UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MEANITH HUON,	)	
Plaintiff,	)	
v.	)	**CIVIL ACTION NO.: 1: 11-cv-3054**
	)	
DAVID LAT, et. al.,	)	
Defendants	)	

PLAINTIFF, MEANITH HUON'S RESPONSE TO THE THE ABOVE THE LAW DEFENDANTS' FRCP 12(b)(6) MOTION TO DISMISS

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Plaintiff, Meanith Huon, responds to the FRCP 12(b)(6) Motion to Dismiss and Memorandum of Defendants, Breaking Media, Inc., Breaking Media, LLC, David Lat, Elie Mystal, John Lerner, and David Minkin ("ATL Defendants" or "Defendants"), as follows:

INTRODUCTION

On or after the day that Meanith Huon was acquitted of sexual assault on May 6, 2010, the ATL Defendants posted the headline "**Rape Potpourri"** and "breaking rape coverage ". Defendants posted a rape story on its blog accusing Mr. Huon of being, a rapist, an attorney rapist near you, a serial sex offender who had victimized multiple women. However, Mr. Huon was acquitted of sexual assault in the original proceedings and he was never called a "rapist." Nothing in the original proceedings and nothing in the news articles mentioned the existence of multiple female victims of Mr. Huon. Defendants invented the fiction that Mr. Huon was charged with "rape", when he had been acquitted of sexual assault of "Jane Doe".[1] Defendants invented the fiction that there was more than one female victim of Mr. Huon. Defendants knew there was only a single complainant.

Defendants did not quote a Belleville News Democrat ("BND") article in its rape story post, and Defendants do not even contend that BND news article existed that reported that Mr. Huon victimized or raped several women. The quote in the 2010 ATL rape story on Mr. Huon is from a 2008 Madison County Record post on the blog MadisonRecord.com. A copy of the ATL story with the citation to the Madison County Record post is attached as Exhibit "A". The edits or markings on the copy of the ATL article attached to Defendants' Response brief hides that the source of the rape story post is the 2008 Madison County Record post. The word "Madison

County Record" in red is blocked by the markings. See Exhibit "A". A copy of the ATL story attached to Defendants' Memorandum is also attached here as Exhibit "B" **because** that copy contains the story about a pedophile immediately before Mr. Huon's story. A copy of the entire 2008 Madison County Record cited by Defendants is attached as Exhibit "C".

The 2008 Madison County Record post quoted by the Defendants in their 2010 rape story about other so-called female victims of Mr. Huon is **the very same article** about the **same Jane Doe** that the Defendants cited to in a 2008 post on Abovethelaw.com when they called Mr. Huon "Lawyer of the Day". Exhibit "D". Second, Defendants argue that they commented on a BND article that has never been produced and that is not quoted anywhere in the rape story post of 2010. Exhibit "A". Defendants, bloggers, cannot argue with a straight face that they were reporting four day old news—opening statement. Four day old news is not even "news" in print journalism. Furthermore, nothing in opening statement refers to Mr. Huon as a serial rapist or as someone with a history of victimizing several women.

STANDARD OF REVIEW

All factual allegations in the complaint must be accepted as true. Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547, 555 (7th Cir. Ill. 2012). A complaint must contain only a "short and plain statement of the claim showing that the pleader is entitled to relief." FRCP 8(a)(2). Judging how the public would interpret nebulous verbiage is difficult. Thus, doubts as to whether a statement has a potentially defamatory meaning should not be resolved in favor of the moving party at the Rule 12(b)(6) stage. Dismissal at the summary judgment stage, after discovery, is more appropriate. On a Rule 12(b)(6) motion, courts should not make "judgment

[1] Mr. Huon filed a motion to strike an exhibit revealing the name and hometown of the complaining woman in case no. 2008 CF 1496, because she was the complainant in a sexual assault case. Docket No. 50.

calls" about the defamatory capacity of allegedly libelous statements at issue. Action Repair, Inc. v. American Broadcasting Cos., 776 F.2d 143, 149 (7th Cir. Ill. 1985).

ARGUMENT

I. THE FAIR REPORTING PRIVILEGE DOES NOT APPLY.

A. THE REQUIREMENTS OF THE FAIR REPORT PRIVILEGE ARE NOT MET.

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 did not report on an official proceedings or make a fair abridgment of the official proceeding. Defendants are bloggers or website operators who contend that they commented on a news article, which has never been produced.[2]

More importantly, Defendants cannot cite to any news article calling Mr. Huon a rapist or a serial rapist. Defendants cannot cite to a news article about multiple female victims who were victimized by Mr. Huon. There are no original proceedings or transcript where Mr. Huon is called a rapist or a serial rapist or where he was charged with sexually assaulting or sexually abusing multiple female victims. Opening statements did not refer to multiple female victims or multiple sex crimes committed by Mr. Huon. **Defendants' Memorandum does not even address** the issue that Defendants depicted Mr. Huon as a sex offender who preyed on multiple female victims.[3]

[2] Defendants have never produced a copy of the BND article, and the link is a broken hyperlink that does not redirect the reader to the BND article. Furthermore, Defendant does not contend that the BND article accuses Mr. Huon of sexually assaulting or sexually abusing or raping multiple female victims .

[3] Mr. Huon alleges in the Fourth Amended Complaint that:

> 72. Defendants intentionally omitted, among other things, the following facts:

Assuming arguendo that there was a BND news article, the ATL Defendants re-published a defamatory statement-- this is not a report of an official proceeding. It is a re-publication of a defamatory statement in a news article, which is defamation. Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc., 297 Ill.App.3d 304. 310 (1st Dist. 1988).[4] Under common law, a person who republished a defamatory statement made by another was himself liable for defamation even though he gave the name of the originator. Hale v. Scott, 371 F.3d 917, 919 (7th Cir. Ill. 2004); Catalano v. Pechous, 83 Ill. 2d 146. (1980); Olinger v. American Savings and Loan Assoc., 133 U.S. App. D.C. 107, 409 F.2d 142, 144 (D.C. Cir. 1969); Cianci v. New Times Pub. Co., 639 F.2d 54, 60-61 (2d Cir. 1980); Owens v. CBS, Inc., 173 Ill. App. 3d 977, 992-993 (Ill. App. Ct. 5th Dist. 1988); Cobbs v. Chicago Defender (1941), 308 Ill. App. 55, 59, 31 N.E.2d 323.

B. DEFENDANTS ARE NOT JOURNALISTS OR REPORTERS.

The fair report privilege does not extend to the stereotypical "blogger" sitting in his pajamas at his computer posting on the Internet or a self-appointed journalist who blogs on a website. In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1141, 1156-1157 (Concurring opinion) (D.C. 2006); Too Much Media, LLC v. Hale, 206 N.J. 209, 242 (N.J. 2011). If that

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a. The complainant that is the subject of all the news articles is the same woman.

* * *

85. The Abovethelaw Defendants falsely stated or intimated that there were other women victims that Mr. Huon allegedly had raped but did not explain that the same woman is the subject of all news stories or blog posts and that Mr. Huon was acquitted of sexual assault.

