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Arkansas Democrat Project

Interview with:

Phil S. Anderson
Law offices of Williams & Anderson, PLC
21 February 2007

Interviewer: Jerry McConnell

Jerry McConnell: This is Jerry McConnell. I'm sitting here in the law offices of Phil Anderson who is the lead attorney for the *Arkansas Democrat* in a lawsuit filed by the *Arkansas Gazette* against the *Democrat*, which wound up being ruled by the jury in favor of the *Democrat*. Phil, the first thing I need to do [is] I must say that I'm making this—doing this interview for the Oral History Program at the University of Arkansas Pryor Center for Visual and Oral History on the history of the *Arkansas Democrat*. Obviously, we are also going to get into the history—some of the history of the *Gazette*, particular in this lawsuit—and the [*Arkansas Democrat-Gazette*]. The first thing I need to do, though, is ask you if I have your permission to do this interview and turn this tape over to the Oral History Project?

Phil Anderson: Yes, you do.

JM: Okay. Now then, tell me—let's start—tell me your full name.

PA: My name is Philip Sidney Anderson.

JM: How do you spell Sidney?

PA: S-I-D-N-E-Y.

JM: Okay. That's one "L" in Philip?

PA: One "L" on Philip. Thank you.

JM: Okay. Okay. You are now in the law firm of Williams & Anderson, right?

PA: Correct.

JM: But at that time you were with Wright, Lindsey & Jennings?

PA: That's correct.

JM: But you have been an attorney for the *Democrat* ever since the Hussmans bought it in 1974. Is that correct?

PA: That's correct.

JM: Okay, very good. All right, I want to get back at some point, Phil, to your background of where you went to school and all that and everything. But first to sort of establish a point, a lot of people that I've talked to in this project so far—or several people at any rate—think that the lawsuit was one of the pivotal and decisive developments in the so called war between the *Democrat* and the *Gazette*, and I wonder if you concur with that?

PA: I do. I believe that it was—looking back, I believe that it was the turning point. I think that the lawsuit by the *Gazette* against the *Democrat* gave the *Democrat* a stature that it had not previously had. The *Democrat* was clearly taken seriously by the *Gazette* in the lawsuit. I think it caused advertisers to pay more attention to the newspaper than they had before. I think that they saw it in a different light. I think readers saw the newspaper in a different light. As you know, before the end

of the year in which the *Gazette* lost the lawsuit, the *Gazette* announced the sale to Gannett on October 31, 1986.

JM: You're saying here that the suit ended in March.

PA: The suit ended in March of 1986 and on October 31 the *Gazette* announced that it had reached an agreement to sell the paper to Gannett. The operation of the *Gazette* by Gannett did something that the *Democrat* could not do itself. The circulation of newspapers—as Walter Hussman [Jr.] once pointed out to me—was like granite. It was very, very hard to get readers to change from a paper that they liked and had read for a long time, however Gannett changed the newspaper. It was something that the *Democrat* couldn't do, but Gannett did it. It changed the product that the readers had cherished for so long, and caused them to look around. It changed the product, and it never could get a grasp of the market. It didn't understand competition.

JM: One of the things that has been suggested to me, Phil, by some people at the *Democrat* is that even after the *Gazette* lost the suit—they said that, if the *Gazette* had been willing to make some serious changes in the way they operated the paper—and maybe to operate it more efficient in some ways—that they could have perhaps stayed in the business.

PA: Yes.

JM: Do you have any feelings about that?

PA: The answer is yes. Both newspapers could have survived. The market was large enough for both papers. The *Gazette* was the dominant paper. The *Gazette* was profitable throughout its modern existence. The *Gazette* was profitable through the depression. It could have continued to be profitable if it had been operated ef-

ficiently. But when Gannett bought the paper with the investment that it made, it changed the score, because in order to recover that investment, it was going to have to take the market.

JM: Okay. Do you think that—and we will get into this later—but, the *Gazette* maintained during the course of the trial that, if these alleged practices of the *Democrat* were not stopped, that it was very likely to put it out of business. Do you think that after they maintained that all the way through the trial that they were sort of in an awkward position at the end? Losing, so what are they going to do now?

PA: They were in an awkward position. They had told—they had insisted that they would go out of business if they didn't win the lawsuit. But, what they had to prove was that the *Democrat* had market power, and market power is the power to control price. Clearly, at the time of this trial, the *Democrat* did not have market power. It could not put the *Gazette* out of business.

JM: Did you ever—this is sort of a silly question, but did you ever think that the *Democrat* would lose this lawsuit? Did you ever think that there was any danger that they would lose this suit?

PA: I thought it was highly unlikely—highly unlikely that the *Democrat* would lose, and I told Walter Hussman that.

JM: Okay.

PA: The *Gazette* was trying to stand the antitrust law on its ear if you will. The anti-trust law exists to encourage competition. Competition makes you better, and that was our theme during that trial. Competition makes you better, and competition should be rewarded. The truth of the matter is that the *Gazette* had not ever had strong competition from the *Democrat*. The *Democrat's* contracts with the unions

that were at the *Democrat* when the Hussman family bought the paper had been negotiated by the *Gazette*. The *Democrat* had just let the *Gazette* negotiate with the unions, and whatever the *Gazette* worked out with the unions was fine with the prior owner of the *Democrat*. It was not a serious competitor. Walter Hussman was the first real competition that the *Gazette* felt, and Hugh Patterson thought that it was unfair.

JM: That's an interesting point, because in all of this—these interviews that I've done—I've sort of reached a conclusion that the previous owners—and in particular K. August Engel who had owned it so long—never really made a serious challenge to the *Gazette*. Never even attempted to seriously challenge the *Gazette*. It was always my theory that all he wanted to do was make a certain amount of money.

PA: What August Engel was content to be was the number two paper, and to make a modest profit. Things were changing about this time, however—incidentally, that's what the Hussman family wanted to do. That is to say Walter Hussman and his father felt that they could operate the number two paper in Little Rock, and make a modest profit, and have a voice in the community—an editorial voice in the community. But, the newspaper world was changing at that time. Afternoon papers were failing. They were failing for a number of reasons. Women were coming into the workforce. There wasn't a demand for an afternoon newspaper like there had been. Television was another factor, because people were getting their news on the 5:00 p.m. news, rather than the newspaper that was delivered after the close of the working day. Afternoon papers were closing around the country. Those market forces were affecting Little Rock, although it was not clear in

1974 that an afternoon paper was doomed.

JM: [Laughs] I didn't think it was doomed, because I went back to work for one in 1971 after working for a morning paper. But at any rate, now let's get into the suit some itself. This is an oral history project and there's been a lot written about it. But, what were the key issues? What were the *Gazette's* contentions in this lawsuit?

PA: The *Gazette* accused the *Democrat* of predatory practices. Those predatory practices included selling newspaper advertising to the major advertisers in Little Rock at \$1 an inch if they would repeat the program that they had in the *Arkansas Gazette*. We can get back to why that was done, although I'm sure other people that you've interviewed told you about that. It made perfect sense. There were free want ads. Free want ads were looked upon by the *Gazette* as a predatory practice. Price cutting on advertising—going off the rate card—was alleged to have been a predatory practice. Free newspaper delivery to our prospective customers—the *Democrat* tried to break into areas where it did not have high circulation. It was viewed at the time as a blue-collar paper. The newspaper was delivered free on routes that the *Democrat* would like to have subscribers in order to attract advertisers, because of the demographics of the neighborhood. The subscribers to the *Gazette* were generally more affluent than those who subscribed to the *Democrat* and were more attractive to the advertisers to reach. There may have been some other practices, Jerry. We can look at some of the documents we have to flesh that out. But, the \$1 an inch advertising program that Walter Hussman came up with was because people read newspapers to read ads—to see the advertising as well as to get the news.

JM: Okay. That's okay.

PA: They got the news too, but they also read the newspaper to see the ads. If the ads from Dillard's [Department Store] and the other large department stores were not in the *Democrat*, people would not read the *Democrat*. They would gravitate to the *Gazette*. Walter was ready to close the *Democrat* after he could not work out a joint operating agreement with Hugh Patterson. He decided he would make one last try. He went around the country looking at newspapers that had increased circulation because of things that they did. The most dramatic was a program a newspaper in Ottawa, Canada had giving free personal classified advertising.

