

National Legal and Policy Center

"promoting ethics in public life"



Co-Founder

Ken Boehm 1949-2018

Board of Directors

*Peter Flaherty, Chairman
Kurt Christensen, Vice-Chairman
Michael Falcone
Richard F. LaMountain
David Wilkinson*

Since 1991

March 6, 2020

The Honorable James Lankford, Chairman
The Honorable Christopher A. Coons, Vice Chairman
Select Committee on Ethics,
U.S. Senate
Room 220 Senate Hart Office Building
Washington, D.C. 20530
Via Facsimile 202-224-7416

Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
61 Broadway, 2nd Floor
New York, New York 10006
Via Facsimile: (212) 401-0810

Dear Chairman Lankford, Vice Chairman Coons, and Departmental Disciplinary Committee:

The National Legal and Policy Center (NLPC) hereby submits this joint complaint to the U.S. Senate Select Committee on Ethics and the New York Departmental Disciplinary Committee against Senate Minority Leader Charles E. Schumer (D-NY) and requests that appropriate disciplinary action be taken against him for his recent public comments threatening two Associate Justices of the U.S. Supreme Court and the court itself.¹

Interests of Complainant

Founded in 1991, following the release of the Senate Ethics Committee report whitewashing the Keating Five, NLPC promotes ethics in public life through research, investigation, education and legal action.² Accordingly, it has an institutional interest in submitting this complaint.

¹ Charles E. Schumer is currently an active member of the New York Bar, Registration No. 1923804, having been admitted on May 5, 1976. As such, he is subject to rules of professional conduct and disciplinary action for violating them. His office address is listed as U.S. Senate, 780 3rd Ave Ste 2301, New York, NY 10017-2024 (New York County) (917) 848-9624.

² <https://nlpc.org/about-nlpc/>

Senator Schumer's Threatening Comments and the Response

1. On the morning of March 5, 2020, in front of the plaza of the U.S. Supreme Court, Senator Schumer, speaking before a rally of pro-choice activists and knowing full well it would be broadcast to the public, shouted the following threat regarding an abortion rights case³ being argued at that same time inside the courthouse.

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. (Emphasis added).

As he made this threat, he turned and pointed to the Supreme Court behind him to emphasize his point that he was directing his attack to the justices personally and the court itself. The crowd cheered him on.

2. It should be noted that Senator Schumer was the lead amicus in a brief filed in the case along with 197 of his Democratic colleagues in the Senate and House of Representatives. Instead of attending the argument inside, he believed his views about the case would be better expressed not in his brief, but at a rally outside the court before the argument was even over, let alone a decision rendered.

3. Following the oral argument, Chief Justice John Roberts promptly issued the following public rebuke to Senator Schumer:

This morning, Senator Schumer spoke at a rally in front of the Supreme Court while a case was being argued inside. Senator Schumer referred to two Members of the Court by name and said he wanted to tell them that "You have released the whirlwind, and you will pay the price. You will not know what hit you if you go forward with these awful decisions." 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. (Emphasis added).

4. The legal community appropriately supported Chief Justice Roberts' rebuke of Schumer. The American Bar Association quickly denounced Schumer's attack on the two justices. ABA President Judy Perry Martinez issued a statement shortly after Schumer's threatening comments:

The American Bar Association is deeply troubled by today's statements from the Senate Minority Leader threatening two sitting justices of the U.S. Supreme Court over their

³ *June Medical Services LLC v. Gee*, No. 18-1323.

upcoming votes in a pending case. Whatever one thinks about the merits of an issue before a court, there is no place for threats — whether real or allegorical. (Emphasis added).⁴(Emphasis added).

5. New York City Bar President Roger Juan Maldonado issued a statement the next day expressing the view of the New York legal community on such comments.