Defendant acted with malice because they knew that Mr. Huon had been arrested in 2008. In 2008 Defendant posted a link to the very same Madison County article. Defendants do not even attempt to address paragraph 85 separately.

[4] Even repeating a defamatory statement made by a third person is defamation. Restatement (Second) of Torts § 571, Comment c, at 187 (1977); Restatement, Second, Torts § 578 (1977).

were the case, "anyone with a Facebook account, could try to assert the privilege." Too Much Media, LLC 206 N.J. at 242. Bloggers exhibit none of the recognized characteristics traditionally associated with the news process, nor do website operators demonstrate an established affiliation with any news entity so as to allow it to claim any privileges. Too Much Media, LLC v. Hale, 413 N.J.Super. 135, 160 (N.J.Super.A.D.,2010), aff'd, 206 N.J. 209 (N.J.,2011). A blogger merely comments on the writings of others on and creates no independent product of its own nor makes a material substantive contribution . Id at 159.

The Illinois legislature has codified a privilege for reporters by specifically using the word "reporter", not "blogger" or "self-appointed journalist". § 735 ILCS 5/8-901.[5]

Certain national journalism organizations have formulated codes of ethics or "canons of journalism." Conradt v. NBC Universal, Inc., 536 F.Supp.2d 380, 397 (S.D.N.Y.,2008).[6]

The neutral reportage doctrine does not apply when someone who could not be regarded as responsible prominent persons makes serious charges against a private individual and those charges are not reported in an accurate and disinterested manner. The doctrine does not protect gossip or defamatory speech. Owens,173 Ill. App. 3d at 995; Hale, 371 F.3d at 919.

The ATL Defendants are not reporters or journalists—the established press-- whose conduct are governed by a code of ethics in news gathering and reporting. Defendants operate websites, including a blog called "Above The Law" that generates advertising dollars from Internet traffic. That traffic is generated by posting rumors, making false accusations, and

[5] Several state laws provide that a reporter's privilege only extends to the established press. Ala. Code § 12-21-142; Alaska Stat. § 09.25.300; Ariz. Rev. Stat. § 12-2237; Ark. Code Ann. § 16-85-510; Del. Code Ann. tit. 10 § 4320.

[6] The Society of Professional Journalist Code of Ethics. http://www.spj.org/ethicscode.asp. News organizations like the New York Times and Business Week have a code of ethics. http://www.nytco.com/press/ethics.html and http://www.businessweek.com/ethics.htm.

defaming lawyers, judges, law students, and law professors about their private lives under the guise of "news".[7] The more sordid, sexual, private and perverse the content, the more web traffic is generated, and, thus, the more advertising dollars is generated. This is not reporting news, much less making a report of an official proceeding.

On the date of his acquittal, the ATL Defendants posted a "**breaking rape coverage**" and rape story depicting Mr. Huon as serial sex offender with multiple female victims. There was no news article hyperlinked calling Mr. Huon a serial rapist–he had been acquitted. No news article existed accusing Mr. Huon of being charged with sexually assaulting or sexually abusing multiple female victims. Besides the Madison County Record, Defendants also quoted a post from a gossip blog site called Lawyergossip.com, which falsely posted that Mr. Huon had sexually assaulted or sexually abused multiple female victims. [8] Lawyergossip.com hyperlinked its post to a 2009 article in The Alton Telegraph. But the Alton Telegraph article **clearly identifies the same woman** in both the 2008 and 2009 Madison County criminal cases that are discussed in the article.

> Meanith Huon, 39, was charged this week in Madison County Circuit Court with harassment of a witness and cyber stalking.
>
> He is accused of contacting **his alleged victim of last year** via the Internet and communicating indirectly with her in such a way as to cause her emotional distress (emphasis added). [9]

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[7] See posts by Defendants, including "Judge of the Day: From the Bench to the Big House?", "Manhattan Lawyer Happy To Help Out Brother-in-Law By Banging His Wife", "UVA Law Grad Charged With Forcible Sodomy Allegedly Sodomized Second Victim During 1L Year", "Judge of the Day: A State Judge's Alleged Affair and Baby Mama Drama Exposed — Via Incriminating Texts", "'Well-Dressed' Alleged Groper Is A Lawyer Without A Job", "A New York Prosecutor Admits to a Very Porny Past — And May Be Forced to Resign Over It," "The Departing Skadden Partner, His Ex-Wife, And The Substance Of African-Americans", "Florida Prosecutor Who Used Badge For Strip Club Perks Is Stripped Of His Job", and others. http://abovethelaw.com/ Exhibit "E".

[8] Exhibit "F"

[9] The Alton Telegraph article is attached as Exhibit "G". The ATL Defendants brag about the power of Google: had

The blogger on Lawyergossip.com had an axe to grind against Mr. Huon and had contacted the prosecutor in Madison County to try to get Mr. Huon's bond revoked.[10]

As previously explained, the other source quoted in the Defendants' post is a post from the Madison County Record blog, Madisonrecord.com. This is a 2008 post about Mr. Huon initial arrest in the Madison County criminal case involving Jane Doe. But, this 2008 post never accused Mr. Huon of sexually assaulting or abusing multiple female victims.[11] Worse, the ATL Defendants cited to the same 2008 Madison County Record article involving a single complainant, Jane Doe, when Defendants made fun of Mr. Huon by calling him "Lawyer of the Day" in 2008 and when Defendants accused Mr. Huon of having a history of victimizing multiple women in the "breaking rape coverage" story in 2010. Mr. Huon even emailed Defendant, David Lat, about the "Lawyer of the Day" post.[12] Under the cloak of "reporting", the ATL Defendants' engages in unfettered and offensive cyber bulling by stalking and defaming individuals like Mr. Huon.

C. THE PRIVILEGE DOES NOT APPLY TO AN INACCURATE ACCOUNT.

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

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Defendants Googled Mr. Huon, Defendants would have found the 2009 Alton Telegraph stating that the same woman made the complaint against Mr. Huon in 2008 and 2009. The Alton Telegraph article was still searchable on the Internet in **July of 2011** when the screenshot was made.

[10] See Chris Hoell's Answer to Interrogatory No. 11 in 11-cv-3054, Exhibit "D" and emails from Lawyergossip.com, Exhibit "H".

[11] Exhibit "C"

[12] Exhibit "I"

Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002). The test is not comparing a blog post with a news story that Defendants or comparing a blog post to a truncated trial transcript that Defendants searched for after the fact. Lowe v. Rockford Newspaper, Inc. held that the privilege did not apply, because the defamatory statements did not appear in the police report. Lowe, 179 Ill.App.3d 592, 597 (2nd Dist. 1989). In Myers v. The Telegraph, a newspaper story mistakenly reported that a criminal pled guilty to a felony, rather than a misdemeanor. The Fifth District held that the news report was defamatory per se. The privilege does not apply if "the defendants published what turned out to be an inaccurate account of the proceedings" In Coursey v. Greater Niles Tp. Pub. Corp, plaintiff was found guilty of 4 out of 5 charges. But the newspaper reported that plaintiff was found guilty of all charges. The Illinois Supreme Court held the newspaper's false reporting was sufficient to overcome the privilege. Coursey ,82 Ill.App.2d 76, 227 N.E.2d 164 (1st Dist. 1967), aff'd, 40 Ill.2d 257, 267 (Ill. 1968).

