MANUFACTURING MADNESS

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Category: Opinions

By Yvonne Abraham, The Boston Globe, 24 November 2013

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Harper Lee, meet Ken Kesey. Elected by voters who clearly have no idea who they're voting for, the councilors are charged with approving nominees to the state's courts. They're a colorful lot, to the point where some of them seem unhinged. Usually, their weekly meetings go smoothly. Then, every so often, they decide to haul even a stellar nominee over the coals — coals heated not by facts, but by misdirected outrage, a desperate yearning for attention, or pure barminess.

And so it was with the Berman hearing on Nov. 13, the audio of which makes for distressing, or terrifying, listening — depending on how attached you are to the US Constitution. Berman, a much-honored litigator who has a long record of civil rights work, is a board member at the Anti-Defamation League, the storied social justice organization.

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But the way some councilors were talking, you'd think he was a card-carrying member of the Klan. Some were upset over the reluctance of the national ADL some years ago to label as genocide the slaughter of Armenians by the Ottoman Turks in the early 20th century. I wasn't crazy about it either. But, as Berman repeatedly explained, neither was he: He was a vocal critic, and considered resigning over the issue.

Not good enough, councilors suggested. "I don't understand how you could stay with the ADL and just ignore that," Marilyn Petitto Devaney said. "You've taken away the history of the Armenians."

Several councilors seized on his campaign contributions — over $100,000 to local and national Democrats over the years — twisting that somehow into a suggestion that he had bought his nomination. None of the councilors seemed to recall that they solicit campaign donations all the time. And let's not get started on the long, spectacular history of councilors themselves embracing the patronage racket.

But the performance of the day was by Oxford's own Jennie Caissie, who just couldn't get her head around the fact that Berman had traveled to Guantanamo Bay to assist an inmate, who was later cleared of wrongdoing and released. "What were you thinking?" Caissie demanded.

He was thinking about the Constitution, actually. Berman said he doesn't believe in "depriving somebody of their liberty in US custody without judicial process." This did not satisfy Caissie, an attorney who apparently missed the lectures on habeas corpus at law school.

"Did you think that there are people being detained and their liberties being denied right in your backyard?" she persisted. "Maybe an Iraq vet suffering post-traumatic stress. . . . Did any of that come into your mind. . . . Or was it just 'I gotta go to Guantanamo Bay because I want to represent somebody accused of terrorism?'"

Actually, Berman has done a lot of pro-bono work in Massachusetts. But even if he hadn't, can we contemplate this madness for a second? One of the people charged with approving judges is bothered by the fact that a nominee believes so strongly in the judicial process that he's willing to do something unpopular to defend it.

The job assigned to the governor's council is crucial — helping to ensure that potential judges are experienced enough, smart enough, and temperate enough for the bench. But the council itself is a circus long overdue to leave town. Judges should be vetted by people who manifest something closer to the qualities we expect of our public leaders: Members of the state Senate, for example, or perhaps elementary school children.

On Wednesday, the governor delayed a vote on Berman's appointment, to buy time to convince councilors to focus on his qualifications, to choose reason over irrationality.

Hey governor, call me if you need advice on dealing with these guys. I have a 6-year-old.

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