

The California Trial

When A Trial Isn't A Trial

It sounds like a chapter in Joseph Heller's novel *Catch 22*. California court orders a Texas businessman to pay \$88 million dollars based on a tort that does not exist under Texas law. Not only did the court try to write new law for Texas but also it also systematically excluded evidence from the defense in the case. A Texas court, that heard all the evidence reached a completely different conclusion.

California courts have never been willing to hear all the evidence in the litigation brought by Anna Nicole Smith's bevy of contingency fee lawyers against her late husband J. Howard Marshall II and his family.

A California bankruptcy court allowed only five days of testimony and only 8 witnesses and at the request of Smith's attorneys excluded key evidence presented by the defendants. The court's ludicrous ruling in the matter was quickly vacated by a higher court, which upheld the defendant's claim that the bankruptcy court should never have heard the issue in the first place.

The U.S. District Court that heard the appeal of the bankruptcy court decision also failed to hold a trial in the matter. Instead it heard only 10.5 days of testimony and only 5 witnesses. The court did not allow the defendants to present any witnesses before it made its ruling, which is currently on appeal. Again, the defendants argue that the District court has no jurisdiction in the case.

In contrast, a Houston Probate Court, held a trial that last for 95 days and heard from 44 witnesses. It is not surprising that when the defendants were permitted to present their case, a jury and the court ruled in the defendant's favor and ordered Smith to pay the defendants \$541,000 in attorneys fees.

As you will see in the following reports on the very limited testimony that was permitted in the California District Court appeal – Smith presented absolutely no evidence she is entitled to any more than the \$6.7 million she received from her late husband while he was alive.

The Legal Issues in This Case

Judge David O. Carter has struck down a decision by a bankruptcy judge that E. Pierce Marshall owes Anna Nicole Smith \$475 million. Judge Carter agreed with attorneys for Marshall that the bankruptcy court exceeded its authority by ruling on a matter that was not a core bankruptcy issue.

Judge Carter conducted a de novo review of the bankruptcy court's findings on the merits of Smith's claim that E. Pierce Marshall interfered with her receiving an inter vivos (a gift given while both parties are living) from her late husband.

The Human Issues

Pierce Marshall is a businessman, family man, husband, father and grandfather who has lived a legal nightmare for the past six years. He lived a quiet and productive life outside the glare of the media spotlight until the death of his father, J. Howard Marshall II, in 1995. While probating his father's will, Pierce Marshall became the target of a hate campaign unprecedented in recent history.

His father's wife (former stripper and Playboy model Anna Nicole Smith) used her notoriety to go on national television to accuse Pierce Marshall of plotting murder, betraying the father he loved and respected, and attempting to cheat her out of millions of dollars. Aided by a tag team of contingency-fee lawyers circling like vultures and looking for a big kill, Smith and others dragged the Marshall family's good name through the mud as they tried to convince a Houston jury that Smith was promised half of her late husband's estate.

The Houston jury heard from both Pierce Marshall and Smith, and decided Pierce Marshall was telling the truth. The court ordered Smith to pay Pierce Marshall \$540,000 in legal fees, part of the small fortune in legal fees he has spent defending his father's estate plan.

Now, through a quirk in the legal system, Smith is in federal court still trying to get more than the \$6.7 million she claims her late husband gave her before he died. No matter who wins at this level, it is likely the case will continue on appeal.

What follows is a commentary on the federal trial in an attempt to provide the public with a feel for the issues and testimony in the case. We appreciate the efforts of the news media to get the facts and provide balanced and fair coverage of this story.

Closing Arguments Gold Digger – Gold Digger – Gold Digger

Anna Nicole Smith's lawyer finally admitted what his client has always denied but everyone else took for granted: his client was in it for the money. In closing arguments before Judge David O. Carter, Smith's attorney told the court that of course she married J. Howard for the money. "What is he offering?" her attorney asked. "Does this court really believe a man reputed to be the richest man in Texas offered her his good looks, longevity, fatherhood?"

Most attorneys would try not to contradict their clients. Smith has always claimed she wasn't a gold digger. But Smith's attorney has been dissing her throughout this trial, first telling the court she did not need to testify at all. In closing arguments he urged the court to remember that, "her testimony is not what this case lives or dies on."

Smith didn't even bother to stay in the courtroom during all of her own attorney's closing arguments.

Smith's Attorneys Pull Out All The Stops

J. Howard Marshall was an educator, government official, corporate executive and successful independent oilman – but if you believe Smith's attorneys, their client became his reason for living and "the most important thing in his life."

They also repeated the claim that Smith saved J. Howard's life. Smith actually testified that when she found her husband looking ill with "the face of death," in early 1995, she sat with him instead of calling a physician or an ambulance.

Attorneys for E. Pierce Marshall fired back; pointing out that Smith has claimed virtually everyone connected with J. Howard was guilty of perjury and plotting against her. Attorney Rusty Hardin attributed the allegations to a combination of greed (on the part of her lawyers and Smith) and the former stripper's paranoia. On Planet Vickie, whatever ill befell her, "Pierce did it."

A Fabricated Lawsuit

"This is a lawyer-generated lawsuit," said Hardin. "I believe it is morally wrong to ask a client to settle a fabricated lawsuit. A made up lawsuit. There are some cases when people come into court with fabricated lawsuits and it's appropriate to fight it. This case was morally wrong from its inception. She didn't get promised half. In this country he (J. Howard Marshall) had a right to dispose of his property as he wanted to, and he did that. She gets a windfall of \$6 million and complains about it."

Everyone Else is a Liar

Defense attorney Rusty Hardin accused Smith's legal team of pursuing a "scorched earth policy" and accusing at least 10 people who worked for J. Howard of perjury. "He (Smith's attorney) has slandered a bunch of people with no evidence," said Hardin, adding that the attorney had made the most scurrilous allegations against Pierce Marshall.

Hardin said he could produce at least four witnesses who would contradict Smith's claim that J. Howard never asked her to return jewelry he could not afford. Hardin told the court he had witnesses to show that making his living trust irrevocable was J. Howard's idea and something he considered before he married Smith.

The Promise No One Heard

Attorneys for Pierce Marshall reminded the court that Smith's sudden claim that she was promised half (of what, she can't describe) didn't surface until 10 months after her husband's death. Smith sued her own husband's trust for even more money in 1995 long before J. Howard died. There was never any mention of "the promise" when Smith filed for bankruptcy in January 1996, even though "the promise" would have been her largest financial asset. It was not until June 1996, after J. Howard's oldest son (Howard III) claimed he was orally promised half of the estate, that Smith filed a similar claim. A Houston probate court found that neither Smith nor Pierce Marshall's brother (J. Howard III) had an oral promise from J. Howard regarding his estate.

"Smith was not the poor little uneducated girl who did not know about a written instrument," Hardin told the court. He reminded the judge that Smith became upset when her name was not put on the title to a ranch J. Howard's trust bought for her use near Houston.

He also noted that Smith took the extra precaution of having her uncle videotape

J. Howard saying that the ranch, a Mercedes and another house in Houston "were hers." Smith did not ask J. Howard to say anything about a promise of half, even though she claimed later he first made the promise when he bought her the ranch.

Control

Smith's attorneys also tried to claim that J. Howard did not want to give up control of his assets. That was a sharp contrast to testimony and documents that show J. Howard had the power to disinherit Pierce Marshall until the day he died.

If You Have No Case – Change the Subject

Using their usual tactics, Smith's lawyers moved quickly off the issue of trying to present evidence that J. Howard ever intended giving Smith more than the \$6.7 million he gave her during the marriage. Instead, they tried to shift the court's attention away from their client and her lack of evidence, to a discussion of what Smith claims are irregularities in J. Howard's estate planning program. That she lacks the standing to challenge transactions not affecting her was never mentioned.

However, they have numerous problems with this strategy. The bankruptcy court hearing Smith's case previously ruled that a Texas Probate Court had jurisdiction in this area and the Houston probate court has already upheld the validity of J. Howard's will and living trust.

Smith's attorney acknowledges that J. Howard's attorney Edwin Hunter "did a great job" with the estate plan. Smith hopes the court will ignore the fact that J. Howard's intention to give responsibility for the family business to his son Pierce remained unchanged since 1982 in a carefully documented series of six wills and seven trusts. J. Howard wrote wills confirming this intention before he even met Smith, as well as after the marriage. Smith is not named in either the will or the trust J. Howard signed after they married.

Everyone Is a Liar

So Smith's attorneys turn to blanket charges of perjury against virtually everyone involved in J. Howard's estate planning process and continue to make false and unsubstantiated claims of discovery abuse.

Discovery Abuse?

