

sor Michael Bazylar,³ who will speak on the comparative perspectives of Holocaust cases and will comment on *Armenian Genocide v. Turkey* and the *Armenian Genocide v. Turkey* case,⁴ which is probably of greater precedential value in the context of the Armenian Genocide claims that we are discussing this afternoon.

Judge Snyder handled both the *Armenian Genocide v. Turkey* and *Armenian Genocide v. Turkey* cases as a U.S. district court judge, and Judge Tevrizian was the settlement judge in the *Armenian Genocide v. Turkey* case. I will open today's discussion with this thought: There was no international apparatus for streamlining restitution and reparation of claims arising out of the Armenian Genocide, nor is there one today. The *Armenian Genocide v. Turkey* case attempted to change that in spite of the fact that the current Turkish government was not a party to the action. I think this is the premise that we'll start with.

Judge Tevrizian was nominated on November 7, 1985 and received his commission on December 17, 1985 to sit as the U.S. District Court Judge for the Central District of California. He retired from the bench in 2007. He's now currently with JAMS where he serves as a mediator and arbitrator on various matters. Prior to his service on the bench, Judge Tevrizian was an associate and later became a partner in the law firm, Kirtland and Packard, from 1966 until he was appointed to the California State Court bench in 1972. He was also a partner in the law firm Manatt Phelps Rothenberg & Tunney and Of-Counsel to Lewis Brisbois Bisgaard & Smith before his appointment to the federal bench.

He served in the California state courts first on the Los Angeles Municipal Court and then on the Superior Court before returning to private practice. In 1985, he became the first Armenian-American ever named to the federal bench. In 1987, he was named Trial Judge of the year by the California Trial Lawyers Association. Judge Tevrizian was also named the 1994-1995 Trial Jurist of the year by the Los Angeles County Bar Association. In 1999, he was awarded the Ellis Island Medal of Honor, an award that celebrates American citizens who have distinguished themselves within their ethnic group.

In 2005, Judge Tevrizian received the Emil Gumpert Award for his efforts in promoting alternative dispute resolution and received the 2005 Justice Armand Arabian Leaders in Public Service Award. Judge Tevrizian, as I indicated earlier, handled the mediation in the

3. Professor Michael Bazylar's individual remarks have been omitted. His Q&A remarks appears later in this section, and his co-authored article with Rajika Shah, *Armenian Genocide v. Turkey*, appears later in this issue.

4. *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012).

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case while serving on the federal bench. He will also address the case and the matters therein. Judge Tevrizian.

II. PANEL DISCUSSION

JUDGE TEVRIZIAN: Thank you. Genocides are not just limited to the Armenians and to the Jewish Holocaust. There are, at the present time, genocides going on in the Middle East, in Africa and in Asia. This matter is of paramount importance and not to be treated as a historical event.

With regard to the case the following is true. On September 18, 2000, California Senate Bill No. 1915 was signed into law by Governor Gray Davis.⁵ This bill was entitled, *A c d*,⁶ and it added section 354.4 to the California Code of Civil Procedure.⁷ That section provided in relevant part, which I will paraphrase, that notwithstanding any other provision of law, any “Armenian Genocide victim,” or heir or beneficiary of an Armenian Genocide victim, seeking benefits under the insurance policies issued or in effect between 1875 and 1923 may bring a legal action to recover on that claim in any court of competent jurisdiction in the State, which shall be deemed the proper forum for that action.⁸

The statute also provided that no action seeking to recover benefits under an insurance policy covered by section 354 would be dismissed for failing to comply with the applicable statute of limitations.⁹ In enacting the section, the California legislature stated that California has an overwhelming public policy interest in ensuring that its residents and citizens, who are claiming entitlement to benefits under the policies issued to the Armenian Genocide victims, are treated reasonably and fairly, and that those legal obligations are honored.¹⁰

To that end, the California legislature declared its specific attempt to provide Armenian Genocide-era life insurance policy holders expeditious, inexpensive, and fair forum by allowing claims to be brought in California, irrespective of any contrary forum selection clauses or limitations period.¹¹ In the early to mid 2000s, two cases came before Judge Snyder raising questions as to whether section

5. S.B. 1915, 1999 Leg., Reg. Sess. (Cal. 2000).

6. *d.*

7. CAL. CIV. PROC. CODE § 354.4 (West 2016).

8. *d.*

9. *d.*

10. S.B. 1915, 1999 Leg., Reg. Sess. (Cal. 2000).

11. *d.*

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motion to dismiss, New York Life argued that section 354.4 was an unconstitutional invasion of the federal government's foreign affairs power because it adopts an official position on extremely sensitive foreign affairs issue, namely the recognition of the Armenian Genocide.²⁰

Judge Snyder disagreed, reasoning that the purpose of section 354.4 was merely to provide a forum for beneficiaries of the Armenian Genocide-era life insurance policies to bring claims to recover.²¹ To that end, she found that section 354.4 was not intended to offer any comment or condemnation of a foreign government, nor was it intended to interfere with the United States' relationship with a foreign government.²² Judge Snyder also noted that none of the parties in *Victoria Versicherung AG v. Movsesian* was a foreign government, nor were any of the parties owned by a foreign government; rather, that the parties involved were simply comprised of an insurance carrier, the beneficiaries, and the heirs of the beneficiaries.²³

Finally, and significantly, Judge Snyder found that New York Life failed to show how section 354.4 conflicted with any federal law or foreign policy.²⁴ Accordingly, she concluded that section 354.4 would likely have little to no impact on the foreign affairs of the United States government and therefore did not violate the Foreign Affairs Clause.²⁵

After she made those rulings, the case was assigned to me for mediation. I was still a sitting judge at that time, and we mediated the case in July of 2004. I'm going to talk about the mediation later on, but before I do, I want to also give you the history and significance of another case pertinent to these matters.