Here, where in the original proceedings is Mr. Huon called a rapist, a serial rapist? Where in the original proceedings are references to multiple female victims of Mr. Huon, or to Mr. Huon posing as a talent scout? Indeed, Mr. Huon was not charged with "rape". [13] Defendants invented facts that were not in the original proceedings. Where in the original proceedings does it state that Mr. Huon "came up with an excellent little game to meet women" or that "Meanith Huon allegedly listed Craigslist ads" or that "he claimed to be a talent scout for models." Where in the original proceedings does it state that a "Craigslist ad [was]posted by Huon in late June, seeking promotional models"?

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[13] "Rape" is defined as forcible vaginal intercourse. People v. Defrates, 33 Ill. 2d 190, 194 (Ill. 1965). It is not oral sex. The FBI changed its definition in 2012. http://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape

D. THE STATEMENTS FALLS OUTSIDE THE PRIVILEGE.

Statements charging a person with unfair business practices, impugning his integrity, prejudicing his practice of law, and/or implying that he committed a crime fall within several of the recognized categories of defamation per se. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 590 (Ill. 2006). These type of defamatory statements are not a fair abridgement of the proceedings and fall outside the privilege. Solaia Technology, LLC,221 Ill.2d 558 at 590-592. 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 these accusations are self-contradictory: Mr. Huon can't pretend to be 3 different people. Worse, the ATL Defendants accused Mr. Huon of being a rapist, a serial rapist, a stalker, someone who has a history of victimizing multiple women in **"breaking rape coverage"**.

E. THE POST WAS NOT A FAIR SUMMARY OF ANY PROCEEDINGS.

For the privilege to apply, a new media's summary must be "fair" for the privilege to apply. A fair abridgment means that the report must convey to readers "a substantially correct account." Solaia Technology, LLC, 221 Ill.2d at 589-590.[14] The reporter cannot make additions.

In this case, the ATL Defendants omitted significant facts, invented facts, conveyed erroneous impressions to its readers, and imputed deviant motives to Mr. Huon. Accusing someone of being a rapist is not a fair summary of the acquittal of sexual assault. Inventing facts

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[14] Restatement (Second) of Torts § 611, Comment f, at 300 (1977). Comment f of the second Restatement states:

> "[I]t is necessary that nothing be omitted or misplaced in such a manner as to convey an erroneous impression to those who hear or read it * * *. The reporter is not privileged under this Section to make additions of his own that would convey a defamatory impression, nor to impute corrupt motives to any one, nor to indict expressly or by innuendo the veracity or integrity of any of the parties." Restatement (Second) of Torts § 611, Comment f, at 300-01 (1977).

that Mr. Huon sexually assaulted or sexually abused multiple female victims is not a fair summary of Mr. Huon being charged with allegedly forcing one woman to perform oral sex **and being acquitted**. Defendants described its post as "**breaking rape coverage**" on the date that Mr. Huon was acquitted. Making things worse, the ATL Defendants wrote about a 15 year old girl being raped immediately prior to the post about Mr. Huon posing as a talent scout to rape bubblegum princesses. Defendants write: "Our next story from the files of the wanton and depraved is a little more in our wheelhouse." What is more wanton and depraved than raping a 15 year old girl? Jane Doe was 26 years old.[15]

F. THE PRIVILEGE DOES NOT APPLY TO FABRICATED EVIDENCE.

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 Snitowsky, NBC reported that a school principal charged one of the teachers with criminal misconduct. The news media provided none of the background needed for the audience to doubt the principal's accusations. Snitowsky held that without further context, the audience has no basis to conclude that the principal had ulterior motives for lying and, thus, the statements were defamation per se. Snitowsky held that the fair report privilege did not protect NBC, because the news media did not simply abridge the statements made to police but reported evidence not found in the report. NBC reported that a security guard witnessed the beating, although the police report never mentioned a witness. By inventing facts beyond the official report to make the charges more credible, NBC abandoned the fair report privilege.

[15] The first sentence of the prosecutor's opening statement is: "In the summer of 2008 [complainant] was not unlike most women in their mid 20s." Page 14 of Exhibit "B" to the ATL's Memorandum. Compare that to Exhibit "B" where the rape story on Mr. Huon follows the story of a pedophile.

In this case, the ATL Defendants abandoned any fair report privilege when it invented facts about other female victims of Mr. Huon who he had allegedly sexually assaulted, abused, or stalked. Defendants' invention of other female victims lends credibility to the rape accusation. Defendants' posted that had the complainant Googled Mr. Huon, she would have found a story that Mr. Huon had sexually assaulted, sexually abused, or stalked other women—without stating that the same woman, Jane Doe, is the subject of all these news articles and posts.

Defendants invented the fiction that the jury was allowed to consider the consent defense and posted a proposed consent form. Defendants omitted that the consent defense was never submitted to the jury.[16] Defendants invented the fiction that Mr. Huon " came up with an excellent little game to meet women" and "that the alleged victim had responded to a Craigslist ad that Plaintiff posted seeking promotional models". There is no evidence in the original proceedings about an excellent little game to meet women or that Mr. Huon posed as a talent scout. The transcript states that the complaining witness responded to a substantial amount of Craigslist ads every month, giving out her telephone number to 30 to 40 strangers a month. There was no evidence that Mr. Huon posted a Craigslist ad seeking promotional models or that the telephone call he had with the complaining witness was connected to an ad for a job.[17] Jane Doe testified she went drinking or bar hopping on a Sunday with Mr. Huon.

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[16] Defendants have refused to produce the entire trial transcript and have not responded to Mr. Huon's requests for a quote for costs of a copy. The District Court must accept as true all factual allegations in the complaint. Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547, 555 (7th Cir. Ill. 2012). Mr. Huon alleges that:

72(b). Defendants intentionally omitted, among other things, the following facts:

> b. The jury was not allowed to consider the consent defense, because Mr. Huon did not testify and the trial judge barred the consent defense before closing arguments. Thus, the jury had to have found that no sexual contact took place.

[17] Pages 262 and 263 of Exhibit "B" of the ATL Defendants' Memorandum.

G. DEFENDANTS' CITED CASES DO NOT APPLY.

Defendant's cases do not apply. The statements in Edwards v. Paddock Publ'ns, Inc. that the news media republished were Illinois State Police data sheets--the original proceedings. Here, Defendants wrote a story about a news article. Nothing in Mr. Huon's original proceedings referred to him sexually assaulting or abusing multiple victims. Mr. Huon had been acquitted.

