatory statements that Mr. Huon was a serial rapist of multiple victims cannot be found in the official proceedings or any news article. It originated from a Lawyergossip.com blog post. Second, the sting of the defamatory statements is not the same as the sting of any statements in official proceedings—it is far worse. Mr. Huon was acquitted. Where is the sting in that from the official proceedings? Third, the natural and obvious implication of this statement is that Mr. Huon committed several crimes. Fourth, Defendants have waived the innocent construction rule as a defense.

Without addressing the case law legally and factually on point, the Defendants just argue that the cases cited by Mr. Huon do not address the fair report privilege. But Mr. Huon cited Illinois cases interpreting the fair report privilege. Myers v. The Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002) and Lowe v. Rockford Newspaper, Inc., 179 Ill.App.3d 592, 597 (2nd Dist.

1989), held that the privilege does not apply to an inaccurate account of an official proceeding—not a news article invented by Defendants after the fact. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 590 (Ill. 2006), the Restatement (Second) of Torts § 611, Comment f, at 300 (1977), and Myers state that for the privilege to apply, a new media's summary of the official proceedings must be "fair" for the privilege to apply. Solaia Technology, LLC, cited by Defendants, further held that statements that are defamatory *per se* fall outside the scope of the privilege. A blog posting sick jokes about raping children is not a news media reporting on an official proceedings. Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc., 297 Ill.App.3d 314, 310 (1st Dist. 1988) held that the privilege does not apply to fabricated evidence. Defendants simply do not respond to these arguments.

Defendants do not even attempt to formulate a reply to the argument that bloggers are not reporters. Defendants argue that Mr. Huon cannot rely on Too Much Media, LLC v. Hale, 206 N.J. 209 (N.J.,2011) and In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1141 (D.C. Cir. 2005), because these cases concern the reporter's privilege. Yet, Defendants rely on the argument that the fair report privilege extends to information supplied to a reporter from an anonymous source, citing Howell v. Enter. Publ'g, Co., LLC, 920 N.E.2d 1 (Mass. 2010). Defendants' argument, however, assumes that Defendants bloggers are reporters who are entitled to protections afforded under the reporter's privilege as to its sources. Defendants miss the point: the reporter's privilege is inextricably subsumed within the fair report privilege.

Defendants are not reporters any more than a racist on newnation.org calling Mr. Huon net as a Cambodian "invasive species" and "nigger depravity" is a journalist. Defendants fall into the same category of pornographers who generate advertising dollars by web traffic.

Defendants are not reporters or journalists whose conduct are governed by a code of ethics in news gathering and reporting. Bloggers and website operator exhibit none of the recognized characteristics traditionally associated with the news process. A blogger merely comments on the writings of others on and creates no independent product of its own nor makes a material substantive contribution to the work of others. Defendants commented on a blog.

Defendants rely on out of state cases that are not applicable. Mr. Huon is not arguing that Defendants were not present at his trial. Mr. Huon is arguing that the fair report privilege does not extend to (1) bloggers and website operators (2) who post a comment about a news article (3) whose existence is invented after the fact or (4) who blog on a blog. Mr. Huon also argues that the blog post (5) was not a fair abridgment of the official proceedings (6) invented and fabricated facts (7) and fall outside the privilege when the statements are defamatory *per se.*

Binder v. Triangle Pubs., Inc., 275 A.2d 53, 58 (Pa. 1971), is a 1972 Pennsylvania state court decision that explained that the "Daily News reporter did not attend all of the trial but rather received his information from the prosecuting attorney." In this case, had the bloggers called the prosecuting attorney or anyone at the courthouse or even Mr. Huon, Defendants would have been informed that Mr. Huon was acquitted. What is the burden of a telephone call? Mr. Huon is not asking Defendants to investigate the case. But before Defendants choose to defame someone to generate a profit, Defendants should at least make a telephone call. Defendants are bloggers who disseminated false statements about Mr. Huon on the Internet and, after the fact, invented a fictional news story. Had Defendants read the newspaper about breaking news, it would have learned that Mr. Huon had been acquitted. Defendants contend it was commenting on a news story but Defendants couldn't even read a newspaper article right. There was no news

article that reported that Mr. Huon was a serial rapist or a rapist or that there were multiple victims. The inquiry in Binder was "directed to whether the Philadelphia Daily News account of the first day of the trial is fair and accurate". In this case, Mr. Huon argues that the blog post was not fair and accurate and fabricated evidence. Mr. Huon was acquitted. Defendants called Mr. Huon a serial rapist and a rapist. The post is not a fair and substantially accurate portrayal of the events in question. On information and belief, there is no evidence in the official proceedings that Mr. Huon posed as a "talent scout", that there were multiple "victims", that Mr. Huon came up with a "game" to meet women that turned "dastardly".