JM: Okay, Phil, what were the specific legal issues involved? It seems to me that—based on the stories that I've read, and I was not in the state at that time—that there were four particular legal issues—"four interrogatories" I think was the phrase that was used at one time.

PA: Well, the case was submitted on four counts to the jury—two counts under the federal antitrust laws and two counts under the state unfair competition statutes. The jury found for the *Democrat* on all four counts. Basically, the *Gazette* was claiming that the *Democrat* was trying to put them out of business, that its pricing practices were predatory, and that predatory behavior was unlawful under the federal statutes and unlawful under the state unfair competition statutes. But, in order to prevail, the *Gazette* had to show that the *Democrat* had market power. That was something, as I said, could not be shown given the fact that the *Gazette* was profitable, had more circulation, [and] had more advertising than the *Democrat* did. It was clearly by every measure the dominant newspaper.

JM: I think at some point I've seen some figures saying that—and I don't remember

what particularly—that it was still about 60 [to] 40—that the *Gazette* had about 60% of the business and the *Democrat* got up to about 40%. Is that correct?

PA: That is my recollection. My recollection also is that decision to sue probably came about when the Federal Trade Commission, to which the *Gazette* had taken its complaints, didn't take any action. When the *Democrat* had a profitable month—June 1984, as I recall, was the paper's first profitable month, there was a news story about the fact. Walter Hussman shared the profit with the members of the staff.

JM: All the employees.

PA: All the employees at the paper shared in the profit. It was not a great profit, but it was a profit. I think that Hugh Patterson probably realized that the *Gazette* was on its way to profitability, because it was making gains . . .

JM: That the *Democrat* was.

PA: Yes—excuse me—that the *Democrat* was on the way to profitability, because it was making gains against the *Gazette* in circulation throughout the state.

JM: There was one issue in there—monopoly leveraging?

PA: Monopoly leveraging was—an allegation was that the *Democrat* was using profits from its other operations in order to fund the losses sustained by the *Democrat*, and the *Gazette* claimed that this was unlawful. There was also testimony about how hard it was for the *Gazette* to compete against this rich empire, which is laughable. There are people in this city today that will tell you the same thing, that it's absurd, because the profits of the *Gazette* in 1974, when the Hussman family bought the *Democrat*, were greater than all of the profits of Camden News Publishing Company that year. The *Gazette* was a bigger paper than Camden

News Publishing Company was a company.

JM: Which would include all their other assets?

PA: Camden News Publishing Company at that time included the country dailies—that is in Texarkana, Hot Springs, El Dorado . . .

JM: Magnolia

PA: Magnolia, and Camden.

JM: Okay. So, did—on some of those issues like that—was there ever any—did the judge ever make a ruling on some of those things? One thing I wondering about is nowhere in either paper that I saw it—they said the judge gave some instructions to the jury, but they never said what his instructions were.

PA: Well, they were jury instructions like jury instructions in any case—civil or criminal. The judge tells the jury what the law is, and the jury applies the law to the facts that the jury finds. The jury is a finder of fact, when there is a jury present. The judge tells the jury what the law is. The instructions that the judge gave—and I can get you copies of the instructions if you like to have them, but they're technical. He told them what the federal law required, [and] he told them what the Arkansas law required with regard to competition in the context of this lawsuit. Yes, he made rulings. The lawyers argued the instructions—the lawyers submitted—each side submitted a set of instructions to the judge. The lawyers argued for the set of instructions that they presented. The judge gave some instructions requested by the plaintiffs and some instructions requested by the defendants. [He] denied some of the plaintiff's, and denied some of the defendant's proposed instructions, which is a normal course in any trial.

JM: Were any of those rulings that he made key in—do you not think—in the deci-

sions that the . . . ?

PA: I am sure at the time we were pleased with the instructions that we got from the judge. I also know that I was disappointed in some of the instructions, but Jerry at this point in time I can't tell you what they were.

JM: Okay. Did the issue ever come up whether or not the other newspapers were actual monopolies or not? Was there—I didn't see any testimony on that in the news stories.

PA: I'm sure that it did come up that they did not have competition all throughout the state. I'm sure that point was made.

JM: Did he ever rule himself on whether they were—the *Democrat* was using monopoly leveraging? Or was that left to the jury to decide?

PA: I don't remember whether that was presented to them or not. Peter Kumpe, my partner, may recall, but I don't recall whether—I know monopoly leveraging was argued. I don't remember if that point came up. I do know that some of the allegations made with regard to the so-called empire were simply not true.

JM: That brings up a point that was maybe explained in some point in time—but I never saw it—why was this a jury trial, rather than a trial just before the judge?

PA: Well, I believe that the *Gazette* requested a jury trial in the complaint. As they were entitled to do, but I believe they demanded a jury trial as a part of the allegations in the complaint.

JM: Okay.

PA: And they were entitled to one—either side would have been entitled to it, Jerry.

JM: Do you think that was a wise decision on their part?

PA: I think they would have lost if they tried the case to any judge in Arkansas.

JM: Okay. It didn't make a difference.

PA: I think that they were better off with a jury than they would have been before a judge, because the law is clear. They were trying to misuse the antitrust laws in order to win in the courtroom what they could not win in the marketplace.

JM: Or hadn't shown much evidence of being able to win in the marketplace.

PA: Correct.

JM: Okay. What—the verdict they were originally started out with twelve jurors and one had to be dismissed, which left you with eleven. I think that the two sides had agreed that that was okay.

PA: I had completely forgotten that point, Jerry. I remember the day that the case went to the jury, and I remember sitting around the next day waiting. But, I had forgotten that we lost one of the jurors.

JM: What would have happened if all four legal issues—the jury returned a unanimous verdict in favor of the *Democrat*—what would have happened had the jury not been unanimous?

PA: It would have been a mistrial. In federal court all jurors must agree to the verdict in civil and criminal cases, which is not the case under Arkansas law. For civil cases a majority of nine can return a verdict in Arkansas courts.

JM: So it would have been a mistrial, then it would have been tried again. You would have faced the possibility of another trial, if someone wanted to try it.

PA: Correct.

JM: Okay.

PA: Well if they didn't bring back a verdict—if they didn't bring back a verdict it would have been a mistrial.

JM: Yes, okay.

PA: And it could have been tried over.

JM: It could have been tried over.

PA: Yes.

JM: Which would have been a lot more expense.

PA: Absolutely.

JM: Yes, especially if you started from scratch. Do you—have you ever figured out or heard—has the *Democrat* or anybody—ever figured out how much this lawsuit cost the *Democrat*?

PA: No one had figured it out. It cost the *Democrat* more than \$1 million, though.

JM: Yes.

PA: It cost the *Gazette* considerably more than that, because the lawyers from Houston [Texas] are more expensive than the lawyers from Arkansas. The experts that the *Gazette* had were more expensive than the experts that the *Democrat* had—including an expert from the University of Arkansas. Steve Susman was the lead lawyer for the *Gazette*. Steve Susman, I am told, was on an antitrust program sponsored by the Antitrust Section of the American Bar Association in Washington [D.C.] a few months after this trial. He told the audience how he lost the trial. He had held mock trials outside of the state and in the state. He said that the plaintiff in the mock trials—the *Gazette* in the mock trials won in the trials that were held in Texas and lost in the trial—or trials—in Arkansas—because the *Democrat* was not seen in Arkansas as a credible threat to the *Arkansas Gazette*.

JM: Do you buy that theory?

PA: The theory that it was not seen as a credible threat, yes. The trial changed that.

That's what the trial changed. The trial changed the way in which the *Democrat* was viewed in Little Rock and in Arkansas.

JM: Were you surprised when the *Gazette* sued the *Democrat*?

PA: I was astonished.

JM: Were you? Okay.

PA: I learned about it on the afternoon of December 12, 1984 when Walter called me and told me that he had been served with a summons. It seemed crazy to me—just foolish, because it was all over competition. A lot of people said after the news came out the next morning about the lawsuit—a number of businessmen around the city of Little Rock said to me, “I’ve faced competition every day, and Hugh Patterson is just not used to it.”

JM: This was a lawsuit in which the dominant business sued the less than dominant business for antitrust violations.

PA: Correct.

JM: Isn’t that rather rare?

PA: Yes. I don’t know that it has ever happened before.

JM: That’s what I wondered if you ever heard of another case like this.

