IN THE U.S. DISTRICT FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

PLAINTIFF'S SECOND AMENDED RESPONSE TO THE ABOVE THE LAW DEFENDANTS' MOTION TO DISMISS

Plaintiff, Meanith Huon, in Response to the FRCP 12(b)(6) Motion to Dismiss and Memorandum of Defendants, Breaking Media, LLC, Breaking Media, Breakingmedia.com, David Lat, John Lerner, Abovethelaw.com, Elie Mystal ("ATL Defendants" or "Defendants"), states as follows:

PREFATORY NOTE

Mr. Huon files this Second Amended Response to comply with the 23 page limitation ordered by the Court on December 5, 2011(the order is Docket No.88). (The First Amended Response corrected a one-word typographically error.)

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). The ATL Defendants did not report on an official proceedings or make a fair abridgment of the official proceeding. Defendants are website operators and bloggers who contend that they

commented on a news article—whose existence on May 6, 2010 Defendants have not established. There is no reference to the Belleville News Democrat ("BND") in the article and the link is a broken hyperlink that does not redirect the reader to the BND. Bloggers cannot defame someone and, in hindsight, search for news articles or truncated transcripts that Defendants never read. Defendants can cite to no mainstream news article calling Mr. Huon a serial rapist. *Assuming arguendo* that there was a news article on May 6, 2010, 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). Even repeating a defamatory statement made by a third person is defamation. Id; Restatement (Second) of Torts § 571, Comment c, at 187 (1977).

B. DEFENDANTS ARE NOT JOURNALISTS OR REPORTERS.

Defendants are not reporters or journalists whose conduct are governed by a code of ethics in news gathering and reporting. 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). The Court can take judicial notice of 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. Personal attacking Mr. Huon on the World Wide Web violates the code of ethics of professional journalism.

The fair report privilege does not extend to the stereotypical "blogger" sitting in his pajamas at his computer posting on the Internet. In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1141, 1156-1157 (Concurring opinion on privilege not to disclose confidential sources)

(D.C. 2006). Several state laws provide that a reporter's privilege only extends to the established press. The fair reporting privilege in defamation cases does not extend to a self-appointed journalist who blogs on a website. Too Much Media, LLC v. Hale, 206 N.J. 209 (N.J.,2011). If that were the case, "anyone with a Facebook account, could try to assert the privilege." Id at 242. Bloggers and website operator 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. Id. A blogger merely comments on the writings of others on, creates no independent product, makes no material substantive contribution to the work of others. Id

In this case, the ATL Defendants are website operators and bloggers who created a website called "Above The Law" to generate advertising dollars from the traffic, and it generates that traffic by defaming lawyers like Mr. Huon. This is not reporting news, much less making a report of an official proceeding. On the date of his acquittal, on May 6, 2010, the ATL Defendants posted a "breaking rape coverage" calling Mr. Huon a serial rapist. There was no news article hyperlinked calling Mr. Huon a serial rapist–he had been acquitted. No news article exists calling Mr. Huon a serial rapist. The ATL Defendants are not the established press governed by ethical cannons of journalism and, thus, are not entitled to the protections afforded the reporter privilege. The ATL Defendants' unfettered, offensive, and illegal conduct is cyberbulling and cyberstalking under the cloak of reporting.

Public policy outweighs extending the privilege to self-appointed bloggers like Defendants. Why not extend the privilege to someone with a Facebook or Blogger.com account who cyber bullies individuals under the cloak of reporting news? The fact that the ATL

Defendants have been successful in generating a lot of money from the web traffic does not make it the established press. It simply puts the ATL Defendants in the same categories as porn sites that profits off the exploitation of other people's misery and degradation. The ATL Defendants fall into the same category of self-proclaimed wannabe "reporters" as the New Nation News a/k/a Newnation.org, a/k/a Newnation.tv–a white supremacist website who reported on Mr. Huon's "Nigger depravity–presented in their own words and actions . . ."

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

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). The test is not comparing a blog post with a news story whose existence on May 6, 2010 is in doubt. The test is not comparing a blog post to a truncated trial transcript that Defendants searched for after the fact to cover up its misdeeds. The law does not say that defendants can defame someone first and then find some writing on a scrap of paper later. 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–the locale of Mr. Huon's criminal trial–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" See also Coursey v. Greater Niles Tp. Pub. Corp, Ill.App.2d 76 (1st Dist. 1967), aff'd, 40 Ill.2d 257, 267 (Ill. 1968). Mr. Huon alleges that on May 6, 2010, on the day that he

was acquitted, the ATL Defendants posted **"breaking rape coverage"** and called Mr. Huon a serial rapist with multiple victims, without stating that Mr. Huon had been acquitted. The further defamatory statements calling Mr. Huon a serial rapist, the claim of multiple victims, the claim of being a talent scout are not reported in the proceedings, like the police report.

