

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HOWARD K. STERN,

Plaintiff,

versus

RITA COSBY and HACHETTE BOOK  
GROUP USA, INC. d/b/a Grand Central  
Publishing, and JOHN OR JANE DOE,

Defendants.

**AFFIDAVIT OF  
ELIZABETH A.  
MCNAMARA IN SUPPORT  
OF RITA COSBY'S  
OPPOSITION TO  
PLAINTIFF'S MOTION  
FOR EXPEDITED  
DISCOVERY**

STATE OF NEW YORK )

) s.s.:

COUNTY OF NEW YORK )

ELIZABETH A. MCNAMARA, being duly sworn, deposes and says:

1. I am a partner in the law firm of Davis Wright Tremaine LLP, counsel for defendant Rita Cosby. I make this affidavit on personal knowledge.

2. On October 22, 2007, a Mac-Certified engineer from Kroll On Track Data Recovery Services made a forensic image of the hard-drive of Ms. Cosby's computer. On October 23, 2007, the duplicate hard-drive was delivered by Kroll On Track to my colleague Elisa Miller. The duplicate hard-drive is being retained at our offices.

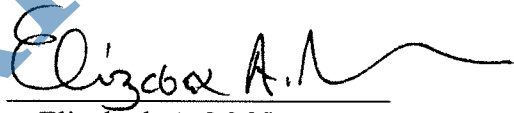
3. On October 24, 2007, DWT received from Ms. Cosby all original hard copies of documents in her possession, including audio and video recordings, that relate to *Blonde Ambition*, her investigation into Anna Nicole Smith's death, and the allegations made in Plaintiff's Complaint and Motion.

4. Attached hereto as Exhibit A is a true and correct copy of a transcript of an audiotaped conversation between Rita Cosby and a third party, Lincoln Bain, that was

aired by Fox News on "On The Record with Greta Van Susteren" on October 15, 2007 and on Access Hollywood on October 14, 2007.

5. My colleague Elisa Miller created the transcript of the Broadcast by viewing the Broadcast on [www.foxnews.com/story/0,2933,302276,00.html](http://www.foxnews.com/story/0,2933,302276,00.html), and <http://www.accesshollywood.com/celebrities/ah7079.shtml>.

6. I have no personal knowledge of the Broadcast or the audiotaped conversation between Cosby and Bain that aired during the Broadcast other than having viewed the Broadcasts on the websites noted above and reviewing my colleague's transcript of the tape. I intend to gain personal knowledge of the tape as we go forward in this action.

  
Elizabeth A. McNamara

Sworn before me this  
24<sup>th</sup> day of October, 2007

  
Notary Public

LINDA G. MOSCHETTI  
Notary Public, State of New York  
No. 01MO4723235  
Qualified in Bronx County  
Term Expires August 31, 2010

**EXHIBIT A**

ARTHARRIS.COM

**Rita Cosby's Phone Conversation with Lincoln Bain**  
**September 8th, 2007**  
*Access Hollywood October 14, 2007*  
*Greta Van Susteren: On the Record, October 15, 2007*

BAIN: She saw it. she saw the video.

COSBY: Well that's what I was going, that's what I was going to ask you. So now tell- Can I ask you- what- so this was Nadine that was the one who walked in the bedroom and saw the videotape of what Larry and Howard, right?

BAIN: Yeah.

COSBY: And what did- what did she see exactly? Can you walk me through what she saw from your perspective?

BAIN: Ah, well I don't want to go onto the details over the phone like this.

COSBY: And just so you know I'm not, this you know this is not going anywhere.

BAIN: Yeah, Yeah. But at the same time I don't know what information they would want me to give out. Now they, I'm their spokesperson um but they - I don't know what information at this time they would want me to give out. Now they did tell me today to try and contact you.

COSBY: Oh good, 'cause I would love to speak with them too, obviously.

BAIN: To be better, they wanted me to contact you to see if we could set up a meeting whether it's over the phone or in person where you could speak to them?

COSBY: That would- that would be great. We should do that as soon as possible. Can they - did they - we could even do that this evening if you want?

BAIN: Okay, well, ahh, this evening will be out for me, urn, um because I'm going to be tied up. It's kind of short notice, um, but probably tomorrow would be better.

COSBY: Yeah, do they want to like um- could they do it like tomorrow evening even? Like maybe, you know maybe uhh, I'm just trying to think, maybe like or even in the morning. We could do it at like 9:30 tomorrow morning.

BAIN: Um, I think that the afternoon would be better.

