JUDICIAL NOMINATION EXHUMES ADL FIASCO

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Nanore Barsoumian, The Armenian Weekly, 24 November 2013

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Devaney is leading the opposition in the Governor's Council against Gov. Deval Patrick's nomination of attorney Joseph S. Berman to the position of Associate Justice of the Superior Court. Devaney deems problematic Berman's involvement with ADL—an organization that claims to combat anti-Semitism and discrimination but refuses to unequivocally recognize the Armenian Genocide— and his failure to resign from the organization's Board when it became clear that ADL had been lobbying Congress against the recognition of the Armenian Genocide.

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Berman would need the support of five of the eight councilors to be confirmed for the judgeship. Berman's public hearing took place on Nov. 13, during which he was questioned for a span of four hours. On Nov. 20, the vote was postponed by an eager Governor, after it became clear that five councilors would instead oppose Berman's nomination. The ADL fiasco took center stage in arguments against his nomination.

"I received a letter asking, what does a 100-year-old Armenian Genocide by the Turks have to do with the nomination of a Justice for the Superior Court? Simple answer: Justice for all," Devaney told

the panel.

Devaney was referring to the ADL's refusal to recognize the Armenian Genocide, and the organization's lobbying efforts against Congressional resolutions recognizing the Genocide.

Berman, a partner at the Looney & Grossman law firm in Boston, has been a national commissioner for ADL since 2006, and a member of its New England Board and Executive Committee.

Devaney told the panel that when she was a Watertown Councilor At Large, she urged towns to cut ties with the ADL's "No Place for Hate" program in 2007. That year, she also authored a Watertown Town Council proclamation that was passed unanimously, severing ties with the organization. Watertown was followed by eleven other Massachusetts municipalities (Belmont, Newton, Arlington, Northampton, Bedford, Lexington, Westwood, Medford, Needham, Newburyport, and Peabody) in severing ties with the ADL program, following broad-based community opposition as part of the "No Place for Denial" Campaign lead by the Armenian National Committee of Massachusetts.

ADL's New England Regional Director Andrew Tarsy then called on the organization to recognize the Armenian Genocide; ADL responded by firing him.

"At the Governor's Council hearing, when Councilor Jubinville asked why he didn't withdraw his membership from ADL, Mr. Berman answered: 'I wrote a resignation letter in my head but didn't write it because of all the good things the ADL does,'" recounted Devaney before the Council on Nov. 20.

"I asked Mr. Berman if he belonged to an organization who denied the Holocaust, would he remain as a member because of all the other good things they do. I said *I* would resign," added Devaney.

"The refusal of the ADL to properly acknowledge the Armenian Genocide and its long-time opposition to Armenian Genocide resolutions in Congress is deeply offensive to the Armenian-American community and discredits an organization that claims to defend human rights," Dikran Kaligian, Chairman of the Armenian National Committee of Eastern Massachusetts, told the Armenian Weekly. "Complicity in the Turkish Government's international denial campaign must be condemned by those who believe in justice for those subjected to crimes against humanity. Press statements by ADL officials this week show that they still don't get it."

In 2007, once the scandal around ADL's policy on the Armenian Genocide had erupted, the organization issued a "Statement on the Armenian Genocide," declaring that "The *consequences* of those actions were indeed *tantamount* to genocide." Many found the statement unsatisfactory, as the wording placed the issue of intent under question—a main factor in the 1948 UN Genocide Convention definition—and sneaked a qualifier before the word genocide.

Armenian Weekly contributor Michael Mensoian was one such critic. he wrote: "The belated backtracking of the Anti-Defamation League (ADL) in acknowledging the planned, systematic massacre of 1,500,000 Armenian men, women and children as 'tantamount to genocide' is

discouraging. Tantamount means something is equivalent. If it's equivalent, why avoid using the term? For the ADL to justify its newly adopted statement because the word genocide did not exist at the time indicates a halfhearted attempt to placate Armenians while not offending Turkey."

Later, when ADL National Director Abe Foxman was confronted, he reportedly retorted, "No one can dictate to you to use the word that you want us to use. We will use the words that we feel comfortable with."

Devaney said she expected Berman, who had held a prominent position in the organization, to have done more. "Joseph Berman could have made the difference by collecting signatures of all the members of the New England ADL chapter and presenting them to the National ADL to support the recognition of the Genocide," she told the Council.