Marshall defense attorney Rusty Hardin was livid when Smith's attorneys falsely claimed they did not have access to the so-called "Fine Tuning Memo" in time for the Smith's October, 1999 bankruptcy trial.

"It just never stops," said Hardin. "I'm dumbfounded he said he has never seen this stuff."

Hardin showed the court evidence that the "Fine Tuning Memo" had been produced 7 months prior to the trial and that Smith's California attorneys simply never looked for it. Houston attorneys working on the case provided it to them 4 months after the bankruptcy trial was concluded.

Hardin also showed the court that Smith's attorneys had received other materials they claimed were withheld, and then chose not to use them because they would lower the wildly inflated value Smith's legal

team has tried to place on the estate.

Smith's Attorney Gets Unprecedented Access

Noting that the court even allowed Smith's attorneys to search through files clearly covered by attorney-client privilege, Hardin told the court, "I have never seen a case in which a lawyer was allowed to rummage around in another attorney's client files. He still hasn't found a promise. It hasn't helped him one damn bit."

Setting a Bad Precedent

Hardin told the court that there is no legal precedent for the type of claim Smith has filed. Smith claims E. Pierce Marshall tortuously interfered with her receiving an inter vivos (transactions made while the parties are living) gift from her husband. But Hardin told the court there is no such cause of action and that providing Smith with any money would set a new precedent that would be contrary to good public policy.

Hardin pointed out that even when J. Howard recorded a statement coached by Smith, he never stated any promise to give her half. He said only that he wanted her to "be supported by me," when Smith had already previously sued her own husband's trust for more support money. No matter how much she received. There were no bounds to her demands for more and more money.

"That is not a specific enough promise to get to first base," Hardin said. "Not once on that tape does he make a specific promise."

Alice in Wonderland

In this "Alice in Wonderland" environment, Smith's attorney criticizes Pierce Marshall for instructing an attorney to "follow the law." Pierce Marshall made the statement to an attorney who fought the production of documents demanded by Smith on behalf of other clients named in the documents in an attempt to protect their attorney client privilege. The bankruptcy court incorrectly blamed Pierce Marshall for the attorney's independent decision to contest production even though the attorney testified it was his decision.

Hardin argues Smith's attorneys want the court to believe that "the absence of evidence is affirmative evidence." He has no evidence of a promise, so he says "there must have been a promise. Courts have never reached the stage where this is evidence."

Missing Elements

Hardin told the court that Smith's case does not have the elements necessary to support her claims. Hardin called Smith's lack of evidence "nothing more than a sympathetic pitch to rewrite J. Howard's will." Specifically:

- There is no evidence that the late J. Howard Marshall made a specific promise to her that was not kept.
- There is no evidence that something was done by Pierce Marshall to prevent her from receiving the gift.
- Smith must show that any interference was intentional. The evidence in the case shows that Pierce Marshall was not even aware of any promise and that Smith never told him about any promise.

"How do you interfere with a gift you don't know anything about?" asked Hardin. "It's impossible to do."

Dan Manning Agrees

Even Dan Manning, the driver who introduced Smith to J. Howard, agreed that "Pierce never did anything to interfere with J. Howard's relationship with Smith." Manning also confirmed that J. Howard said he wanted Smith taken care of "during the time he was with her," not after his death.

The Trial Setting the Record Straight

Like a child digging through a pile of manure hoping to find a pony, Smith's attorneys have based their case on continually escalating demands for discovery of Marshall documents. But after more than 475 boxes of over 2 million pages of documents have been produced, including material that should be covered by the attorney-client privilege, Smith's attorneys still don't have their pony or any other evidence that J. Howard planned to give her more than the \$6.7 million he provided for her during his lifetime.

Pierce Marshall testified that he and his attorneys have met every discovery demand made by Smith and her attorneys and ordered by the court. Marshall addressed head-on the allegation by Smith's lawyers that he shredded documents crucial to their case. Marshall told the court he volunteered in another case that he had shredded documents from his own files that were not subject to discovery and had nothing to do with his father's estate. Also he testified the same documents were available from his father's files and were produced years ago.

Marshall reminded the court that even the judge in the original probate case noted that the documents in question could be easily reproduced. As a show of good faith, Pierce Marshall said, he obtained duplicate copies of the materials he destroyed and turned them over to the court as well. None of the documents in question are at issue in the case.

Pierce Marshall also testified that he has given more than 30 days of depositions in 13 various cases involving his father's estate. He told the court he missed only one deposition because he did not learn about it in time from his attorney.

"Have you ever intentionally violated a court order?" asked defense attorney Rusty Hardin.

"Absolutely not," said Marshall.

If Smith's lawyers' case is like a three-legged stool, the elimination of false allegations of discovery abuse will cut off one of the legs.

Down the Rabbit Trail

Judge Carter seemed to indicate he was aware that the discovery in this case has gone far beyond what is necessary to get to the facts. He noted that he had 58 volumes of material but considered only six to eight relevant to the issue at hand. Smith's attorneys have benefited from a strategy of papering the courts with tons of irrelevant documents and then demanding still more discovery. Yet after killing several forests, they are no closer to finding any real evidence to support Smith's fabricated claims.

Put It In Writing

Smith's attorneys are trying to convince Judge Carter that J. Howard Marshall made an oral promise to their client that no one ever heard and that was never committed to paper. This, despite the fact Smith was represented by attorneys during almost all of her relationship with J. Howard and was well aware of the importance of getting things in writing.

Smith testified she was upset when she learned her name would not be on the title to some property J. Howard bought for her use. She understood what a prenuptial agreement was when she appeared on the Howard Stern Show shortly before her husband's death and said she would not inherit anything and was "on her own" when he died.

Pierce Marshall reminded Smith's attorney that his father was an attorney who, when he agreed to something orally, always put it in writing. "If dad was serious about it, he always backed it up in writing. He was a lawyer. He knew the importance of written documents."

Marshall: "Dad never told me about any commitment to Vickie (Anna Nicole Smith). No one has ever come forward (with evidence of an oral agreement) in 13 lawsuits."

Vickie Speak

“Why can’t someone as successful as you pay your own bills?”

It was a good question from a reporter during the February 1995 edition of A Current Affair.

The entertainment program, not usually known for asking celebrities tough questions, is clearly skeptical of Smith’s claims that she had been “cut off” and “couldn’t pay her own bills.” Had the people from A Current Affair been able to look in Smith’s bank accounts at the time, they would have found close to \$100,000.

Smith tells the interviewer her husband promised to “pay her bills.” No mention of a claim to half his assets, or stock in the family business. Those claims would not come until 10 months after her husband died.

Had the show’s reporter checked out her story about “saving her husband’s life,” they would have learned that J. Howard choked on soup she was feeding him and that while she screamed hysterically, someone else called 911.

“I could have married him four years ago and been a rich snob,” Smith tells her interviewer. She claims she waited to establish her career so “people would not think I married him for his money.” However, in her next breath she tearfully tells viewers, “I just want my bills paid and my salary back.”

Then the real Smith makes an appearance. She tells the reporter that if her husband were aware of what was going on, he would “take a bat and beat the crap out of someone.”

Although it’s not 60 Minutes, A Current Affair asks rhetorically: “A loving wife, or is she after his bucks?”

Smith later told a Houston courtroom, “It’s expensive to be me.” She told the Texas probate court she needed \$50,000 a month to pay her bills.

Some Good News

Anna Nicole Smith’s attorneys love to use misinterpretations of the evidence and trick questions while questioning opposition witnesses. Marshall attorney Rusty Hardin told the judge that Smith’s attorney was “misleading the court,” with some of his questions.

For example, Pierce Marshall has testified repeatedly that his father hired attorney Edwin Hunter to handle estate planning and tax cases. Hunter and attorney Harvey Sorensen have said the same thing. But Smith’s attorney asked Pierce, “You brought in Edwin Hunter...?”

When attorneys for Pierce Marshall objected, Judge David O. Carter noted, “I’ve already concluded that J. Howard hired Hunter,” a very positive comment since it cuts the heart out of Smith’s claim that Pierce hired Hunter and then conspired to gain control of his father’s estate.

Those Darn Tapes

She said it in her own words. Anna Nicole Smith, who now claims she is owed still more money from her late husband, told a different story shortly before he died. Appearing on the Howard Stern Show, Smith admitted she was not going to inherit anything when the late J. Howard Marshall died. “I’ve got to fend for myself,” Smith told the talk show host after admitting she had not signed a pre-nuptial agreement.

Smith said she was getting “nothing.” In fact, the alleged promise Smith claims her late husband made to her did not come up until 10 months after his death.