It is the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally, even though he attributes the libelous statement to the original publisher, and even though he expressly disavows the truth of the statement." Hoover v. Peerless Publications, Inc., 461 F. Supp. 1206, 1209 (E.D.Pa.1978); Olinger v. American Savings and Loan Assoc., 133 U.S. App. D.C. 107, 409 F.2d 142, 144 (D.C. Cir. 1969). Cianci v. New Times Pub. Co., 639 F.2d 54, 60-61 (2d Cir. 1980); Catalano v. Pechous, 83 Ill. 2d 146.

H. WHETHER THE PRIVILEGE HAS BEEN ABUSED IS FOR A JURY.

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). [18] Cook v. Winfrey, held that the District Court committed reversible error by, 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).

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[18] In Brown & Williamson Tobacco Corp., plaintiff sued CBS and a reporter over a broadcast on cigarette advertising strategy. Defendants argued that the libel was privileged as a fair and accurate summary of the Federal Trade Commission staff's report on cigarette advertising. The Seventh Circuit held that "this is a question of fact"

II. DEPICTING MR. HUON AS A REPEATED SEX OFFENDER OF MULTIPLE CRIMES AGAINST MULTIPLE FEMALE VICTIMS IS NOT AN OPINION.

A. THE ILLINOIS SUPREME COURT HAS HELD THAT ACCUSING SOMEONE OF COMMITTING A CRIME IS AN ASSERTION OF A FACT.

The Illinois Supreme Court has already resolved the issue that when someone is charged with committing a crime, that statement is a fact, not an opinion. Catalano v. Pechous, 83 Ill. 2d 146, 159-161 (Ill. 1980). In Catalano, the Illinois Supreme Court concluded that an accusation of a specific criminal behavior is a statement of fact and not a constitutionally protected expression of opinion. 83 Ill. 2d at 162. The accusations need not charge the criminal offense with the precision of an indictment. Catalano, 83 Ill. 2d at 156; Horowitz, 168 Ill. App. 3d at 608. In Catalano , a city clerk stated "(t)wo hundred forty pieces of silver changed hands -- thirty for each alderman." The Illinois Supreme Court stated that the charge of bribery made by the city clerk informed his audience of a criminal act of which the audience was unaware had been committed by the aldermen. Catalano, 83 Ill. 2d at 162. As the Illinois Supreme Court explained:

> So stated, the contention that Pechous' statement was not defamatory reduces to the claim that when a charge of crime is based only on an inference drawn by the speaker, it must be treated as no more than an expression of opinion and thus ceases to be defamatory. We do not believe that such a position is supported by the language from Gertz on which the defendants rely . . .
>
> The argument made here would give a defendant in a defamation suit an absolute immunity rather than the limited immunity conferred by New York Times on a person whose defamatory statement was made without actual malice. Catalano v. Pechous, 83 Ill. 2d 146, 159-161 (Ill. 1980).

The Illinois Supreme Court relied on Cianci v. New Times Publishing Co. (2d Cir. 1980), 639 F.2d 54. There, a former mayor had been accused some 12 years previously of committing a

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and that "the question is whether this would save the defamation count if the jury found that the broadcast was a fair summary after all." 713 F.2d at 271-273.

rape.[19] The Second Circuit held that "Accusations of criminal activity, even in the form of opinion, are not constitutionally protected. . . .No First Amendment protection enfolds false charges of criminal behavior." Cianci, 639 F.2d at 63-64 (2d Cir. 1980).[20]

In this case, Defendants' statements are worse than the rape statements in Cianci, because Defendants' accused Mr. Huon of having committed crimes against multiple victims, including rape, stalking, harassment. Defendant called Mr. Huon a "rapist", a serial rapist, a potential rapist, a depraved and wanton individual and described him as someone who has committed multiple sex crimes against multiple female victims. Defendants wrote "it seems to me that there is entirely too much (alleged) raping going on in this country." A rape or an alleged rape is an assertion of fact that was proven false at trial—Mr. Huon was acquitted.

B. THE US SUPREME COURT AND THE ILLINOIS SUPREME COURT HAVE REJECTED THE ARGUMENTS THAT OPINIONS ARE NOT ACTIONABLE.

The U.S. Supreme Court and the Illinois Supreme Court have rejected the argument that opinions are not actionable under the First Amendment. Bryson v. News America Publication, 174 Ill. 2d 77 (Ill. 1996). As the U.S. Supreme Court explained, there is no additional First Amendment protection of opinion, because "it would ignore the fact that expressions of

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[19] In Cianci, the cover of the July 24, 1978 issue of New Times bore a photograph identified as "Vincent "Buddy' Cianci Mayor of Providence, R.I." and a legend reading:
Was this man accused of raping a woman at gunpoint 12 years ago? The article itself carried a headline in large and heavily blacked type:

> **BUDDY WE HARDLY KNEW YA**
> followed by five lines, also in bold face and larger than normal type:
> **Twelve years ago, in a suburb of Milwaukee a law student was accused of raping a woman at gunpoint. After receiving a $ 3,000 settlement, she dropped the charges and the incident was nearly forgotten. That student, Vincent "Buddy" Cianci, Jr., is now the mayor of Providence, Rhode Island.** Cianci, 639 F.2d at 56.

[20] The Second Circuit noted that the alleged libels in Gertz v. Robert Welch, 418 U.S. 323 (U.S. 1974), included an "implication that petitioner had a criminal record" and charges that he was a "Leninist" or "Communist-frontier". 639 F.2d at 61-62.

'opinion' may often imply an assertion of objective fact." Milkovich v. Lorain Journal Co., 497 U.S. 1, 18 (1990). "[T]he test to determine whether a defamatory statement is constitutionally protected is a restrictive one". Bryson, 174 Ill. 2d at 99-100. A statement is constitutionally protected under the first amendment only if it cannot be "reasonably interpreted as stating actual facts." Bryson, 174 Ill. 2d at 100; Milkovich, 497 U.S. at 20.

The assertions that Mr. Huon was charged with sexually assaulting, sexually abusing, raping, or stalking multiple female victims are capable of proven true or false. Defendants cannot prove that there were multiple female victims, because the subject of the posts was the same woman. **Nothing in the original proceedings or a news article** states that Mr. Huon has sexually assaulted or sexually abused multiple female victims. Nothing in the original proceedings called Mr. Huon a "rapist". He had been acquitted and was not charged with "rape." The statements that Mr. Huon "came up with an excellent little game to meet women", "listed Craigslist ads where he claimed to be a talent scout for models", told lies that "turned dastardly, pretty quickly", is an "attorney rapist near you", is a "rapist", is a "depraved dude", "forced her to perform oral sex", lied to someone about his job and intentions "to get her into the car" are all assertions of fact that are susceptible to being proven true or false.