At his hearing, Berman had said he had chosen to stay, since he was in agreement with ADL on all issues except for the Armenian Genocide, and he believed that it would be more effective to change the organization from within.

During her interview with the *Armenian Weekly* on Nov. 22, Devaney said the issue was important to her especially since she had heard about the atrocities that took place during the Genocide from survivors themselves. She remembered how in 2007, Genocide survivor Areka Derkazarian, whom she calls a friend, accompanied her as she appeared before the Massachusetts Municipal Association (MMA) to urge them to withdraw sponsorship from ADL's program. The MMA unanimously voted to end its affiliation with the ADL program in April 2008, following the "No Place for Denial" action campaign and a petition signed by over 30 local churches and organizations.

The statement signed by five councilors, declaring that if the vote had taken place as expected on Nov. 20, the undersigned would have voted 'No.'
Devaney said that soon after news of her opposition to Berman got out, she began getting hate mail from Berman supporters. "I've never experienced in my tenure getting hate mail for doing the right thing," she said, shaking her head. Then, leaning forward, she added, "This has been really misunderstood… The ADL has been working *hard* to prevent the Armenians from having their history."

Earlier, at Berman's hearing on Nov. 13, councilors also criticized ADL for sending letters to U.S. Senate Judiciary Committees before candidate hearings, which according to Councilor Jennie Caissie, amount to "bona fide litmus tests." "I don't want ideologues on the bench," added Cassie. Councilor Jubinville, too, had noted that Berman's involvement with ADL raised concerns regarding his ideology. In response, Berman said that he was not going to assume the position of an "ADL judge," and that he would "decide cases based on the facts."

Berman's 'Contributions campaign'

Berman's campaign contributions were another sore point during the hearing on Nov. 13. After his

2004 bid to a judgeship were rejected by the Judicial Nomination Committee—a body appointed by the Governor to oversee judicial nominations—Berman's campaign contributions increased, surpassing $110,000 in ten years.

Among the state candidates receiving Berman's donations were Gov. Patrick, Congresswoman Katherine Clark, Attorney General Martha Coakley, State Treasurer Steven Grossman, Senator Elizabeth Warren, and others. All the recipients were Democratic candidates.

When grilled about whether he contacted any of those elected officials on behalf of his judicial nomination, Berman acknowledged that he had contacted Katherine Clark that morning and asked her to call Councilors Albano and Jubinville.

"After he applied for a judicial appointment in 2004 and was rejected, he started his contribution campaign and donated $110,000 total, giving the appearance he was going to buy his way to a judgeship," Devaney later told the Weekly, adding, "In my tenure, I've never seen any nominee contributing so much."

"I don't look for a political activist/fundraiser as a quality in a judge," Devaney told the panel on Nov. 20.

Berman's "demeanor" and "behavior" were also bothersome to Devaney, who found some of the attorney's responses arrogant and short.

In addition, Berman's lack of criminal trial experience—he specializes in commercial litigation— and his interest in "time standards" in the courtroom were also raised as points of concern.

Vote postponed

Only one of the councilors, Terrence W. Kennedy, voiced his support of the attorney.

Disappointed with the councilors' position vis-à-vis his nominee, Gov. Patrick said he would postpone the vote, indicating that in the coming days he would work to sway the votes in favor of Berman.

"This Council will have the opportunity… to vote on this nominee. I am going to work hard to get the votes. I have not had an opportunity to do that, and I am not ready today," said the Governor, adding, "I appreciate that some of you have views that had been hardened. But I think that this is a candidate who is more than ready to serve…"

"We are not going to change our minds," said Devaney. "We are going to stand by the vote. I want you to know that."

Anticipating the Governor's move, Councilor Robert L. Jubinville had prepared a typed statement declaring that if the vote had taken place as expected on Nov. 20, the undersigned would have voted "No." The document was signed by Jubinville, Devaney, Oliver P. Cipollini, Jr., Jennie L. Caissie,

and Christopher A. Iannella, Jr.

"We put on the record our objection to continuing the vote on Mr. Berman's confirmation," further read the statement.

The vote is expected to take place on Dec. 4. However, it is also possible that the nomination would be withdrawn before that date.

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