

TEXAS LAWYER

BLONDE BOMBSHELL IMPLODES ON WITNESS STAND

Pin-Up Girl Wins Battle of One-Liners; Former Prosecutor Wins War

by JOHN COUNCIL

Once one of Houston's fiercest prosecutors, Rusty Hardin has spent years building one of Texas' most successful criminal defense practices. His name and reputation go a long way, especially with Houston celebrities who often have gone to Hardin for help when they get in trouble with the law. But Hardin will have a hard time



"It was a trial lawyer's dream," Rusty Hardin says of the probate trial.

living down his latest celebrity case, a probate trial involving the fortune of billionaire oilman J. Howard Marshall II. His cross-examination of Marshall's widow, pin-up girl Anna Nicole Smith, who sought half of her late husband's fortune, is what legends are made of. Its cutting sarcasm and one-liners were devoured by the media. And the media feasted on Smith's answer to Hardin's question as to why she spent so much money: "It's very expensive. It's terrible the things I have to do to be me." Smith, with J. Howard Marshall III, had laid claim to the octogenarian's

fortune, claiming heir Pierce Marshall had blocked their inheritance. On March 7, a Harris County jury in Probate Judge Mike Wood's court found that J. Howard Marshall II did not promise half his estate to his wife, and imposed \$35.3 million in damages on J. Howard Marshall III for bringing a baseless suit. Hardin recently talked to Texas Lawyer Senior Reporter John Council about the case.

Texas Lawyer: You've come a long way from the Harris County District Attorney's Office. How is it that you came to represent J. Howard Marshall II's heir, Pierce Marshall, in a probate case?

Hardin: It doesn't quite fit my history. My practice is half civil practice and half criminal but the civil had not involved probate. I had a friend that represented Pierce Marshall, Liz Tipton, and she asked if I would go second on the trial. It was scheduled to go to trial in May of 1997. It did not go to trial, and in the meantime Tipton resigned. Then Ware, Snow, Fogel & Jackson signed on, and we took it from there. They represented

Pierce Marshall individually and his family, and I represented Marshall Petroleum and the accounting firm.

TL: This case barely would have made the news if it hadn't have been for the presence of Smith. Now you're forever linked with that case. What was it like being part of the nation's most watched probate case?

Hardin: I loved it because it was a trial lawyer's dream. You have a person . . . getting famous attention because of the size of her bustline. What was so fun about it was clients are not always as clearly in the right as Pierce Marshall was. It was like being a prosecutor again. You just fill up the tires and go straight ahead.

TL: Smith seemed to be no match for you on cross-examination, causing her to cuss and toss out accusations. Were you taking delight in that three-day cross-examination?

Hardin: No. Actually, she wasn't that easy to cross-examine because of the role she played. I had watched her testify two years before. She would never answer what the lawyers were asking, saying "I don't know. I don't remember." And lawyers would just get frustrated and go on. The danger was looking like you are beating up on a witness. You can never beat up a witness until they have earned it in front of a jury. The jury said her case was over once the cross-examination started. I didn't have anything to do with it. The key was keeping her up there and exposed so the jury could see what she was like. If you actually replayed that cross, a lot of it would be immensely boring. She won the battle of one-liners hands down.

TL: Was that cross-examination of a woman who wore a shirt emblazoned with the word "spoiled" as easy as it seemed?

Hardin: The funny thing is, I wear glasses and didn't have them on when I was questioning her and I hadn't seen it.



While giving her testimony seeking her deceased husband's estate, Anna Nicole Smith wore a shirt with the word "spoiled" on it.

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Everyone in the courtroom saw that before me. And people were saying “It’s so obviously manna from heaven.” And the question was whether to ask her about it, to get it on the record. So my last question was “What is the word on the front of your blouse?” And she said, “Spoiled.” And I said, “Pass the witness.”

TL: One particular vulgarity that Smith used against you in trial has become courthouse legend. Tell us that story.


Hardin: Well, she . . . was crying and sort of going in a free-form monologue that I didn’t ask the judge to stop because it wasn’t helping her any. And I asked her if she had been taking new acting lessons. And she shot back: “Screw you, Rusty.” And that has become a wildly used phrase, so far mostly affectionately. I’ve had people yell it out at a basketball game, and some people at the courthouse doing landscaping yelled it out. At lunch today, at least five people stopped by and said “Screw you, Rusty.” I had no idea until the Thursday night after her three days on the stand how widespread the attention had been on the trial.

TL: You may be the first lawyer in history to play Debbie Boone’s “You Light Up My Life” in a closing argument. Why did you feel the need to take such a liberty?

Hardin: It was so much fun. It’s one of the rare things that you

do and realize this can blow up in your face. Throughout the trial, it got to be a joke. Her lawyer kept referring to the fact that J. Howard referred to her as “the light of my life.” The phrase was used so often that the jury was so tired of it, they wouldn’t mind a spoof about it. On one of the last official legal nights of Napster, my son downloaded it. And we played it on my secretary’s 13-year-old daughter’s boom box. [During the closing argument] I said to my assistant Bridget, “Hit it.” And out came “You Light Up My Life.” The jury cracked up. No one complained.

TL: You told your client that it was “almost a sin to get paid to have this much fun.” Do you have any plans to give any of the fees back?

Hardin: No. In fact I told him I didn’t even want to say it if he was going to take it seriously. I don’t think I’ll offer a refund, and I don’t think he’ll ask for one. It was a co-lead type of thing, and we couldn’t have done it without the firm. I’m a little embarrassed that the focus post-trial has been on me. The other lawyers were Lee Ware, Don Jackson, Don Fogel and Jeff Chambers. They had a role equal to mine and deserve equal credit. 

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