

# Exhibit 4

## (File Under Seal)

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 VIRGINIA L. GIUFFRE,

4 Plaintiff,

5 v.

15 CV 7433 (RWS)

6 GHISLAINE MAXWELL,

7 Defendant.  
-----x

8 New York, N.Y.  
9 January 14, 2016  
10 12:00 p.m.

11 Before:

12 HON. ROBERT W. SWEET,

13 District Judge

14 APPEARANCES

15 BOIES, SCHILLER & FLEXNER  
16 Attorneys for Plaintiff  
17 BY: SIGRID McCAWLEY

18 HADDON, MORGAN & FOREMAN  
19 Attorneys for Defendant  
20 BY: LAURA MENNINGER

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1 (In open court)

2 THE COURT: I will hear from the movant.

3 MS. MENNINGER: Thank you, your Honor, Laura Menninger  
4 on behalf of the defendant Maxwell. We are the movant for the  
5 purposes of today's hearing. I filed both a motion to dismiss  
6 the complaint, which is based on one claim of defamation, as  
7 well as a motion to stay discovery during the pendency of our  
8 motion to dismiss the complaint.

9 At the heart of this case, your Honor, defamation is  
10 about words, specifically false and defamatory words, about the  
11 plaintiff published to another by the defendant with a certain  
12 level of culpability and resulting injury. Depending on the  
13 context of the words, the content of the statement, the  
14 relationship of the speaker and the listener, depending on the  
15 time, place and manner of the statement, the Court may find the  
16 words to be actionable or not, privileged or not, defamatory in  
17 meaning or not.

18 The central problem with this particular complaint,  
19 your Honor, is that all of the key elements of defamation are  
20 conspicuously absent. Cutting through the hyperbole and the  
21 rhetoric contained in the complaint, one is still left  
22 wondering what words are actually at issue. Is it the three  
23 sentence fragments contained in paragraph 30 against Ghislaine  
24 Maxwell are untrue, shown to be untrue, claimed or obvious  
25 lies, or does it include some additional or extra false

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1 statements that are referenced but never explained in  
2 paragraphs 31 and 34? In what context were any of these  
3 sentence fragments published? What, if anything, were they in  
4 response to?

5 Your Honor has found in previous cases, such as  
6 Hawkins v. City of New York, that the failure to identify the  
7 individuals to whom the statement allegedly was made and the  
8 content of that statement is fatally defective to an attempt to  
9 state a libel or slander cause of action.

10 In this case, in this complaint, plaintiff has barely  
11 even attributed a few sentence fragments to my client,  
12 Ms. Maxwell. She stripped them of any context. She hasn't  
13 provided the entire statement in which those sentence fragments  
14 were contained, nor the articles in which any of those  
15 sentences might have appeared. She has not pled facts, which,  
16 as this Court knows, post-Twombly, must be included, not just  
17 legal conclusions. She has not pled facts demonstrating actual  
18 malice, nor any special damages or facts that would support  
19 defamation per se. Because of the many pleading failures, your  
20 Honor, I do not believe this complaint should stand.

21 The Second Circuit made quite clear that your Honor  
22 has an important gatekeeping function in a defamation case.  
23 The Court must ascertain whether the statement, when judged in  
24 context, has a defamatory meaning, and also whether it is  
25 privileged.

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1           As your Honor also found in Cruz v. Marchetto, you  
2 cannot rely, as the plaintiff tries to do here, on the less  
3 stringent pleading requirements that predated Twombly and  
4 Iqbal, and furthermore, that the plaintiff must plead facts  
5 which support either defamation per se or special damages.

6           Here, your Honor, while there are statement fragments  
7 contained in the complaint at paragraph 31, there's not even a  
8 complete sentence attributed to my client, Ms. Maxwell. That,  
9 your Honor, has been found on numerous occasions to be  
10 insufficient to state a cause of action for defamation.