“Are you set for life?” Stern asked.

“I wish I was,” said Smith.

Note to Smith: If you hadn’t “lost” the \$4 million in jewelry you received from your late husband, you probably would be set for life. Hiring a felon as a personal bodyguard is not a good idea.

A Fading Star

Anna Nicole Smith is bigger than ever. Unfortunately, we are not talking about her career. Not only has the former Playboy centerfold put on weight but also she and her legal team have lost the swagger displayed in Houston for the probate trial she would ultimately lose.

Smith's \$475 million judgment that made headlines last year is gone. So are the "bodyguards" and the fancy outfits. The media contingent is smaller, and her attorneys seem to know that their case, like their client, hasn't improved with age.

The Same Old Story

Smith's attorney set the stage once again by telling the court that the late J. Howard Marshall, II (J. Howard) loved Anna Nicole Smith and called her "the light of his life." In Houston the phrase became a courtroom joke when jurors learned that Smith often couldn't be bothered to return her husband's phone calls, much less spend time with him.

Her attorney began misleading the court when he told the judge that Smith is a small town girl from Mexia, Texas. In fact, she is from Houston. Boesch tells the jury that Smith spoke to J. Howard "every night on the phone." Testimony in Houston showed that J. Howard often spent hours trying to reach his wife, who would not return his telephone calls.

Defense attorney Rusty Hardin reminded the court that, "No one has ever heard J. Howard say he wanted to leave Smith anything after he died." He also noted that Smith "went through everything J. Howard gave her and filed for bankruptcy shortly after his death." Hardin reminded the court that Pierce Marshall had always said his father should spend his money as he pleased. "His (Pierce's) attitude always was it was dad's money; he could do what he wanted with it."

J. Howard was the Boss!

The Marshall defense team quickly demonstrated that J. Howard controlled his affairs until the end of his life. Since 1982, he had always intended for his son, Pierce, to inherit the family business. J. Howard's attorney, Harvey Sorensen, testified that his client "religiously tried to keep his separate property separate" following the end of his first marriage in 1960. Under Texas law, Smith would not be entitled to any separate property following her marriage to J. Howard.

While Smith alleges an oral promise, J. Howard remained committed to his goal that Pierce ultimately inherit the family business through a series of six wills and seven related trust agreements dating back almost 15 years. J. Howard did provide Smith with millions of dollars during his lifetime before he came to realize that Smith was unfaithful, and would not be his companion and that his marriage to her had been a mistake. Smith's attorneys have been unable to elicit a single word of testimony from Smith and others that E. Pierce Marshall interfered with his father's relationship with Smith. All testimony from third parties proves just the opposite.

Smith Doesn't Want to Testify

Anna Nicole Smith didn't know it, but her goose was cooked in August 2001, when U.S. District Judge David O. Carter issued an order saying that "credibility of witnesses" is the overriding concern in this case. Her attorneys realized the problem. During the first week of the trial, they told Judge Carter they were not planning to call her to testify.

The suggestion that Smith won't testify did not sit well with the court. Smith's attorney declared he wanted to "argue the record." Translation; My client made an idiot of herself on the stand in Houston; we don't want to repeat that disaster in California. He told the court that his client's cross-examination by Marshall defense team member Rusty Hardin would be salacious and expose his client to negative publicity. Smith's lawyer seemed to have forgotten that it was his client who cursed Hardin and made headlines with her wild, unsubstantiated allegations against Pierce Marshall from the witness stand in Houston. Her actions were so outrageous that Judge Mike Wood told her attorneys to get her off the stand and explain the meaning of the word perjury to Smith. Judge Wood told Smith he would consider turning a transcript of her testimony over to the Harris County District Attorney for investigation of possible perjury charges.

It was Smith's lawyer who reminded the court over and over again that Smith was a Playboy Magazine's Playmate of the Year. Boesch brags about his client's posing nude for the entire world, and then pretends to be insulted because Edwin Hunter jokingly referred to her as "Miss Cleavage."

Judge Carter Wants Smith on the Stand

Judge Carter noted that Smith's allegations against E. Pierce Marshall were damaging to his reputation. "Your position," he told Smith's lawyer "falls on deaf ears." While Judge Carter did not order Smith to appear, he made it clear that he expected her to take the stand. The Marshall defense team had already indicated that E. Pierce Marshall intended to testify in the case.

Why Smith Doesn't Want to Talk About Her Love Life

Judge Carter has already heard testimony from attorney Harvey Sorensen that marital fidelity was an important issue to J. Howard Marshall and was one requirement in the draft of a prenuptial agreement. Smith's infidelity during her marriage to J. Howard was well documented in the Houston trial. Boesch has tried to position his client as the light of J. Howard's life and as the person who brought him back to life after his second wife died. In fact, attorney Edwin Hunter was the first of many witnesses who told the court, "I would not say he was happily married. He was very unhappy, actually."

The Usual Courtroom Antics

Smith's usual courtroom antics began on the first day of the trial, when her attorneys asked the court to provide Smith a more comfortable chair because "she has a bad back." In Houston, Smith used a minor accident with a barbell as an excuse to skip court and try to get out of the trial. During the first week of her California trial, she was late for court and frequently out of the courtroom. Smith also continued to burst into tears at various times during the trial. It didn't work in Houston. In California, Judge Carter focused on the testimony and ignored her courtroom antics.

Discovery Abuse Claim Falls Apart

Judge Carter made it clear in orders issued before the trial that he was not going to allow Smith's lawyers to use claims of discovery abuse as a smoke screen to cloud the real issues in the case. Judge Carter had already vacated a \$475 million judgment against Pierce Marshall, based primarily on claims that Marshall had not produced all the documents demanded by Smith's attorneys. Judge Carter resolved the issue by requiring that all documents, including those subject to attorney-client privilege, be produced. Without the discovery abuse crutch to lean on, Smith's legal team would now have to put-up or shut-up on the real issues in the case.

Should Boesch Go to Texas?

Smith's lawyers also had good reason to be afraid of the Marshall defense team. When they represented to the court that the Marshall defendants had not followed an order by the bankruptcy court, defense attorney Rusty Hardin demanded her lawyer produce the order. The court is still waiting to see it.

Later Smith's legal team claimed no knowledge of an attorney who was part of their legal team. The attorney had received documents Smith's lawyer claimed had not been produced during discovery. The court learned that the documents had been available to Smith's lawyers for years. Judge Carter asked if Smith's lawyer was planning a trip to Texas to view the documents. Pierce Marshall has always contended that he and his attorneys provided every relevant document -- ultimately producing 475 boxes of documents several times in the case at a cost of thousands of dollars.

Give 'Em Enough Rope and They Will Hang Themselves

Smith legal team doesn't seem to understand that the court and the Marshall defense team are wise to his tricks. Smith's lawyer argued repeatedly that a confidential 1991 study is one of the missing documents he has not received and that it would "prove his case." The study was listed on a log of evidence that relates to matters being considered in the early 1980s. Judge Carter ordered a search for the document involving attorneys from Texas and Kansas, even though it was obvious the document in question never existed. The company in question researched going public in 1981, and the log listing a 1991 study was clearly a

typographical error. But Smith's lawyer pressed on, telling the court that there is such a study and he hasn't received it.

More Bad News for Smith

The first bit of bad news for Smith came from Eric Brunstad, a law professor who is part of the Marshall defense team. Brunstad told the court that under the doctrine of res judicata, Smith's attorneys had an opportunity to stop the Houston probate trial she lost. But Brunstad noted they never filed such a motion. The Marshall defense team filed a motion to dismiss her California case, arguing that the same issues have already been tried and resolved in the Houston probate court. Under the doctrine of res judicata, once an issue is decided, it should not be retried in another court.

The Same Old Case

It didn't work in Houston, but that didn't stop Smith's attorneys from basically retrying the same case with the same witnesses that appeared in Texas. They seem well aware they are facing the same team of attorneys who cleaned their client's clock in Texas.

Issues in the Case

The issues are relatively simple. Did the late J. Howard Marshall II intend to give Anna Nicole any gifts in addition to the more than \$6.7 million he gave her? And did his son E. Pierce Marshall interfere with the giving of such gifts?

Smith has no witnesses to support her claims. Instead, her legal team tried to spin a conspiracy theory that focused more attention on J. Howard's estate planning than on his client's vague and unsubstantiated claims. Jurors in Houston stated after the trial that they saw through this strategy in short order during that case. Once again, those involved in J. Howard's estate planning made it clear that they carried out his wishes – without any influence from his son, E. Pierce Marshall.