D. THE STATEMENTS FALLS OUTSIDE THE PRIVILEGE AND IS DEFAMATORY *PER SE.*

Statements charging a person with unfair business practices, impugning his integrity, prejudicing his practice of law, and/or implying that he committed a crime falls within several of the recognized categories of defamation *per se.* Solaia Technology, LLC ,221 Ill.2d at 590; Coursey. 40 Ill.2d. At 267. These type of defamatory statements fall outside the privilege. Id. 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. On the day of his acquittal, the ATL Defendants accused Mr. Huon of being a sex offender in **"breaking rape coverage"**, a cyberstalker, hyperlinking to the defamatory post on Lawyergossip.com.

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

For the privilege to apply, a new media's summary must be "fair". A fair abridgment means that the report must convey to readers "a substantially correct account." Restatement (Second) of Torts § 611, Comment f, at 300 (1977); Solaia Technology, LLC, 221 Ill.2d at 589-590. In this case, the ATL Defendants omitted significant facts, invented numerous fiction, conveyed erroneous impressions to its readers, and imputed deviant motives to Mr. Huon. Defendants attacked the veracity and integrity of Mr. Huon: "**So we're not denying that she hurled herself out of a moving vehicle, we're contending she jumped out of the car to make**

it look like she was raped? Right, sure. That sounds like the definition of incredible."

F. THE PRIVILEGED 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 who worked at her school with criminal misconduct. The news media provided none of the background needed for the audience doubt the principal's accusations, making no reference to prior disagreements between the principal and the teacher. 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. By inventing facts beyond the official report to make the charges more credible, NBC abandoned the fair report privilege.

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. Defendants invented facts beyond any official report:

-breaking rape coverage.
-any alleged attorney rapists near you .
-the files of the wanton and depraved
- A St. Louis-area lawyer came up with an excellent little game to meet women.
-Meanith Huon allegedly listed Craigslist ads where he claimed to be a talent scout for models.
-But Huon's potentially harmless lies allegedly turn dastardly, pretty quickly:
-Had the victim Google Huon, she would have found stories like this from the Madison County Record:
-Or she might have come across this link from, at Lawyer Gossip:
-Of course, women shouldn't have to assume that every guy they meet is a potential

rapist.
-But apparently there are a lot of depraved dude walking around that are potential rapist.
-This is gonna end badly.
-Oh, come on. If somebody was driving and tried to "force" me to perform oral sex on them, I'd just get out of the stupid car. Which is to say, I'd do exactly what the victim did in this case.
-Damn. If you can't get a woman to consensually stay in a moving vehicle, can you really get her to consensually agree to sex (insofar as lying to her about your job and your intentions to get her into the car counts as consensual in the first place)?
-Obviously, Huon sees things differently.
-So we're not denying that she hurled herself out of a moving vehicle, we're contending she jumped out of the car to make it look like she was raped? Right, sure. That sounds like the definition of incredible.
-It seems to me that there is entirely too much (alleged) raping going on in this country.
-If this keeps up, men and women are going to have to start carrying around sexual consent forms on their persons.
-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.

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 made no mention that the complaining witness was 26 years old, implying Mr. Huon was a pedophile.

II. THE COURT SHOULD NOT CONSIDER THE TRUNCATED TRANSCRIPT OF OPENING ARGUMENTS FROM MAY 4, 2010 OR THE A NEWS ARTICLE.

In ruling on a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must presume all of the well-pleaded allegations of the complaint to be true. Miree v. DeKalb County, Georgia, 433 U.S. 25, 27(1977). In addition, the court must view those allegations in the light most favorable to the plaintiff. Gomez v. Illinois State Board of Education, 811 F.2d 1030, 1039 (7th Cir.1987). The ATL Defendants makes the bare assertion

that its defamatory blog post was a commentary on a news article from the Belleville News-Democrat ("BND"), without presenting any evidence that the BND article exists or was hyperlinked on the date in question. The Court cannot rely on mere assertions of conclusions. Mr. Huon alleges that the defamatory post was published on the day he was acquitted on May 6, 2010–not May 4, 2010. The BND is not mentioned anywhere in the post. The hyperlink is broken. The ATL Defendants do not report that the BND removed their defamatory posts.