11           Furthermore, the complaint does not state to whom any  
12 such statements were made. There is a general allegation that  
13 the statements were made, quote, to the media and public, but  
14 no media is identified, no publications are identified. While  
15 the complaint states at one point that it was published and  
16 disseminated around the world, not a single publication is  
17 mentioned or attached to the complaint.

18           And furthermore, the complaint fails to state where in  
19 fact the statements were made. Although it does state the  
20 statements were made in the Southern District of New York, it  
21 attributes those sentence fragments to a press agent who is  
22 admittedly located in London.

23           Finally, your Honor, there is a lot of confusion  
24 contained in the paperwork with regard to the standard of  
25 malice that must be pled. Again your Honor has found, and

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1 numerous other Southern District Courts have found likewise,  
2 that malice in this context is malice in the sense of spite or  
3 ill will. Looking to the complaint, your Honor, there's not a  
4 single conclusory or factually-supported allegation that would  
5 give rise to a finding of malice. And that, your Honor,  
6 likewise is fatal to the complaint.

7 Finally, in terms of pleading deficiencies, plaintiff  
8 in this case has tried to allege defamation per se by claiming  
9 her profession is as a professional victim. In other words,  
10 ten days before she claims my client made statements about her,  
11 plaintiff founded a nonprofit through her organization, through  
12 her attorneys in Florida, called Victims Refuse Silence, and  
13 thereby states that any attempt to impugn anything she says is  
14 defamation per se.

15 There is no support in the case law for a profession  
16 of being a victim, your Honor. And likewise, there's no  
17 factual support to suggest, and the cases require, that the  
18 statements attributed to my client, Ms. Maxwell, have anything  
19 to do with her nonprofit organization, nor that my client was  
20 even aware of an organization founded a mere ten days earlier  
21 and which doesn't appear to have any actual business conduct  
22 related to it.

23 So your Honor, I think for all those reasons, the  
24 complaint is insufficiently pled and should be dismissed.

25 Our papers go on a little bit further, your Honor, to

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1 also argue that to the extent any of these sentence fragments  
2 can be pieced together, the statements, at most, are a general  
3 denial. In other words, plaintiff admits in the complaint that  
4 she started a media campaign against my client, she issued some  
5 very salacious allegations against my client in the British  
6 press and in some pleadings that she filed in Florida. And  
7 after having done that, my client, she says, issued a statement  
8 that the allegations are quote, unquote, untrue.

9 Repeatedly, cases both in New York State and federal  
10 courts have found general denials are not actionable, that  
11 individuals have a right, when they have been accused of  
12 misdeeds in the press, to respond, so long as they don't abuse  
13 that privilege. And by abuse of privilege, that means  
14 including numerous defamatory extraneous statements about the  
15 person to whom they are responding and/or excessively  
16 publicizing their response.

17 In this case, your Honor, the statement the  
18 allegations are untrue is about as plain vanilla as one can  
19 find. There's no better way to issue a general denial than to  
20 just say that the allegations are untrue, without more.  
21 There's not a single reference to plaintiff herself.

22 Although, in opposition, plaintiff claims to have been  
23 called a liar, complains that she was called dishonest, she  
24 doesn't actually point to any statement which contains those  
25 words, nor any statement which actually refers to her as a

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1 person, simply to the allegations which her client had issued,  
2 and frankly, allegations which had been circulated in the  
3 press.

4 So saying the allegations are untrue is tantamount to  
5 a general denial, and that is one additional reason, your  
6 Honor, that I think the complaint should be dismissed.

7 Thank you.

8 MS. McCAWLEY: Good morning, your Honor. May I  
9 approach with a bench book?

10 THE COURT: Sure.

11 MS. McCAWLEY: Thank you.

12 THE COURT: I think in duplicate. Do you have another  
13 copy?

14 MS. McCAWLEY: Sure, of course.

15 Good morning, your Honor, my name is Sigrid McCawley,  
16 I'm with the law firm of Boies, Schiller & Flexner representing  
17 the plaintiff in the case, Virginia Giuffre.