Harvey Sorensen Takes the Stand

Attorney Harvey Sorensen was the first on the stand. Sorensen represented J. Howard in tax matters from March 1983 until December 1993. Sorensen testified that his client had a consistent estate plan dating back to 1982 and that J. Howard always intended to leave stock in the family business (MPI) to his son, Pierce. "Did J. Howard ever show any intent to give her (Smith) any MPI stock?" asked defense attorney Rusty Hardin? "None at all," Sorensen answered.

Sorensen testified that J. Howard signed a will and trust after he was dating Smith that did not leave her anything. Sorensen testified that J. Howard intended to provide for Smith when he was alive and noted that, "She went through everything he gave her. It was all gone by January, 1996."

Attorneys for Pierce Marshall reminded the court that the "New Community Memo" Sorensen wrote, which Smith's lawyers say is their smoking gun, was based on a conversation J. Howard had with Sorensen the same day he signed a will and trust that left nothing to Smith. Sorensen testified that J. Howard told him a month later to forget about the ideas outlined in the new community memo when he learned they would have negative tax consequences.

Hardin: Did J. Howard ever say he planned to leave Vickie Marshall (Anna Nicole) half of his property?

Sorensen: No.

Hardin: Did J. Howard ever say he planned to give Vickie half the appreciation of his Koch stock?

Sorensen: No.

Hardin: Did J. Howard ever envision Vickie receiving any Koch stock?

Sorensen: No.

Hardin: Did you ever discuss the “New Community Memo” with Pierce Marshall?

Sorensen: No.

Hardin: Did you ever have a meeting with J. Howard that he didn’t dominate?

Sorensen: No.

Hardin: Was Pierce Marshall responsible for your termination?

Sorensen: That’s not true.

Hardin: Did Mr. Marshall ever order you to arrange a gift for Vickie?

Sorensen: No, his instructions were only to explore options. It was research only.

Smith’s attorney: Did he intend to make a gift to her?

Sorensen: No. It would be a gift only if certain conditions were satisfied.

Smith’s attorney: Did he say he wanted to give his future wife a gift of one-half of the new community?

Sorensen: No, that’s not correct. It would be a gift if we could structure it (to avoid paying taxes).

Later, another of J. Howard’s attorneys, Edwin Hunter, told the court J. Howard examined a number of strategies for funneling money to Smith and ultimately decided that forming a company to promote Smith’s career was the most practical approach. The company was formed, although Smith refused to go along with the plan. Ironically, Smith married one of the country’s most successful business executives and then didn’t listen to his advice concerning her business.

Sorensen told the court that J. Howard controlled his estate plan throughout his life. “He was his own man to the end,” he added. Sorensen also testified that Pierce Marshall didn’t know anything about the new community memo. Smith’s attorneys claimed that Pierce Marshall had Sorensen fired for writing the new community memo. Sorensen testified that he never discussed the memo with Pierce and didn’t provide Pierce with a copy of the memo. Sorensen testified that it was J. Howard who eventually shifted the estate planning work to another law firm and that Pierce played no role in that decision.

Tooling for War

Sorensen testified that J. Howard hated paying taxes and wanted him to be more aggressive in his dealings with the Internal Revenue Service. The next lawyer into the breach with the IRS was Edwin Hunter. Smith’s attorneys noted that Hunter (who is known for his colorful language and wit) wrote he was “tooling for war” in a confidential internal outline of estate planning ideas following Smith’s marriage to J. Howard. Smith’s lawyers used the term to claim that Pierce and Hunter were plotting against their client. In fact, Hunter testified he was tooling for war with the Internal Revenue Service. Hunter testified that Pierce Marshall never saw his “Post Nuptial Fine Tuning Outline” and that his many contacts with Pierce involved numerous Marshall tax cases that were before the IRS and had nothing to do with Smith.

Pierce Marshall testified that he and Hunter developed a good working relationship with the IRS and were in the process of resolving the outstanding tax cases.

The Myth of the Missing Documents

Lacking witnesses to back his client’s claims, Smith’s attorney continued to try to demand additional documents even though they have no bearing on the issues before the court. He has demanded an original copy of J. Howard’s Amended and Restated Living Trust. He successfully used false claims of “missing documents” to sway the bankruptcy court to issue sanctions against the defendants. The Marshall defense team provided additional documents, even though there is no evidence J. Howard ever intended to give Smith any additional money from the trust.

Attorney Edwin Hunter told the court that J. Howard made the trust irrevocable because he was afraid Smith's advisors might try to take control of his estate after he married Smith. Hunter also told the court that the trust was structured so that J. Howard could have provided additional money to Smith had he wanted to. Hunter also noted that J. Howard was unhappy with the way Smith treated him and she could not be trusted to handle her own financial affairs, much less J. Howard's complex business.

The Smoking Gun That Wouldn't Fire

Smith's attorneys have described a memo Sorensen wrote to a colleague as a "smoking gun" that would prove J. Howard planned to give their client still more money. But Sorensen told the court that the so called "new community" memo merely outlined a question J. Howard asked his law firm to explore involving a way that Smith could share in their "new community." When J. Howard was told that the idea would force him to pay additional taxes, Sorensen testified, J. Howard instructed him to drop the idea.

Attorney Edwin Hunter, who took over estate planning for J. Howard later in his life, testified that J. Howard had him investigate a number of different options before settling on the creation of a corporation that would allow J. Howard to support Smith's career without incurring gift taxes. As envisioned, the company would have paid Smith more than \$300,000 a year. Hunter testified the corporation was created but Smith refused to participate.

What Exactly Does the "New Community Memo" Mean?

The court also indicated that the so-called "New Community Memo" is open to wide interpretation. Sorensen reminded the court that Smith had no interest in MPI and that the changes would not have had an impacted on Smith.

No Pot of Gold at the End of the Rainbow

Smith's attorneys claimed that the "New Community Memo" meant J. Howard intended to give Smith a large amount of cash quickly. In fact, Sorensen testified the memo outlined a proposal that would have given her money for retirement – something that a spendthrift like Smith could have used. But the payout, had the plan not been rejected as unworkable, would not have come for as many as 30 years, probably too late for Smith and her bevy of contingency-fee lawyers to cash in.

Was Adopting Anna an Option?

Sorensen testified that avoiding heavy taxes was such a serious issue with J. Howard that he also asked his attorneys to study whether he could adopt Smith to avoid any especially onerous generation-skipping tax. Adopting the former stripper was another idea that was suggested and eventually dropped.
Judge Carter Questions the Witnesses

While the idea of adoption may have seemed extreme, Judge David O. Carter took it seriously enough to question Sorensen about the tax implications. The court then heard what jurors in Houston heard concerning J. Howard's aversion to paying taxes - a key issue in understanding the many suggestions that were made and rejected during the formation of his estate plan and during his relationship with Anna Nicole Smith.

Court Agrees -- J. Howard Hated Taxes

Judge Carter also indicated during his questioning of witnesses that he understood the complex plan for J. Howard to sell his MPI stock back to the company for cash, once J. Howard was convinced that the sale would not have an impact on his control. "My impression is that J. Howard was a very independent person who was unwilling to give up control of his business dealings to Pierce Marshall," said Judge Carter. Yet testimony showed that J. Howard did surrender control of assets during his life to people he trusted and that he trusted Pierce and his long time accountant Finley Hilliard to follow his wishes. Evidence shows that such trust was well placed.

Edwin Hunter Offers Apology to "Miss Cleavage"

Edwin Hunter said he is sorry if Anna Nicole Smith was insulted when he called her "Miss Cleavage" in an outline he wrote at his office for internal use. Smith sat stone-faced during the exchange.

Like many of the approximately two million documents in this case, the outline has found its way into the record. Despite the production of more than 475 boxes of documents, Smith's lawyers continue to claim there are "missing" documents that will help their case. Of course, live witnesses would be more helpful, but they don't exist. So far, both of the witnesses called to the stand have testified they produced all the documents in their files and have testified J. Howard did what he wanted to with his assets.

The Same Old Trick – Attack the Estate Plan

Smith Texas attorneys thought they could sway the Houston jury by attacking J. Howard's complex estate plan. The jurors saw right through the ploy. Now her California attorneys are trying the same tactic. Toward the end of his life, J. Howard and his attorneys worked out a series of complex transfers that shifted stock in the family company to Pierce Marshall while generating the maximum cash income for J. Howard.

Attorney Edwin Hunter explained in great detail the reasons for each transaction. Smith's lawyers contend that the transfers were designed to keep money away from their client. However, Hunter told the court that J. Howard was always in control of his estate and could have left Smith additional money at any time, even after he made his living trust irrevocable.