COSBY: Okay, my- my only fear is I'll be, well, you know what I'll do, I'll do it in the afternoon. I'm actually at an event tomorrow, but I could do it even tomorrow evening. Do you want to do it- try to do it tomorrow evening?

BAIN: That would be good, because we will have to get in contact with their lawyer also and bring her up to date and—

COSBY: That would be wonderful so maybe we could shoot for, why don't we shoot for like 9, could we do it like 9:30 tomorrow night?

BAIN: Yeah, yeah that could work.

COSBY: Yeah why don't we tentatively do like 9:30 tomorrow evening.

BAIN: Okay.

COSBY: That would be terrific and – can I just ask you Lincoln just off the record too, was it just Nadine who saw it or was it both of them who saw it?

BAIN: I think it was just Nadine but, I- I can-I can let them confirm that for you tomorrow, but I know for sure that Nadine saw it.

COSBY: And she so, so she saw the two of them and they were naked right in the tape as far as she saw?

BAIN: Yeah.

COSBY: And do you know if she saw the tape more than once or just one time or—

BAIN: I don't remember at this time because I don't want to give you wrong information.

COSBY: Right.

BAIN: And that was several months ago.

COSBY: And that is was this was what I going to ask you. When she- this is important too, because you know for credibility too. Lincoln when did she tell you this first when was the first time you heard this?

BAIN: I don't remember exactly but, I don't remember the exact date at this time, but I have notes and the lawyer has notes. And the lawyer can tell you the exact date um, um, but they were about to do an affidavit.

COSBY: Right so it would have been like, maybe like November/December right? Like it was, it was like in the fall though right?

BAIN: I honestly, I -I honestly, cannot remember.

COSBY: But it wasn't like, -it was after Daniel died, right? When their, was it, I remember when they did the affidavit ... but it wasn't in the affidavit itself right?

BAIN: Affidavit, they were going to do a different affidavit because some news, some media persons heard about this and they spoke to them about it, and they were going to do an affidavit so that this- this news, these media people could bring it out to the public.

COSBY: And then why did they not do it? What was the reason that they didn't put it in the affidavit?

BAIN: Um I think in the end the media person said that the story was going dead and they were probably going to wait for another time. I think that seeing that you brought out this book. I think these people are going to contact them again.

COSBY: Right, I wouldn't be surprised. But and do you firmly believe Nadine, her credibility, Lincoln from everything you've seen and everything you've heard first hand?

BAIN: From everything I've seen from them?

COSBY: Yeah.

BAIN: I would believe anything they say because they are so- they refuse to lie about anything, and even down to saying that they were-were not legal at the time that's that was like very dangerous for them.

COSBY: Mm hmm.

BAIN: They were----(inaudible) everything. They would not stretch anything. If anything was being reported and-and it wasn't totally accurate they would correct it right then.

COSBY: Mm hmmm.

BAIN: But they refuse to lie about anything. You know, so based on my experience with them I believe them.

COSBY: And do you, do they ... where do you think they think the tape is now? Where do they think the tape exists?

BAIN: Say again?

COSBY: Where do they think the actual tape itself exists? You know of Larry and Howard, do they think the tape exists somewhere that they know of? Or? [pause] Lincoln?

BAIN: Yeah. I think yeah, I think the tape exists.

COSBY: Rut they are sure? She is absolutely sure she physically saw her watching? Was it a DVD or VHS? Or do we know'?

BAIN: Um, I think it was a DVD.

COSBY: Mmm k.

BAIN: But I

COSBY: But we should, well I'll ask her for, but I'd love to. We should definitely do that because I know that um, you know when I spoke with investigators obviously who- who interviewed Nadine and the other, they were very adamant that the other things they had shared with them were accurate.

BAIN: Right.

COSBY: And that they -they were actually-they actually fed them things sort of that weren't totally accurate to see if they would correct them and they did. Just like you said. They were- you know- you know. Just testing to see how credible someone is, and they said that they very much believed their credibility and felt that they were absolute--absolute on it and that Nadine did see it.

BAIN: Yeah.

COSBY: And that she saw Anna watching it.

BAIN: Yeah.

COSBY: And do we know if she saw her watching it on more than one occasion, Lincoln or do you know?

BAIN: I don't remember right now because I want to be totally honest and I don't want like yes or say anything-

COSBY: And no, no I don't want you to either.

BAIN: So that's why they can just confirm that for you tomorrow.

COSBY: That'd be wonderful, so then why don't I call you then. I'll give you a call- Should I call you on this number? Or what's the best way to reach you?

BAIN: The best way to reach me? Um, give me, your give me your contact for you?

COBRY: Absolutely. It's 646-

BAIN: Hold one sec.