

10/6/98 Miami Herald 1C
1998 WLNR 3331777

Miami Herald (FL)
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October 6, 1998

Section: Living

THE IDEALIST LABORING DOGGEDLY FOR A DECADE TO PROTECT MIAMI'S
HOMELESS LAWYER BENJAMIN WAXMAN CLUNG TO HIS BELIEF THAT JUSTICE
PREVAILS IN THE END. A LANDMARK SETTLEMENT LAST WEEK PROVED HIM RIGHT

ELINOR J. BRECHER Herald Staff Writer

Ten years ago, the American Civil Liberties Union asked a young lawyer named Benjamin Waxman to handle a suit against the City of Miami on behalf of the homeless.

The plaintiffs were alleging that police constantly harassed them, destroyed their few belongings, roused them from the public spaces where they encamped, and locked them up for the "crime" of lacking a permanent home.

To Waxman, then 32, it was just another rights case, one that appealed to his sense of justice but didn't resonate in any special way.

"Generally, I'm compassionate for people who have had difficult circumstances thrown at them and need help," says Waxman, who last week saw U.S. District Judge Federico Moreno approve a settlement with the city safeguarding the rights of the homeless.

"I knew nothing about homelessness. I learned to care."

As it turned out, the ACLU could not have chosen a better person than Waxman to defend the downtrodden.

That's because under other circumstances, Waxman -- a partner in the Miami criminal defense firm of Robbins, Tunkey, Ross, Amsel, Raben & Waxman and a resident of Key Biscayne -- believes, he could have been one of them.

"I always feel I've been really lucky about things," says Waxman, a wiry man with wispy dark hair and a relentlessly upbeat attitude.

Known to his friends and relatives as "Benji," Waxman's luck began when he was adopted in infancy by Harry and Betty Anne Waxman of Milwaukee, who already had adopted two daughters. Real-estate developer Harry Waxman, an Orthodox Jew, immigrated from Romania in 1933, the year Adolf Hitler became German chancellor.

Being adopted, says Waxman, ``has something to do with the way I view the world. You have this sense of what would have happened if I had not been chosen by my parents, what my lot might have been.

``Maybe that's a kernel of what's out there for me in regard to this case."

After high school in Milwaukee, Waxman spent several months picking grapefruit on an Israeli kibbutz, then proved an indifferent student

WAXMAN, FROM 1C

at the University of Minnesota, where he studied business.

``A lot of my colleagues in the ACLU had very active political lives," he notes. ``I was the antithesis. I had no interest in politics. I partied and went to classes. Toward the end, I thought maybe I would become a lawyer. I was analytical and enjoyed debating."

He calls himself ``a mediocre student" during his first year at the University of Miami Law School. He graduated in 1983.

``Then I got a clerk job with [noted South Florida lawyers] Joel Hirschhorn and Harry Solomon, and I knew what I wanted to do: criminal defense, and probably something to do with civil rights."

He took up practice in Colorado, but returned to Miami because, ``if you want to do defense, this is the place."

He took an ACLU case here and there, and Pottinger ``was one of those: `It's been reported that homeless people were being run out of the route of the Orange Bowl.' I thought, `That sounds interesting.' "

An ignoble start to a case that would consume him for a decade.

Ominous warnings

In the initial stages of the class action named for Michael Pottinger, still homeless in Miami, Waxman says other lawyers warned him and co-counsel Valerie Jonas: ``You don't have a prayer. You don't have a legal theory to stand on," Waxman recalls.

``They said we'd have Rule 11 sanctions filed against us, for filing a frivolous lawsuit in federal court," adds Jonas.

She remembers that she and Waxman ``used to have screaming arguments."

Waxman calls them ``very contentious debates about where we should be going and what we should be doing."

In retrospect, she says, ``it was a very productive way to work. We managed to get the right answers out of those clashes."

The two have become good friends. In fact, they're working on two death penalty cases together. Waxman, she says, is ``so self-effacing. In a field filled with people with huge egos, it's so unusual to meet someone not like that."