C. DEFENDANTS' CASES DO NOT APPLY OR SUPPORT MR. HUON'S POSITION.

O'Donnell v. Field Enters and Horowitz v. Baker-- cases cited by Defendants—was decided before Bryson and Milkovich. Kelly v. Blum, 2010 Del. Ch. LEXIS 31, 69-70 (Del. Ch. Feb. 24, 2010). Solaia Tech., LLC actually supports Mr. Huon. The Illinois Supreme Court held that the statement that an attorney, was filing infringement claims for a worthless patent to make a lot of money is not an opinion and directly impugned the plaintiffs' integrity

by questioning the validity of the patent and infringement claim. 221 Ill. 2d at 584-585.

III. THE ILLINOIS SUPREME COURT HAS REJECTED SIMILARLY STRAINED ATTEMPTS TO FIND UNNATURAL BUT INNOCENT MEANINGS.

The Illinois Supreme Court in Chapski v. Copley Press, warned against the lower courts "generally strain[ing] to find unnatural but possibly innocent meanings of words where such construction is clearly unreasonable and a defamatory meaning is more probable" 92 Ill. 2d 350-352, (1982); Tuite v. Corbitt, 224 Ill. 2d 490, 503 (Ill. 2007). The innocent construction rule does not require courts to strain to find an unnatural innocent meaning for a statement when a defamatory meaning is far more reasonable. Tuite, 224 Ill. 2d at 505. In applying the rule, courts must give the alleged defamatory words their natural and obvious meaning. Id. Courts must interpret the alleged defamatory words as they appeared to have been used and according to the idea they were intended to convey to the reasonable reader.

In Owens v. CBS, Inc., 173 Ill. App. 3d 977, 978-980 (Ill. App. Ct. 5th Dist. 1988), someone claiming to be Michael Brown of Centreville, Illinois, sent a letter to the White House threatening Ronald Reagan, the President of the United States, with assassination. The U.S. Secret Service initiated an investigation of the matter. The Secret Service investigation was reported a television station located in St. Louis, Missouri, and owned by defendant CBS, Inc. (CBS), in news broadcasts which aired at 5, 6, and 10 p.m. on November 23, 1983. During the course of the 6 and 10 p.m. broadcasts, CBS repeated accusations by defendant Delores Brown, sister of Michael Brown, that the letter had actually been written by plaintiff, Carolyn Owens. Those accusations were false, and plaintiff subsequently sued both Brown and CBS for libel.

CBS argued that it could not be liable because under the so-called "innocent construction" rule, its 6 and 10 p.m. newscasts must be interpreted as not having libeled plaintiff

and the "gist" or "sting" of the 6 and 10 p.m. newscasts was true . CBS argued that the 6 and 10 p.m. newscasts set forth the particulars of the Secret Service investigation and explained why the Browns and plaintiff were involved in it. Because the newscasts point out that three people were being investigated, that the investigation was continuing, that no one had been charged or arrested, and that the statements made by Delores Brown which implicated plaintiff were presented as mere allegations, CBS argued that the newscasts do not necessarily suggest that plaintiff was the guilty party and are susceptible of an innocent construction.

The Illinois Appellate Court Fifth District rejected CBS's arguments. The defect in CBS's analysis, said the Illinois Appellate Court, is that it misperceived the nature of plaintiff's cause of action. Plaintiff does not seek to impose liability on CBS based upon any direct accusations made by CBS itself. Rather, the gravamen of plaintiff's cause of action against CBS is that it should be held liable because it republished a defamatory statement made by defendant Delores Brown. Owens, 173 Ill. App. 3d at 990-991. The Illinois Appellate Court rejected the argument that Delores' Brown's statements were an opinion. The Illinois Appellate Court stated that under common law, a person who republished a defamatory statement made by another was himself liable for defamation even though he gave the name of the originator. Owens, 173 Ill. App. 3d at 992-994.

Defendant CBS argued it could not be held liable because the contents of the 6 and 10 p.m. newscasts were true. The gist of its argument was that it should be protected from liability because it reported the Browns' accusations and the details of the Secret Service investigation accurately. The Illinois Appellate Court held that this argument is completely without merit, because the law in Illinois remains that the republisher of a defamatory statement made by

another is himself liable for defamation even though he gives the originator's name. Indeed, a faithful retelling of a defamatory statement may be the most damning kind." Owens,173 Ill. App. 3d at 992-996 . The Illinois Appellate Court noted that the CBS reporter responsible for the stories, appeared to have violated the standards for reporters. Reporters should refrain from "explicit fingering and identification of the alleged criminal by name" where a crime has been committed but there is "no warrant or arrest or indictment for any particular person." Owens,173 Ill. App. 3d at 992-996 .

In Mr. Huon's case, the ATL Defendants falsely accused Mr. Huon of committing crimes against multiple female victims who did not exist. There was no evidence of such crimes in any original proceedings. Defendants invented the facts. The Defendants accused Mr. Huon of "rape" when he had been acquitted. Defendants' faithful retelling of Lawyergossip.com rumors may be the most damning kind.

IV. THE POST IS DEFAMATORY PER SE.

A. Mr. HUON HAS STATED A CAUSE OF ACTION FOR DEFAMATION PER SE.

Statements impugning a person's integrity, prejudicing his practice of law, and/or implying that he committed a crime are 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 coverag**e" story that Mr. Huon, an attorney rapist near you and a wanton and depraved individual, posed as a talent scout and forced a woman to perform oral sex and that there were other sex crimes against several female victims. Before the Huon story, Defendants wrote about a 15 year old girl being raped. Then Defendants wrote that the next story—the Huon story—was about the "wanton and the depraved". What is more wanton and depraved than raping a 15 year

old girl? Defendants compared Mr. Huon's "victim" to a "bubblegum princess". Defendants imputed that Mr. Huon committed a crime, he lacks integrity by lying, he fornicates with several women, that he is an "attorney rapists near you", that he is a pedophile who preys on princesses.

These statements would fall into all the categories of defamation per se: "(1) words that impute a person has committed a crime; (2) words that impute a person is infected with a loathsome communicable disease; (3) words that impute a person is unable to perform or lacks integrity in performing her or his employment duties; (4) words that impute a person lacks ability or otherwise prejudices that person in her or his profession; and (5) words that impute a person has engaged in adultery or fornication." Solaia, 221 Ill. 2d at 579-80. The hyperlinks to the defamatory statements of Lawyergossip.com were republication of additional defamatory statements, adding credibility to the lies about Mr. Huon.

It is well established that it is defamatory to call or imply that someone is a "rapist". As the U.S. Supreme Court stated, No one will deny "that it is libelous falsely to charge another with being a rapist". Beauharnais v. People of State of Ill., 343 U.S. 250, 72 S.Ct. 725 U.S. (1952); Cooper v. Dupnik924 F.2d 1520 (9th Cir. 1991); In re Thompson, 162 B.R. 748 (E.D.Mich.,1993). The facts here are more egregious: Mr. Huon was called a rapist after he was acquitted by a jury of his peers and he was called a serial rapist and stalker. Defendants call Mr. Huon "a potential rapist" and one of the "depraved dudes walking around out there that are potential rapists". Worse, Defendants invented the fact that there were more victims out there.