18 With all due respect to my colleague, I think she read  
19 a different complaint than the one submitted in this case. She  
20 left out significant factual details from the complaint that  
21 plead actual defamation.

22 This is an old story. A woman comes forth and finally  
23 gets the courage to tell about the sexual abuse she endured,  
24 and her abusers come public and call her a liar and say her  
25 claims are, quote, obvious lies. That quote is in our

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1 complaint.

2 Your Honor, this is an actionable defamation case.  
3 Fortunately for women who have been abused in this manner, the  
4 law of defamation stands by their side. It does not allow  
5 someone to publically proclaim they're a liar and issue  
6 character assaults on them without ramifications.

7 After those statements were made, we filed this  
8 defamation lawsuit. Virginia Giuffre was only 15 years old  
9 when she was recruited by Maxwell to be sexually abused by both  
10 Maxwell and Jeffrey Epstein, who is a convicted pedophile and  
11 billionaire. She was harmed for many years before she finally  
12 found her way to Thailand and escaped clear to Australia where  
13 she hid out for ten years before the FBI interviewed her and  
14 she made her statement public.

15 Your Honor, this is a very serious case of abuse. My  
16 client never sued Ms. Maxwell until she came out and called her  
17 a liar publically for claiming her allegations of sexual abuse  
18 were false. That's actionable defamation. We have seen that  
19 in cases recently, and I will walk you through those.

20 Now while this story may sound hard to believe, it  
21 happened, and there were over 30 female childhood victims in  
22 Florida alone that came forward and gave statements to law  
23 enforcement about this same type of abuse.

24 Unfortunately, due to Epstein's vast wealth and power,  
25 he was able to get off with a very light sentence. And his

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1 co-conspirators were also part of that plea agreement, that  
2 non-prosecution agreement, and were not prosecuted. That  
3 agreement is being challenged by two other victims in Florida  
4 in a case in front of Judge Marra case called the Crime  
5 Victims' Rights Act case.

6 I want to mention that while my colleague didn't  
7 mention it in her opening, she does mention it in her papers, I  
8 contend that the order she referenced in her papers by Judge  
9 Marra, which we included a copy of for you, has been  
10 misrepresented. That order did allow my client -- on page 6 it  
11 says, quote, Jane Doe 3 is free to assert factual allegations  
12 through proper evidentiary proof should she identify a basis  
13 for believing such details are pertinent to the matter.

14 So while the paper suggested she was deemed to have  
15 impossible allegations or that those allegations were untrue,  
16 that's absolutely not what the court said in Florida, so I want  
17 to correct that for the record before we begin.

18 What we have here is a defamation case. As the Court  
19 well knows, defamation -- this is a libel per se case where the  
20 words were published in writing. And as you know, libel per se  
21 is when a word tends to expose another to public hatred, shame,  
22 contempt or ridicule. I see no other allegation that could be  
23 worse than calling a sex abuse victim a liar. To lie about  
24 sexual abuse has to be one of the most scornful things  
25 available, and that is subject to defamation.

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1 Now in the papers -- and I will just touch on this  
2 briefly because my colleague did not touch on it significantly  
3 here and I don't want to waste the Court's time, but she  
4 alleged a number of privileges that she believes Ms. Maxwell  
5 should be able to hide behind in order to preserve these  
6 defamatory statements.

7 I impart on your Honor that a determination as to  
8 whether any of those privileges apply would be premature at  
9 this stage. That's your case, which is Block v. First Blood,  
10 691 F.Supp. 685. In that case you dealt with one of the  
11 privileges she is asserting here, the prelitigation privilege,  
12 and you found that it would be premature, even at the summary  
13 judgment stage, to be analyzing whether or not that was  
14 applicable.

15 So what we have here is qualified privileges being  
16 asserted as to defamatory statements. The two qualified  
17 privileges she asserts are the self-defense privilege and the  
18 prelitigation privilege. So in other words, if the defamatory  
19 statements survive, she says, nevertheless the privileges  
20 preclude the case from going forward.