The ATL Defendants cannot rely on the truncated transcripts of opening statements on May 4, 2010–opening statement is not evidence. Mr. Huon alleges that the defamatory statemen, published on May 6, 2010, does not convey to the readers a substantially correct account, i.e. the consent defense was barred on May 6, 2010. Conveniently, the Defendants have selected truncated portions of the transcript, even though counsel for Defendants has admitted that she has the entire trial transcript. By refusing to produce the entire trial transcript and by not offering evidence that Defendants even looked at the transcript before defaming Mr. Huon, Defendants have failed to meet their burden that the privilege applies. Defendants' reliance on opening arguments–in hindsight–is no defense. In Von Kahl v. Bureau of Nat. Affairs, Inc., 2011 WL 4032384 (D.C.,2011), plaintiff sued the Bureau of National Affairs, Inc. ("BNA") alleging that BNA defamed him in summaries published about a petition he filed following his criminal prosecution. BNA produced a truncated transcript attributing the source of the statements to be arguments of the prosecutor. The District Court held that the fair reporting privilege did not apply, because BNA never made clear that the prosecutor made the statements. In this case, Defendants never made it clear the "facts" were opening arguments. Opening argument is not evidence. People v. King, 109 Ill.2d 514 (Ill. 1986). The purpose of the

opening statement is to advise the jury what the evidence will show. People v. King, 109 Ill.2d at 535. Accordingly, reversible error may occur when the prosecution asserts in the opening statement facts or propositions on which no evidence later is presented. Id.

Defendants' reliance on the self-serving statements of the complaining witness after the fact of the posting is not a defense. Defendants never reported that the complaining witness had a motive for lying and was impeached on numerous occasions by Mr. Huon's attorney. By treating the complaining witness's self-serving statements as undisputed facts, Defendants invented facts and added to what actually took place at the judicial proceedings.

The ATL Defendants argue that the court can take judicial notice of the truncated transcript, but the truncated trial transcript from May 4, 2010 are neither referred to in Mr. Huon's complaint nor central to his claim for defamation. Russo v. Palmer 990 F.Supp. 1047, (N.D.Ill.,1998). The truncated trial transcript doesn't call Mr. Huon a serial rapist and does not refer to multiple victims. Defendants' chart is an improper attempt to decide questions of fact, before Mr. Huon has even been afforded an opportunity to conduct discovery and when the ATL Defendants have refused to produce the entire trial transcript. Cook v. Winfrey, cited by the Defendants, held that the District Court should not resolve factual on a motion to dismiss under Rule 12(b)(6)." 141 F.3d 322, 330-31 (7th Cir. 1998). Defendants' request to convert the motion to summary judgment motion under FRCP 12(d) should be denied, since Mr. Huon has not been given reasonable opportunity to conduct discovery. Defendants have the burden of proving that the privilege applies. Lowe v. Rockford Newspaper, Inc., 179 Ill.App.3d 592 (2nd Dist. 1989). Defendants have failed to meet the burden by engaging in gamesmanship and not producing the entire trial transcript, the police report, the written statements of the complaining

witness–namely, the entire official proceedings.

III. IT IS A QUESTION OF FACT FOR A JURY HAS TO WHETHER THE PRIVILEGE HAS BEEN ABUSED.

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). Brown & Williamson noted that Illinois appellate courts disagree as to whether the fair report privilege can be overcome. Gist v. Macon County Sheriff's Dep't, 284 Ill.App.3d 367, 373, 671 N.E.2d 1154, 1161 (4th Dist.1996); Wilkow v. Forbes, Inc. 2000 WL 631344 (N.D.Ill.,2000) , aff'd, 241 F.3d 552 (7th Cir. 2001). 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).

IV. THE POST IS DEFAMATORY *PER SE*.

As previously discussed above, 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". 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*. Solaia, 221 Ill. 2d at 579-80. The hyperlinks to the defamatory statements of the Madison Record and Lawyergossip.com were republication of more defamatory statements, making the lies about Mr. Huon even more outrageous.