Howell v. Enter. Publ'g, Co., LLC, 920 N.E.2d 1 (Mass. 2010), cited by Defendants, held that the privilege only applies to news media: " . . . (2) the only practical way many citizens can learn of these actions is through a report by the news media, and (3) the only way news outlets would be willing to make such a report is if they are free from liability, provided that their report was fair and accurate." Howell, 920 N.E.2d at 14. Defendants also omit the rest of the quote: "If, however, the source is an unofficial or anonymous one, a report based on that source runs a risk that the underlying official action will not be accurately and fairly described by the source, and therefore will not be protected by the privilege, or that the information provided will go beyond the bounds of the official action and into unprivileged territory." Howell, 920 N.E.2d at 14. In this case, Defendants are bloggers who had no source and ran the risk that the post would be defamatory. Defendants write a novel and expend efforts charting arguments but curiously make only two reference to the so-called news article that it has never produced. Defendants have not even produced an affidavit from the author of the post as to the source he relied on, before posting the defamatory post. In its Reply brief, Defendants argue Mr. Huon

can't prove the existence of such a news article. If Mr. Huon can't prove the existence of a news article, what source is the Defendants' relying on?

Defendants' other case cited, Beary v. West Pub. Co., 763 F.2d 66 (2nd Cir. 1985) is not applicable. Beary held that § 74 of the New York Civil Rights Law gave absolute immunity to a West Advance Sheet of a judicial opinion, "Since West's Advance Sheet publication of Judge Friedmann's opinion reproduced it precisely as written by the judge." 763 F.2d at 68. Defendants are not Westlaw or Lexis, it didn't produce a copy of a judicial report precisely as written by the judge, and we are not governed by New York statutory law. The judge in Mr. Huon's Madison County criminal case didn't call him a "rapist." The criminal trial judge barred the consent defense but Defendants in this case wrote an essay falsely stating that the jury was able to consider the consent defense and that Mr. Huon should carry a consent form for his "chronic loneliness" as long as he is not having sex with "barnyard" animals:

> **-I, the undersigned, being of sound mind and hot body, do hereby consent to affixing my ____to the other party's______. Such amorous undulations include, but are not limited to, ____, ______, and all proposals will be considered so long as no animals (barnyard or otherwise) are involved.**
> **I claim no rights to future__________,_________,or________, in exchange for this brief interruption in my chronic loneliness.**

In its Reply brief, the ATL Defendants describes calling someone who has been acquitted a serial rapist of multiple victims as a "flippant" or "'smart alecky' style of writing . . . to create reader interest". In Solaia Tech., LLC, cited by the Defendants, the Illinois Supreme Court explained that "[A] defendant cannot escape liability for defamatory factual assertions simply by claiming that the statements were a form of ridicule, humor or sarcasm." Solaia Tech., LLC, 221 Ill. 2d at 581. How is a post on raping a 15 year old girl, luring bubble gum princesses, or carrying around a consent form not to be used with sex with barnyard animals self-deprecating

humor? Mr. Huon highly doubts that calling Defendants or its attorneys “rapists” or “pedophiles” or “sexual predators” or “sex offenders” tantamount to “smart alecky”. Inventing facts and calling someone a serial rapist of bubble gum princesses is not a aleck--it shocks and offends the conscience, which is why registered sex offenders have difficulty finding jobs or housing. Falsely calling an attorney a “rapist” on one of the most trafficked legal blog is like putting up a billboard in a small community calling someone a “sex offender.”

Sellers v. Time, Inc., 299 F. Supp. 582, 585 (E.D. Pa. 1969), cited by Defendants, involved a 1960s Time, Inc. article about a golfer who was sued for hitting someone with a golf ball. Plaintiff alleged the article made it appear that he played golf for business and not for pleasure. Sellers v. Time, Inc., 423 F.2d 887, 890 (3rd Cir. 1970). The golfer was not called a serial rapist of multiple female victims. Defendants are bloggers, not Time, Inc. How can Defendants seriously compare falsely calling someone a serial rapist of multiple female victims with adding “‘color’ to enliven an otherwise routine and dull account of a legal decision’”? The trial judge in Mr. Huon’s Madison County case didn’t call him when he was “rapist”, after he was acquitted, to enliven the jury’s finding of not guilty.