Because Mr. Huon has alleged defamation per se, he does not have to allege special damages. Defendants cite to no case law that there is a heightened pleading standard for defamation per se cases. Damages are presumed in a defamation per se case. While Illinois

does require a heightened pleading standard for defamation per se claims, that procedural standard "does not apply in federal court." Muzikowski v. Paramount Pic. Corp., 322 F.3d 918, 926 (7th Cir. 2003); Cunningham v. UTi Integrated Logistics, 2010 U.S. Dist. LEXIS 38493 (S.D. Ill. Apr. 19, 2010). In a defamation per se action, injury to the plaintiff's reputation may be presumed. Tuite v. Corbitt, 224 Ill. 2d 490, 866 N.E.2d 114, 2006 Ill. LEXIS 1668, 310 Ill. Dec. 303, 2006 WL 3742112 (Ill. Dec. 21, 2006; Muzikowski, 477 F.3d at 903-904.

B. DEFENDANTS' CASES ON DEFAMATION PER SE DO NOT APPLY OR THE CASES SUPPORT MR. HUON'S POSITION.

Defendants' cases do not apply. Hahn v Konstanty 257 A.D.2d 799, (N.Y.A.D. 3 Dept.,1999), involved a newspaper article stating that plaintiff was charged with disorderly conduct but that the charges were dismissed **on certain conditions** when, in fact, there were no conditions of the dismissal. In this case, Defendants' did not omit some minor "condition". Mr. Huon was acquitted of sexual assault—he had not even been charged with "rape." He most certainly was not accused of victimizing other women. No news story reported other female victims. and Defendants posted a "breaking rape coverage" that called him a rapist. Worse, Defendants accused Mr. Huon of raping multiple women and of being a con artist who lured women with lies to get them into his car. Defendants compared Mr. Huon to a pedophile.

Gist v. Macon County Sheriff's Dep't is an unpublished Rule 23 order in part 284 Ill. App. 3d 367, 370 (Ill. App. Ct. 4th Dist. 1996) and should not be cited. [21] Schaefer v. Hearst

[21] There, the plaintiff was wanted on an arrest warrant as of October 6, 1994, for burglary to a motor vehicle, which is entirely true. The Court held that the Crime Stoppers flyer stating that plaintiff "might possibly be armed" or "should be considered dangerous" or was a "most wanted" fugitive--to the extent the statements can even be considered as applying to plaintiff or asserting facts about him-- are all secondary details, immaterial to the truth of the Crime Stoppers flyer that the plaintiff was wanted on an arrest warrant as of October 6, 1994, for burglary to a motor vehicle. Gist v. Macon County Sheriff's Dep't, 284 Ill. App. 3d 367, 371-372 (Ill. App. Ct. 4th Dist. 1996). In Mr. Huon's case, he was NOT wanted for raping multiple victims or even one victim—He was not wanted for any crime. He was acquitted. Defendants described him as an attorney rapist near you who had a history of

Corp., 5 Media L. Rep. (BNA) 1734, 1736 (Md. Super. Ct. 1979) is not even a published opinion that is available on the LexisNexis AllStates Database. Defendants cited a Maryland Superior Court decision that is not even readily accessible.

In this case, Defendants **got everything wrong**. On the day Mr. Huon was acquitted, Defendants posted on the Internet "breaking rape coverage" that Mr. Huon was a rapist who had rape or victimized before.

C. MR. HUON HAS STATED A CLAIM FOR DEFAMATION PER QUOD.

Mr. Huon has stated a claim for defamation per quod. The Seventh Circuit has explained the requirements for pleading special damages:

> The amended complaint alleged an immediate decrease in plaintiff's gross sales of Brazil nuts and of all other nuts following the publication of the letter. Although not naming the particular customers it lost, plaintiff listed specific figures of its gross sales before and after the publication and averred that the decrease in sales was the 'natural and proximate result' of the letter. Continental Nut Co. v. Robert L. Berner Co., 345 F.2d 395, 397 (7th Cir. Ill. 1965).

In another case, the Seventh Circuit explained:

> Although the complaint made general (and insufficient) claims of loss of reputation, it also averred that as a result of the letter plaintiff "has been and is still being refused normal credit terms by its suppliers" and has expended time, money, and effort to reestablish its credit. In our opinion, these averments sufficiently notify defendants of plaintiff's claim that it has suffered monetary loss as a result of refusals of credit, stemming in turn from the statement in defendants' letter. Procedures are available by which defendants can learn the names, circumstances, and amounts, and the details need not be pleaded. Fleck Bros. Co. v. Sullivan, 385 F.2d 223, 225 (7th Cir. Ill. 1967).

Mr. Huon has alleged special damages—he has alleged a decreased in business revenue.[22]

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committing violent sexual assaults against other female victims on multiple occasions.

[22] Mr. Huon alleges:

186. The actionable and offensive statements published by Defendants, and each of them, have directly and proximately caused harm to Plaintiff's professional standing amongst lawyers and businessmen and has damaged Plaintiff's reputation for honesty and integrity, and has caused injury to Plaintiff's legal practice, business operations and good will and have negatively impacted the public's confidence in Plaintiff.

The posting of the ATL story led to the Gawker Defendants reposting the same ATL story. Mr. Huon adopts his arguments in his Response brief to the Gawker Defendants' Motion to Dismiss.

D. DEFENDANTS' CASES ON DEFAMATION PER QUOD DO NOT APPLY.

Schaffer v. Zekman, 196 Ill. App. 3d 727, 733 (1st Dist. 1990), was questioned by the Seventh Circuit. Spelson v. CBS, Inc., 581 F. Supp. 1195 (N.D. Ill. 1984) was decided on a motion for summary judgment. Brown & Williamson Tobacco Corp. v. Jacobson, cited by Defendants, said "But Brown & Williamson must be allowed to plead over (unless the dismissal of the complaint can be upheld on other grounds)." 713 F.2d 262, 270 (7th Cir. Ill. 1983).

Mr. Huon should be given leave to replead this count. Mr. Huon can plead that he had to expend monies as a result of the defamatory statements.[23]

E. THE POST DOES REFER TO MR. HUON'S BY NAME.

Defendants argue that the defamatory statements statement has to name the Plaintiff, citing Barry Harlem Corp. v. Kraff, 273 Ill. App. 3d 388, 391-92. This argument was rejected by

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197. As a legal result of the intentional and malicious conduct of the Defendants, and each of them, jointly and severally, Mr. Huon has suffered damage to business, trade, profession and occupation, all to Mr. Huon's special damages in a sum to be determined at time of trial.

201. Mr. Huon sustained special harm as a result of the publication of the erroneous and inflammatory communications by Defendants, including, but not limited to, the loss of his professional reputation.

202. Moreover, as the result of the defamatory publication referred to herein, Mr. Huon has sustained irreparable harm to his reputation, emotional distress and loss of standing in the community.