The Dog That Didn't Bark

Smith's attorneys claimed that letters show J. Howard wanted to establish a "catchall trust" for Smith. Using one of their favorite tactics, Smith's lawyers pulled out Hunter's bills in an attempt to show that he billed for creation of a trust that was never provided during discovery. Hunter explained the trust was part of another set of documents and pointed out that the catchall trust eventually became another entity designed to provide income for Smith.

Smith's attorneys' strategy seemed to be to focused on single documents, invoices and other unrelated pieces of paper to try to make up for the fact that no one has ever testified J. Howard promised her more than the \$6.7 million he gave her while he was alive.

The court also learned that Smith blew every dime her late husband gave her and the money she earned as a Playboy Playmate, model and actress. In sharp contrast, the late Lady Walker, who died unexpectedly at the age of 51, managed to become a multimillionaire by not squandering the money she received from J. Howard during their relationship. By the way, Lady Walker never got any stock in the family business and was never in any of J. Howard's wills or trusts.

When the Bullying Backfires

E. Pierce Marshall described for the court how he woke up one day to find himself being attacked on national television. Marshall, a husband, father and businessman who had never received any attention from the news media, testified he was suddenly the target of "constant public attacks" by an entrenched celebrity Anna Nicole Smith.

In one segment of the Howard Stern show, Smith told the national radio talk show audience that Pierce had cut her off and adds, "He's evil, I just can't stand him." Smith reached this conclusion even though she had virtually no personal contact with Pierce Marshall.

"(Smith) was attacking me -- an entrenched celebrity using the media to attack me," Marshall testified.

Knowing the court was about to see videotapes of the attacks, Smith's lawyer struck out in desperation, accusing Marshall of hiring a public relations firm to "coddle the press."

In a 1995 videotape of the program "A Current Affair," Smith told the reporter that her husband's son (Pierce) cut off her money and that she can't pay her bills. In Houston, jurors learned that Smith had tens of thousands of dollars in her own bank accounts at the same time she claimed her utilities were being cut off. When asked why she wrote a large check to a designer for a gown at the same time she claimed her utilities were being cut off, she responded, "It's expensive to be me."

Smith Encouraged Media Coverage

Smith's attorneys began to complain as soon as reporters began getting both sides of the story and asking their client tough questions. For the record, one of Smith's lawyers can be seen accompanying her during

video taping for a segment of 20/20 that ran shortly before the Houston probate trial. The same lawyer, whose main job in Houston seemed to be to get his client soft drinks, walk her to the restroom and carry her purse, also acted as a liaison with reporters.

Pierce Marshall, because of false statements, successfully sued one of Smith's Houston attorneys for libel. Judge David O. Carter told Smith's attorneys that he will not be influenced by media coverage of the case and complimented both sides for showing restraint and not holding news conferences on the courthouse steps.

It Was All Borrowed Money

Pierce Marshall testified that his father's spending spree on Smith was all done with borrowed money.

"Something needed to give," said Marshall. "My father didn't want to sell assets, and his expenses (most of which were gifts to Smith) exceeded his income."

Smith incorrectly blamed Pierce, when the money began to dry up. Testimony showed it was the J. Howard's bank that declined to lend him additional funds and it was J. Howard who declined to sell assets to pay for Smith's decadent lifestyle.

Life on Planet Vickie

The jewelry issue has been a centerpiece of both the Houston and California trials and illustrates the unusual values on what some pundits like to call Planet Vickie. (Vickie Lynn Marshall a.k.a. Anna Nicole Smith)

Smith received, and lost, approximately \$4 million in jewelry from her husband. When he lacked the borrowing power to pay for yet another large purchase, he told his son Pierce and others that Smith would have to return the jewelry.

Smith told the court her husband never asked her to return the jewelry. J. Howard's attorneys testified Smith's lawyers negotiated with them for the jewelry's return. According to some testimony, one of Smith's attorneys demanded \$300,000 in legal fees in exchange for returning the jewels.

Because of the long delay in returning the jewelry, the jewelry store sued J. Howard over the purchase. Apparently on Planet Vickie, diamonds are one of the major food groups—and you can't live a healthy life without them.

I Can't Believe You Don't Read Playboy

Anna Nicole Smith's attorney was indignant as he addressed the court. He had complained to the judge that Pierce Marshall had stopped payment on a check his father wrote to buy Smith almost a million dollars in jewelry.

When Pierce Marshall testified he did not have legal authority to stop payment on his father's personal checking account, Smith's lawyer changed tactics, complaining that Pierce should have found the money to pay for the jewelry. Pierce Marshall testified that his father wrote the check, then tried to borrow money to cover it, and, when he couldn't, told Smith to return the jewelry. She refused until after the jeweler sued both Smith and her elderly sick husband and then only in return for a cash payment.

The dispute over the jewelry is just one more example of life on Planet Vickie, where a major accomplishment in life is posing nude for Playboy Magazine, according to Smith's lawyers. Her lawyer became indignant when Pierce Marshall said he wasn't immediately aware of his father's relationship with the former Playmate. Smith's attorney couldn't believe that Marshall wasn't glued to each issue of Playboy Magazine.

Smith's lawyers tried to show that Pierce Marshall plotted with others to prevent their client from receiving gifts from J. Howard. Some plot. Smith received approximately \$6.7 million in gifts during her relationship with J. Howard, including: two houses, a ranch, cars, jewelry, a rented apartment in New York and lots and lots of cash.

Smith Hates a Man She Doesn't Even Know

Anna Nicole Smith wanted the court to suspend reality and agree that Pierce Marshall interfered with something he knew nothing about. Smith was asked on the witness stand if Pierce Marshall was aware of her claims that his father promised her half of his wealth or continuous support.

Smith: “Me and Pierce never spoke.”

Hardin: “How could he interfere with a promise he never heard?”

Smith would later acknowledge she had met Pierce Marshall only twice in her life and had spoken to him only twice. She said suggestions that Pierce didn't like her came from third parties whom she has not produced to testify in court.

Judge and Lawyers Ask Smith If She's “Under Medication”

Anna Nicole Smith's performance in court was so bizarre that both attorney Rusty Hardin and Judge David O. Carter asked her if she was under the influence of any medication during her testimony. Smith seemed slightly dazed during much of her testimony and continually asked for simple questions to be repeated. Smith showed the same reluctance to answer specific questions that she had exhibited throughout this trial and others, even when she was being questioned by a federal judge.

Judge Carter: “I've seen you walk into court with a limp.”

Smith: “Can we talk about it in private?”

Judge Carter: “Have you been under medication?”

Smith: “Can we please talk about it in private? I'm not on any medication at this time.”

Part of the Act?

Maybe it's just coincidence, but part of Smith's pattern seems to be to have a visible medical problem each time she comes to court. Smith made sure the courtroom shared her pain. In Houston, her attorney bandaged her injured hand in the courtroom, and Smith held her bandaged hand up so that jurors couldn't miss it. In Santa Ana, Smith appeared to walk with great difficulty. Yet, outside of the courtroom observers say her pain appeared to vanish.

Judge David O. Carter provided her with a more comfortable chair when he was told she had back problems. When asked about a specific medical condition, Smith asked to be questioned about the subject “in private.”

Judge Carter may not be aware that medical experts testified in Houston that Smith had exaggerated a minor injury. Even Smith's own physician testified she was capable of coming to court.

Long on Greed – Short on Specifics

Questioning Smith is like trying to pin Jell-O to the wall. Judge Carter acknowledged the problem when he told attorney Rusty Hardin, “I'm trying to give counsel leeway because of the way she answers questions.” But the court did not give Hardin the leeway to pursue Smith until her real personality emerged. Hardin asked Smith what she claimed Pierce Marshall did to block her expectancy of additional gifts from her husband. Smith claimed Pierce Marshall “cut us off.”

Hardin: “Do you recall the time?”

Smith: “I don't know when he did it.”

Hardin: “Can you recall the time? Can you recall the part of the year?”

Smith: “I don't know when he did it.”

Hardin then asked Smith to pinpoint the specific promise J. Howard made concerning any additional gifts or support.

Smith: "I don't have nothing on paper. All I have is my word and my husband's word."

Hardin: "Who did he tell?"

Smith: "Just me."

Anna's Values

Anna Nicole Smith summed up her values a few minutes into her testimony concerning how she became a stripper. She testified she stopped at a dance club because she liked the neon sign outside. She said she was "humiliated" after dancing on stage and ran from the club. But she said she changed her mind when "I saw all the money on my lap. I went back the next day."

A Christma\$\$\$\$ Wish List from Vickie

Smith's love for cold, hard cash was evident during her testimony. Under cross-examination by attorney Rusty Hardin, she described the Christmas wish list she sent to her husband J. Howard Marshall.