PA: No. And that’s why it was so peculiar. That’s why I thought it was so unlikely that the *Gazette* would prevail, because the antitrust laws are made to protect competition. The *Democrat* was trying to compete with the dominant newspaper in this market.

JM: You don’t know of—certainly—any similar cases involving other newspapers? Do you?

PA: No, there haven’t been many newspaper antitrust cases tried. Ours was the only

newspaper antitrust case that was even filed around the time that we tried this.

JM: I think that maybe—one of your witnesses Roy McDonald from Chattanooga [Tennessee]—I think that he said that he had filed an antitrust case against one of the Chattanooga papers, but that they had been the dominant paper when he sued them—if I remember correctly.

PA: Roy McDonald may have sued the *Chattanooga Times*. I know that Roy McDonald had some trouble with the Department of Justice himself—with the *Chattanooga Free Press*. He was asked about it during the trial. He was a witness for the *Democrat*. He was asked about his unfair practices by one of the lawyers for the *Gazette*. He said, “Yes, I did that. Sometimes you reach a point where you just want to pick up a brick and throw it, and that’s what I did.” And the jury laughed. [Laughs]

JM: I did see that. The—what—I noticed at some point and I never found a follow up on it, but at some point after the trial was over the *Gazette* filed a—with Judge [William] Overton I presume—wanted him to order a new trial or set aside the verdict and enter a judgment for the *Gazette*. And I presume that he rejected those.

PA: I presume so as well. Those are normal motions that would be filed. At some point Steve Susman called me and said that the *Gazette* would not take an appeal if we would not seek to recover our costs from the *Gazette*. And we reached that agreement.

JM: Oh you did. Oh okay. I don’t remember ever seeing that.

PA: That may not have been in the paper.

JM: So they would not appeal if you wouldn’t go back into the court, and say, “Okay,

they sued us falsely and we want them to pay for . . .”

PA: Well, we would have been entitled to costs. We wouldn't have been entitled to attorney's fees.

JM: Yes, okay.

PA: I say “we”. The *Democrat* would have been entitled to recoverable costs. The recoverable costs would have included the cost of depositions that were actually used in the trial, some other expenses, court costs, and the like—but not attorney's fees and not a great part of the expenses incurred in the preparation and trial of the case.

JM: Did you ever form an opinion whether or not—that it seemed in your view sort of—if I can use that word—ludicrous that the bigger corporation sued—the bigger paper sued the *Democrat*—did you ever consider whether or not they thought the cost of the suit itself would drive the *Democrat* over the edge?

PA: I didn't get that idea. I didn't get the idea that they would [try to] put the *Democrat* out of business with a lawsuit. At some point Steve Susman told me that during the time the case was being prepared for trial—told me that if they were not successful that the Pattersons were going to sell the paper.

JM: Say that again. I was reading . . .

PA: At some point during the preparation of this case for trial, Steve Susman told me that, if the *Gazette* was not successful in its lawsuit against the *Democrat*, the Pattersons were going to sell the paper.

JM: Okay. Did that surprise you?

PA: It did surprise me.

JM: Were you aware at the time that the suit was filed and went to trial that Patterson

had tried to—apparently had tried to negotiate a sale back earlier in 1980 and 1981 with—did you know that?

PA: Yes. Yes, we knew that. We had the documents that I showed you earlier today. Those were produced during the discovery process. We knew that Hugh Patterson had talked to the *New York Times* about selling the paper to the *New York Times*. We knew that he had talked to the *Los Angeles Times* about selling the paper. We knew that he had shopped around. The most we could glean from people that we talked to who were very closed mouth about the matter—that is people in the industry—was that Hugh wanted too much for the newspaper—that his asking price was not reasonable. And I think that the *New York Times* matter fell through, because Hugh wanted to continue to run the paper after selling it to the *New York Times*. Now, these are old memories and I can't tell you where I got them, but I can tell you that this was suggested to us during the investigation that we made of his efforts to sell the paper. We made an extensive investigation, and we could not turn up much that was useful in the trial.

JM: Okay, in other words they would just become an arm of the *New York Times*—a mini *New York Times* in Little Rock, Arkansas in which they would continue to operate the paper though, but they would have the *New York Times*'s revenue resources behind them.

PA: Yes.

JM: Yes, okay. If the—I know that the—Susman contended that—and I think that some of his expert witnesses contended that Little Rock was really a one newspaper market. That it wouldn't support two newspapers, and I take it you said earlier that you didn't necessarily agree with that position.

PA: I don't agree with that. There are economists around the United States who developed, if you will, a practice in determining that two newspapers could not survive in particular markets, because there was a consolidation of newspapers going on around the country under the Newspaper Preservation Act. That is, it permitted newspapers to enter into a joint operating agreement. This was a theory of convenience to the industry, if you will. There were people who developed models showing that two newspapers couldn't succeed. The Justice Department has its own economists to test these theories, but the Newspaper Preservation Act spawned a little industry that had as its thesis that newspapers could not survive in competition with one another in many of the markets in the United States.

JM: Even if it had been the case that Little Rock wouldn't support two newspapers, would it have been wrong for the smaller newspaper to try to survive?

PA: No. There wouldn't have been anything wrong with it at all. The antitrust laws encouraged that. It's the great American way.

JM: At one point—and this may have been something that he told—that Susman told a reporter—I don't remember if he'd said this in the trial, but he said that by the end of 1985 that the *Democrat's* legal fees were already at \$500,000, which was \$100,000 more than the *Gazette's* legal fees.

PA: I don't remember seeing that at all. I think that I would have remembered that. I don't believe that it is true. I know Steve, who is an old friend, and we've worked together in antitrust suits before. Steve is one of the leading antitrust lawyers in the United States today. He's been enormously successful, but Steve has always commanded high fees.

JM: One of the points in contention in the suit—antitrust term—is relevant market.

There was—I think that the two sides disagreed on what the relevant market was. Was there ever a determination of what the relevant market for the newspapers was? And do you remember that?

PA: That's always an issue in any antitrust case. You've got to define the market. Jerry, I know it was an issue in that case, because it's an issue in all antitrust cases. But I don't remember that we had much of a disagreement over that. I don't remember the particulars. I think that we came to an agreement in that case on what the relevant market was.

JM: How was the *Gazette* going to claim that there was a danger of success of a *Democrat* monopoly—that there was going to be a demonstrable danger of the *Democrat* developing a monopoly if the *Gazette* was still making money?

PA: That's why the lawsuit seemed so foolish and ill advised, because it seems obvious that as long as it was profitable, as long as it was dominant in circulation, advertising, and revenues, then it couldn't show that the *Democrat* had market power. Because market power means the power to set prices, and the *Democrat* did not have that power. The *Gazette* itself had market power, because when it raised its advertising rates advertisers felt that they had to be in that newspaper. It raised rates and took advertising dollars from the advertising budget that could have been used to buy advertising in the *Democrat*. In other words by raising its rates—which it had the power to do because advertisers had to be in that newspaper—it was making advertising dollars unavailable to the *Democrat*.

JM: This was back earlier years in the 1970s and everything.

PA: That's correct.

JM: So in particular the *Gazette* had a lot of readers and—as you said in affluent areas

and in West Little Rock and something like that. So the people that sold to them, and the big department stores who sold to those areas, or the fancy boutiques, they knew that they wanted to reach those people. So if the *Gazette* raised the rates for those ads, then those advertisers felt they had to have those ads. So they would take those ads, and then say, “Well, I don’t have as much left in my advertising budget.”

PA: That’s right.

JM: “I’ve got to cut somewhere.”

PA: That’s what the *Democrat* salesmen ran into when they were trying to sell advertising for the *Democrat*.

JM: This goes back to one of the questions . . .

[End of Tape 1, Side 1]

[Beginning of Tape 1, Side 2]

JM: Phil, one of the issues that came up in the trial was that the *Gazette* was talking about how much money that the *Democrat* had lost and was willing to lose, and to finance its competition—its unfair competition in their view. There was a monstrous difference in how much the two sides said they’d lost. I think that the *Gazette* claimed that the *Democrat* had lost \$50 million, and the *Democrat* said the actual losses were \$17 million. Is that correct?