A palpable intensity

Waxman also radiates intensity, an unsettling quality to passengers in his Jeep as he zips through rush-hour Miami traffic, but a quality that earned the admiration of Kendall Coffey, one of the attorneys who represented the city in the lengthy and often arduous mediation phase of the case.

Coffey says he was struck by "the tremendous dedication with which he continued to pursue every aspect of [the case]."

Waxman was "passionate, zealous and tenacious, but ultimately reasonable on points he felt strongly about," says Coffey.

UM law professor Stephen Schnably, who joined Waxman on the Pottinger case in 1994, marvels at how well Waxman "holds up under pressure and sleep deprivation . . . He always has tremendous workloads. I remember him speeding down I-95 near the airport at one minute to midnight on April 15, when a brief was due. There was a huge line at the post office, so we went around to back and he gave it directly to the workers.

"You could tell he had done that before."

Although the Pottinger case took up more and more of his time, in 1994, Waxman found himself successfully arguing an appeal in a cocaine case before the U.S. Supreme Court.

"It was awesome," says Waxman, who did the work for his firm, where he specializes in appellate cases.

The other side's wrong

He explains the attitude that carried him through this case and others: "The other people are wrong, and one day they're going to get it. Sometimes you make lots of small changes, and hopefully that'll mushroom into a big change."

In 1995, Waxman married Dr. Gwen Wurm, director of community pediatrics at UM/Jackson Memorial Medical Center. The couple is expecting twins in November. Waxman has two children by a previous marriage, one of them adopted.

Wurm was attracted by her husband's sunny disposition: "He's someone who doesn't get disappointed. He doesn't see things that don't go the way they should as a let-down; he sees it as part of the process."

In trademark style, Waxman says he didn't waver in his belief that justice would prevail in the Pottinger case.

Over the years, Atkins issued several landmark rulings in the plaintiffs' favor. The rulings prompted the city and county to launch a model system for helping the homeless which has attracted federal money and national attention.

Historic settlement

Last December, the two parties reached a settlement, approved last week by Judge Moreno. It requires Miami to train police officers in Constitutional rights and sensitivity, and pay \$1,500 to each homeless person who can prove unfair treatment by police since 1984. The agreement has been applauded by advocates across the country.

"I think it's going to protect them as people," Waxman says of the agreement. "I hope it's going to get them some money that they can do something good with."

And if they don't do something good with it?

``That's their prerogative, and it should be their prerogative . . . This lawsuit was very much about bringing some sense of dignity and respect back to homeless people, whose rights were trampled."

The homeless, he says, ``are just like you and me, in that they had families, they struggled growing up, they wanted good things for themselves in life."

color photo: Lawyer Benjamin Waxman with Arthur Rosenberg and Valerie Jonas and Stephen Schnably at Bicentennial Park (a)

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News Subject: (Judicial (1JU36); Legal (1LE33))

Region: (USA (1US73); Americas (1AM92); Florida (1FL79); North America (1NO39); Wisconsin (1WI54))

Language: EN

Other Indexing: (ACLU; AMERICAN CIVIL LIBERTIES UNION; ATKINS; COFFEY; IDEALIST; JEEP; KENDALL COFFEY; ORTHODOX JEW; US SUPREME COURT; UM; UM/JACKSON MEMORIAL MEDICAL CENTER; UNIVERSITY; UNIVERSITY OF MINNESOTA; WAXMAN) (Arthur Rosenberg; Benjamin Waxman; Betty Anne Waxman; Federico Moreno; Generally; Gwen Wurm; Harry; Harry Solomon; Harry Waxman; Historic; Joel Hirschhorn; Jonas; JUSTICE PREVAILS; Lawyer Benjamin; Michael Pottinger; Moreno; Ominous; Pottinger; Raben Waxman; Real; Stephen Schnably; Ten; Valerie Jonas; Waxman; Wurm)

Edition: Final

Word Count: 1487

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