- Rent for New York apartment \$12,000
- Salaries for two bodyguards \$24,000
- \$50,000 for her bank account in New York
- \$50,000 for her bank account in California
- \$50,000 for her bank account in Texas
- \$2,500 for a publicist

When asked if her apartment rented for \$12,000 a month, Smith told the court she might have overstated the amount because, "I'm not too good on zeros."

Smith Had Plenty of Lawyers

Smith tried to portray herself as naive and uneducated. Yet when she filed for bankruptcy in 1996, it was clear that she had a small army of attorneys working for her for years. Her bankruptcy filings showed her owing approximately \$350,000 to nine separate attorneys and law firms.

More significant is the fact that her listing of assets does not include any promise of continued financial support or half of everything her late husband owned. Asked how she could explain such a glaring omission of what would potentially be a major asset, Smith told the court: "My lawyers deal with my cases, I don't."

"Can we assume that since you had not filed any document or told anybody by August 1995 that you hadn't told anybody about the promise?" asked Rusty Hardin.

"I don't remember," said Smith. Pressed further on the issue, Smith again told Hardin "I'll have to get with my lawyers."

Stop The Vickie Bashing

Smith's attorneys suddenly became very sensitive about their client's image, asking the court to stop any "Vickie bashing." In other words, don't give Rusty Hardin a chance to really establish the type of person she is.

In Houston, Smith's diatribes against E. Pierce Marshall and her cursing of Hardin made national headlines. Smith has tried to use the media to promote her case since early 1995, but her lawyers whined to the court when the other side responds in 2001.

For example, one of her lawyers can be seen accompanying her and her son on a video shoot for the television program 20/20 that took place shortly before the Houston probate trial began. Attorney Rusty Hardin reminded the court that it was Smith who went on the national television program "A Current Affair" in early 1995 to attack E. Pierce Marshall. Smith's attorneys sent out their own news releases about the case and seemed to be coordinating a news conference in Houston when she pulled out of the probate trial.

But once the media heard the actual evidence and Smith exploded on the witness stand, the media began to take a very different view of the case. ABC News revisited the story a second time and Smith's portrayal was much less flattering than the first story.

Does the Press Really Care?

Media interest in the case has been minimal since Smith herself testified her career peaked in 1993. Trial coverage usually didn't even make the front page of the Metro section of the local newspaper.

Vickie Takes the Stand

Smith told the court that she had no witnesses or documents that would back the claim he later husband planned to give her more than the \$6.7 million she received while he was alive. Nor has she provided a shred of evidence that E. Pierce Marshall ever blocked his father from giving her more money.

"Our contention," says attorney Hardin, "is that he (J. Howard) had the same donative intent throughout his lifetime. That he still felt that way in May 1995. He intended to make her self-sufficient and wealthy during his lifetime."

J. Howard's attorney Jeff Townsend testified that he worked hard to set up a company to promote Smith's career but that Smith's attorneys would not cooperate. Smith claims she knew nothing about the company, even though attorneys who said they represented her participated in negotiations in New York and Texas to set up the business. It was finally incorporated, and Smith accepted the company stock.

She Doesn't Even Know the Man

Smith viciously turned on Pierce Marshall even though she admitted she had met him only twice and spoken to him twice by telephone. Smith immediately interpreted innocent business transactions made on her behalf as part of a plot to keep her from receiving money from J. Howard.

When J. Howard purchased a ranch for her use in Tomball, Texas, his attorney pointed out that Smith was still married to her first husband and that putting the ranch in her name would give her first husband a claim to the property. Instead, the ranch was put in the name of a trust.

According to Smith's testimony, she incorrectly assumed that because Pierce Marshall's name appeared on the deed along with his father's as a trustee, that he was blocking her from obtaining the ranch in her name.

Smith, who had numerous lawyers during her relationship with the late J. Howard Marshall, seemed to focus on documents that would put possessions in her name but never had J. Howard put any promise of future support in writing at any time in their relationship.

Nothing Has Changed

Smith did not explode on the stand or curse attorney Hardin as she did in Houston. According to the Orange County Register, Judge David O. Carter "shielded Smith from intense questioning by Hardin. Numerous times the judge waved his hand downward to order Hardin to lower his voice."

Smith's strategy as a witness was to claim she couldn't remember significant dates, to have even the simplest questions repeated over and over, or to answer a completely different question from the one that is asked.

The paper also noted that the court gave Hardin additional time to question Smith because he "frequently had to ask questions numerous times before getting an answer from her."

What About Credibility

The court stated early in this case that witnesses' credibility would be a major issue. Smith began her testimony by stating under oath she was a Texas resident. Hardin showed her numerous sworn statements she had signed saying she was a California resident. Smith blamed the problems on her lawyers, saying, "I just sign where they put the sticky things."

Avoiding Her Houston Mistakes

Smith avoided some of the issues that got her in trouble in Houston, where she accused Pierce Marshall of trying to have her killed. In California, she is much more circumspect, saying only that she thought Pierce was capable of "doing her harm."

Why Other Witnesses are Important

There are at least half a dozen witnesses who were prepared to challenge Smith's credibility on key issues in this case.

Smith claims she never yelled at her husband about money. Employees at MPI are prepared to testify that she did.

Smith claims she did not flash her "rosebuds" at J. Howard while coaching him to make an edited tape of comments to a judge conducting a hearing on the appointment of a guardian in Houston.

A nurse who was in the room at the time has testified that Smith did flash her breasts at her husband to entice him to make the tape.

Smith says she did not refuse to sleep in the same bed with her late husband and did not embarrass him by telling him in front of others that he would wet the bed.

J. Howard's driver was prepared to testify that is exactly what she said.

Smith says she never slept with another man at J. Howard's home.

A witness was prepared to testify that is exactly what she did.

Smith's attorneys have claimed that a page making the Living Trust irrevocable was slipped into the document after J. Howard signed it. Numerous witnesses were prepared to testify that J. Howard knew he was making the trust irrevocable when he signed it. They told the jury in Houston that J. Howard's advisors explained the provision to him and that he willingly signed the document in front of witnesses.

Shouldn't Smith's Credibility Be An Issue?

If, as the court has stated, the credibility of the witnesses is a key issue in this case, Anna Nicole Smith should be in big trouble. Attorney Rusty Hardin showed the court a document Smith signed to obtain a \$350,000 home improvement loan on her home in Los Angeles. Despite her marriage to J. Howard, Smith signed the loan papers under her maiden name and told the bank that she "solemnly swore under the penalty of perjury that she had purchased the home with her own separate funds."

"That is an untrue statement," said Hardin. Smith admitted the statement was untrue, as were statements on the loan application that she had not received any monetary support from any individual and had paid for support of the house. Smith testified over and over again that J. Howard paid for the house and was paying her bills.

Once again Smith denied any responsibility for her actions, saying that her housekeeper had filled out the papers and Smith only signed them.

"We have now gone over four affidavits under oath that are not true," noted Hardin. Smith's attorneys objected.

October 5, 2001

The following statement was issued after a hearing before Judge David O. Carter concerning discovery issues in the case.

A Statement From E. Pierce Marshall

We look forward to providing Judge Carter with the information he has requested.

Anna Nicole Smith's attorneys had an opportunity to question everyone involved in the estate planning of J. Howard Marshall II, both in depositions and on the witness stand in Houston. They also had access to more than two million documents. Not one person has ever testified, nor did any document show, that Smith did not receive everything her late husband wanted to give her.

Monday, August 27, 2001

It Could Be Back to the Witness Stand for Anna Nicole Smith

Former stripper Anna Nicole Smith's credibility will be on trial soon in a California court. U.S. District Judge David O. Carter said today he wants to hear from Smith as well as defendant E. Pierce Marshall and other witnesses. This is a major setback for Smith, whose lack of credibility led jurors in Texas to conclude she was lying when she said her late husband, J. Howard Marshall II, promised her a share of his estate.

Judge Carter set December 11 as a tentative date for the hearing, but said the date could change, depending on appeals presently underway on various rulings in the case. Judge Carter has already vacated a ruling made in Smith's favor by a bankruptcy court.

"We look forward to the opportunity of getting Smith on the stand," said E. Pierce Marshall. "In addition, we look forward to proving once and for all that her attorney's allegations that we failed to provide adequate discovery in this case are a lie."

After her antics on the witness stand in Houston, Judge Mike Wood threatened Smith with contempt of court and ordered her to stop lying. At one point, Judge Wood said he would turn over a transcript of Smith's testimony to the district attorney's office for possible prosecution for perjury.