PA: The \$50 million figure was outrageous. I don’t recall how they calculated that, but that was absolutely outrageous. I don’t remember the exact number now. I do know that it was a point of evidence in the trial what our books showed—or what the newspaper’s books showed. If the news article said \$17 million I will accept that, but I can tell you it was not \$50 million. That was absolutely absurd.

JM: We talked at some point in time—and I talked to people at the *Democrat* about how involved they were in getting ready for this trial. They had taken all of their people over there digging up documents and everything else to do—and lots of things. Do you have any idea how many defense attorneys that you used on this case?

PA: I can tell you something about the trial preparation, and working with the people at the *Democrat*. And I'd like to tell you about that, because that was an unusual experience for me. It was remarkable really in so far as the lawyers working on the case. Peter Kumpe was on the case. Leon Holmes, who is now a United States District Judge, was a young lawyer cutting his teeth on the trial of that case, and sat with us at counsel table. Annabelle Clinton at that time—now Annabelle Clinton Imber, who is on the Arkansas Supreme Court—was a member of the trial team. There may have been other lawyers with us, but my belief is that that's the lot. Annabel Imber, Leon Holmes, and Peter Kumpe worked with me. They all had specific areas of interest. And what I wanted to tell you about trial preparation was that we had very many documents. The document production started immediately upon joining issues in this case. Walter told me that he wanted me to get the case to trial as quickly as we could. He didn't want any delays. He wanted us to get a trial date, and hold on to it. He wanted us to respond to discovery within the thirty days allowed for doing so on the various requests for documents. We didn't get any extensions of time. We were on a fast track. The case was filed on December 14, 1984—excuse me December 12, 1984, and was tried in March of 1986. There was enormous discovery on both sides. There was no protective order. We tried to work out a protective order to protect informa-

tion that was deemed confidential, proprietary, competitive information. We wanted to restrict financial information from the *Democrat* just to the lawyers for the plaintiff and Hugh Patterson, and we would agree to restrict the information obtained from the *Gazette* just to Walter Hussman. They didn't want to do that. We were on a conference call with Judge Overton—that is the lawyers were, and Walter Hussman was on the conference call with us. We were trying to work out a protective order to protect the financial information. Walter realized that he was not going to be able to keep his information completely away from people other than Hugh Patterson. He said, "We just won't have a protective order. Let's abandon the effort." So everything that was produced in discovery was available to everyone. About a month before the case went to trial, Walter and Paul Smith and the other principal people at the *Gazette* for advertising—the advertising manager [and] the circulation manager, came to our offices.

JM: Do you mean at the *Democrat*? You said the other officers at the *Gazette*.

PA: I'm sorry.

JM: Yes, okay.

PA: I've done that before.

JM: That's all right.

PA: And I apologize for misspeaking. The other principal *Democrat* officers—advertising and circulation—came to our offices. At that time I was practicing with Wright, Lindsey & Jennings, and we had a large room set aside where all of these exhibits were kept. The people from the *Democrat* worked all day every weekday into the night going through the evidence that we had obtained from the *Gazette*. They started work I think around 6:00 a.m. at the *Democrat*, and came

over to our offices around 9:00 a.m. or 9:30 a.m. And they stayed into the night going through reams and reams of documents. And they turned up numerous instances of off-the-rate-card deals that the *Gazette* had been putting together in recent years. That is to say, undercutting their statement that they [the *Gazette*] didn't sell off the rate card. They did sell off the rate card. The biggest mistake that they made was selling off the rate card and giving a small advertiser a better rate than Dillard's got. When Mr. Dillard found out about that, he removed his advertising from the *Arkansas Gazette*.

JM: Was that why he—do you remember who the small advertiser was?

PA: I don't remember who the small advertiser was, but I know that Walter Hussman had a copy of the *Gazette* invoice.

JM: Yes, okay. And they had accused the *Democrat*—is that correct? Of selling off—going off the rate card, and that's one thing they were finding fault with the *Democrat* about?

PA: That is correct. They were saying that it was an unfair practice by offering advertising deals off the rate card.

JM: Which would have been cheaper than if they had paid the rate card price for advertising. Is that right?

PA: Yes, much cheaper. Among the documents that I've given to you, there is a memorandum from Marilyn Ryburn who worked in advertising. She complained that something—she complained that she was being asked to send invoices that were not consistent with the rate card. She said, "We tell our advertisers that we will not sell off the rate card, and I've been doing it and this is the same thing that you've been accusing the *Democrat* of doing."

JM: And she was working for the *Gazette*?

PA: She was working for the *Gazette*.

JM: Okay.

PA: She was in the advertising department of the *Arkansas Gazette*.

JM: And what was her name? Marlene?

PA: Marilyn Ryburn.

JM: Okay.

PA: There is a memo, and she said, “I’m very unhappy about this practice, because it looks like we’re doing exactly the same thing that we are accusing the *Democrat*.”

JM: How long did this go on that all the *Democrat*—forgive the colloquial phrase—honchos spent over here going through all those . . . ?

PA: They started a month before the trial, and they went right up to the day of the trial.

JM: Is that right? Hours and hours and hours . . .

PA: Hours and hours and hours. They came over to the law firm’s offices, and sat down, and went through all of the *Gazette*’s invoices for advertising for years. And they found numerous instances of the *Gazette* doing exactly what it was claiming that the *Democrat* was doing, and claiming that what the *Democrat* did was unlawful.

JM: What other types of documents were involved in all of this discovery? You said—I think I saw at some point—is that correct that there was maybe 8,000 documents involved?

PA: There were more than 8,000 documents. I’m looking at one document here that’s from the *Arkansas Gazette*. These are the *Gazette*’s document numbers on it. This is 87,771. There were hundreds of thousands of documents.

JM: Okay. Okay. How many were used as exhibits? What would be your recollection on that?

PA: I don't have a recollection. I can tell you, because we have the exhibits downstairs.

JM: No, that's okay.

PA: We have an index of the exhibits.

JM: That's not all that . . .

PA: There were a lot of exhibits.

JM: That's not all that key issue. You had—and I assume that it worked both ways that you had documents, that you had minutes of their board meetings. And what other type of documents were there?

PA: We had minutes of their board meetings, minutes of the *Gazette's* committee meetings, a wide range of information from their accounting office of financial information about the *Gazette*, circulation information about the *Gazette*, everything about the business operation of the *Arkansas Gazette* for a number of years we had. And they had the same information from the *Arkansas Democrat*.

JM: Okay. How did you decide what all you were going to subpoena?

PA: We would work with our client and ask the client, and ask the client what information we should ask for from the *Gazette*. We were told that generally that both sides opened the books to the other side.

JM: Okay. Okay. So everybody got to look and see what the other side was doing.

PA: That's right. That's exactly right. It was all out in open view.

JM: Okay. In your perusal of all those documents, particularly the documents that came from the *Gazette*—and I've heard a number of the people from the *Democ-*

rat say this—that in all this competition—so to speak—the war—so to speak—that they thought that the *Gazette* had been very arrogant about the way that it conducted its business and the way it dealt with the *Democrat*. Did you form an opinion about that?

PA: Yes the *Gazette* was imperious—if you will—in the way it treated advertisers. And it made some advertisers furious. I remember that movie advertising was particularly bad. The restraints and demands that the *Gazette* made with regard to advertising for the movie theaters. The movie theaters had to have advertising in the *Gazette* for the same reason that other advertisers had to be in the *Gazette*. The *Gazette* set demands on how the copy was to be delivered, how soon the copy had to be delivered prior to publication. It made rate increases at will. The advertisers felt like they had to go along. That rate increases weren't discussed with the advertisers. They were just imposed on the advertisers. There were many furious advertisers, and some of them testified at the trial. They testified that the *Gazette* was demanding, and very difficult to work with.

JM: And they would refuse to change the ad. Somebody would come back and say, "Okay, I want to change an ad." And they would say, "No you can't do it."

PA: That is correct.

JM: Yes. In some cases that involved—they had prepared an ad to sell certain merchandise, and certain merchandise didn't arrive. So they wanted to change to something else.

PA: That was the testimony that we got from the advertisers who had had bad experiences with the *Gazette*. It was unyielding in its demands upon the advertisers, and treated the advertisers in a way that did not make them happy.

JM: How about what was going on in their board meetings. What were they—can you give me a synopsis of what kind of attitude is going on by the *Gazette* people?