204. Plaintiff has, and will suffer, special damages and pecuniary loss directly from a loss of clients in his legal practice and the loss of profit from business deals and interactions in an amount well in excess of Seventy-Five Thousand ($75,000.00).

[23] The complaint has never been dismissed on the merits. The prior amendments were voluntarily made by Mr. Huon. The First Amended Complaint was filed to add more allegations against the ATL Defendants and to add the Jezebel Defendants. The Second Amended Complaint was filed after Mr. Huon voluntarily dismissed certain defendants. The Third and Fourth Amended Complaint were filed, because the Court on its own motion raised the issue of subject matter jurisdiction, after the motions to dismiss were fully briefed but before the Court ruled on the motions. Mr. Huon contends the subject matter jurisdictional defects were caused in part by Defendants' failure to disclose their affiliates as required under FRCP 7.1 and Local Rule 3.2.

the Seventh Circuit and the Illinois Supreme Court. Simply because the story is labeled "fiction" and, therefore, does not purport to describe any real person" does not mean that it may not be defamatory per se. Muzikowski v. Paramount Pictures Corp., 322 F.3d 918 (7th Cir. 2003). In Bryson v. News America Publication , plaintiff alleged that she was the fictional character who was referred to as a "slut" in a short story written and published by defendants. The Illinois Supreme Court held that the clear implication of the word "slut" was that the plaintiff was in fact sexually promiscuous and that the article did not have to refer to her by name. 174 Ill. 2d 77, 672 N.E.2d 1207 (Ill. 1996).

In this case, Defendants entire article is about "Meanith Huon", not Jackie Chan or Mr. Chow from "Hangover". Here, Defendant did not produce a Jet Li movie in which the character plays a lawyer accused of raping a woman from St Louis, after repeatedly committing sexual assaults against other women. Defendant called "Meanith Huon" a rapist and a serial rapist. Defendants cannot argue with a straight face that the disparaging statements are about someone other than Mr. Huon. "Meanith Huon" does not have to appear in every sentence. The "attorney rapists near you" and "the files of the wanton and depraved " introduces the story on Mr. Huon. The sentence "lot of depraved dudes walking around out there that are potential rapists" is inserted between the paragraphs specifically referring to Mr. Huon by name is talking about Mr. Huon. Defendants strain to find an unnatural meaning.[24] Bryon held the innocent construction rule does not apply simply because defamatory words are "capable" of an innocent construction."

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[24] Parker v. House O'Lite Corp.—cited by Defendants--was decided on a motion for summary judgment and actually support Mr. Huon. There, the First District held that "We are not required to strain to find an unnatural but possibly innocent meaning for words where the defamatory meaning is far more reasonable. 324 Ill. App. 3d 1014, 1026 (Ill. App. Ct. 1st Dist. 2001).

174 Ill. 2d at 93.

Defendants argue that many of the statements are not defamatory by straining to find an unnatural meaning—even going so far as to create a chart lifting words and sentences out of context. Defendants invented fiction and passed them off as facts to lend credibility to the rape story. The statements regarding the testimony of "Plaintiff's alleged victim" lends credibility to the rape story, because it adds support to the allegations that Mr. Huon made up a story about promotional models who never existed to lure and rape the complaining witness into his car: "But the next day, the victim was running late and called Huon. He told her to meet him at another bar, but when she got there, he told her the other promotional models left, and so he was going to interview her, the victim said".[25] The natural meaning is that had the complainant Googled Mr. Huon, she would have found a story that Mr. Huon had posed as a supervisor for a company that sets up promotions of alcohol to sexually assault women in the past and she would never have gotten into Mr. Huon's car. The statements made by Defendants made the story worse. The text was about Mr. Huon telling the complainant that the promotional models had left. The gist of Defendants' statements is that Mr. Huon's modus operandi was luring women to interviews for promotional modeling where no other models were present for the purposes of

[25] Here is the actual text:

> But the next day, the victim was running late and called Huon. He told her to meet him at another bar, but when she got there, he told her the other promotional models left, and so he was going to interview her, the victim said.
>
> And this people, is why God invented Google. Had the victim Googled Huon, she would have found stories like this, from the Madison County Record:
>
> A Chicago attorney who was posing as a supervisor for a company that sets up promotions for alcohol sales at area bars was charged in Madison County July 2, with two counts of criminal sexual assault, two counts of criminal sexual abuse and one count of unlawful restraint.

sexually assaulting them. Worse, Defendants do not explain that the same woman is the subject of all the articles. The woman that was running late is also the same Jane Doe that is the subject of all the news articles. The gist of Defendants' statements is that Mr. Huon is a serial rapist.

Without identifying a single statement, Defendants assert that many of the statements would not tend to cause such harm to Plaintiff's reputation . Which ones? The one where Defendants call Mr. Huon an attorney rapist? Posing as a supervisor? Someone who sees things differently when charged with rape? Someone who fondles a woman without her consent? Someone who forces someone to perform oral sex in his car? "Rape" has no innocent meaning.

VI. MR. HUON HAS STATED A CLAIM FOR FALSE LIGHT.

Lovgren v. Citizens First Nat'l Bank, 126 Ill. 2d 411 (Ill. 1989)—cited by Defendants—support Mr. Huon's claim. The elements of false light are one who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." (Citing Restatement (Second) of Torts); 126 Ill. 2d 411, 418 (Ill. 1989)).

In this case, calling Mr. Huon a rapist and a serial rapist would be highly offensive to a reasonable person. Defendants acted with reckless disregard because Mr. Huon was never called a "rapist" or a serial rapist in the original proceedings. No evidence of multiple female victims of sexual abuse or sexual assault was introduced at trial. Defendants, Elie Mystal and David Lat, are Harvard-educated attorneys who should have been able to read a newspaper at the 6th grade level. Defendants bragged about the power of Google and blogging yet posted four day

old news on the day that Mr. Huon was acquitted and called it "breaking rape coverage," in a world where news are posted in real time. Defendants knew that the same woman was the subject of all the news articles, because Defendants cited the same the Madison County Record twice—once in 2008 when they called Mr. Huon "Lawyer of the Day" and the second time in 2010 when they called him a serial rapist. Defendants never did the minimum fact checking that a reporter would have done by calling Mr. Huon. Defendants invented facts that were so compelling that David Feige, the attorney for the Gawker Defendants, argued that Mr. Huon needs to be tracked like a registered sex offender, relying on the false assumption that there were multiple victims. For this section, Mr. Huon adopts his above response to Defendants' arguments regarding his defamation claims.

