

Patent Lawyer Turned Prosecutor



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*When Johnny Ward Took
A Wrongful-Death Suit
He Had No Idea He'd
Try a Criminal Case, Too*

by JOHN COUNCIL

Clients usually hire Johnny Ward when they have a patent infringement or a personal-injury suit — not one that alleges murder. But in the summer of 2004, a family retained Ward for just such a case, which led to an unusual six-year adventure that ended with him signing on as a special prosecutor and winning a March 10 murder conviction.

“It was my first criminal case,” says Ward, a partner in Longview’s Ward & Smith who is the son of U.S. District Judge T. John Ward of Marshall. “And it’s been the most interesting case that I’ve had in my career.”

Dean Byrum, who retained Ward in 2004, says she needed a civil litigator who could stop her son-in-law David Len Moulton from collecting a life insurance policy on her deceased daughter Becky Moulton. Byrum says she firmly believed that David Len Moulton had murdered her daughter. And Byrum says she wanted justice for her daughter’s death, but was having trouble persuading the Cass County criminal district attorney to prosecute.

Byrum’s sister, Ann Weemes, called McKool Smith partner Sam Baxter for legal advice, Baxter says. Weemes, who lives in Marshall, knew Baxter because she cooks for the Dallas-based firm’s lawyers when they have patent trials in Marshall’s federal courthouse. Baxter says he couldn’t resist

PATENT LAWYER TURNED PROSECUTOR WINS CIVIL SUIT AND CRIMINAL CASE

helping the woman who “makes the best pot roast on the face of the earth.”

“I originally told her that the DA’s office is going to handle this. And she told me they’re not doing anything,” Baxter says. “She starts telling me some of the facts and there was some life insurance involved. I said I need to get you to a good lawyer who can handle this. So I sent her to Johnny.”

Byrum says she called Ward after Cass County District Attorney Randy Lee declined to submit a criminal case regarding Becky Moulton’s death to a grand jury for consideration.

“We tried our best to get the DA to take this case and do something with it. And he would not. And we decided to call a lawyer,” Byrum says.

Lee denies he wouldn’t consider the case. “We basically were waiting for further information” before taking the case to a grand jury, says Lee, now a Texarkana solo.

Ward says he never turns down business from Baxter, whom he knew from his days as an associate with McKool Smith. Ward says he listened to Byrum’s story and agreed to meet her in person.

“It sounded kind of crazy. But because Sam Baxter was my mentor, I looked into it. I was very skeptical going into it. I’d never heard of a personal-injury lawyer taking on a wrongful-death case that was a murder case,” says Ward, a partner in Longview’s Ward & Smith. “But it being Sam, he’d been a good source of business, [I figured] I’ll go talk to them.”

When he pulled his Chevrolet Suburban onto the Byrums’ rural property in Cass County, Ward says he saw a front yard full of pickup trucks. He thought he was meeting with Dean Byrum and her husband Carrel. But when he entered the home, 10 members of the Byrum clan were inside.

“Every one of us was there. We met him around my dining room table. He must have been overwhelmed, but he didn’t appear to be,” Dean Byrum says of Ward.

Cass County DA Clint Allen says Johnny Ward had no trouble handling the criminal case. Ward’s skills as a patent litigator helped him.



Cass County DA Clint Allen (above) appointed Johnny Ward as an assistant district attorney to help him prosecute David Len Moulton.

Among other things, the family told Ward that Moulton had physically abused his wife during their marriage. They told Ward that Moulton was in dire financial straits. And they told Ward that Moulton’s story about finding his wife’s body floating in a pond behind their Atlanta, Texas, house on April 17, 2004, didn’t make sense, Byrum and Ward say.

Ward believed it would be a difficult wrongful-death suit to prove to a jury. First, an autopsy report found that the cause of Becky Moulton’s death was “inconclusive.” And while the family members allege that Moulton had abused his wife, he had never been convicted of family violence. Finally, there were no witnesses to the alleged murder.

After Ward explained to the Byrum family how a civil suit could stop Moulton from collecting on a life insurance policy — money the family wanted to go to Becky Moulton’s daughter Stephanie — the family was impressed with Ward, Dean Byrum says. Ward also explained his 40 percent contingent fee should the civil suit result in money damages, Byrum says.

But money was not the family's primary concern, Byrum says. "It was more about finding" Moulton responsible for Becky Moulton's death.

Ward asked the family members if they wanted time to decide on hiring him, Byrum says. "And we said 'no, we want you.' It was immediate."