Once again it appears Smith's attorneys have no witnesses to back their client's claim she was promised more than the \$6.7 million she received from her late husband during the marriage. Many of those listed as witnesses by Smith's attorneys testified in Houston that J. Howard Marshall II was in control of his affairs and that his son Pierce never interfered in his father's estate planning, a direct contradiction of Smith's claims.

"Today's hearing was another step on the road to putting this issue behind us and letting our family live in peace," said Pierce Marshall.

Tuesday, June 19, 2001

Another Setback for Anna Nicole Smith in Federal Court

A federal judge has dealt Anna Nicole Smith (Vickie Lynn Marshall) another set back in her litigation with E. Pierce Marshall. Judge David O. Carter denied Smith's motion to dismiss Marshall's appeal of a bankruptcy court decision that awarded Smith \$475 million.

Judge Carter had previously vacated the judgment after ruling that the bankruptcy court erred in considering "non core" issues in Smith's bankruptcy case.

"Judge Carter's ruling is not surprising," said G. Eric Brunstad, Jr., an appellate specialist who teaches bankruptcy and commercial law at Yale and Harvard law schools and is the member of the Marshall defense team who argued the "non core" matter before Judge Carter. "Smith's motion to dismiss Marshall's appeal was highly irregular. You sometimes see motions to dismiss appeals on jurisdictional grounds. But in this instance, Smith urged dismissal on the theory that Pierce failed to comply with court orders, which just isn't true. In his ruling, Judge Carter recognized that dismissal is an extreme measure, and that Smith's motion was out of sync with the court's plan to resolve this case on the merits. We are confident that the facts demonstrate that E. Pierce Marshall has at all times played by the rules and did not do anything that would warrant sanctions by any court."

In his decision, Judge Carter wrote, "...the matter before this Court is no longer an appeal, but instead a district court review of proposed finding and conclusions of the bankruptcy court. Thus this proceeding cannot be dismissed."

The District Court ruling is one of a series of setbacks for the former stripper. Judge Mike Wood is considering whether Smith should be hit with sanctions for filing a frivolous lawsuit against E. Pierce Marshall and others in his Houston Probate Court. Jurors in the Houston case rejected Smith's claims that she was promised half of her late husband's assets. Her late husband's accountants are also suing Smith. The motion charged that Smith and her attorneys filed frivolous pleadings and pursued them in bad faith after September 11, 2000.

Thursday, May 24, 2001

Judgment Against E. Pierce Marshall Nullified Anna Nicole Smith Case Moves to Federal District Court

A Statement from E. Pierce Marshall

Today's decision is a major victory in defending my father's estate plan and proving that Vickie and her bevy of contingency fee attorneys have lied when they have accused me of disrespecting the courts. The decision that this is a non-core issue means that the bankruptcy court's judgment is vacated and no bond is needed as we press our appeal.

Our goal is to have the district court review all the evidence in this case, which will show conclusively that Vickie's claims have absolutely no merit.

False allegations of discovery abuse by Vickie's attorneys has been a fabricated ruse to hide the fact that Vickie has no case. Vickie's claim that my father ever planned to give her more than the millions she has already received and squandered is also a lie.

I have demonstrated a lifetime of respect for and compliance with court orders. Vickie's attorneys have shown they will go to any lengths to defame me because they are desperate to recoup the millions of dollars they have invested in this case. This attempt to prejudice higher courts will fail under the weight of the evidence as will their attempt to raid my father's estate.

I will continue to work, as I have in the past, within our legal system, to protect my father's estate plan.

Tuesday, May 8, 2001

The following information is provided as background for those interested in this case. We are continuing our policy of only responding to comments made by the plaintiffs but otherwise not seeking additional media attention for this story.

You may have read that a federal judge has tentatively ruled in favor of Anna Nicole Smith in her suit involving E. Pierce Marshall. Without the proper context this statement is misleading. A final resolution as to whether Smith is entitled to any money is years away.

What The Court Said

"U.S. District Court Judge David O. Carter warned he could change his mind before issuing a final ruling next week.

"I can't describe how foolhardy you would be to take this as a final ruling", he told attorneys for Ms. Smith and her former stepson E. Pierce Marshall." -- Associated Press

Background

Yesterday's court hearing allowed attorneys for both sides to address "two threshold issues" in this case. The hearing did not begin to address all of the issues that will ultimately be considered. (The two threshold

issues are whether the bankruptcy court had jurisdiction and whether the issue at hand was a core issue under bankruptcy law.)

The court noted: "If the court determines that this is a core matter, it will review the rest of the bankruptcy court's decision for abuse of discretion. If the court determines that this is a non-core matter, it will review all aspects of the bankruptcy court's decision, including its factual findings." -- Judge David O. Carter

It should also be noted that either side could appeal the court's decisions to the 9th Circuit and the U.S. Supreme Court.

Bankruptcy Court's Decision Still Subject To Review

"The bankruptcy court's factual findings include findings imposed as sanctions for Pierce's discovery abuses. Whether or not these sanctions were warranted and whether or not the bankruptcy court's factual findings were correct are issues that are not before the Court on this phase of the appeal. The appeal remains open." -- Judge David O. Carter

Monday, February 12, 2001

Vickie Due Back on the Stand in Houston

Vickie Lynn Marshall (stage name, Anna Nicole Smith) is scheduled to resume testimony on Monday, February 12th in the Houston courtroom of probate Judge Mike Wood.

Jurors in the case have already heard a parade of witnesses say that Vickie's late husband, J. Howard Marshall II (Howard Senior), provided generously for her while he was alive. Witnesses say Howard Senior never intended to change his estate plan, which placed the family's energy business in a separate property trust (when Vickie was 14-years old) and left the company to his son E. Pierce Marshall.

Vickie faces possible perjury charges following her previous testimony in the case. Her answers contradicted those of witnesses who have appeared during the trial, which began in September 2000. Those witnesses have portrayed Vickie as an absentee wife who was greedy, manipulate and insensitive to her elderly husband. One witness said Vickie got her husband in the mood for shopping by giving him Valium while visiting an expensive jewelry store. A witness said the drug left the 88-year-old Howard Senior slumped in his wheelchair.

Furthermore, Vickie cannot provide a single witness or document to support her claim to a share of the estate.

Question: (Attorney Rusty Hardin) - "You cannot give us the name of a single human being who ever heard J. Howard Marshall promise you half of the estate?"

Answer: Vickie-- "I don't know."

Hardin challenged Vickie to produce a document or even a witness who would say that her late husband promised her half of his estate. "I'm sorry. I'll have to get back to you," Vickie said. "I can't tell you now."

"Vickie's testimony has helped explain why we have consistently rejected suggestions this case be settled," said E. Pierce Marshall. "It is now evident to the world that this is a fabricated story. My father made his wishes clear in a series of six wills and seven trusts (signed before and after his marriage to Vickie). My father never would have settled this type of frivolous lawsuit, and I will not insult his memory by settling a lawsuit based on fabricated claims we know are untrue."

Friday, February 9, 2001

The following letter is in response to comments made by Vickie Lynn Marshall's (stage name -- Anna Nicole Smith) attorneys in an article for Lawyers Weekly USA.

Thanks to worldwide media coverage, the public now knows that Vickie made up her claim that her late husband promised her half of everything he owned. After her performance in Houston, it is no wonder her attorneys have fought so hard to keep her off the witness stand and focus her case on false claims of discovery abuse.

When Vickie was asked if she could provide a single witness or document to support her claim, she told the court, "I will have to get back to you on that."

Vickie made other allegations from the stand that were so outrageous that she was admonished by Judge Mike Wood not to lie to the court. Speaking out of the presence of the jury, Judge Wood told Vickie he will refer her testimony to the Harris County District Attorney because he believes she lied under oath.

Pierce Marshall and his attorneys have never engaged in any form of discovery abuse, nor has he abused any court rules or procedures. It should be noted that a Houston probate court has found that the millions of documents produced during discovery are more than adequate to try the case.

Jurors in the Houston probate case now underway have heard numerous credible witnesses refute each of Vickie's claims about Howard Senior's clearly stated estate plans, his ability to see and understand the documents he signed and the plans he did make to promote Vickie's career during his life.

Attempts by Vickie's attorney, Philip Boesch, to demonize others only emphasize the fact that he has no case. Criticizing someone for retaining legal counsel and pursuing his family's rights under the law is a slap in the face to the federal courts and the legal profession. Boesch's unwarranted attacks on the Marshall family attorneys show disrespect for the due process of law.

Pierce Marshall has the greatest respect for our nation's legal system, and is confident that these issues will finally be resolved in his favor as the legitimate legal process continues.