PA: The *Gazette* board minutes of April 1984 contained a report from an advertising manager that the *Democrat*'s response to the *Gazette*'s advertising programs was weak and ineffective. This was eight months before they filed their lawsuit saying that they were going out of business. The minutes also stated that 1984 was a very good year. There were minutes after the lawsuit was filed stating that 1984 was a very good year, and minutes stating that 1985 was looking like a very good year. The minutes of the board meetings contradicted the testimony from the witness stand and the allegations that the lawyers were making about how dire the *Gazette*'s situation was.

JM: And then, I believe, that you had evidence of—some of which you presented—about the salaries of . . .

PA: The salaries in 1986 dollars were generous for the Patterson family. The Pattersons made a very good living from the newspaper. Their salaries were not going down. They were going up.

JM: At the same time they said they were suffering?

PA: Correct.

JM: Yes, okay. At some point—and you may have made this point yourself—that you said the *Gazette* could have made—they were making money anyway, and they could have more money and still could make more money if they had operated more efficiently.

PA: Yes, the minutes of committees of the *Gazette* reflected a thread of expressed concern about how they had to keep costs down. The costs were continuing to es-

calate. Statements were made—“We have too many people around here” [and] “We’re going to have to stop hiring.” Those complaints continued for several years going right up to the time of trial. Apparently, they couldn’t get control of their—or didn’t get control of their costs. They didn’t do whatever they should have done in order to get control of their costs. They bought top-end equipment. The presses were top-of-the-line presses. The computer system used by the *Gazette* was absolutely top-of-the-line. Walter Hussman had a computer system that I think he bought second hand for \$25 thousand. It was a rubber bands and chicken-wire sort of thing. He ran a low-cost operation. He knows how to stay on top of costs, and he kept them down. He competed on a shoestring compared to what the *Gazette* was spending on its own operation.

JM: Did it appear that maybe Hugh just wasn’t willing to make those cuts, or was it clear whether he didn’t know how? Or he just wasn’t willing?

PA: I think he wasn’t capable of doing it.

JM: Okay.

PA: Whether that’s a lack of knowledge of what to cut or lack of will, I’ll let others determine that. He was not capable of doing it.

JM: Did you find any evidence in all the exhibits and everything that you subpoenaed that—how they were responding to what the *Democrat* was doing as the years went on? Why they didn’t respond say quicker to free classified or lower rates on . . . ?

PA: The—I didn’t let you finish your question.

JM: That’s all right.

PA: They waited too long to respond on free classifieds. That was the—the free clas-

sifieds made classified ad reading in central Arkansas at least—it made a subscription to the *Democrat* essential for people who read classified advertising. Because people were reading classified advertising, it meant that the advertising that was sold to automobile dealers and others—it made it an essential buy. The classified advertising section of the *Democrat* became an essential buy for those who buy classifieds, because of the free ads. The *Gazette* simply didn't respond to it. When it did respond to it—it had some program that was 'three three three' . . .

JM: Yes, I remember that now.

PA: But it was a sad response. It was too late and too little. By that time the *Democrat* had established its position as the paper with the best classified advertising section. Those free classifieds are still being given away. I mean they are still available at the *Democrat-Gazette*.

JM: As I recall Paul Smith came up with an ad that said, "Who needs 'three, three, three' when you can get free, free, free."

PA: That's exactly right. [Laughs]

JM: I would have to interject in here that some of us news types—you know, news people from the news side—probably learned something from this lawsuit. We discovered that people took the newspaper for something other than to read the news. [Laughs]

PA: That's correct.

JM: Particularly I think that the *Democrat's* circulation went up considerably when they started giving away free classifieds for people who wanted to read the classifieds.

PA: People are looking for jobs. They are looking for automobiles. It is for some people—for a segment of the population—an important part of a newspaper. The *Democrat* established itself firmly with free want ads.

JM: So that was just the—did you ever see any minutes from the *Gazette* whether they had discussed it in the board meetings or anything?

PA: I can't recall at this point, Jerry.

JM: Okay. Did you ever get any . . .

PA: I know that they did discuss the free want ads.

JM: Yes.

PA: I know about that, but I can't tell you the details of the discussion.

JM: Okay. Did you get anything—and I've been told this at several points and I've seen this on both sides of the interviews and everything that Hugh was telling the people that worked there, "Don't worry about it. We're going to win this war. The *Democrat* is not a real threat." He was going off—a couple of places I've heard where he went into the newsroom and talked to them about it. Did you run across any of those statements?

PA: I don't recall that. I'm not saying that it didn't happen. I'm just saying that I don't recall it. I do know that Hugh said things about the *Democrat* and Walter Hussman that were unfavorable. He looked upon Walter Hussman as a businessman who didn't follow ethics—who didn't follow business ethics. He looked upon him as unethical.

JM: Did he ever say what those ethics were that he was fighting for?

PA: I think that it was clear that the unethical behavior was offering advertising for prices that were lower than those of the *Gazette*.

JM: [Laughs] It was giving away free classifieds.

PA: Free classified advertising.

JM: Yes. Yes. I think that maybe, at some point in time, he had said that was one reason he didn't want to go into a joint operating agreement, though too. I think he talked about the whole Hussman operation at one point in time.

PA: He pretty well demonized Walter Hussman—or attempted to—in the community. He may well have said something about all of the Camden News Publishing Company's operation.

JM: Phil, what is the difference that the suit was filed as a federal antitrust lawsuit and also charging violations of the state unfair practices act? What is the—explain the state law, and what's the difference . . . ?

PA: Arkansas doesn't have a well-developed antitrust statutory scheme. The unfair competition statutes and statutes that come close to being antitrust statutes are old. At that time we didn't have some of the acts that we have now that can substitute for what the federal statutes do, although there is not a strong antitrust body of state law. The federal statutes are reliable. There is a lot of law on what they mean. There are a lot of cases construing the statutes. It is a clear road map of where to go. The suit could have been filed in state court. It wasn't. Under the federal antitrust laws there could be treble damages if there is a recovery—damages would be trebled. Quite literally the victory by the *Arkansas Gazette* in this case—if the newspaper had received the actual amount of damages that it sought—would have closed down Camden News Publishing Company in my opinion.

JM: And the *Democrat* along with it. They are all . . .

PA: Yes, all of those.

JM: All of those, okay. What did they wind up asking in damages? When they first started out they were saying anywhere from \$23 million to \$123 [million] or something like that, but didn't they wind up at the end choosing a lower figure?

PA: It was a much lower figure. I can find out what it was, but I cannot tell you precisely what it was.

JM: I may have that figure. Sometimes I will remember it was something like either \$6 or \$8 million in actual loses and then another \$60 million or something that they said the worth of the paper had gone down by that much. They added those two together. Does that sound correct?

PA: I just can't . . .

JM: Okay.

PA: I just don't remember. I do know that at the time that I knew the treble damages would be devastating for the company—for the whole enterprise.

JM: I think that it came up and didn't they contend that, at one time, Walter was being financed not only by the papers, but also by his cable television and all of that?

PA: They did contend that. That was not true.

JM: Yes, okay.

PA: And they found out that it wasn't true, but that was part of their contention. The cable television companies didn't contribute anything to the publishing enterprise.

JM: I'll go back to that state law just a minute that it provides—am I correct—that you can't sell anything below cost if it's designed to give you a competitive advantage. Is that correct?

PA: That's—you have correctly stated the state law.

- JM: Okay. And of course you got an innocent verdict on that also?
- PA: Correct. Well, it was a [verdict in favor of the] defendant. I mean it was not “innocent” as a criminal law concept.
- JM: Oh, okay. Okay. All right, I understand. Okay. Now in other circumstances, if the *Gazette*—in the conditions they were in at the beginning of this period—had given away advertising and increased their news hole to huge proportions, could they have been in violation of the antitrust act?
- PA: Well, I think there would have to be—I think what you would have to do is look at the totality of the circumstances. If it undertook predatory practice activities, and we could demonstrate that it was with the intention of putting the *Democrat* out of business, then, yes, it could have. If they had engaged in forbidden conduct under the antitrust laws, they could have been sued and would have been liable if we could prove it.
- JM: And my point being, of course, that they, being the dominant newspaper, would have been a lot more susceptible to such a suit if they had been committing such acts.
- PA: My belief was that all during this time that the *Democrat* was so far behind [and] was in such a desperate situation that there was nothing that it could do that would violate the antitrust laws, because it didn't have any market power at all.
- JM: Was Walter Hussman—his actions say between 1974 and 1979 when it was I think could have been rather obvious that—could that have been used as some kind of evidence that he didn't come into the market intending to run the *Gazette* out of business? That he was just . . .?
- PA: We believe that we proved that his actions were honestly industrial, and we

proved that. And yes, everything that went on early he was looking for a number two spot in the market. He testified that that's what he wanted, and that he would be satisfied with modest profits.

