

LAWYER LIMELIGHT: JOSHUA BUDWIN

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Winning a jury verdict for a client can be just the beginning.

Joshua Budwin learned that early on in a 2007 patent infringement claim for Versata over its pricing software, which resulted in a \$400M verdict against Germany company SAP AG. The Philadelphia-area native, who has an engineering degree from Rensselaer Polytechnic, had started at **McKool Smith's** Austin office a few years earlier after graduating from Temple University Law School in 2005. He is now a principal in the office, continuing to focus on technology law.

"Before that, my sense had been that you go to trial, get your jury verdict and that's it. In that case, I learned otherwise: It's often just the first step in the battle," explains Budwin.

After the massive victory, the judge threw out part of the damages award and ordered the case reheard.

"We got a bigger verdict the second time," Budwin says. He was part of the team that defended the second verdict all the way to the U.S. Supreme Court, which refused to take up the case.

Lawdragon: Were there particular lawyers you got to know early on at McKool who have significantly influenced your career?

Joshua Budwin: There are three. One is Sam Baxter, whom I can remember going to trial with in 2006. The big thing that I learned is that so much of the stuff you focus on during the discovery phase of the case doesn't matter as much when you get to trial. He really taught me early on the things that you need to focus on when you're in the discovery phase. Some things are important for trial and some things aren't, and you have to figure out which to let go.

Another one who had a big impact – and still does – is Doug Cawley. I've done a ton of trials with him. We've done three ITC [International Trade Commission] hearings in a row for Rovi, a TiVo subsidiary. Working with Doug and seeing him in action has always been amazing. And the thing that he really taught me is that patent cases involve complex technology, but at the end of the day, it boils down to a story about people. And it's who can tell the most persuasive story about people that will probably win in the end. You can get so focused on the technical nuances that you lose sight of the bigger picture.

The third one is Ted Stevenson because I've done a few trials with him also. And he is really good at drilling down to the nub of an issue. I can remember myself or other more junior lawyers trying to explain something, and him almost being a little bit impatient with us, like, "OK, that doesn't matter. Focus. Get to the point. Get to the thing that really matters." And then as soon as you hit whatever that was, he would say, "OK, that's it. Focus on that." The thing that he really taught me was to sift through the chaff to get to the wheat, or the haystack to get to the needle. Especially when you're doing these patent trials, but it's true elsewhere, where you have really limited time, you've got to focus on those important things and be able to jettison the rest.

LD: Those are three amazing mentors. You've had some tremendous success and so much trial experience. Your work for TiVo in particular seems like the kind of legal work most lawyers spend a career hoping for. Can you talk a little more about that?

JB: They've been a great client. We've had three successes for them at the ITC, which is a really interesting and unique forum that's very important now. And those cases are a lot of work because from filing to hearing is about a year. They have unique procedures, too: no jury, judge only, very fast-paced.

The first of those cases is particularly interesting: A ruling in our favor was affirmed with a precedent-setting opinion by the Federal Circuit that embraced the broad scope of the ITC's jurisdiction. And then that went to the Supreme Court on certiorari, which was denied. But you have to get through all those steps to secure a victory, which we did.

LD: When you think about the number of trials you've had so far and the level of mentoring, it says a lot about McKool Smith.

JB: The firm has always had this mentality of trying to let more junior people have an opportunity to do things. And a lot of that comes from the entrepreneurial spirit of the firm and wanting to give the younger people opportunities so that they can grow. This isn't a place where somebody says, "That's my client. You can't talk to them, you can't deal with them."

You have the ability to interact with clients at a very early stage. They give young people opportunities to speak in court, to handle motions, to take witnesses at trial, because that's ultimately how you find the next generation, but it's also how your younger people learn early on what to focus on. If you're somebody who spent five years writing legal research memos, when you go to take a deposition, it's probably not going to be a good deposition. But if by your fifth year you've gone to two trials and you know what's really important – how that deposition is used in Court and the ability to focus, at the time of the deposition, on the things that will matter down the road at trial – you can go and take a good deposition. That then helps immensely when it comes to trial.

Our young people have the confidence to go and take a two- or three-hour deposition instead of wasting all day on something because they know what's important. And they know at the end of the day, depending on who the witness is, if that person isn't coming to trial, you might play 10 minutes of that deposition by video.

LD: As a trial lawyer, though, you've probably found that some of your best lessons are from cases where you lost or something unfavorable happened, right?

JB: True. Ted Stevenson, a principal in the Dallas office, has said, "If you haven't lost a case, you haven't tried enough cases."

In 2013, we won a substantial verdict for ParkerVision from a federal jury in Orlando, Fla. The next year, the judge granted judgment as a matter of law against us and an appeals court upheld the decision.