Defendants make no effort to respond to Mr. Huon’s arguments that the blog post invented facts and that, on information and belief, the official proceedings contained no record of serial victims, Mr. Huon posing as a “talent scout”, bubblegum princesses, Mr. Huon being convicted or being freshly charged with rape on the day of his acquittal, Mr. Huon inventing a game, or jury being allowed to consider the consent defense. Counsel for the ATL Defendants admitted in open court that Defendants have the entire criminal trial transcript. But Defendants are unable to cite excerpts in the official proceeding to rebut Mr. Huon’s argument. That is

because Defendants invented facts in the post to generate web traffic and advertising revenue dollars. Here, Defendants charged Mr. Huon of committing fraud by pretending to be a talent scout, a supervisor for a company that sells alcohol, a promoter seeking promotional models—all three statements are inherently conflicting. Worse, the ATL Defendants accused Mr. Huon of raping multiple women in **"breaking rape coverage" i**n conjunction of calling Mr. Huon an attorney rapist near you, of being a cyberstalker, and of being serial criminal, hyperlinking the post to defamatory statements from Lawyergossip.com. Breaking rape coverage implies that someone has been charged or accused of rape. Calling Mr. Huon an attorney rapist near you painted a picture of Mr. Huon as someone who posed a danger who had to be tracked. Inventing stories of other female victims, including some who may be a bubble gum princess age or a 15 year old, just made getting the information out seem more urgent. In fact, Defendants' strategy worked: the Jezebel.com Defendants and other websites picked up the story and the Jezebel Defendants posted Mr. Huon's mug shot and encouraged its readers to call Mr. Huon. This republication of the story eventually led to Mr. Huon becoming a target.

IV. THE FAIR REPORT REQUIRES THAT THE REPORT OF AN OFFICIAL PROCEEDING BE COMPLETE AND ACCURATE.

The ATL Defendants do not reply to the issue that the Defendants' blog posting of the Lawyergossip.com blog post or this fictitious news story is not complete and accurate. Defendants mischaracterize Mr. Huon's argument as requiring an independent investigation, so that Defendants can argue as a matter of public policy such duty would silence free speech. That is not the issue. Defendants didn't even make a telephone call to the courthouse or Mr. Huon or

the police, before calling Mr. Huon a "rapist". Defendants and its attorneys seem to believe that being charged with sexual assault involving oral sex makes someone a "rapist" or a "serial rapist." Defendants couldn't even read newspaper articles on the 6th grade level and get the story right: nothing in the newspaper called Mr. Huon a "rapist" or "serial rapist". Evidently, Defendants spend more time inventing facts and writing an elaborate story than reading a newspaper article. The issue is that the ATL Defendants' blog post was not complete and accurate, because Defendants not only conducted no investigation but Defendants was unable to correct read the newspaper stories on a 6th grade reading level. Defendants didn't just disseminate to the world that Mr. Huon was a rapist. Defendants invented facts that Mr. Huon was a serial rapist, that there were multiple victims, that Mr. Huon lured bubblegum princesses or females around that age, that Mr. Huon suffered from chronic loneliness, that Mr. Huon was having sex with barnyard animals.

In deciding if the fair report privilege applies, the court compares "the official report with the news media account . . . If the defamatory matter does not appear in the official record or proceedings, the privilege of fair and accurate reporting does not apply. Myers v. The Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002); Lowe v. Rockford Newspaper, Inc.,179 Ill.App.3d 592 (2nd Dist. 1989); Coursey v. Greater Niles Tp. Pub. Corp, 82 Ill.App.2d 76, (1st Dist. 1967), aff'd, 40 Ill.2d 257, 267 (Ill. 1968). In this case, where in the official proceedings is it stated that Mr. Huon is a serial rapist , that there are multiple female victims, that Mr. Huon posed as a talent scout? Where does it state that in the police report? The privilege does not permit the expansion of the official report by the addition of fabricated evidence designed to improve the credibility of the defamation. Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc.,

297 Ill.App.3d 314, 310 (1st Dist. 1988). In this case, the ATL Defendants abandoned any fair report privilege when it invented facts not found in the police report that—among other lies--there were other alleged rape victims and that Mr. Huon was a serial rapist.