21 The self-defense privilege has been addressed by the  
22 highest court of New York just as recent as this year, and  
23 that's in the case of Davis v. Boeheim. And that was case  
24 where the Syracuse basketball coach was accused by two victims  
25 that were childhood victims who later as adults came forward

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1 and set forth their allegations against him. One of his  
2 colleagues came forth and called those victims liars publicly,  
3 same thing that happened in this case. And the court there  
4 said that the case cannot be dismissed, it has to proceed  
5 forward, and they are entitled to prove those allegations were  
6 false, that the victims were not liars, and indeed they were  
7 subject to the abuse they were subject to.

8 Another case that is recent which I supplemented with  
9 your Honor is the Cosby case. It's recent out of  
10 Massachusetts, and very similarly there -- in fact, the  
11 statements weren't even as strong as Ms. Maxwell's statements  
12 here. In our complaint, Ms. Maxwell calls our client's  
13 allegations of sexual abuse, quote, obvious lies, issued by  
14 press release nationally and internationally to the media. And  
15 we do cite to the media that it is sent to. That's in  
16 paragraph 30, 36 and 37, international media, national media  
17 and the New York Daily Post, who interviewed Ms. Maxwell on a  
18 New York street. So that is alleged in detail in our  
19 complaint.

20 But in Cosby the court said, quote, suggestions that a  
21 plaintiff intentionally lied about being sexually assaulted  
22 could expose that plaintiff to scorn and ridicule, and  
23 therefore, Bill Cosby's statements could be found to have a  
24 defamatory meaning, and the court allowed the case to proceed  
25 past the motion to dismiss stage.

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1           We also have the McNamee v. Clemens case which you may  
2 be familiar with. It's another New York case involving Roger  
3 Clemens where he had been alleged to have engaged in steroid  
4 use. His trainer stated that publicly. He came forward and  
5 called his trainer a liar publicly, and the court found that  
6 that statement that he is a liar was actionable defamation that  
7 survived the motion to dismiss, because publicly proclaiming  
8 someone a liar is actionable defamation. It is not mere  
9 denial, it is actionable defamation.

10           So those are the cases I would like to direct the  
11 Court's attention to. Again, on page 10 of our opposition we  
12 have a litany of cases that deal with the issue of calling  
13 someone a liar and that being actionable defamation.

14           She also asserts the prelitigation privilege, and that  
15 is a privilege addressed in your Block v. First Blood case.  
16 That privilege is intended to protect communications between  
17 parties, typically attorneys, in advance of litigation in order  
18 for them to narrow the scope of the litigation or to negotiate  
19 a resolution in advance of litigation. That prelitigation  
20 privilege does not cover public statements by Ms. Maxwell's  
21 hired press agent that are given to the national and  
22 international media for the purposes of defaming my client,  
23 calling her allegations of sexual abuse untruths and calling  
24 them, quote, obvious lies. So that prelitigation privilege  
25 does not apply.

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1                 The Khalil case, which is cited in the defendant's  
2 brief, actually has a great passage in there that describes if  
3 the allegation is made for an improper purpose, in other words,  
4 if it is made for a wrongful purpose or to harass or seek to  
5 press or intimidate the victim, then it is not something that  
6 the defendant can avail themselves to as a privilege.

7                 Now, just briefly, the opposition also stated that our  
8 complaint is deficient in other manners; for example, that we  
9 haven't properly alleged the to whom, as I referenced. You can  
10 look at paragraphs 30, 36 and 37 to see that. That is a  
11 technical pleading deficiency that she is raising there. We do  
12 meet the standards of Twombly. We have pled detailed facts  
13 that our client was sexually abused as a minor child. We pled  
14 other facts about that abuse. And Ms. Maxwell intentionally  
15 and maliciously came out and called her a liar in order to  
16 protect her own self.