VII. MR. HUON HAS STATED A CLAIM FOR UNREASONABLE INTRUSION INTO THE SECLUSION OF OTHERS.

Busse v. Motorola, Inc., 351 Ill. App. 3d 67, 72 (Ill. App. Ct. 1st Dist. 2004)—cited by Defendants and decided on a summary judgment motion—actually support Mr. Huon's claim:

> Private facts were at issue and clearly alleged in Johnson, 311 Ill. App. 3d at 578-79. There, defendant K mart hired private investigators to pose as employees at K mart's warehouse to monitor suspected acts of theft, vandalism and drug use by employees. Johnson, 311 Ill. App. 3d at 575. The investigators gathered and reported personal information about employees, including family problems, romantic interests, sex lives, health problems, future work plans and criticism of K mart. Busse v. Motorola, Inc., 351 Ill. App. 3d 67, 72 (Ill. App. Ct. 1st Dist. 2004).

In this case, Defendants did not just intrude on Mr. Huon's life by disclosing private facts about his romantic interest or sex life or private life. They made things up private facts for him: Mr. Huon invented a game to meet women, he victimized multiple women, he is a rapist, he posted Craigslist ads, he posed as a talent scout.

VIII. MR. HUON HAS STATED A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

The publication of a defamatory statement constitutes 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). In Kolegas v. Heftel Broadcasting Corp., defendants, radio disc jockeys, made defamatory statements about the plaintiff, who was organizing a festival to benefit "Elephant Man" disease. Defendants said on the air that plaintiff was "not for real" and was just "scamming" them and that there was "no such show as the classic cartoon festival". The Illinois Supreme Court held that these statements supported a claim for extreme and outrageous conduct, because defendants "had access to channels of communication" and "the power of the media cannot be denied but the plaintiffs had no similar access to the public . . ." Kolegas v. Heftel Broadcasting Corp.,154 Ill.2d at 22.

In this case, Defendants called Mr. Huon a rapist or sex offender who came up with a game to lure women into his car and sexually assault or abuse them. The allegations accused him of a crimes and impugned his integrity and are extreme and outrageous. More powerful than radio, Defendants' websites get almost 2 million visitors a month.[26] The Abovethelaw.com site is ranked no. 1 or 2 for law blogs. http://www.invesp.com/blog-rank/Law. Mr. Huon has no similar access, much less a forum to rebut the outrageous conduct. Out of 30 million websites, Abovethelaw.com ranks no. 6,379 in the US. http://www.alexa.com/siteinfo/abovethelaw.com#.

Defendants' cited case law do not apply or support Mr. Huon's position. Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 108 S.Ct. 876 (U.S.Va.,1988), has been called into

[26] Exhibit "J".

doubt. Bryson, 174 Ill.2d 77 (Ill. 1996). Berkos v. National Broadcasting Co., Inc.,161 Ill.App.3d 476, (1st Dist.,1987), 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 Operation Greylord. In this case, Mr. Huon was not under investigation for being a serial rapist and a sex offender with multiple female victims. He was acquitted and he was never accused of victimizing multiple women.

IX. MR. HUON HAS STATED A CAUSE OF ACTION OF TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE.

J. Eck & Sons, Inc. v. Reuben H. Donnelley Corp., 213 Ill. App. 3d 510, 515 (Ill. App. Ct. 1st Dist. 1991) supports Mr. Huon's claim. There, the First District held that the key issue in the tort of interference with a party's prospective economic advantage is intent. Plaintiff in J. Eck & Sons, Inc. had to (but did not) allege that defendant knew that it's refusal to publish his Yellow Page ad would cause him economic damage and that defendant acted despite the knowledge. In this case, defamation is an intentional tort. Defendants knew that Mr. Huon, as an attorney, depended on his reputation to maintain existing business and develop new economic relations. Defendants decided to call Mr. Huon a rapist and a serial rapist and disparage him on a blog where the audience is the legal community.

Mr. Huon has pled the elements of the tort: (1) he has have a reasonable expectancy of entering into a valid business relationship with clients and prospective clients; (2) defendants knew he was an attorney and Mr. Mystal and Mr. Lat, as attorneys themselves, know about this expectancy (3) Defendants intentionally interfered with Mr. Huon's expectancy preventing the expectancy from ripening into a valid business relationship when they called him a rapist—who wants to hire an "attorney rapist near you"? and (4) Defendant's intentional injured Mr. Huon in

his ability to maintain and find business relationships." J. Eck & Sons, Inc., 213 Ill. App. 3d at 513-14 (1st Dist. 1991).[27] Defendant's post is analogous to posting on a billboard next to a superhighway lane just for lawyers, judges, law students, clients calling Mr. Huon a rapist . With so much business coming from the Internet as a source or clients and employers using Google to perform background checks, how can Defendants with a straight face argue that they did not damage Mr. Huon? As bloggers, Defendants should appreciate the power of social media in maintaining and preserving existing businesses and relationships.

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

To state a claim for civil conspiracy, a plaintiff must allege the agreement and also a tortious act committed in furtherance of that agreement." He has alleged the elements of civil conspiracy. Time Savers, Inc. v. LaSalle Bank, N.A., 371 Ill.App.3d 759, 309 Ill.Dec. 259, 863 N.E.2d 1156 (2nd Dist. 2007). Mr. Huon alleges that Defendants, writer Elie Mystal, his editor David Lat, publisher David Minkin, CEO John Lerner, Breaking Media, Inc. f/k/a Breaking Media, LLC, for the purpose of publishing a defamatory post on the World Wide Web, defamed Mr. Huon by creating and publishing the post and allowing it to be republished. Mr. Huon alleges that one of the conspirators, Mr. Mystal, engaged in an unlawful act by defaming him by writing the post. Mr. Lat defamed Mr. Huon by refusing to remove the defamatory post and by editing the website Abovethelaw.com on which the post appeared. Mr. Minkin published the post on the website Abovethelaw.com. Defendants shaped the content of the ATL blog, including the comments of the John Does. Mr. Huon adopts and incorporates his argument in his

[27] Where recovery for intentional interference with a prospective business relation or economic advantage is sought, the plaintiff need not prove breach of contract. See generally Soderlund Brothers, Inc. v. Carrier Corp., 278 Ill. App. 3d 606, 663 N.E.2d 1, 215 Ill. Dec. 251 (1995). See also Belden Corp. v. InterNorth, Inc., 90 Ill. App. 3d 547, 551, 413 N.E.2d 98, 101, 45 Ill. Dec. 765 (1980). Strosberg v. Brauvin Realty Servs., 295 Ill. App. 3d 17, 34 (Ill. App. Ct. 1st Dist. 1998).

Response to the Gawker Defendants' Motion to Dismiss.

The case cited by Defendant does not apply because the Court held that the underlying tort for defamation was not properly pled and, thus, the civil conspiracy count must fail. That is not the case here. Here, Defendants are on notice that the underlying tort is defamation, false light, invasion of privacy, and intentional infliction of emotional distress and Mr. Huon's right to relief is more than speculative.

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

For sake of brevity, Mr. Huon adopts and incorporates his argument in his Response to Gawker's Motion to Dismiss.

CONCLUSION

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

/s/Meanith Huon

Meanith Huon

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 March 12, 2013

MEANITH HUON'S RESPONSE TO THE ABOVE THE LAW DEFENDANTS' MOTION TO DISMISS

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