Eubanks v. Northwest Herald Newspapers, 397 Ill. App. 3d 746, 750 (Ill. App. Ct. 2d Dist. 2010), cited by Defendants, held that the article published by the newspaper was "was a complete and accurate summary of an official report from the Lake in the Hills police department." As the court explained, "The fair-report privilege applied to the publication of this information because it was an official report from a police department. . . . Furthermore, the defendant did not make any omissions or additions to its publication that would give any sort of false impression. The published article reiterated the exact information received from the police department." Eubanks , 397 Ill. App. 3d at 750. In the case at hand, the ATL Defendants didn't get an official report from the police. Defendants are glib about what the Defendants were commenting on or the source. Was it a fictitious news article invented by Defendants after the fact? Was it the Lawyergossip.com blog post? Defendants spend very little effort explaining what was the Defendants blogging or commenting on? Why? Because the Defendants probably commented on another blog posting. In that case, Defendants are not reporters making a report of an official proceeding—Defendants didn't republish a police report. Defendants are bloggers who make sick jokes about child rape and animal sex, generating web traffic by defaming individuals like Mr. Huon, in an effort to generate advertising dollars. Regarding timeliness, Defendants called Mr. Huon a serial rapist AFTER he was acquitted of a two counts of a sexual assault by a single complaining witness. Defendants made additions by inventing facts that there were more victims out there who had been raped, that the victims may be bubblegum princesses,

that Mr. Huon posed as a talent scout. Defendants didn't even get the original news story about the acquittal right. More importantly, Defendants didn't just "report" on an official proceedings. Defendants wrote an entire essay on Rape Potpourri and simply invented facts. Defendants' continued insistence that the post is "an accurate report of the proceedings on the first day of Plaintiff's trial" is meritless. Where in the official proceedings on the first day does the prosecutor mention other victims, that Mr. Huon is a serial rapist, that the complaining witness is a bubblegum princess, that Mr. Huon posed as a talent scout? Interestingly, Defendants inundate the Court and Mr. Huon with charts and truncated trial transcripts. But the Defendants spend little or no efforts comparing the official proceedings with the blog post.

V. THE COURT SHOULD DRAW A NEGATIVE INFERENCE AGAINST DEFENDANTS FOR NOT PRODUCING THE ENTIRE TRIAL TRANSCRIPT.

Defendants know that in deciding if the fair report privilege applies, **the court compares the official report with the news media account** . If the defamatory matter does not appear in the official record or proceedings, the privilege of fair and accurate reporting does not apply. Myers v. The Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002). **Defendants also know that** the fair report privilege has two requirements: (1) the report must be of an official proceeding; and (2) **the report must be complete and accurate or a fair abridgemen**t of the official proceeding. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 588 (Ill. 2006). Defense counsel admitted in open court that she has the entire trial transcript but has chosen to file electronically selected excerpts from a truncated transcript. Why? Defendants argue that "The Court should review and consider the transcript of Plaintiff's trial in evaluating the fair report privilege." How is the Court supposed to do that when Defendants only filed the truncated transcript of the first day of a trial that lasted an entire week? Defendants argue that

the fair report privilege only requires " summaries of public proceedings". How can the Court compare a summary when Defendants only produces excerpts of a truncated trial transcript from the first day of a 5 day trial? Defendants attempt to improperly shift the burden to Mr. Huon by arguing that Defendants should not have to produce "the entire official proceedings," including "the police report" and "the written statements of the complaining witness." Defendants miss the point. Defendants bears the burden of establishing the privilege. Nowhere in Defendants' briefs do Defendants attempt to compare the blog posts with a police report or with the complaining witness's statements. The truncated trial transcript that Defendants have produced do not contain a record of Mr. Huon being charged with rapes of multiple victims or a record of Mr. Huon posing as a talent scout, because no such reference exits.