17                 So that is what we have put in our complaint. The  
18 Hawkins case that she references and the Cruz case that she  
19 references are vastly different. In Cruz there wasn't even an  
20 allegation of defamation, and the court was reading into the  
21 complaint whether or not there could have been defamation.  
22 Here we stated specifically who made the statement, when she  
23 made the statement, where she made the statement, why she made  
24 the statement. That is all we need to do. It's more than  
25 sufficient to plead a case of defamation in this instance.

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With respect to the allegations that we haven't pled properly libel per se, I want to be clear we pled that in two ways. And the case law is a case cited in the defendant's brief, and it's Jewell, and it does a very good job of parsing out the difference between slander and libel, and there is a difference in the case law, as your Honor knows.

In the instance of libel, the written words, Cardozo has said, it stings, it stings longer, so therefore, in pleading libel per se, you don't have to plead special damages in the way that you do for slander.

The Matherson case, which is out of New York, also articulates that. The difference, it says, quote, on the other hand, a plaintiff suing on libel need not plead or prove special damages if the defamatory statement tends to expose the plaintiff to public contempt, ridicule, aversion, or disgrace. And that is exactly what we have pled in this case, that the statements that our client lied about the sexual abuse she endured as a minor were statements that exposed her to that public contempt and ridicule.

She has also pled libel per se with respect to her profession. While my colleague may make light of the fact that she is involved in helping victims that -- people who are victims of sexual trafficking, that is what she has dedicated her life to doing. And to come out and publicly proclaim her a liar about sexual abuse harms the nonprofit and harms the work

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1       she has been doing. She has been harmed personally by saying  
2       her claims are, quote, obvious lies, and she has been hurt  
3       professionally in that manner, and we allege both things in our  
4       complaint.

5                  Your Honor, Virginia has been beaten down many times  
6       in her life, but the law of defamation stands at her side. I  
7       pray upon you that you will consider the complaint and not  
8       dismiss it, because her claims should be able to be proven in  
9       this Court. Thank you.

10                 THE COURT: Thank you very much.

11                 Anything further?

12                 MS. MENNINGER: If I may, your Honor.

13                 Again, plaintiff comes before you claiming she has  
14       been called a liar. There is no statement attributed to my  
15       client, in the complaint or elsewhere, in which my client has  
16       called plaintiff a liar. There are three sentence fragments  
17       contained in the complaint, the allegations against Ms. Maxwell  
18       are untrue, and that her claims are obvious lies.

19                 Your Honor, it is a meaningful distinction. I can  
20       explain a little bit of the background here. Plaintiff came  
21       forward and gave an interview in the press in 2011 claiming  
22       that my client was somehow involved with Mr. Epstein's sexual  
23       abuse of her. She gave an exclusive interview to a British  
24       newspaper in which she made that allegation, plaintiff did, and  
25       was paid for it.

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1                   My client issued a general denial in 2011 saying that  
2 the allegations were untrue. At that time, plaintiff said  
3 that, although she had been in contact with the likes of Prince  
4 Andrew in London and Bill Clinton and other famous people,  
5 there was no suggestion that those people had engaged in any  
6 kind of improper sexual contact with her.

7                   Fast forward a few years. Some other women who  
8 claimed they were victims of Mr. Epstein's abuse filed a  
9 lawsuit in Florida and they asked the court to undo a plea  
10 agreement that had been entered into by the U.S. attorney's  
11 office down in Florida or that the U.S. attorney's office  
12 somehow worked with the state authorities in crafting, and  
13 those two other women, not plaintiff, litigated for I think  
14 seven years now whether or not they should have been informed  
15 earlier about whatever plea agreement was going to go on with  
16 Mr. Epstein.

17                  Well, December 30 of 2015, plaintiff filed a motion to  
18 join that Victims' Rights Act litigation, and in her motion to  
19 join the Victims' Rights Act litigation she filed a  
20 declaration, in which, as I understand it thirdhand based on  
21 the judge down there's order, she claimed to have been involved  
22 in sexual relations with Prince Andrew, with world leaders, a  
23 former prime minister of some country or other, Mr. Alan  
24 Dershowitz. She made a number of spurious allegations, and one  
25 of them involved my client, Ms. Maxwell.

