

Bruce J. Ennis: A Remembrance

Bruce J. Ennis, a major advocate in the battle for the rights of those defined as mentally ill, died July 29, 2000, from the sequelae of leukemia. He was also my colleague, mentor, law partner, and most importantly, my best friend. When I saw him for the last time in late May, he was recovering from intensive treatment involving chemotherapy and stem cell replacement therapy. His hair was growing back, his stentorian baritone with which he entranced the Justices of the Supreme Court was returning, and he had just learned that there were no longer any leukemic cells in his blood. But, the treatment also destroyed his immune system; in late July he contracted a lung infection that could not be arrested and he died within a week of his last hospitalization in Boston.

It is altogether fitting that this journal grant space to this brief remembrance. It is unlikely that there is, or will be, a more staunch and capable advocate for the rights of those considered as mentally disabled as Bruce Ennis. After graduating cum laude from Dartmouth in 1962 and in the top 10% of his 1965 law school class at the University of Chicago, and a brief stint as a Wall Street lawyer, he joined the New York Civil Liberties Union (NYCLU) in 1968 as a staff attorney. While there, as the Director of the Mental Patients Rights Project, he became the first lawyer to work full-time on behalf of this still under-represented population. In that role, and working with others, he was a prime participant in the three landmark cases that became the high point of the civil rights movement for those with mental disabilities. In *Wyatt v. Stickney*, 344 F. Supp. 373; 344 F. Supp. 387 (M.D. Ala. 1972) *aff'd*, *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974), he challenged the conditions of hospitalization for those with mental illness and mental retardation, leading to significant reductions of the institutions' populations, major increases in expenditures for mental health and rehabilitative services, improvements in psychologist-patient ratios, noteworthy reductions in the abuses of patients, and the adoption of the then innovative idea of individualized treatment and rehabilitation plans. The principles argued for by Bruce and adopted by the late Judge Frank Johnson in his final order were soon copied by 35 other states.

One of the important byproducts of the *Wyatt* litigation was that the attorneys working on the case decided to form the Mental Health Law Project (MHLP; now the Bazelon Center) in Washington, DC. For many years, Bruce served as its Chairman of the Board.

When the horrible conditions of overcrowding, inadequate staffing, and severe mistreatment of residents at Willowbrook State School for the Mentally Retarded in New York became national news, Bruce and his colleagues at the NYCLU and the MHLP filed a request for a preliminary injunction seeking equitable relief on behalf of those residents. And, as in *Wyatt*, Bruce won a great deal of what he asked for, including prohibitions against seclusion, the immediate hiring of additional staff, and increased medical and health care for residents. *New York State Ass'n for Retarded Children, Inc. v. Rockefeller*, 357 F. Supp. 752 (E.D. N.Y. 1973).

Bruce's most significant mental health case was *O'Connor v. Donaldson*, 422 U.S. 563 (1975). Kenneth Donaldson had been civilly committed to Chattahoochee State Hospital in Florida in 1957. He was kept there for 14 years without treatment and his demands for release fell on deaf ears. Finally, through the efforts of Morton Birnbaum, a psychiatrist who had lobbied for a constitutional right to treatment, Bruce, and two other lawyers, filed a Sec. 1983 action in federal district court. Prior to trial, Bruce published his admittedly polemical book, *Prisoners of Psychiatry* (1972), arguing forcefully against involuntary civil commitment. Donaldson prevailed and was awarded compensatory and punitive damages against the two psychiatrists who refused to discharge him. Bruce and Paul Friedman, who also became my partner in 1980, represented him on appeal in the then fifth circuit, and again prevailed. The appellants asked the Supreme Court to review the decision and they agreed. Bruce was chosen to represent Donaldson before the Court. He once confessed to me that he spent the days prior to his first oral argument before the Court, including the morning of the argument, vomiting frequently from anxiety. Nevertheless, he won essentially a 9-0 judgment.

The Court held that "a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." It was not a ringing endorsement of the right to treatment that Birnbaum and Donaldson had fought for. But the right to liberty had been won. And, arguing solely for a right to treatment, Bruce felt, could have led to a close, even negative vote (see Chief Justice Burger's concurring opinion). Kenneth Donaldson eventually published a memoir of his fight for freedom, *Insanity Inside Out* (1976) in which he singled out Bruce "for his masterful handling of the battle in the courtroom (p. v)."

Bruce went on to participate in over 250 Supreme Court cases. He argued 16 of these, winning 11. Most of his later cases were in defense of the first amendment. Ironically, during the same week that the Supreme Court decided *Kansas v. Hendricks*, 521 U.S. 346 (1997), upholding the constitutionality of so-called "sexually violent predator" statutes, and *Washington v. Gluckberg*, 521 U.S. 702 (1997) and *Vacco v. Quill*, 521 U.S. 793 (1997), upholding statutes that barred assisted suicide even for mentally competent terminally ill patients, Bruce won his final major case. Garnering the support of such diverse Justices as Stevens, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, he prevailed in *Reno v. ACLU*, 521 U.S. 844 (1997). That case challenged the constitutionality of certain provisions of the Communications Decency Act that purportedly protected children from "harmful" material on the Internet. The Court viewed those provisions as content-based restrictions on speech and could not be upheld under the First Amendment. Most importantly, Bruce

convinced the Court that the Internet was more like reading material than it was a visual or auditory medium like television or radio, media that can be more highly regulated. The Court compared the Web to a “vast library” containing millions of publications or a sprawling mall offering goods and services. This designation, more than a decision on the constitutionality of a statute, will make this case a landmark of first amendment doctrine.

Not surprisingly, there is a commonality, of course, between his fight for the rights of mental patients and his advocacy of freedom of expression. Both seek to protect the rights of individual citizens from unwarranted intrusion into our lives by the government. His enduring legacy, whether as a public interest lawyer or a private attorney, is that Bruce’s entire professional life was devoted to protecting the civil liberties of us all. His death is not only mourned by his wife Emily and his two teenage children, Alex and Bradley, but by all of us who value self-determination, liberty, and the freedom to read, see, and think for ourselves. We are all the lesser for his death.

Dr. Donald N. Bersoff