VI. IT IS A QUESTION OF FACT FOR A JURY AS TO WHETHER THE FAIR REPORT PRIVILEGE WAS ABUSED.

Defendants' own cited case, Cook v. Winfrey, held that the District Court committed reversible error by dismissing plaintiff's defamation claim on the grounds that the statements were privileged under Ohio law, because "the conclusion that the privilege applied to the allegedly defamatory statements in this case required the district court to resolve factual issues that should not be reached on a motion to dismiss under Rule 12(b)(6)." 141 F.3d 322, 330-31 (7th Cir. 1998). Both the Seventh Circuit and Illinois courts have held that it is question of fact for a jury as to whether the fair reporting privilege was abused. Brown & Williamson Tobacco Corp. v. Jacobson, 713 F.2d 262, 272 (7th Cir. 1983); Maple Lanes, Inc. v. News Media Corp., 322 Ill.App.3d 842 (2nd Dist. 2011) (genuine issue of material fact as to whether newspaper correctly quoted sheriff). Defendants conveniently do not reply to Mr. Huon's arguments and, therefore, have conceded the argument that a FRCP 12(b)(6) motion should not decide the

question of whether the privilege has been abused. Defendants and its attorneys knew or should have known this—since the case was cited by Defendants—but proceeded to file a novel-length brief on a FRCP 12(b)(6) motion.

VII. THS U.S. SUPREME COURT AND THE ILLINOIS SUPREME COURT HAVE REJECTED THE ARGUMENTS ADVANCED BY DEFENDANTS THAT OPINIONS ARE NOT ACTIONABLE.

Defendants continue to disregard the U.S. Supreme Court's and the Illinois Supreme Court's rejection of the very same argument that expressions of opinions are not defamatory. Milkovich v. Lorain Journal Co. 497 U.S. 1, 13-15 (1990); Bryson v. News America Publication, 174 Ill. 2d 77 (Ill. 1996). In Solaia Tech., LLC decision relied on by Defendants, the Court reiterated its holding in Bryson: "However, there is no artificial distinction between opinion and fact: a false assertion of fact can be defamatory even when couched within apparent opinion or rhetorical hyperbole. Bryson, 174 Ill. 2d at 99-100, citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 18-19, 111 L. Ed. 2d 1, 17-18, 110 S. Ct. 2695, 2705-06 (1990)." Solaia Tech., LLC, 221 Ill. 2d at 558. The U.S. Supreme Court held that there is no separate first amendment privilege for statements of opinion and that a false assertion of fact can be libelous even though couched in terms of an opinion. Milkovich, 497 U.S. at 18 (simply couching the statement "Jones is a liar" in terms of opinion--"In my opinion Jones is a liar"--does not dispel the factual implications contained in the statement). Thus, the test to determine whether a defamatory statement is constitutionally protected is a restrictive one. Under Milkovich, a statement is

constitutionally protected under the first amendment only if it cannot be "reasonably interpreted as stating actual facts." Milkovich, 497 U.S. at 20. In applying this test the court first considers whether a reasonable fact finder could conclude that the allegedly defamatory statement was an assertion of fact. Milkovich, 497 U.S. at 20. Bryson v. News Am. Publs., 174 Ill. 2d 77, 99-100 (Ill. 1996). The test is whether the assertion is sufficiently factual to be susceptible to being proven true or false. Milkovich, 497 U.S. "Whether the statement was actually true or false is a question of fact for the jury". Bryson v. News Am. Publs., 174 Ill. 2d 77, 100 (Ill. 1996).

In this case, Defendants argue without merit that "The Post does not assert additional facts aside from what actually occurred at trial." The blog post made additional assertions of fact: Mr. Huon posed as a talent scout, there were other victims, Mr. Huon had been charged with other rape or sex crimes, Mr. Huon was a serial rapist, Mr. Huon invented a game to meet women. All of these defamatory statements are assertions of facts that are subject to being proven true or false. The facts in the case at hand is more egregious than in Bryson where plaintiff was called a "slut." Mr. Huon was accused of being a serial rapist with multiple victims. He was identified by his name and profession. The article was not presented as fiction but as assertions of fact. Defendants did not even attempt to state, "In my opinion, Mr. Huon is a rapist." Defendants asserted facts that Mr. Huon was a "rapist", that he was a "serial rapist", that he had stalked or raped multiple victims, that some of these victims may be "bubble gum princess" age (by comparison or metaphor). These statements can and have been rebutted, because Defendants cannot cite in the official proceedings where these assertions of facts were made. Defendants can't even produce a news article.

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (U.S. 1975), cited by Defendants, held

that there was no cause of action for invasion of privacy for disclosing a rape victim's name by the news media. Mr. Huon doesn't have a claim for invasion of privacy: he's not suing the Defendants for disclosing his name.