JM: I notice as a little sidebar—and I took some interest in this, because I know her—why didn't the judge allow Gale Arnold to testify?

PA: Gale had been in the courtroom. Gale was not listed as a witness as I recall. She had been advising Steve's side. I think she inserted herself into the lawsuit. You will recall that the lawsuit was originally filed not only against Camden News Publishing Company, the *Arkansas Democrat*, and Walter Hussman Jr. but also against Walter Hussman Sr. and Mrs. Hussman.

JM: I remember that, okay.

PA: And they were not in good health. Gale went nevertheless—tried to give the other side whatever information she thought would be harmful to her brother. At the beginning of the trial—the first day of the trial—Steve Susman on behalf of the *Gazette* dismissed claims against Mr. and Mrs. Hussman Sr. We had the rule on witnesses. That is, if a party is going to be a witness and the other side asks for the rule on witnesses, the witness will be excluded from the courtroom, and would not be permitted to stay in the courtroom and then testify. The night before Steve was about to rest [his case] he called me. Walter and I had been working on documents. It was about 10:00 p.m. at night. We were in the elevator hall and the phone rang in our offices. It was Steve Susman, who said he was calling to say that he was going to call Gale as a witness the next day. He indeed tried to do so, and we objected because we had asked for the rule on witnesses, and she was present in the courtroom. Steve had some argument that she was the best and

only person who could testify to something. She, presumably, was going to testify that Walter hoodwinked her father or something about buying the newspaper, but it was not helpful.

JM: At some point in the trial they brought up the issue of the redesign of the *Gazette*, and whether or not they had lost some advertising and circulation during all of that. I was working out-of-state at the time, and I wasn't sure what redesign they were talking about. Do you know?

PA: I don't remember what the design elements were, but I do remember that it was not successful. People didn't like the paper with the new design, so they changed back. They went back to the old format. This happened about the time [that] Coca-Cola introduced a new formula for Coca-Cola and did not market the original formula. New Coke, as it was called, was a disaster. It was soon withdrawn from the market, and the original formula restored. I asked Hugh Patterson on cross-examination if the new design of the newspaper was like New Coke. I drew an objection from Steve Susman, and the judge sustained the objection. He told me to move on, but I had made my point that it was a mistake. They had another advertising program that I remembered only this morning before you arrived in looking through some of the minutes of the meetings. They had a new advertising director, and he had a program called 'I *Gazette*-it.' That's I *Gazette*-it. It sounds to me like the dumbest thing in the world. They were going to have bumper stickers. If somebody got a bumper sticker that said "I *Gazette*-it," they could put that's person name in a drawing to get a new car. If it sounds crazy, it was. If it sounds crazy now, it sounded crazy then.

JM: Yes. [Laughs]

PA: It was just so foolish and meaningless.

JM: I'm wondering if that redesign—you know, at some point in time—but I'm not sure at what point in time this was—they brought in an editor from the *Washington Star*, which was the defunct *Washington Star*.

PA: McIlwain?

JM: Yes, McIlwain. You're right. And they wanted him to redesign the paper. I know I've been told that that didn't last long, but I didn't know whether maybe they redesigned some stuff that he had suggested, and then decided, "No, we don't want to do that."

PA: That is—now that you mention it, I think that you're exactly right. There are some minutes stating that Mr. McIlwain had been terminated because he was going in the wrong direction—or what proved to be the wrong direction.

JM: [Laughs] Okay. Oh my, oh my. Well, maybe I can find out about that from somebody else. Why did—and you surely have formed an opinion about that—I noticed that Steve Susman said—maybe it was in closing arguments—that he had never had a witness as clever as Walter Hussman. What was that all about?

PA: He also said that in a book. There was a book that was published after the trial and each chapter featured a lawyer, and the lawyer was permitted to write about his great cases. Steve Susman had a chapter. He referred to Walter Hussman. What happened was that Walter's deposition was a little shaky in some places. Walter had never given a deposition before. He was somewhat tentative. Walter underwent a change during the time we were working on this. He became less tentative and more forceful. He realized that he was going to have to win the lawsuit himself.

JM: Yes.

PA: That it was up to him. It was wonderful to watch. Steve Susman came at Walter expecting to find the tentative person whose deposition he took. He bored in on him immediately in cross-examination, and Walter roared right back and bit him. But what Steve was trying to get him to testify to was wrong, and Walter told him it was wrong. He said, “You should know that was wrong”, and told him why. Walter was a tiger on the witness stand. Steve said in this book and also told people at the antitrust conference where he lectured after the trial that he had never seen such a transformation in a witness.

JM: Now then, you won the trial. Not long after that, the *Gazette* sold the paper to Gannett. They came in here and immediately announced that they had deep pockets, lots of money—I know they had lots of money, and they knew how to do this business. And they started spending a lot of money. Is that correct?

PA: That’s correct. The sale was announced on October 31, 1986—Halloween, appropriately enough. The sale was completed at the end of the year. When Al Neuharth, the chairman of Gannett, was here in connection with the announcement of the purchase, he said, “Our firm has deep pockets.” Somebody asked him how to pronounce the name of his company, and he said, “The accent is on the ‘net.’” They made no secret of the fact that they had deep pockets, and they were going to spend their money. And they did. They slashed subscription rates to a degree that was ludicrous. They weren’t even paying for the newsprint. They spent a lot of money. They immediately went into the red. As I said to you earlier, the *Gazette* had shown a profit for many, many years—all through the Great Depression. It had never had a loss until Gannett bought the paper. Gannett lost

money the first year, lost more money the second year, and progressively it lost money. When we went to the Department of Justice in regard to acquisition of the *Gazette* assets when the *Gazette* closed, the lawyers for Gannett had charts with a bar graph showing in color, in red, each year of the paper's operation and the amount of the losses that the paper experienced that year. Each year the red bar graph was longer. The people at the Department of Justice said, "This is a cumulative chart. Isn't it?" And the lawyer for Gannett said, "No, those are annual figures." The year they closed up until the day that they had shut the paper down, they had lost \$30 million dollars in Little Rock—\$30 million in less than a year. The losses were incredible. They were incredible, but they weren't material on Gannett's balance sheet. The lawyer for Gannett said, "Look. We've tried it. We've done everything we can to improve the paper. We've had surveys. We've followed what the surveys showed. We can't change the paper to make it more successful. Walter is going to stay there year, after year, after year—and take his losses. We have a better way to spend our money."

JM: That's what he actually said—told the Justice Department? Right?

PA: No, that's what he told me.

JM: Oh, told you. Okay.

PA: He didn't tell the Justice Department that.

JM: No, okay.

PA: He told me that as an explanation of why they decided they would go ahead and sell.

JM: Okay.

PA: They did tell the Justice Department that they had done everything they could to

improve the paper and to satisfy the market. And that they were unable to achieve the gains that they would have to have in order to continue business.

JM: Did you at some point in time consider suing Gannett for antitrust violations?

PA: Yes we did. Ultimately, of course, we didn't. One of the considerations was that everything that Gannett was doing with the *Gazette* resulted in lower costs for the consumers—either the readers because of lower subscription costs or advertisers .

..

[Tape Stopped]

[End of Tape 1 Side 2]

[Beginning of Tape 2 Side 1]

JM: This is Jerry McConnell again. Phil, this is the start of our second tape. On the other tape you were talking about that you had considered the possibility of suing Gannett for antitrust violations, which you were mentioning that one of the things they did was making it cheaper for the consumers, so go ahead.