**E. Pierce Marshall's reply to
Vickie Lynn Marshall's opposition to his renewed motion for stay pending appeal.**

**Submitted January 26, 2001, in
United States District Court, Central District of California, Southern Division**

**E. Pierce Marshall's reply to
Vickie Lynn Marshall's opposition to his renewed motion for stay pending appeal**

Friday, January 26, 2001

Court Will See Through Slander in Anna Nicole Smith Case

E. Pierce Marshall charged today that California attorneys for Vickie Lynn Marshall (stage name -- Anna Nicole Smith) have continued their campaign to try to poison the judiciary by slandering his character. Represented by Dallas attorney Jeff Chambers, Pierce has already won an \$8.5 million-dollar jury libel verdict against one of Vickie's Houston attorneys, Diana E. Marshall (no relation). Marshall predicts that, despite these falsehoods, he will ultimately prevail in carrying out his father's last wishes.

Pierce points out that Houston Probate Judge Mike Wood has repeatedly rejected Vickie's false allegations of discovery abuse. Judge Wood has said publicly the California bankruptcy court misapplied Texas law. "We have produced millions of pages of documents," Pierce noted. "Vickie alleges discovery abuse because her attorneys have not found any evidence supporting the merits of her claim: that my father intended to leave her half of everything he owned."

"I have demonstrated a lifetime of respect for and compliance with court orders," Pierce said. "Vickie's Los Angeles attorney, Philip W. Boesch, Jr., continues to recite repeatedly the false allegations of discovery abuse in an attempt to prejudice higher courts, because he knows the actual evidence in the case fails to support his bizarre theories. I believe the appeals court will see through Boesch's blatant attempt to

circumvent the facts, and that the bankruptcy court's unsupportable opinion will be reversed on appeal," Pierce added.

"At no time did I ever interfere with property or gifts my father wanted to give Vickie before or after their marriage," Pierce said. "In fact, I assisted my father in making some of those gifts," Pierce stated.

Houston Testimony Refutes Each of Smith's Claims

Testimony in the current Houston probate trial has already rebutted all of Vickie's allegations and the conclusions in an opinion issued by a California bankruptcy court.

Accountant Nancy Koonce testified that she was in the room when Howard Senior made the decision to make his living trust irrevocable. She said Pierce Marshall made no attempt to influence his father's decision, and that Howard Senior's other advisors explained several times that the decision would mean he could not leave money to Vickie from his living trust (which held his interest in Marshall Petroleum, Inc. which in turn held his stock in Koch Industries) Koonce said Howard Senior slammed his hand on the desk and said, "Do it."

Koonce told jurors Howard Senior provided for Vickie from income that came from outside his trust, by giving her more than \$6.7 million in cash, jewelry, homes and cars during their 14-month marriage, in addition to all the stock in a corporation he set up to fund her career.

Pierce Marshall Never Interfered

Attorney Jeff Townsend contradicted claims by the bankruptcy court that Pierce Marshall blocked several proposals to provide additional funds for Vickie. Townsend joined a long parade of witnesses who testified that Pierce Marshall never interfered with his father's giving Vickie millions of dollars.

Townsend told jurors Marshall Senior asked his attorneys to review numerous ideas, including adopting Vickie, but rejected all those concepts because of negative tax consequences. Because of the huge difference in their ages, Marshall was hit with the "generation skipping tax" which levied taxes at the rate of 140 percent of the gift.

Witnesses in Houston have also refuted the bankruptcy court's conclusion that Pierce fired an attorney who wrote a memo describing a way to provide additional money to Vickie. The attorney, Harvey Sorensen, testified that he worked only for Howard Senior and was not fired over the so-called "new community" memo. The memo was written one day after Marshall Senior signed a new will that reaffirmed his decade old estate plan and left nothing to his new wife.

Pierce Marshall has testified he never saw the "new community memo" at the time it was written because the memo was locked up in Harvey Sorensen's confidential client files until long after Howard Senior's death. Sorensen testified Howard Senior rejected the idea outlined in the memo as impractical one month after the memo was written.

Townsend contradicted another conclusion of the California bankruptcy court when he told jurors Pierce Marshall did not block creation of a catch-all trust for Vickie. Townsend explained that the trust concept was dropped in favor of a corporation that could fund Vickie's modeling career. The corporation was funded by Howard Senior and given to Vickie after their marriage.

Howard Senior Said He Couldn't Teach Vickie About Money

Witnesses have testified that Howard Senior's relationship with his wife had deteriorated because of her continuous insatiable demands for more and more money and the way she treated her husband on the rare occasions she visited him. Howard Senior's nurse testified he told her he made a mistake by marrying Vickie. The nurse also said Howard Senior would not even take Vickie's phone call on the night before he died.

It Was Vickie Who Counted on Publicity To Win the Case

"It is most ironic that Vickie's attorneys point to the media notoriety the case has received as an excuse to press demands that would deny me due process of law," said Pierce. "It is Vickie and her attorneys who have attempted to turn the legal process into a media circus."

The Dog That Didn't Bark

Perhaps most important of all is what jurors have not heard in the Houston probate trial. No witnesses have come forward to say they ever heard Howard Senior say he planned to give Vickie half of what he owned.

E. Pierce Marshall's Supplemental Briefs on the Probate Exceptions

"Short Version"

[E. Pierce Marshall's Supplemental Briefs on the Probate Exceptions – Short Version](#)

"Long Version"

[E. Pierce Marshall's Supplemental Briefs on the Probate Exceptions – Long Version](#)

The Long version serves to make the short version clear.
Note cites of Judge Carter's own case on page 35 of the text.

E. Pierce Marshall's Statement of Issues On Appeal.

[E. Pierce Marshall's Statement of Issues On Appeal](#)

Marshall Vows Immediate Appeal for Miscarriage of Justice

Appeal Says California Court Had No Jurisdiction or Cause of Action

January 3, 2001 -- Terming the decision "an illegal sham and a disgrace to legitimate law," E. Pierce Marshall vowed to fight a ruling by California bankruptcy magistrate Samuel L. Bufford that he owes half a billion dollars, plus punitive damages, to model Anna Nicole Smith and her platoon of contingency fee lawyers. The ruling came despite the fact that Smith is not named in her late husband's will, and the bulk of the assets Bufford is attempting to give the former stripper were her late husband's separate property and under Texas law are not part of his estate.

"The court invents facts and law and maliciously excluded relevant evidence in an attempt to reach a predetermined outcome," said E. Pierce Marshall. "Testimony of individuals who did not agree with the court's conclusions was struck, creating a Star Chamber proceeding," he added.

"The identical issues before the Bankruptcy Court were currently being tried properly before the Texas Probate Court. Judge Bufford has neither the jurisdiction to decide this Texas Probate matter nor the authority to attempt to collect any assets. Bufford's opinion is a miscarriage of justice that will be appealed to the highest level necessary to correct this injustice."

The full text of Marshall's Motion for Leave to Appeal

[Marshall's Motion for Leave to Appeal](#)

Memorandum of Points and Authorities in Support of Motion for Withdrawal of Reference

Memorandum of Points and Authorities in Support of Motion for Withdrawal of Reference

Pierce Marshall Appeals Miscarriage of Justice, In California Bankruptcy Case; Says Court Had No Jurisdiction or Cause of Action

Terming the decision a legal lynching, E. Pierce Marshall vowed to fight a ruling by California Bankruptcy Judge Samuel L. Bufford that he owes half a billion dollars, plus punitive damages, to model Anna Nicole Smith (the stage name of Vicki Lynn Marshall).

"The court invents facts and law and maliciously excluded relevant evidence in an attempt to reach a predetermined outcome," said E. Pierce Marshall. "Testimony of individuals who did not agree with the court's conclusions was struck, creating a star chamber proceeding," he added.

In a motion filed in support of the appeal, Marshall's attorney, Joseph Eisenberg, says the ruling will cause his client "irreparable harm."

"The Bankruptcy Court has no jurisdiction in a Texas probate case and no cause of action against my client," says Eisenberg. He noted that the District Court has already indicated that Anna Nicole Smith's claim is nothing more than a probate lawsuit.

Statement from E. Pierce Marshall

Regarding the Vicki Lynn Marshall Bankruptcy Trial in California

Wednesday, September 27, 2000

The memorandum of decision issued today was based on a dispute regarding discovery and not on the facts or the evidence presented in the case. This extraordinary decision is a miscarriage of justice that is not supported by the facts and will not stand up on appeal.

We are confident that a Texas jury, that is permitted to evaluate all the evidence in the case, will allow my father's clearly stated wishes to be carried out.

We will utilize every appellate avenue available to us to appeal the California decision and expect to prevail in an appeal.