It was really hard because we'd spent so many years working on this case and litigating it, and we got a successful result, and then it felt almost like we had the rug pulled out from under us. But in these types of cases, you're building a house of cards where each one has to stand up on top of the previous one. It has to stand up not just through the trial but all the way through the appeal.

All the defense team has to do is knock one of the cards out. If it can, the whole thing falls down, and that's what this felt like. It was really frustrating because I believe to this day that we were right and I wish that we were able to convince the trial judge

and the Federal Circuit of that (much as we'd convinced the jury already). It's frustrating to have to live with a result that you believe was wrong.

LD: Tell me a little more about your background, where you grew up, how you decided to move from engineering into law.

JB: I grew up on the East Coast, just north of Philadelphia. One of the closest towns to us was Washington's Crossing, Pennsylvania where Washington crossed the Delaware during the Revolutionary War for a surprise attack on British allies encamped at Trenton, N.J. It was an area with a lot of history. I had a friend who lived in a house that had a fireplace from the 1700s with one of those big hooks that you could use to swing a cauldron over a fire. My mom was a schoolteacher. And my dad passed away when I was eight, so we were raised in that environment for a while until my mom remarried some years later.

I did decently well in high school and went to Rensselaer, an engineering school in upstate New York. I finished in three years, partly to save my folks some money on tuition and also because I just didn't really enjoy the upstate New York winters very much. I wanted to get out of there.

LD: A wise man.

JB: After that, I didn't know exactly what I wanted to do. I had a technical degree, but I had this summer internship working for Bristol-Myers Squibb in New Jersey. And I was working in a computer lab that had these really high-end, at least at the time, supercomputers. So, they had to air condition it to something like 50 degrees in the room. Every time I went into this secure room – which required an extra badge to get into – I basically had to wear a coat. At some point, I just decided, I didn't really want to have a career sitting in a refrigerator talking to computer programmers all day. Plus, even though I worked in this lab, I always had to work harder at the hardcore computer programming aspect of it than other people. It was a little like playing a piano. You can learn to play a piano and you can memorize and do all that, but somebody who just has a natural ingrained ability at that is always going to be better at it than you are.

LD: I understand perfectly.

JB: So I was that guy who worked hard and learned how to play the piano, but it was more mechanical piano playing than natural artistic piano playing. And so I decided that I needed to do something different, something that maybe suited my natural talents a little bit better. I was looking at different options, grad school and things like that, and I knew that going and getting a doctorate or a master's degree or something in a hard science was probably not exactly what I wanted.

Then I thought about how my mom always jokes, and I'm sure everybody says this, that I was argumentative as a child. I did have a bit of an interest in the law. And I said, "OK. Why don't I try going to law school?" And I really wanted to go to one of the law schools in Washington, D.C.: Georgetown, George Washington, American. Those were the three that I was focused on. I wanted to be in the heart of things. I wanted to see policy.

As I was going through that process, Temple in Philadelphia, which is close to where I grew up, sent me a notice in the mail that basically said, "You can apply here, and we won't charge you an application fee." And I'm like, "All right. I've already got all this done for all these other ones." So, I applied. I got into two of the three D.C. schools. I think Georgetown waitlisted me. And then Temple offered me a scholarship. And Temple's a state school in Pennsylvania. I basically was looking at having my tuition mostly paid for, and I was able to live at home for the first year and a half.

I commuted for the first year and a half, riding the train every day. I knew with my science background and my engineering background that I probably would be pushed toward doing some of these information technology matters, so I took law classes in IT. I clerked at a law firm in Philadelphia that was doing a lot of patent prosecution and some litigation.

LD: So how did you connect with McKool Smith?

JB: I had a professor in law school, an adjunct professor, who was actually working with McKool Smith in Austin at the time on a case. He came into class one day and he basically said, "I got you a job in Texas." This was between the second and third year of law school. "You're going to go there, you're going to meet a nice Texas girl and you're not going to come back," was what he said. And I'm thinking, "I've been on the East Coast my whole life. I've never been to Texas. All I know about Texas is like cowboy hats and all that kind of stuff." But I was a single guy. And really, the hardest choice I had to make was leaving the clerkship at the Philadelphia firm. They'd been so nice to me and they'd offered me another opportunity to stay for the summer. I just decided that that was the time to get out of my comfort zone and have an adventure.

I went and interviewed with McKool Smith. I had my interview, and I liked it. They offered me a job. And then I moved to Austin for the summer of 2004. And I was here a few weeks and I met my wife. I'm still at McKool 16 years later and my wife I have been married almost 15 years now. My parents actually moved to Austin from Philadelphia. My wife's parents moved to Austin too. So we've got everybody here now (other than my brother, who stubbornly refuses to leave Blacksburg, VA).