Mischaracterizing paragraph 24(a) of the Second Amended Complaint, the ATL Defendants argue that Mr. Huon's sole claim is that it was inaccurate to state that the charges stemmed from more than one woman. What about paragraphs (b) through (l)? Paragraph 24(a) through (l) state 12 facts that the Defendants omitted from the story. Paragraph 25(a) through (aa) then state 27 facts that Defendants simply invented in the story. See attached Exhibit "A".

In Hahn v Konstanty, a New York appellate court decision, a newspaper published that plaintiff was charged with disorderly conduct but that the charges were dismissed on certain conditions. The defamatory statement was that there were no conditions of the dismissal. In this case, Mr. Huon was acquitted and on the date that he was acquitted, Defendants posted a "breaking rape coverage" that implied he was a rapist of multiple women and con artist who lured women with lies and placed the Huon story next to the story of a child rapist and compared Mr. Huon's victim to a bubblegum princess. Myers v. The Telegraph,–decided in the same locale Mr. Huon's criminal case –is on point. In this case, the ATL Defendants implied Mr.

Huon had raped several women and made the following defamatory statements, on the day of his acquittal:

> **-breaking rape coverage.**
> **-any alleged attorney rapists near you .**
> **-the files of the wanton and depraved**
> **- A St. Louis-area lawyer came up with an excellent little game to meet women.**
> **-Meanith Huon allegedly listed Craigslist ads where he claimed to be a talent scout for models.**
> **-But Huon's potentially harmless lies allegedly turn dastardly, pretty quickly:**
> **-Had the victim Google Huon, she would have found stories like this from the** . . .
>
> -. . .**Oh, come on. If somebody was driving and tried to "force" me to perform oral sex on them, I'd just get out of the stupid car. Which is to say, I'd do exactly what the victim did in this case.**
> **-Damn. If you can't get a woman to consensually stay in a moving vehicle, can you really get her to consensually agree to sex (insofar as lying to her about your job and your intentions to get her into the car counts as consensual in the first place)?**
> **-Obviously, Huon sees things differently . . .**
>
> **- . . . It seems to me that there is entirely too much (alleged) raping going on in this country.**

It is well established that it is defamatory to call or imply that someone is a "rapist". 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). Mr. Huon was called a sex offender after he was acquitted by a jury of his peers. Because Mr. Huon has alleged defamation *per se*, he does not have to allege special damages.

V. THE COURTS HAVE REJECTED THE ARGUMENTS ADVANCED BY DEFENDANTS 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. Milkovich v. Lorain Journal Co, 497 U.S. 1, 13-15 (1990). First, there are no First Amendment considerations in this case. Mr. Huon

is neither a public figure nor official, the defamatory statement is not of public concern, and defendants are not media defendants but bloggers and website owners. The U.S. Supreme Court in Milkovich and the Illinois Supreme Court in Bryson have rejected the argument that expressions of opinions are not defamatory. Bryson v. News America Publication, 174 Ill. 2d 77 (Ill. 1996). [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. Whether the statement is actually true or false, however, is a question of fact for the jury. Simply because the story is labeled "fiction" and 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 , the Illinois Supreme Court held that a fictional story in Seventeen magazine calling the plaintiff a "slut" was an assertion of fact, because the clear impact of the statement was that plaintiff was, in fact, sexually promiscuous. The assertion is sufficiently factual to be susceptible to being proven true or false and, thus, not protected under the First Amendment.

Throughout it brief, the ATL Defendants make sweeping generalizations but cite only one instance that do not support the generalization. Arguing the post is an opinion, the ATL Defendants' cite the statements calling Mr. Huon "wanton and depraved" for coming up with a game of meeting and raping women and that "Huon's potentially harmless lies allegedly turned dastardly, pretty quickly". These statements are assertions of fact that are susceptible to being proven true or false. Mr. Huon can prove as true or false the alleged assertions that he came up

with a game, that he met multiple women, that he raped several women, that he raped anyone at all, that he is wanton or depraved. These are assertions of fact.

VI. THE ILLINOIS SUPREME COURT HAS ALREADY REJECTED SIMILAR STRAINED ATTEMPTS BY DEFENDANTS TO FIND UNNATURAL BUT INNOCENT MEANINGS.