Surprise Deposition

In August 2004, Ward assisted Dean and Carrel Byrum and their granddaughter Stephanie with filing *Carrel Byrum, et al. v. David Len Moulton* in the 5th District Court in Cass County. The plaintiffs requested injunctive relief to prevent Moulton from receiving his wife's life insurance benefits and requested damages based on the allegation Moulton had caused his wife's death.

Moulton filed a general denial to the suit in September 2004, asking that the plaintiffs take nothing.

After filing the wrongful-death civil suit, Ward says he got a huge break when he deposed Moulton.

"I went to depose David Moulton. And I thought, sitting down, he'd take the Fifth Amendment," Ward says. Instead Moulton talked for five hours.

What Moulton said during the October 2004 deposition formed the basis of the civil suit, Ward says, especially the details Moulton gave about how he found his wife floating in the pond behind their house.

According to his deposition transcript, Moulton said on the day of his wife's death the couple had ordered a delivery pizza, then he left the house for 30 minutes to talk to someone about a tree trimming job and came home to find his wife floating in the pond. Moulton speculated during the deposition that Becky likely was taking a walk and might have been startled by a snake and had choked on a piece of pizza, according to his deposition.

"I got her upper body up on the bank and I tried CPR and I — the first thing I had to do is take my fingers and reach in her mouth and drag food out of it," Moulton said in his deposition.

Moulton also said he had slapped Becky Moulton "four or five times" during their marriage, but said he slapped her "very seldom. I mean, I love my wife. I'm not a beater."

The deposition was crucial to the upcoming civil suit, Ward says. Most importantly, he says, people who drown don't float on top of water immediately; their bodies must decompose for a long time before they float. Moulton's story just didn't make sense, Ward says. It was a point Ward says he was able to make during the civil trial through medical expert testimony.

"The history of domestic abuse and the fact that he had left her alone for 30 minutes on a bright sunny afternoon and that she was walking by the pond, was startled by a snake and choked on pizza. It just didn't sound right," Ward says.

"It goes back to that old criminal saying, 'Nobody talks, everybody walks.' And he talked and talked and talked," Ward says of Moulton.

With what they'd learned from Moulton's deposition,

in February 2005 the family filed a first amended petition in *Byrum*. "Through discovery the plaintiffs have found evidence that indicates that the defendant did indeed murder the decedent," the plaintiffs alleged.

Before the suit went to trial in March 2006, there was another crucial development. Dallas' Southwestern Institute of Forensic Science (SWIFS) changed the cause of death on Becky Moulton's autopsy report from undetermined to "homicide," Ward says.

Mark West, then a criminal investigator with the Atlanta Police Department who was investigating Becky Moulton's death, says he presented SWIFS investigators with additional information about the day Becky Moulton died.

"Nothing added up . . .," says West, who interviewed David Len Moulton and presented additional statements to SWIFS — including that Moulton said he found his wife's body floating in the pond — that led it to conclude that Becky Moulton's death was inconsistent with a drowning. West now is a deputy with the Cass County Sheriff's Department.

"That was a red flag to the medical examiner. This woman is not going to be floating an hour after her death. The statements and the floating — that was the red flag," Ward says of SWIFS' decision to change Moulton's cause of death.

At the start of the March 17, 2006, civil trial, Ward says during his opening statement he broke down Moulton's version of what occurred the day his wife died. Ward says he used a PowerPoint presentation, with photos and a timeline, that made Moulton's version of events difficult to believe.

The opening slide stated: "6:30 Pizza is delivered Becky is alive. 7:00 David returns home. 7:37 David calls Dean Byrum. 7:51 David calls 911. 8:22 Becky is pronounced dead at the hospital."

The presentation also pointed out 16 actions Moulton said he took between 7:37 p.m. and 7:51 p.m., including calling his wife's mother to ask about Becky Moulton's whereabouts, searching for her on their 26 acres of property, finding her body and pulling her out of the pond, and calling 911.

"It had pictures of the land and the timeline. And the timeline was microscopic," says Scott Stevens, a partner in Longview's Stevens Love who helped Ward represent the *Byrum* plaintiffs in the wrongful-death suit. "It broke down what happened in a short period of time. He walked through all of that in great detail. When you saw that, it was hard to see it the way the defendant had it happening."

After a week-long trial, the jury found Moulton responsible for his wife's death and on March 23, 2006, awarded the plaintiffs \$13 million in damages, according to the judgment. On April 17, 2006, 5th District Judge Ralph Burgess signed a final judgment also ordering that Moulton not be "permitted to exercise dominion or control over monetary benefits" related to his wife's death.

Paul D. Hoover of Texarkana's Paul D. Hoover & Associates defended Moulton at trial. Hoover died on Oct. 23, 2009, according to his brother, Greg Hoover, a retired attorney who lives in Texarkana.