Defendants cannot rely on the cases it cited on page 4 of its Memorandum, because as Defendants admit on page 9 of its Reply brief, "Defendants did not make an argument about the innocent construction rule in the Memorandum." The cases cited on page 4 of Defendants' Memorandum were decided on a motion to dismiss based on the innocent construction rule: Horowitz v. Baker, 168 Ill. App. 3d 603 (3d Dist. 1988)—decided before Bryson and Milkovich—held that "the language used by the defendants may reasonably be innocently interpreted . . ." O'Donnell v. Field Enters., Inc., 145 Ill. App. 3d 1032, 1036 (1st Dist. 1986) was decided before Bryson and Milkovich on a 2-619 motion, pursuant to 735 ILCS 5/2-619,and plaintiff was given an opportunity to conduct limited discovery.

VIII. THE POST IS DEFAMATORY *PER SE.*

Statements impugning a person's integrity, prejudicing his practice of law, and/or implying that he committed a crime is defamatory *per se*. Solaia Technology, LLC , 221 Ill.2d at 590; Myers, 332 Ill.App.3d at 922; Coursey v. Greater Niles Tp. Pub. Corp., 40 Ill.2d 257 at 239. On the date that Mr. Huon was acquitted of rape, the ATL Defendants posted a "breaking rape coverage" story that Mr. Huon, a wanton and depraved individual, posed as a talent scout and forced a woman to perform oral sex and that there were other female victims. Before the Huon story, Defendants wrote about a 15 year old girl being raped. Then the ATL Defendants wrote that the next story—the Huon story—was about the "wanton and the depraved". What

could be more wanton and depraved than raping a 15 year old girl? Defendants than compare Mr. Huon's "victim" to a "bubblegum princess" and implied that he was having sex with barnyard animals. Defendants imputed that Mr. Huon committed a crime, that he lacks integrity by lying, that he fornicates with several women, that he is an "attorney rapists near you", that he is a pedophile who preys bubblegum princesses. As the ATL Defendants admit, this would fall into all the categories of defamation *per se*. Berkos v. National Broadcasting Co., Inc.,161 Ill.App.3d 476, (1st Dist.,1987), cited by Defendants, held that a judge stated a cause of action for defamation and false light against NBC for identifying him as involved in judicial corruption under investigation. In this case, on the date that he was acquitted, Defendants falsely identified or implied that Mr. Huon was under investigation for being a serial rapist or rapist.

IX. DEFENDANTS ADMIT THAT IT DID NOT ARGUE THE INNOCENT CONSTRUCTION RULE.

Curiously, Defendants admit that on page 9 of its Reply brief that " Defendants did not make an argument about the innocent construction rule in the Memorandum". Why do Defendants attach a chart lifting words and sentences out of context and arguing that the words and sentences are not defamatory, namely, can be innocently construed? Defendants' chart is an improper argument and Defendants' admission on page 9 is binding.

X. DEFENDANTS DO NOT ADDRESS THE ILLINOIS SUPREME COURT DECISION IN KOLEGAS V. HEFTEL BROADCASTING CORP.

Defendants again do not address the arguments raised by Mr. Huon that several cases around the country have held that the publication of a defamatory statement constitute extreme and outrageous conduct. Kolegas v. Heftel Broadcasting Corp., 154 Ill.2d 1, (Ill.,1992); Hatfill v. New York Times Co., 416 F.3d 320 (4th Cir. 2005); Russell v. Thomson Newspapers, Inc., 842

P.2d 896 (Utah,1992); Moss v. Wallace, 2009 WL 4683553 (Conn.Super.,2009). Defendants do not respond to Mr. Huon's discussion of the Illinois Supreme Court's decision in Kolegas v. Heftel Broadcasting Corp. The U.S. Supreme Court stated in Hustler Magazine, Inc. v. Falwell,

> Of course, this does not mean that any speech about a public figure is immune from sanction in the form of damages. Since New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), we have consistently ruled that a public figure may hold a speaker liable for the damage to reputation caused by publication of a defamatory falsehood, but only if the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 52 (U.S.Va.,1988).

