



Schumer Should Apologize – Sincerely This Time – for Supreme Court Tirade

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“I want to tell you, Gorsuch, I want to tell you, Kavanaugh, you have released the whirlwind, and you will pay the price! You won’t know what hit you if you go forward with these awful decisions.” Thus did Senate Minority Leader Charles Schumer (D-N.Y.) address a crowd in front of the Supreme Court Wednesday morning. It was impossible to miss the implication that Schumer was menacing two Supreme Court justices by name with unpleasant if vague consequences, leading Chief Justice John Roberts to issue a rare public rebuke:

Justices know that criticism comes with the territory, but threatening statements of this sort from the highest levels of government are not only inappropriate, they are dangerous. All members of the court will continue to do their job, without fear or favor, from whatever quarter.

Schumer, through his office, at first dug in. He claimed he had meant his harsh words only for fellow senators, a claim belied by his having addressed Gorsuch and Kavanaugh by name. He went on to attack Roberts for supposedly following a “deliberate misrepresentation of what Sen. Schumer said,” and also for failing to call out President Donald Trump for wrongful comments about judges — although in fact the chief justice had done just that a bit over a year ago, in a highly publicized exchange over the President’s disparagement of an “Obama judge” who’d ruled against him.

Defenders of Schumer assailed the chief justice for not having weighed on some other inappropriate Trump sallies, including his ill-grounded speculation recently (never filed as an actual motion) that Justices Ruth Ginsburg and Sonia Sotomayor should recuse themselves from Trump matters, and his aspersions on the judge in the Roger Stone case. Those are part of a frequent and blatant Trump habit of trash-talking judges, both as a candidate (calling the judge in the Trump University case “Mexican” and “a hater”) and as President (“so-called judge” among numerous others). Some — I’m one — would say that this is among Trump’s very worst and most damaging patterns of behavior.

But as cooler heads noted, including Ruth Marcus of the Washington Post, the chief justice is not a playground proctor who can step in to write up every demerit; he needs to save his efforts for the instances that are most dangerous, as he in fact has done.

The wider picture, it might be noted, is one in which nasty swipes at judges have been routinized for years, from a range of public figures and also from former President Barack Obama, both in his 2010 State of the Union speech and also repeatedly during the court review of ObamaCare. Still, none of these have gone as far to suggest personal threat as did Schumer — not even the extraordinarily inappropriate amicus brief filed by Sens. Sheldon Whitehouse and four other Senate Democrats last August, assailing the Court’s legitimacy and warning that “restructuring” at the hands of political branches lies ahead if it does not mend its ways.

By Thursday, Schumer had revised and extended his remarks, asserting that he “should not have used the words I used. ...in no way was I making a threat.” He suggested that he had meant only to call the Justices’ attention to the prospect of damage to their political authority and standing in public opinion. He did not apologize, however, either for the original remarks or for his attacks on the good faith of Roberts and others.

Reason columnist Jacob Sullum recalls the words of Neil Gorsuch in comments before his high court confirmation. “I know the men and women of the federal judiciary,” Gorsuch said. “I know how hard their job is, how much they often give up to do it, the difficult circumstances in which they do it...I know these people, how decent they are, and when anyone criticizes the honesty or integrity or the motives of a federal judge, I find that disheartening, I find that demoralizing, because I know the truth.”

And Sullum writes:

If you believe that is a bunch of self-serving claptrap, that Trump is right when he suggests that judges (when they disagree with him, at least) are doing nothing more than following their own political prejudices, then you believe an independent judiciary is an illusion. If judges are simply politicians in robes, if they cannot be expected to set aside their personal preferences when they decide cases, that whole branch of government, which plays a vital role in upholding the rule of law, protecting people’s rights, and preventing the government from exceeding its constitutional limits, is fundamentally illegitimate.”

Better for good people of all parties to rally behind the principles of an independent judiciary. There’s still time.

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