The ATL Defendants argue in a fragmented and disjointed manner that if you remove each sentence from the post and chart and graph it, then you can find an unnatural but innocent meaning, citing to an incomprehensible chart that the Defendants have created. Why not remove each word from the post? Why not move the sentences and words around? The law requires that the defamatory statements be read in the context the statements were posted. Without a context, any series of words would have an unnatural but innocent meaning. The Illinois Supreme Court in Chapski v. Copley Press, warned against "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" Chapski v. Copley Press, 92 Ill. 2d 350-352, (1982); Tuite v. Corbitt, 224 Ill. 2d 490, 503 (Ill. 2007). "[O]nly *reasonable* innocent constructions will remove an allegedly defamatory statement from the *per se* category." Tuite, 224 Ill. 2d at 504; Bryson, 174 Ill. 2d at 90. Lifting sentences out of their context and charting them creates unreasonable and unnatural meanings. 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. Id. .

Defendants first argue that many of the statements are not defamatory citing the single statement that Mr. Huon is a St. Louis lawyer. Readers will ask why is a Chicago lawyer in St Louis like the readers' comments on the Jezebel.com site. Defendants miss the point: Mr. Huon

contends that Defendants invented fiction and passed them off as facts. Mr. Huon was an Edward Jones financial advisor who received training in St. Louis. The ATL Defendants falsely write that Mr. Huon posed as a talent scout, a supervisor for a company that sells alcohol , and someone seeking promotional models. How can Mr. Huon pose as three different people? The statements in the post contradict themselves and are inherently fabricated.

Defendants argue many of the statements are not about Mr. Huon, by pointing to a single instance to the statement about "pretend[ing]" to be a "talent scout" or an "an Ostrich rancher from sub-Saharan Africa" to meet "bubble gum princesses". On the contrary, the entire story is about Mr. Huon pretending to be a talent scout to rape girls. The post does not identify the ages of these girls other than a comparison to ""bubble gum princesses". As the trial transcript of the *voire dire* in the criminal case on May 4, 2010 would show–which the ATL Defendants conveniently edited out--potential jurors, including one who would become the foreman, thought that the alleged complaining witness was a minor because her name was withheld. In the post, the ATL Defendants makes it more likely for the confusion to happen by comparing the alleged victim to "bubble gum princesses"–a clear reference to underage girls when the complaining witness in fact was a 26 year old woman. The entire article is about rape stories of little girl. The first story is about a 15 year old girl being raped. The next story is from the "wanton and depraved" file. What can be more "wanton and depraved" than raping a 15 year old? Raping a 26 year old? No. Lying and luring a bubblegum princess to be raped. That is more wanton and depraved. The clear import of the post defames Mr. Huon as a "wanton and depraved" pedophile. The Illinois Supreme Court has refused to extend the holding in Barry Harlem Corp. v. Kraff, Bryson v. News America Publications, Inc., 174 Ill.2d 77 (Ill. Oct 24, 1996) (fictional

character refers to plaintiff). It is not seriously disputed that the post is about Mr. Huon and that Defendants called Mr. Huon an "attorney rapists". This is not self-deprecating humor because the only person being belittled or defamed is Mr. Huon. Furthermore, it is a question of fact for the jury as to whether or not the statement was in fact understood to be defamatory or to refer to the plaintiff. Tuite, 224 Ill. 2d at 503.

The Defendants broadly claim that "many of Plaintiff's allegations do not accurately reflect the statements in the Post" by pointing to a single instance where "the Post describes the testimony of Plaintiff's alleged victim." However, the repetition of an imputation made by a third person is actionable although the defamer attributes the charge to a third person. Restatement (Second) of Torts § 571, Comment c, at 187 (1977). The ATL Defendants omit facts from the official proceeding that cast doubt on the complaining witness, who was impeached numerous times during cross-examination.

The use of the chart is improper, because it lifts sentences and words out of their natural meaning in the context that they were used. Moreover, Mr. Huon shouldn't have to go through 6 pages of a fragmented and disjointed chart consisting of 40 lines and 8 columns of permutations to try to decipher the ATL Defendants' incoherent arguments. Defendants have the burden to write a cogent motion to dismiss, not fragments from Ludwig Wittgenstein's Philosophical Investigations or like lines of Wallace Stevens' poetry.

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

The ATL Defendants do not give a cogent argument for the dismissal but merely adopts prior arguments. Mr. Huon adopts his prior response to Defendants' arguments. To prove false light, Mr. Huon must show that the publicity at issue is "of and concerning" him, that it placed

him before the public in a false light, and that there was actual malice. Muzikowski v. Paramount Pictures Corp., 322 F.3d 918 (7th Cir. 2003). Mr. Huon has alleged that the ATL Defendants posted a defamatory post calling him a depraved and wanton attorney rapist and se offender who came up with a game to rape several women, that Defendants knew that these statements were false, and that Defendants acted with malice.