Since 1990, federal courts apply Milkovich v. Lorain Journal Co. (1990), 497 U.S. 1, in determining whether speech in defamation actions is privileged. Herring v. Adkins, 150 Ohio Misc.2d 13, 19-20 902 (Ohio Com.Pl.,2008). In

Snyder v. Phelps, 131 S. Ct. 1207, 1220 (U.S. 2011), cited by Defendants, held that " Our holding today is narrow. We are required in First Amendment cases to carefully review the record, and the reach of our opinion here is limited by the particular facts before us." In that case, the congregation of the Westboro Baptist Church picketed picket the funeral of Marine Lance Corporal Matthew Snyder, who was killed in Iraq in the line of duty. The picketing took place on public land approximately 1,000 feet from the church where the funeral was held, in accordance with guidance from local law enforcement officers. The picketers peacefully displayed their signs for about 30 minutes before the funeral began. Plaintiff, Matthew Snyder's father, saw the tops of the picketers' signs when driving to the funeral, but did not learn what was written on the signs until watching a news broadcast later that night. The Court also stated that "[N]ot all speech is of equal First Amendment importance,' " however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous."

Snyder v. Phelps, 131 S. Ct. 1207, 1215 (U.S. 2011). Mr. Huon's acquittal in a sexual assault case in Madison County, Illinois is a matter of purely private significance that has no bearing in New York City or worldwide. Defendants didn't obtain a permit to picket 1000 feet from Mr. Huon's apartment for 30 minutes. Defendants just disseminated defamatory statements worldwide that were republished and continues to remain on the Internet.

XI. THE COURT SHOULD ALLOW A PRIVATE CAUSE OF ACTION FOR CYBERBULLYING AND/OR CYBERSTALKING.

Defendants again do not respond to the arguments raised by Mr. Huon. The problems of cyberstalking and cyberbullying by bloggers and the media is a serious threat to Americans. When a statute is enacted to protect a particular class of individuals, courts may imply a private cause of action for a violation of that statute although no express remedy had been provided. Sawyer Realty Group, Inc. v. Jarvis Corp., 89 Ill.2d 379, 386 (Ill. 1982). This standard evolved from a test first articulated in Cort v. Ash (1975), 422 U.S. 66, 78, where the Supreme Court examined four factors: (1) Is the plaintiff one of a class for whose especial benefit the statute was enacted? (2) Is there any indication of legislative intent to create or deny such a remedy? (3) Is it consistent with the underlying purpose of the legislative scheme to imply such a remedy? (4) Is the cause of action traditionally allocated to State law? Sawyer Realty Group, Inc. v. Jarvis Corp., 89 Ill.2d 379, 386 (Ill. 1982). Illinois courts have continually demonstrated a willingness to imply a private remedy, where there exists a clear need to effectuate the purpose of an act. Id.

In this case, (1) Mr. Huon is within the class of members for whom the statute was

intended to protect; (2) The comments to the cyberstalking act indicates that the legislatures intended to protect people from harassment from websites; (3) implying a remedy is consistent with the legislative scheme to fight cyberbullying and cyberstalking; (4) the cause of action is traditionally allocated to state law. Illinois has an interest in stopping its citizens from being stalked and bullied online. At least one other state court has attempted to create a private cause of action for stalking or cyberstalking. Remsburg v. Docusearch, Inc., implied a private cause of action from a consumer protection statute similar to the Illinois Consumer Fraud and Deceptive Practices Act to address the problem of cyberstalking. 149 N.H. 148, 816 A.2d 1001 (N.H.,2003).

In this case, there is adequate remedy for the growing problems of cyberstalking and cyberbullying. Like in Mr. Huon's case, prosecutors either do not have the will to try these cases or they overcharge defendants with cyberstalking crimes that have no merit. Private enforcement of cyberstalking would provide a better shield against the unfettered and unregulated conduct of bloggers. The cyberstalking criminal statute is fairly new. The criminal case involving Mr. Huon and the retaliatory actions taken by the prosecutors to charge—and later dismiss—the cyberstalking charges against Mr. Huon when the complainant Googled and stalked Mr. Huon online demonstrates that a private cause of action is needed. The response of self-appointed journalists bloggers like Defendants demonstrate that there is no adequate protection in the cyberworld. False accusations and malicious prosecutions of individuals for cyberstalking just makes the individual a target for more cyberbullying and harassment online. Defendants' dismissal of the wrongful prosecution of Mr. Huon, after defaming him and calling him a serial rapist, show no genuine remorse for its misconduct.