PA: That's right—cheaper for the reader, because of lower subscription rates, [and] cheaper for advertisers because of lower advertising rates. We concluded that, given the history of the newspaper competition in Little Rock and the fact that all of the things that Gannett was doing resulted in lower prices, that it would be difficult to convince the jury that Gannett was doing something that was prohibited by the antitrust laws. It would be difficult to pursue a lawsuit where the only damage was to the competitor and, arguably, not the competition. So we didn't file a lawsuit. I talked to John Stuart Smith, Gannett's lawyer, about this when we were working together to work out a plan to buy—for the *Democrat* to buy the assets of the *Gazette*. He said, "We expected you to sue us." He said, "When we

cut the circulation rates we thought for sure you would sue us.” And he said, “I was going to use the same arguments against you that you used against Steve Susman.”

JM: [Laughs] Okay, he was the attorney for Gannett?

PA: John Stuart Smith was Gannett’s lawyer.

JM: Okay, how did he spell his middle name? Stuart . . . ?

PA: S-T-U-A-R-T.

JM: Okay. John Stuart Smith. Okay.

PA: He is now deceased, but he was a fine lawyer.

JM: Yes, okay. All right. So he was laying in wait for you?

PA: He had all of our arguments. They had exhibits from the trial. They had a complete library of what we had introduced and what our arguments were.

JM: Okay. Explain to us—and I’ve seen some explanation from Walter—but explain why the *Democrat* bought the *Gazette* assets and how all of that worked. You didn’t buy—what you didn’t buy—you didn’t buy the paper so to speak.

PA: No, we—no. There was no merger.

JM: Yes, All right. Okay.

PA: The paper was not purchased. The paper was put up for sale as required by the Justice Department. The Justice Department said that it was not going to take any action to stop the *Democrat* from buying the assets of the *Gazette*. There was quite an effort made to sell the newspaper and that was unsuccessful. People who looked at the books of the paper saw what a dreadful condition it was in, and what serious losses the paper had incurred under Gannett’s ownership. No one was interested in buying the paper, so they closed the paper. The *Arkansas Democrat*

purchased the assets of the paper. It was not a merger. It was not an acquisition of the paper. Now, Walter had asked the Justice Department when they made their decision about what they were going to do that they let us know on Monday—on a Monday, so that arrangements could be made for Sunday delivery. It was as far away from the Sunday delivery as you could get. The integration of the *Gazette* routes into the *Democrat* routes could have been accomplished with difficulty but with—at least—better results than absolute chaos with more time. The Justice Department's announcement and the press release were distributed on Friday morning, so the circulation people ended up by delivering both routes. And sorted it all out later.

JM: As time went on.

PA: As time went on they sorted it out. And also, we closed on that Friday because of the concern about damage to property and the like if the *Gazette* continued in operation over the weekend. There were serious concerns about property damage, so we closed the purchase that day.

JM: What kind of property damage were there concerns about?

PA: Well, Jerry, there were concerns that there could be damage to the presses or to other property at the newspaper. The situation in the *Gazette* newsroom was bad that day—the day that we closed the purchase of the assets. There was drinking going on there, and a general undercurrent of rowdiness. There had been some comment made about changing the locks on the *Democrat*—I mean on the *Gazette* building. But, given the animosity of the *Gazette* staff towards the *Democrat* at that time [and] given the unruly behavior that was going on in the *Gazette* newsroom, I would say that we all came to the collective notion that it would be

better to just to go ahead and preserve the physical assets—secure the physical assets as best we could, and protect the physical assets.

JM: Okay. Now, if the *Democrat* had merged with the *Gazette* or had actually bought the *Gazette*, they would have been—is this correct—they would have been liable for those losses that Gannett had incurred?

PA: No. Those losses had been incurred, and had been paid for. The merged company would have come as it was. Essentially, it just would have been taking the paper as is. The *Democrat* preferred to buy the assets. It preferred for Gannett to close the *Gazette*.

JM: Okay, but why . . . ?

PA: It was preferable for Gannett to close the business.

JM: I understand that, but why? That's what I'm . . .

PA: Well, because the *Democrat* didn't want to close it.

JM: Okay.

PA: That's why.

JM: Okay, because of damage to its reputation?

PA: No. No, it wasn't that. It was a sad time. It was a very sad time, but the *Gazette* was where the *Gazette* got to be because of actions that were taken that in hindsight turned out to be a series of bad business decisions by the Patterson family and by Gannett. It was a sad time. The situation came about because of actions that Gannett took. Gannett knew it. It was Gannett that gave up. It was Gannett's lot to close the paper.

JM: Okay. Walter at some point—I may be confused about this a little bit too—but, at some point, he was making the point about why you didn't allow the *Gazette* to

publish one final edition. What was the rationale on that? Why couldn't they publish, say, one more time?

PA: Because of the danger—from my standpoint?

JM: Yes.

PA: The final decision was made by Walter, because Walter makes the final decision on everything. I can't speak for Walter Hussman [Jr]. I can tell you what my concerns were. My concern was the longer the printing plant and *Gazette* building stayed open the greater the danger was to the property. It was—as I said I can't speak for Walter Hussman—I was seriously concerned about the plant and the equipment. Walter ultimately made the decision to go ahead and close the transaction that day with Gannett. Gannett—as soon as they knew that the Justice Department was not going to sue—was ready to close. And did so.

JM: I may have misunderstood this, because I understood Walter to say that the reason that he didn't allow them to publish another edition was fear of incurring extra expenses. It could have been—I don't know—it could have been—I don't know what that was all about, so maybe I misunderstood that.

PA: You may not have. What Walter acted upon, he acted upon. I, frankly, don't remember cost being an element, but Walter has a better memory than I do.

JM: Okay.

PA: And there was concern because we sent the security people over to the *Gazette* newsroom with Paul Smith to tell them that he would take applications for jobs and all that sort of thing. The newsroom was a dangerous place. There were people who were drinking in the newsroom. There was rowdiness. I wasn't there. That was reported to me. But, it was a sad day for the *Gazette* people. I still fully

believe that it was the right thing to do.

JM: You had asked the government to let you know on a Monday, so you would have time to work out some of these details before that weekend . . .

PA: Correct.

JM: . . . before the next Sunday paper.

PA: Right.

JM: And then they didn't let you know.

PA: No, they didn't let us know. That was as about as late as the last business day of the week.

JM: Yes, so at any rate. Okay. It's curious you know—I guess—that a lot of the animosity was still directed at the *Democrat* rather than say at Gannett.

PA: Oh, that's right. The animosity was directed at the *Democrat* and at Walter. It was the Gannett Company that pulled the plug.

JM: So Gannett just said, "We can't cut it, so we're going to shut it down."

PA: That's it.

JM: Yes.

PA: Well, they had conducted a survey to see what they could do to improve the paper, and they found out that there was nothing that they could do to improve the paper. With nothing to do to improve the paper, they felt like they should shut it down, and [they] made that explanation to the Department of Justice.

JM: How long had you all known that they were considering this or wanting to do something about that they were wanting to get out? How long had you all been talking to them before all of this happened?

PA: Jerry, my recollection is that we entered into a contract with Gannett in Washing-

ton [D.C.] on July 3. And then worked through it to—it was October when the sale took place.

JM: I think that's right. Yes.

PA: And worked through it after that.

JM: Did word leak out that this was—do you remember was there . . . ?

PA: Also, we had to provide the Justice Department with an enormous amount of information—both sides did.

JM: What sort of information?

PA: Financial information.

JM: Oh, okay.

PA: Word did leak out. I don't know how it leaked out. I do know that there was a “do not disclose” provision in the contract between the *Democrat* and Gannett. The penalty was enough to prevent anybody from deliberately violating it. I know there were Herculean efforts on both sides to keep this quiet. I know that when the contract was signed, we didn't know just what all of the assets were, because Gannett's lawyers didn't want to ask the *Gazette* to give it to them. That is to say, they didn't want to alert the staff in Little Rock that there might be a sale.

JM: Oh, okay. Okay. I had heard that there was some people saying, “Oh, we think that we are about to go out of business” or something like that. And others saying, “No. I don't think there's anything to it.” But they sent in—Gannett sent in—as I recall—a guy from Denver [Colorado] who they said was—sort of his—they discovered later—I think—that his specialty wasn't newspapers, it was closing down newspapers. [Laughs] I think they sent him in as a publisher or something. I can't even remember his name now, but they sent someone in there who .

..

PA: Knew what was going to happen.

JM: Yes. And knew what was going to happen, and was getting prepared for that.

But at any rate so, okay—very interesting time [and] a very interesting interview, Phil. Now, let's go back and get some of your background information. We had said that your name was Philip Sidney Anderson, and I believe that you told me that you were a native of Little Rock. Is that correct?