Greg Hoover, who assisted his brother during Moulton's deposition but did not participate in the civil trial, says the change in the autopsy report made Moulton's defense difficult.

"The problem that I remember Paul having with it was that the medical examiner in Dallas first concluded that it was inconclusive. And several months later it got changed to homicide," Hoover says. "I think that was the main problem that Paul had with it."

While Moulton did not have money to pay the \$13 million damage award — much of it was punitives — the *Byrum* plaintiffs did receive \$320,000 from Becky Moulton's life insurance policy, of which their lawyers received 40 percent. David Len Moulton had no money to pay for an appeal, Greg Hoover says.

Moulton did file a pro se appeal of the judgment. But on Sept. 19, 2006, Texarkana's 6th Court of Appeals dismissed it for want of prosecution because Moulton failed to file a docketing statement and did not pay a filing fee.

Another Look

There was an important spectator in the audience during the March 2006 civil trial: Clint Allen. Allen had just defeated Randy Lee in the 2006 Democratic Primary and would become the Cass County DA in 2007 because he had no Republican opposition. He was curious about the Moulton case.

"I decided we needed to take another look at the case and at least present it to a grand jury," he says. He knew it was going to be a difficult criminal case.

On Nov. 4, 2008, he convinced a grand jury to indict Moulton for murder, alleging Moulton had drowned his wife in the pond. Moulton pleaded not guilty. Then, on Dec. 22, 2008, Allen appointed Ward as a Cass County assistant district attorney to help him prosecute Moulton.

"[T]he reason we did that is basically we thought he'd be a great asset to our team. He had already tried the civil case. He knew the case backward and forward. He had a great relationship with the family," Allen says. "That's not something you see a lot — a wrongful-death case being tried before a criminal case based on the same facts."

Before the *State v. Moulton* criminal trial began last month, Ward says he waived any interest he had in future recovery in the civil suit against Moulton. The defense in the criminal case had raised that as an issue in a pre-trial motion, Ward says.

"I told Clint, 'You know this, but I'd pay to try this case,'" says Ward, who was not paid for serving as a special prosecutor.

Rick Shelton, a partner in Hughes Springs' Stovall & Shelton who represented Moulton during the criminal trial, did not return two telephone calls seeking comment before presstime on April 1.

During Moulton's criminal trial, Ward performed much as he did in the civil trial, Allen says. He gave the opening statement and closing argument and examined many witnesses. In fact, Ward says his opening statement — which included

the PowerPoint presentation — was identical to the one he gave at the civil trial three years earlier.

Allen says Ward had no trouble handling the criminal case. Some of his skills as a patent litigator, such as handling complex information — benefitted Ward, Allen says.

"He was outstanding. One thing that immediately becomes clear when you begin working with Johnny is he's extremely bright," Allen says. "And the other thing that impressed me is his organizational skills. He can take a large volume of information and lay hands on anything he needs at a moment's notice."

Moulton did not testify during the criminal trial but the testimony from the *Byrum* civil suit was presented as evidence, Allen says.

All of the work Ward had done in the civil case made the criminal trial that much easier, Allen says.

"If you add on the time that he prepared for the civil trial, and the depositions that he took, it was just phenomenal," Allen says. "He had already done all of this work. And in the criminal trial that benefitted us. There's no doubt about that."

Ward says he had no problem jumping into unfamiliar criminal law territory, especially when it came to talking to the jury.

"A trial is a trial. That cuts across whether it's patent law, criminal law or a personal-injury case," Ward says. "Being able to talk to a jury translates well whether it's a criminal case or a civil case."

But he says he felt pressure like never before because a man's freedom was at stake — not just money.

"It's a different level of stress when you're dealing with somebody's liberty," Ward says. "I have a new level of respect for people who do this for a living."

On March 10, a jury found Moulton guilty for his wife's murder. The next day, the jury sentenced Moulton to 60 years in prison.

On March 25, Judge Ralph Burgess appointed David Horton to represent Moulton, who filed a motion for new trial on March 31. Horton, a partner in Texarkana, Ark.'s Harrelson Horton & Matteson, says he is unfamiliar with the facts of the case and is investigating his client's appeal.

After six years, the Byrum family finally received what it wanted — criminal punishment for Moulton, Dean Byrum says. Moulton currently is incarcerated in the Cass County Jail, Ward says.

Byrum says Ward isn't just a civil lawyer who helped them; he's a member of their family. To show their respect, the Byrum family purchased an advertisement in the *Atlanta Citizens Journal* thanking Ward and Allen for helping them.

Notes Byrum: "We just thanked the Lord that he sent them to us to handle this." 

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