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1                   Well, within minutes of filing that motion to join  
2 that action, lo and behold, her story hits the British press.  
3 Whether or not that was at her lawyer's instigation, I don't  
4 know, but they have been courting the press in a number of  
5 ways, so I wouldn't be surprised.

6                   The press comes calling and asked my client and  
7 Mr. Dershowitz and Prince Andrew and everyone else whether any  
8 of the allegations contained in this legal pleading are true.  
9 Buckingham Palace issued a statement flatly denying the claims  
10 made by plaintiff here. Mr. Dershowitz came out even stronger  
11 and not only flatly denied it but did in fact call her a liar  
12 and said, among other things, if she lied about me, she  
13 probably lied about all these other world leaders that she  
14 claims she was involved with at the age of 17 and 18, and that  
15 the story dates back to '99 when she claims these activities  
16 occurred. And so he came out and actually called her a liar.

17                  Buckingham Palace said her claims were absolutely  
18 untrue. At the end of one article, in which the two comments  
19 about plaintiff were contained, is a statement attributed to my  
20 client, Ms. Maxwell, and her statement reads, the claims  
21 against Ghislaine Maxwell are untrue. She has now made  
22 additional statements about world leaders, and those claims are  
23 obvious lies. So that part about obvious lies come after the  
24 part about claims against world leaders and famous politicians  
25 and the like.

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1                   Well, I tried to go to the Florida action to find  
2 where these allegations were that apparently plaintiff believes  
3 my client's statement was in relation to. And guess what?  
4 Judge Marra down in the Southern District of Florida has  
5 stricken the declaration from public access. He has stricken  
6 the actual paragraphs making all of these allegations, and has  
7 restricted from public access the documents that contained the  
8 allegations. And he issued an order, and I attached that  
9 order, because I believe the Court can consider it taking  
10 judicial notice, to my declaration here on the motion to  
11 dismiss.

12                  In the order, just so we're all clear, I'm not  
13 misrepresenting what happened, as I was just accused doing,  
14 Judge Marra held, after describing what he called lurid  
15 allegations, he found they were impertinent and immaterial to  
16 the motion to join the Victims' Rights Act filed by plaintiff.  
17 He said that they concerned non-parties, including my client,  
18 who was not there and able to defend herself within the  
19 litigation, and he denied her request to join that action  
20 finding that she waited a long time. While she may be a  
21 witness to things that are concerned down there, she does not  
22 need to join the action in order to assert rights that the  
23 other plaintiffs down there are already asserting.

24                  Then he goes on in the order to remind her counsel of  
25 their Rule 11 obligations to only include pertinent materials.

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1 And he was not denying they would ever be able to, but seems to  
2 seriously question whether or not admissible non-cumulative  
3 evidence of the things that were claimed would ever be heard in  
4 his court.

5 So I don't actually have a copy of whatever it is that  
6 was claimed down there because it's not publicly available, and  
7 it certainly was not mentioned in the complaint, wasn't  
8 attached to the complaint, it's just somewhere out there that  
9 the press has picked up on and published.

10 In the meantime, Mr. Dershowitz is now involved in  
11 ongoing battles with plaintiff's lawyers down in Florida. They  
12 cross claimed one another for defamation. And she's been  
13 participating in that litigation as a non-party as well,  
14 although it concerns her attorneys and the same exact  
15 allegations.

16 So while others have called her a liar, notably  
17 Mr. Dershowitz, and others have denied claims that plaintiff  
18 has made, including Buckingham Palace, and while Judge Marra  
19 down there has found her claims impertinent and immaterial to  
20 the allegations going on in Florida, Ms. Maxwell has not  
21 actually ever called her a liar.