PA: I was born in Little Rock. I went to the University of Arkansas for undergraduate school and law school, both.

JM: Okay. Where did you go to high school?

PA: Well, this started out during the war years. In 1942 my father was in the Corps of Engineers—he was part of the mobilization of troops following the Japanese bombing of Pearl Harbor. My father was a captain. He had been in R.O.T.C. [Reserve Officer Training Corps] at the University of Arkansas. We moved to Omaha, Nebraska for him to prepare to go to Oak Ridge, Tennessee, which was part of the Manhattan project. My father was in charge of housing at Oak Ridge. That was because the Corps of Engineers was building a city. I went to high school in Oak Ridge. I went from the third grade through my junior year of high school at Oak Ridge. In the middle of my junior year of high school, I moved to Marked Tree.

JM: Marked Tree, Arkansas.

PA: In eastern Arkansas. My dad had bought a farm in Poinsett County. I graduated from high school at Marked Tree.

JM: What was your—let's go back—when were you born?

PA: May 9, 1935.

JM: May 9, 1935. Okay, and what was your dad's name.

PA: Philip Sidney Anderson.

JM: Okay. [Laughter] Okay, you're a junior then. Okay. What was your mother's name?

PA: I dropped the junior when dad—well, actually it was before dad died. I talked to him, and said, "I'm thinking about dropping the junior." He said, "Phil, you can do anything that you want to. If you want me to be Philip Sidney Anderson Jr., I will be." Mother was Francis Walt. She was born at Scott [Arkansas].

JM: W-A-L-T?

PA: W-A-L-T. Dad was born in Fort Smith [Arkansas].

JM: Was he?

PA: Yes he was.

JM: Okay. Okay. The Walt family name rings a bell with me. What did her family do? Do you know?

PA: They were all farmers.

JM: Were they? Okay.

PA: Her brother, Martin Lee Walt, Jr., was known familiarly as "Buddy." Buddy Walt had a farm on Fourche Dam Pike for many years, and then moved to Dumas [Arkansas] and farmed with his sons when they got out of the University of Arkansas.

JM: So you went to the University, and when did you graduate from the University?

PA: I graduated from the University in 1959. I took my law degree and my undergraduate degree at the same time.

JM: Okay.

PA: The reason I did that was if I had graduated I would have been commissioned as a second lieutenant, and I would have gone to Korea. I didn't want to do that. I wanted to finish my law degree, and as a matter of fact I did receive both an undergraduate law degree and commission on the same day. I did go immediately into the [United States] Army.

JM: Did you?

PA: Yes. But, it was on a strange six-month active duty program that the Army had at that time for reserve officers. Missy and I spent the entire six-months at Fort Benjamin Harrison, Indiana. It wasn't bad at all. I came back in April 1960 to begin the practice of law.

JM: Where did you start practicing?

PA: I started practicing at Wright, Harrison, Lindsey & Upton. Ed Wright was my father-in-law. I practiced with Wright, Harrison, Lindsey & Upton and its successors the last being Wright, Lindsey & Jennings.

JM: Okay.

PA: I withdrew from that firm on November 16, 1988 with Jack Williams, Peter Kumpe, and David Menz.

JM: How do you spell Menz?

PA: M-E-N-Z.

JM: Okay.

PA: We formed this firm.

JM: Okay, and . . .

PA: And we opened our doors here on December 1, 1988.

JM: If my memory is correct, have you been president of the Arkansas Bar Association?

PA: No. I've been president of the American Bar Association.

JM: The American—I knew you were president of the American Bar Association.

PA: I was active in the Arkansas Bar Association. I was what was then called chairman of the Arkansas Bar Foundation. The title has been changed to president of the Arkansas Bar Foundation. I became active in the American Bar Association. I was interested in the American Bar Association really because of the interest that Ed Wright had in it. Ed was president of the American Bar Association . . .

JM: I was going to say that he had been president also.

PA: . . .in 1970 and 1971. I started my work with the American Bar Association without any intention of being president or anything else, but one thing led to another.

JM: Okay. What year did Ed die?

PA: Ed died on February 1, 1977.

JM: 1977. I remember—I was at the *Democrat* when that happened. I remember that. Okay. So you've been in your own practice here now, and you have a specialty?

PA: Well, it's business law. The firm is a business law firm. I do a lot of litigation—have done a lot of litigation—business litigation. And I do corporate work as well as litigation, but the corporate work is closely related to litigation issues.

JM: Okay, that—I think that we've about covered the territory here.

PA: Let me say that I do a lot of media work, too.

JM: Oh, okay.

PA: And not just for the *Arkansas Democrat-Gazette*, but also for other media outlets. During the White Water investigation I represented—at one time—ABC, CNN . . .

JM: Okay.

PA: ABC, CBS, NBC, CNN, the Reporter's Committee for Freedom of the Press, and the American Broadcaster's Association—that's not quite the name of it, but that is . . .

JM: That was during the White Water . . . ?

PA: I represented those entities in an effort to obtain the videotape of President [William Jefferson] Clinton's deposition. It was a fruitless effort, but we tried.

JM: [Laughs] That was the one before . . . ?

PA: It was the one in Judge Susan Wright's court.

JM: Susan Webber Wright.

PA: Yes.

JM: Okay.

PA: It was the Jim McDougal case.

JM: Yes, I remember that well. I was just trying to think about the deposition before Judge Susan Webber Wright. That was the one . . .

PA: That was another case involving the president. She found that the president had lied during the deposition, I believe. Is that right? She found that . . . ?

JM: I think there was one—yes.

PA: Yes.

JM: I think—is that the one where he pled guilty to, or didn't he admit—I don't remember. I can't remember.

PA: No. He wasn't charged with anything.

JM: No.

PA: The president wasn't charged with anything, but I think that she found his testimony to be erroneous. And that led to his turning in his law license.

JM: Yes, okay. That—yes, I understand that. Okay. Phil, is there anything else that you can think of that we haven't touched on about—in particular about the trial and *Gazette* versus the *Democrat* or leading up to it? Or early on just—well, you've been involved with the *Democrat* since 1974. Is there anything else that we haven't covered that you think that maybe we should touch on now?

PA: No, I can reiterate the fact that, from my point of view, everything that Walter Hussman did was honestly industrial. I know that he was simply trying to maintain a separate editorial voice in central Arkansas. If he had not been successful in this one last try to do everything to gain a market share, he would have closed the paper down. He and his father had agreed that they would take a look at the paper a few years after they bought it, and if it was not working then they would close it. Yes, his efforts in this one last try did result in losses, but he was gaining market share. The losses were decreasing. He was headed for a profit, and I am satisfied that he was looking for modest profits to stay in business and maintain an editorial voice in central Arkansas.

JM: He was headed for a profit, and then Gannett entered the picture. [Laughs]

PA: Gannett entered the picture and tried to outmatch him with losses, and they certainly did outmatch him.

JM: Yes.

PA: He did not take the bait and sue Gannett. And he didn't take the bait and try to match Gannett dollar for dollar, because he couldn't.

JM: Yes.

PA: But, he was fortunate to have some very capable people at the *Democrat*. Paul Smith and the others who are there are all veterans. When they met Gannett, they had been through one newspaper war. The thing about the Gannett people is [that] they hadn't. The Gannett editors who were sent down here hadn't any experience in . . .

JM: Competition.

PA: . . . competitive markets.

JM: That's true. I think that Paul Smith and maybe somebody else said, "And one thing about it was the *Gazette* gave us time to learn how to compete."

PA: That's right.

JM: He said, "At first we tried a lot of things that didn't work or we didn't know how to compete. But they gave us—by letting us hang around—they gave us a chance to learn how to compete."

PA: He had battle-hardened veterans in circulation, advertising, and in the general management of the company. One of Gannett's ploys was to try to hire away those managers, and it offered at least one manager far more than he was making here to go to one of their papers elsewhere. He stayed, and he is still here right now.

JM: I think that they hired a lot of people from the newsroom, also. But okay, Phil, this has been a very enlightening interview, and I appreciate your help and cooperation. This is one that I've enjoyed. Thanks a lot.

PA: Well, I've enjoyed it too, Jerry. It is good to talk to you. Thank you.

[End of Interview]

[Transcribed by Geoffery L. Stark]

