

Pound Cake and Quaaludes: Why Bill Cosby's Deposition Transcript Was Unsealed

by Practical Law Litigation

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On July 6, 2015, a judge in the US District Court for the Eastern District of Pennsylvania unsealed excerpts of a deposition given by entertainer Bill Cosby in an action settled ten years ago in which the plaintiff accused Cosby of battery and sexual assault. The court held that Cosby's own actions diminished his entitlement to privacy. The court also determined that procedural missteps when the case was settled prevented Cosby from relying on an alleged confidentiality provision in the settlement agreement between the parties.

Comedian and actor Bill Cosby appeared in a host of television shows in the 1960s and 1970s, including *I Spy*, *The Electric Company* and *Fat Albert and the Cosby Kids*. In the 1980s, Cosby's fame skyrocketed with the success of *The Cosby Show*, a sitcom in which he played Dr. Heathcliff Huxtable, an obstetrician and family man living in Brooklyn Heights with his wife and five children. Cosby also gave public speeches on matters including childrearing, family life and crime. In May 2004, Cosby delivered a speech (the Pound Cake Speech) at an NAACP award ceremony commemorating the 50th anniversary of the *Brown v. Topeka Board of Education* decision. During that speech, Cosby referenced pound cake while discussing crime and criticizing what he viewed as lax parenting skills.

The Constand Case

Cosby's public persona and reputation as a wholesome family man has been tarnished in recent years by dozens of women who claim that the comedian drugged and sexually assaulted them. In March 2005, Andrea Constand, former Director of Operations for the women's basketball program at Temple University, sued Cosby in the United States District Court for the Eastern District of Pennsylvania for battery, sexual assault and intentional and negligent infliction of emotional distress, among other claims. Cosby was deposed during discovery. Excerpts of his deposition testimony were later quoted and referred to in briefs filed by the parties in connection with motions for sanctions and other discovery-related relief. The court temporarily sealed these materials pending a full hearing on whether they should be permanently sealed. Before the court ruled on the motion to seal, however, the parties settled the case.

Nearly ten years later, the Associated Press moved to intervene and obtain access to the deposition excerpts and other documents filed under seal in the *Constand* litigation. The district court ordered the materials to be unsealed ([No. 05-cv-1099, 2015 WL 4071586 \(E.D. Pa. July 6, 2015\)](#)).

Cosby's Deposition Testimony

During his deposition, Cosby admitted that he acquired seven prescriptions for Quaaludes in the 1970s. A Quaalude is a central nervous system depressant that acts as a sedative and a hypnotic. Its effects include drowsiness and reduced heart rate and respiration. Quaaludes became popular for recreational use in the late 1960s and 1970s before the US banned the domestic production and sale of them in 1984.

The following question and answer from Cosby's deposition transcript have been widely reported in the media:

Q. When you got the Quaaludes, was it in your mind that you were going to use these Quaaludes for young women that you wanted to have sex with?

A. Yes.

When deposing counsel asked whether Cosby gave Quaaludes to any women without their knowledge, Cosby's attorney objected and instructed him not to answer.

The Court's Decision

The court ordered Cosby's deposition excerpts and other documents to be unsealed and denied Cosby's request to redact them before their release. The court's decision addressed, among other things:

- **The right to public access of court documents.** Although there is a presumptive right to public access to most documents filed with the court, in the Third Circuit there is no presumptive right regarding discovery motions and their supporting documents. A party seeking to prevent public access to discovery materials is therefore unencumbered by the presumption and instead must show good cause under [Federal Rule of Civil Procedure 26\(c\)](#) to keep the materials under seal.
- **Cosby's diminished privacy interests.** Cosby asserted that disclosing the deposition testimony would affect his privacy interests because it would reveal intimate knowledge about his medical history, prescription drug use, financial affairs and personal relationships. However, a public person subject to legitimate public scrutiny may have diminished privacy interests. The court held that Cosby narrowed the zone of privacy that he might otherwise claim because he "has donned the mantle of public moralist" by publicizing his views on childrearing, family life, education and crime in public speeches like the Pound Cake Speech.
- **The public's interest in the information.** The court determined that the public has a significant interest in the stark contrast between Bill Cosby, the public moralist, and Bill Cosby, the subject of allegations concerning improper and potentially criminal conduct.
- **Cosby's misplaced reliance on the parties' settlement agreement.** Cosby argued that unsealing the deposition testimony would undermine the parties' reliance on their settlement agreement in which, according to Cosby, the parties agreed to keep all discovery material confidential. The Court rejected Cosby's reliance argument because:
 - the parties never presented the settlement agreement to the court or asked the court to retain jurisdiction over the enforcement of the confidentiality portion of the agreement; and
 - after the case settled, neither party asked the court to permanently seal the discovery material, which at the time was subject only to an interim sealing order.

Sealing documents in federal court is procedurally complicated and not always warranted by the facts of the case. For information on filing documents under seal, including issues to consider when seeking a sealing order and guidance on the standards courts apply for sealing documents, see [Practice Notes, Filing Documents under Seal in Federal Court](#) and [Filing Documents in Federal District Court: Filing Documents Under Seal](#). For information on depositions generally, see Practical Law's [Deposition Toolkit](#).