22 And your Honor, all of these cases that plaintiff  
23 cites to, Davis v. Boeheim, McNamee v. Clemens, all of those  
24 cases had complaints which had attached to them the actual  
25 statements at issue.

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1           I think in the McNamee v. Clemens case there were some  
2 27 exhibits attached to the amended complaint where Mr. Clemens  
3 had been on 60 Minutes and given statements to reporters and  
4 gone on at length calling the plaintiff in that case,  
5 Mr. McNamee, a liar, calling him a liar 25 ways to Sunday,  
6 talking about his financial motives, his potential financial  
7 gain, et cetera.

8           Likewise, in the Davis v. Boeheim case, Mr. Boeheim  
9 gave a press conference in which he called the accusers liars.  
10 He questioned their financial incentives following the Sandusky  
11 case to be coming forward then, and he went on at length about  
12 all of the reasons why they might be coming forward now with  
13 their, quote, unquote lies.

14           In each of those cases, McNamee v. Clemens and Davis  
15 v. Boeheim, the New York Court of Appeals, as well as the  
16 Federal Court in the Eastern District of New York, made clear  
17 that the one thing that is not actionable is a general denial.  
18 And then they talk about why Mr. Boeheim's comments and  
19 Mr. Clemens' comments went well beyond what anyone might  
20 consider a general denial. And fortunately, those cases  
21 actually had records which included the statements, included  
22 the articles in which the statements were made, so the Court  
23 could engage in the sort of analysis that it must, that is, to  
24 decide whether, in context, the statement has a defamatory  
25 meaning.

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1                   So I think even now, saying that my client called her  
2 client a liar is just not supported by a single fact in the  
3 complaint. While the complaint makes conclusory statements  
4 like it was a campaign questioning her dishonesty and all of  
5 that, when you get right down to the actual statements, which  
6 this Court has held on numerous occasions must actually be  
7 spelled out in a defamation case, the only statements are,  
8 quote, sentence fragments like allegations against Ghislaine  
9 Maxwell are untrue.

10                  And by the way, looking at those news articles, one  
11 might see that they actually are talking about allegations that  
12 have lodged in the British press. They don't refer to  
13 Ms. Roberts, as she was then known, they don't refer to  
14 anything about her, they don't call her a liar, they don't  
15 question her financial motives, although I'm sure she has some.  
16 So if you look at the cases Davis v. Boeheim, McNamee v.  
17 Clemens, you will see Ms. Maxwell's statements, even to the  
18 extent they're alleged, fall well within the general denial  
19 privilege.

20                  I think it's inaccurate to quote, with regard to the  
21 prelitigation privilege, the statements attributed to  
22 Ms. Maxwell that reserved her right to seek redress from the  
23 British press for the repetition of what she said were untrue  
24 allegations. And that is something that, under British law,  
25 one must assert or waive. So if you don't, under British law,

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1 put the press on notice that you are challenging the veracity  
2 of statements that the British press is publishing, then you  
3 will have been deemed to have waived your right to do so in the  
4 future.

5 We cited Khalil v. Front, which is a New York Court of  
6 Appeals case from last year. It was actually affirming the  
7 dismissal of a case on a motion to dismiss. So while plaintiff  
8 claims that privileges like this can't be decided at the motion  
9 to dismiss stage, the New York Court of Appeals directly found  
10 otherwise. And there they said that if a statement is made in  
11 anticipation of litigation, whether or not -- I think they used  
12 the word "contemplated" litigation, whether or not the  
13 litigation actually occurred is not material, but if they are  
14 made in anticipation of potential litigation then they are  
15 entitled to the prelitigation privilege.

16 So not only do I believe that the statements  
17 themselves are non-defamatory general denials, but insofar as  
18 they were issued to put the British press on notice, that  
19 repetition of them may give rise to litigation. They also  
20 should be afford the prelitigation privilege that the New York  
21 Court of Appeals has recognized. Thank you.

22 THE COURT: Thank you very much. I will reserve  
23 decision.

24 ooo  
25