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

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). Perhaps, we can start with the Illinois Supreme Court: in Kolegas v. Heftel Broadcasting Corp., defendants, radio disc jockeys, made defamatory statements about the plaintiff, who was organizing a festival to benefit neurofibromatosis, a serious neurological disorder, which is commonly known as Elephant Man disease. Defendants stated on the air that plaintiff was "not for real", that plaintiff was just "scamming" them, 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. More importantly, the plaintiffs had no similar access to the public . . ." Kolegas,154 Ill.2d at 22.

In this case, the facts are more egregious. Mr. Huon had been wrongfully been prosecuted by Madison County and was exonerated. On the date of his acquittal, Defendants called Mr. Huon a scammer who lies to lure little girls and women to meet him, depraved and

wanton, an attorney rapist, someone posing as a talent scout, a predator of bubble-gum princess, someone who came up with a game to meet women that turned dastardly, more wanton and depraved than a rapist of a 15 year old girl. The ATL Defendants use the power of the world wide web to gain access to more channels of communications than Mr. Huon, because Defendants have access to the thousands, if not millions, of potential readers. The Abovethelaw.com site is ranked no. 1 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#.

Hustler Magazine, Inc. v. Falwell does not apply, because Mr. Huon is not a public figure and, thus, there are no First Amendment implications in this case. In addition, the U.S. Supreme Court stated in Hustler Magazine, Inc. v. Falwell, "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."485 U.S. 46, 52 (U.S.Va.,1988). Hustler Magazine has been called into doubt. Bryson, 174 Ill.2d 77 (Ill. 1996). 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). The ATL Defendants' remaining cases hold that plaintiff's state a cause of action for defamation and false light. Berkos v. National Broadcasting Co., Inc. 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, on the date that he was acquitted, Defendants falsely identified or implied that Mr. Huon was under investigation for being a serial

rapist and engaging in wanton and depraved behavior. Defendants' reliance on Berkos is tantamount to conceding that Mr. Huon states a cause of action for defamation and false light.

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

The problems of cyberstalking and cyberbullying by bloggers and the media is a serious threat to Americans. Many states have enacted "cyberstalking", "cyberbullying", or "cyberharassment" laws. Addressing the American Psychological Association's ("APA") Annual Convention, Dr. Elizabeth Carll, of the APA Media Psychology Division, stated: "It is my observation that the symptoms related to cyberstalking and e-harassment may be more intense than in-person harassment, as the impact is more devastating due to the 24/7 nature of online communication, inability to escape to a safe place, and global access of the information. Recent scandals in news involving the Fox News Corporation phone hacking incidents show that even the established press have used technology to engage in illegal activities to stalk its subject.

Social media encourages and accelerates abuses by cyber bullies and cyberstalkers who cloak themselves as bloggers and "wannabe" journalists. Social media, bloggers, website operators have given birth to a new crime that people are more at risk for–cyberstalking and cyberbulling. The criminal statutes are not adequate to protect Americans from the threat of cyberbullying and cyberstalking, because of the ever changing nature of technology and the vast expanse of the world wide web. Private enforcement of cybercrime is needed.

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.

Mr. Huon's case is a classic of example of why the criminal statutes are ineffective for enforcement against cyberstalking and why the ATL Defendants are not reporters. The Madison County prosecutors used the Illinois cyberstalking statute in 2009 CF 1688 to retaliate against Mr. Huon for demanding a trial in 2008 CF 1496. The allegation was that the complaining witness Googled Mr. Huon and read a blog with no reference to the complaining witness name. The blog postings allegedly included a "wide variety of professions of love, along with religious references", including "10 reasons why I'd make a good husband for you." The alleged post made no reference to the complaining witness by her legal name. Madison County prosecutors contended that if a complaining witness comes across a website that makes no reference to that person and if the words of that website causes the person to experience subjective emotional distress–no matter how harmless the words are, that constitutes cyberstalking. Madison County prosecutors overcharged Mr. Huon with meritless charges, in the hopes that either he would be convicted of something or his funds would run out.

