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## Tenacious by All Accounts

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In his North Carolina drawl, attorney Russell "Rusty" Hardin explains how he drew out former Playboy model Anna Nicole Smith's nasty side on the witness stand during a recent trial.

"I had seen her limited and unremarkable movies," Hardin said. "On the stand one day, in one of her soliloquies, she's crying, doing much better than in her movies. I asked her if she had taken new acting lessons."

Smith responded with an expletive. Hardin won the case, denying Smith the \$2 billion she sought from her late husband's estate. But the 60-year-old lawyer now faces a much tougher matchup: defending the Andersen accounting firm against a criminal indictment by the Justice Department.

Andersen has vowed to fight the obstruction-of-justice charge. Hammering out a settlement is technically possible, but Hardin isn't known as a deal maker. He's a litigator.

The outcome of the case probably will shape the structure of the accounting industry, decide whether Andersen lives or dies and determine how much money the firm might have to pay Enron Corp. shareholders and creditors.

A former Texas prosecutor known for his withering cross-examinations, Hardin has represented all manner of high-profile clients since entering private practice, including former Houston Oilers quarterback Warren Moon and baseball star Wade Boggs.

After less than 30 minutes of jury deliberations, Moon was acquitted of charges that he assaulted his wife. Boggs was cleared of sexual harassment charges. But most of Hardin's Houston-based practice is devoted to civil cases.

There are some lines Hardin won't cross.

"I don't do rapes, robberies or delivery of drugs unless I believe the client didn't do it," he said. "I'm just not comfortable with those. I was a prosecutor too long to be doing those cases with people that I secretly believe did it. Everybody's entitled to an adequate defense; they're just not entitled to my defense."

Andersen hired him last year to defend it against a class-action lawsuit filed by Enron shareholders, who allege that the accounting

firm played a role in the energy giant's financial meltdown. But two weeks ago, the Justice Department added a federal indictment to his caseload.

Hardin said he was looking forward to the chance to express his beliefs about his client—an experience that he said was central to his zest for his profession.

"I like trying to persuade people to the point of view that I have. There are a lot of lawyers that are outstanding no matter what the issue is. If it's dark outside, I'm not very good at arguing it's daylight. I'm only effective if I believe in what I'm doing."

"If Andersen was really the sort of organization that deserved to be demonized by the federal government, I wouldn't represent them because I wouldn't like them."

### **Bulldog Litigator, Savvy Public-Relations Expert**

Hardin grew up in a small North Carolina town and said he always wanted to be a lawyer. He said he flunked out of Wesleyan University ("You were 20 years old and you were in Connecticut in springtime," he explained), served in Vietnam and afterward entered the law school at Dallas' Southern Methodist University.

After graduating, he spent 15 years as an assistant district attorney in Houston. He said he never lost a felony case.

He left the prosecutor's office to start a political action committee, Texas People Against Crime, aimed at mobilizing voters to remove soft-on-crime judges from the bench. In 1991, he set up his private law practice, focusing on litigating civil cases for crime victims.

Three years ago, he won a \$65-million judgment for the estate of an elderly woman who had been molested in a nursing home.

Hardin also was tapped to aid independent counsel Robert Fiske, the prosecutor appointed to probe the Whitewater case. He stayed on as chief trial counsel for the team after Fiske was replaced with Kenneth Starr, but left to return to his practice when it appeared key figures in the case would be pleading guilty without a trial. Fiske is an attorney with Davis Polk & Wardwell, another law firm retained by Andersen.

The accounting firm, in severe need of a bulldog litigator and a savvy public-

relations expert, may have found both in Hardin, colleagues say.

"He seems to get public opinion going his way," said Gerald Treece, associate dean of the South Texas College of Law and a veteran of the Houston legal scene. "Every other case, he's gotten in front of the story in terms of public opinion. I just don't know if you can in a case like this. But he's got his dander up, and he's ready to play."

Hardin's sense of how stories play out has helped him win over juries in major cases. In the Smith trial, Hardin represented the son of late oil tycoon J. Howard Marshall, who married Smith in 1994 at age 89 despite a 63-year age gap and then died 14 months later.

When the opportunity arose, Hardin made light of Smith's assertion that her late husband referred to her as "the light of my life." In his closing arguments, Hardin played the chorus of the Debby Boone pop hit "You Light Up My Life" from a recording his son had downloaded from the Internet.

After the verdict, jurors sang him the song. (A federal judge in California later granted Smith an \$89-million award in a related case.)

### **Believing in the Justice System**

The Andersen case probably will prove a more sober affair. But Hardin said he had no regrets about the cases he had taken to trial.

"The ones I'm sorry I took, I fired the clients. I've had a couple of cases where I fired clients because they lied to me. But representing people or corporations who have a problem is a trip that I adore."

"My biggest regret is that corporations feel the need to settle cases that shouldn't be settled. They think it is economically cheaper to settle than it is to try it. I think that's an abuse of the system. What the heck was the system created for?"

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