The issue of section 354.4's constitutionality came before the court a second time in *Victoria Versicherung AG v. Movsesian*, 670 F.3d 1067 (9th Cir. 2012).²⁶ In that case, the plaintiffs were persons of Armenian descent, who claimed to be the rightful beneficiaries of life insurance policies issued during the Armenian Genocide.²⁷ The plaintiffs' claims would otherwise have been barred by the applicable statute limitations, so they

20. *d.* at *32-33.

21. *d.* at *49.

22. *d.* at *39-40.

23. *d.* at *36.

24. *d.* at *39.

25. *d.* at *40.

26. *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067 (9th Cir. 2012).

27. *d.* at 1070.

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markable result that took place in the case.⁵¹
 Unfortunately, it was not so remarkable in the case.⁵²

JUDGE SINANIAN: Thank you. This question is directed to Professor Hovannisian. These cases were brought by policy holders to try and collect insurance policies held by victims, what implications did they have or do they have on the Armenian-American?

RICHARD HOVANNISIAN: I think that the compensation involved in these cases gives the community significant satisfaction as an expression of validation of the immeasurable suffering and losses as a result of the Armenian Genocide. There is a feeling in the Armenian community that it does not possess the necessary political influence to achieve worldwide recognition and restitution in the face of state denial and perceived state interests of various governments. Therefore, the life insurance cases afford a symbolic affirmation of the suffering and irreparable losses of the Armenian people. I believe that for almost all parties to the class action lawsuits, this aspect is far more important than achieving any personal enrichment or personal aggrandizement. While the amount of restitution remains minimal, it represents for the community an important statement relating to the still-outstanding crime against the Armenian people.

There remains among Armenians a strong sense of great disadvantage against the powerful forces relentlessly attempting to suppress memory. The situation is different from Holocaust restitution, in which not only is there a large corpus of properly-funded legal scholars and experts who achieve impressive results through legal and extralegal means, but there are also governments and legislatures involved. These bodies are able to influence parties to reach settlements. If, for example, the State of California, makes it known that it will suspend trade or investment transactions with a foreign government or particular institution, the potential losses for those bodies are likely to make them far more amenable to reaching settlements involving compensation and restitution to the injured parties. This critical impetus is generally absent in the Armenian case, and because the United States government withholds official reaffirmation of its recognition of the Armenian Genocide, the opposing side is even able to argue that such potential legislation is contrary to the policies and positions of the federal government. The case of the life insurance poli-

51. *d.*

52. *Movsesian v. Victoria Versicherung A.G.*, 670 F.3d 1067 (9th Cir. 2012).

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cies nonetheless may be regarded as an important precedent and opening.

There will come a time, I believe, when Armenians who still possess property deeds or other entitlement documents will be able to seek restitution or compensation for their losses, even though the Turkish government has enacted multiple laws and regulations nullifying their validity and declaring the lands and goods seized without compensation to be “abandoned properties.” Again, those still in possession of property deeds would represent a very small fraction of those who were dispossessed, but the symbolic value of the related affirmation and validation would be great. I think that this may be a viable avenue for future legal recourse.

JUDGE SINANIAN: Thank you. This question is for Professor Bazylar. What risk is there in having California legislate another statute to make it foreign policy neutral? To elaborate, would a statute, not using the language of Armenian Genocide but, for example, including those who died in the Ottoman Empire in this time of year (in neutral language), be in any way successful at this point in time with the Ninth Circuit?

MICHAEL BAZYLER: I thought, as Judge Tevzian, that the en banc panel had just incorrectly decided that case. Now, they may just look at this and say, well, even that somehow surreptitiously impacted our foreign policy. As the judges on this panel know, you can always find a reason to rule a certain way. This was a commercial case and to somehow say that if you say this “G-word,” all of a sudden everything somehow impacts foreign policy.⁵³ I just cannot understand that. How the en banc panel came up with that decision to me is strange. Procedurally, I want to bring in another hero of mine and his name is Benjamin Ferencz. He is ninety-five years old and the only living prosecutor from the Nuremberg trials.⁵⁴ This is what he taught me: “Never give up,” these are his three wise words. That is what he taught me.

JUDGE SINANIAN: Okay. Thank you. I will conclude by quoting Stuart Eizenstat, the former US Ambassador to the European Union and a crucial member of the Holocaust restitution movement in the United States. He said, “US courts are not the best places to

53. Movsesian v. Victoria Versicherung A.G., 629 F.3d 901, 903 (9th Cir. 2010).

54. Emma Green, *Justice* 100 (2016). b g, T

resolve profound historical and political questions.”⁵⁵ I think that is basically the understanding that the Armenians have with regard to the case. As much as we like to feel encouraged about this litigation, ultimately the case, was dramatically disappointing.

Thank you very much to the panelists.

55. STUART E. EIZENSTAT, IMPERFECT JUSTICE LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II, at 341 (2003).