XII. MR. HUON STATES A CAUSE OF ACTION FOR CIVIL CONSPIRACY.

Defendants are aware that due to page limitations, when Mr. Huon amended his Response, he inadvertently omitted the reference to the John Does 1-100, because in his original Response brief and Amended Response brief, Mr. Huon argues that the John Does 1-100 conspired with the Defendants [Docket Nos. 79 and 84]. However, the Second Amended Complaint alleges all Defendants conspired, including the John Does 1-100. On information and belief, the John Does 1-100 are not agents of the ATL Defendants. The 30+ single space paged complaint alleges in sufficient factual detail the role of each conspirator from Breaking Media to the author Elie Mystal Defendants, John Does 1 to 100, including, John Doe No. 1 a/k/a LatherRinseRepeat, are registered users, writers, or editors of Abovethelaw.com who posted defamatory comments regarding Mr. Huon. Mr. Huon can amend his complaint to allege more facts, if necessary.

Defendants do not explain how Mr. Huon's allegations fail under allegations fail under Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) but Defendants clearly have notice of Mr. Huon's run of the mill lawsuit. As the 7th Circuit stated, "In our initial thinking about the case, however, we were reluctant to endorse the district court's citation of the Supreme Court's decision in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), fast becoming the citation du jour in Rule 12(b)(6) cases, as authority for the dismissal of this suit." Smith v. Duffy, 576 F.3d 336, 339-340 (7th Cir. Ill. 2009).

XIII. PLAINTIFF WAS GIVEN LEAVE TO FILE HIS SECOND AMENDED RESPONSE BRIEF.

Mr. Huon was given leave to file his Second Amended Response, contrary to

Defendants' argument. On December 5, 2011, the Court entered the following order: " . . . Plaintiff is granted leave to file a responsive brief of no more than 23 pages to the Above The Law Defendants Motion to Dismiss on or before December 12, 2011.(Docket No. 87.) Defendants argues that Mr. Huon's Response brief was "over-long". The Above The Law Defendants were given leave to file a 22-page Memorandum of Law with Exhibits in Excess of 170 pages. The entire document is in excess of 192 pages. The ATL Defendants filed a Summary and a 12 page Reply brief. Mr. Huon had to respond to all of Defendants' meritless arguments.

Mr. Huon has asked for, in the alternative, that he should be allowed to plead special damages. Mr. Huon has sustained special damages by hiring a defense attorney to defend Ms. Andrews' complaint and by sitting in jail waiting to post an I-bond, as a result of Defendants' defamatory posting that was republished by the Jezebel Defendants. The charges have been dismissed by the State. Mr. Huon should be given leave to amend his defamation *per quod* count by alleging special damages. Mr. Huon's complaint was not previously dismissed by this Court. The delay in this case was partly caused by the ATL Defendants filing unopposed motions for extensions of time (Docket Nos. 26 and 30), filing a novel-length brief on issues that cannot be decided on a FRCP 12(b)(6) motion, disclosing the complainant's and witness's personal information from the Madison County criminal case. Defendants made the decision to file a 192+ page document. The fact that Mr. Huon has to respond to Defendants' 192+ page document, explaining why Defendants' motion is meritless is not a basis for denying Mr. Huon's request to replead under FRCP 15, in the alternative, should the Court dismiss certain counts.

Mertens v. Hummell, 587 F.2d 862, 865-866 (7th Cir. Ill. 1978), cited by Defendants,

does not apply. There, plaintiff failed to comply with pre-trial discovery orders. Plaintiff's amended complaint would have been his fifth complaint after 2 1/2 years following the inception of the case. Mertens v. Hummell, 587 F.2d 862, 865-866 (7th Cir. Ill. 1978). In this case, Mr. Huon has not violated any pre-trial discovery orders, the delay was caused by Defendants' filing massive briefs and making meritless arguments that Mr. Huon had to respond to. Defendants in this case knew or should have known that its motion cannot be disposed of at this stage, because discovery would be needed on whether the privilege was abused (if the privilege applied).

WHEREFORE, Plaintiff, Meanith Huon, requests that this Honorable Court deny The Above the Law Defendants' Motion to Dismiss.

/s/Meanith Huon

Meanith Huon

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CERTIFICATE OF SERVICE

Under penalties of law, I attest the following documents or items have been or are being electronically served on all counsel of record for all parties on January 29, 2012:

MEANITH HUON'S SUR-REPLY BRIEF OPPOSING THE ABOVE THE LAW DEFENDANTS' MOTION TO DISMISS

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