The ATL Defendants knew about the false cyberstalking charges because they posted a defamatory comment about it with a hyperlink to the Lawgossip.com website. However, rather

than engaging in investigative journalism to explore the possibility that anyone who creates website content that someone finds distressful can be charged with cyberstalking in Illinois –much less even report to the world of the prosecutorial misconduct–Defendants proceeded to engage in the same conduct that the Madison County prosecutors called cyberstalking.

The Illinois cyberstalking statute criminalizes "a course of conduct using electronic communication directed at a specific person" when the actor "knows or should know that [it] would cause a reasonable person to. . . or (2) suffer other emotional distress. The ATL Defendants on at least two occasions, in 2008 and 2010, posted statements regarding Mr. Huon that caused him to experience distress. The facts here are even more egregious than what Mr. Huon was charged with by Madison County prosecutors. In 2008, the ATL Defendants called Mr. Huon "Lawyer of the Day" by poking fun of his false arrest. In 2010, after Mr. Huon was acquitted, the ATL Defendants continued to stalk Mr. Huon online and called him wanton and depraved and implied that he was a serial rapist, an attorney rapist, someone who got away with rape, a pedophile of bubble gum chewing girls. The statute defines "Emotional distress" to mean "significant mental suffering, anxiety or alarm" and "Harass" to mean "to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, or terrorizes that person." Mr. Huon suffered alarm and anxiety from the posts, because the ATL Defendants posted on a legal blog visited by lawyers and judges that Mr. Huon was a rapist and a serial rapist. Posting on the Internet on one of the most highly trafficked legal blog is like putting up a billboard on a highway trafficked by only lawyers and judges. The comments to the statute defines "electronic communication" broadly.

Desnick v. American Broadcasting Companies, Inc., 44 F.3d 1345 C.A.7 (Ill.),1995.,

held that plaintiff ophthalmic surgeon stated a claim for defamation against ABC's PrimeTime Live for its investigative journalism for calling him a "big cutter". Had the ATL Defendants performed investigative journalism, they would have discovered that Madison County prosecuted Mr. Huon for cyberstalking for facts less egregious than the ATL Defendants' more egregious conduct. O'Donnell v. Field Enterprises, Inc.—decided before the Internet--was talking about "If the news media cannot report what it sees and hears at governmental and public proceedings"–not some blogger in his pajamas commenting on a news article. The First Amendment does not protect tortious or criminal conduct. Desnick, 44 F.3d at 1355. Galinski v. Kessler does not apply when the conduct is not only unlawful but tortious. Scott v. Aldi, Inc., 301 Ill.App.3d 459, (1st Dist. 1998). Galinski held that no private cause of action exists for some archaic crime called barratry. Modern day causes of action for malicious prosecution exist as adequate remedies. Similarly,in Lane v. Fabert, plaintiff had remedies available under the Consumer Fraud and Deceptive Business Practices.

In this case, there is no 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 provides a better shield against the unregulated conduct of bloggers. 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., 149 N.H. 148, 816 A.2d 1001 (N.H.,2003). Several states have passed laws creating a civil cause of action for stalking. Wyoming W.S.1977 § 1-1-126 (Civil Liability for stalking); Virginia VA Code Ann. § 8.01-42.3 (Civil action for stalking); Oregon O.R.S. §

30.866.

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

The underlying tort is defamation, false light, or intentional infliction of emotional distress. 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. Under Bell Atlantic Corp the complaint must describe the claim in sufficient detail to give the defendant fair notice of what the claim is and the allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a "speculative level". 550 U.S. 544 (2007). Here, Defendants are on notice that they defamed Mr. Huon and placed him in a false light. Defendants are aware of the conspiracy, because they self-identified themselves as the "Above the Law" Defendants The 30+ single space paged complaint alleges in sufficient factual detail the role of each conspirator who posted defamatory comments regarding Mr. Huon. Mr. Huon's right to relief is more than speculative. Bell Atlantic Corp, held that for complaints in antitrust or RICO claims, fuller set of factual allegations may be necessary to show that relief is plausible. Smith v. Duffy, 576 F.3d 336, 340 (7th Cir. 2009). This concern does not apply to your run of the mill lawsuit. Id, at 340. Ashcroft v. Iqbal was "special in its own way" because a detainee sued the U.S. Attorney General and the Director of the FBI. Smith v. Duffy, 576 F.3d at 340-341. Mr. Huon has not filed a RICO lawsuit. Mr. Huon has filed a run of the mill suit.

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

Respectfully submitted,

/s/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 December 12, 2011:

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

/s/ Meanith Huon

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