Senator Schumer’s comments were inappropriate. The comments exceeded the bounds of acceptable criticism of federal judges. By stating that judges “will pay the price” for their decisions, his comments crossed the line from fair criticism to intimidation. Statements like these risk compromising the independence and even the personal safety of our judges. (Emphasis added).⁵

6. Harvard Law Professor Laurence Tribe issued a tweet (supported by others in the legal community, including noted Democratic lawyer Neal Katyal) agreeing with Chief Justice Roberts, and calling on Schumer to apologize:

These remarks by @SenSchumer were inexcusable. Chief Justice Roberts was right to call him on his comments. I hope the Senator, whom I’ve long admired and consider a friend, apologizes and takes back his implicit threat. It’s beneath him and his office.⁶

7. What was Schumer’s response to the criticism? Did he apologize? No. Did he take back this threat? No. His spokesman Justin Goodman shot back at Justice Roberts: “For Justice Roberts to follow the right wing’s deliberate misinterpretation of what Sen. Schumer said, while remaining silent when President Trump attacked Justices Sotomayor & Ginsburg last week, shows Justice Roberts does not just call balls and strikes,”⁷

8. Senator Schumer issued another statement defending his threat, stating “Of course, I did not intend to suggest anything other than political and public opinion consequences for the Supreme Court, and it is a gross distortion to imply otherwise.”⁸

9. Majority Leader Senator McConnell took to the Senate floor the next day and rebuked Senator Schumer for his threatening comments and noted that instead of apologizing for his

⁴ <https://www.theblaze.com/news/aba-rips-schumer-for-threatening-that-conservative-supreme-court-justices-will-pay-the-price-for-pro-life-rulings>

⁵ <https://www.nycbar.org/media-listing/media/detail/statement-by-city-bar-president-roger-juan-maldonado-on-comments-by-elected-and-appointed-officials-that-denigrate-or-threaten-judges>

⁶ <https://twitter.com/tribelaw/status/1235348314796720128>

⁷ <https://www.washingtonpost.com/politics/2020/03/04/john-roberts-chuck-schumers-extraordinary-war-words/>

⁸ <https://www.usatoday.com/story/news/politics/2020/03/05/chuck-schumer-misspoke-conservative-supreme-court-justices/4962895002/>

comments, Schumer “doubled... and tripled down” in defending them.⁹ As Senator McConnell correctly noted, Schumer doubled down when he tried to “gaslight” America by claiming that his remarks were directed at his Republican colleagues for their support of Gorsuch and Kavanaugh and their pro-life positions. He then tripled down and attacked Chief Justice Roberts for issuing a statement criticizing his incendiary comments on the courthouse steps before a cheering crowd.

10. As Senator McConnell stated, “There is nothing to call this except a threat... The minority leader of the United States Senate threatened two associate justices of the U.S. Supreme Court. Period... [W]ords carrying the apparent threat of violence can have horrific unintended violence,” McConnell added, noting that the numerous threats to judges and federal officials have been investigated by the U.S. Marshals Service.

11. After repeatedly defending his remarks, Senator Schumer took to the Senate floor, and instead of apologizing for this remark he made the day before as many had called for, he issued a non-apology and continued to maintain disingenuously he did not make any kind of threat.

Of course, I did not intend to suggest anything other than political and public opinion consequences for the Supreme Court and it is a gross distortion to imply otherwise.... I should not have used the words I used yesterday. They didn’t come out the way intended them to... I’m from Brooklyn. We speak in strong language. I shouldn’t have used the words I did, but in no way was I making a threat. I never — never — would do such a thing.”(Emphasis added)

12. The undisputable fact is that Schumer did, at least in some way, make a threat to two sitting Supreme Court justices and the Court itself. It strains credulity to believe that, regardless of his Brooklyn pedigree, Senator Schumer, who is a Harvard-educated lawyer, Sena Minority Leader, and vocal opponent of both Justices Gorsuch and Kavanaugh, did not intend to choose the exact words he spoke as he turned and pointed to the Supreme Court behind him to further emphasize his point. In short, his non-apology is a lame excuse for inexcusable conduct.

Grounds for Senate Ethics Committee Action

The U.S. Senate Select Committee on Ethics has jurisdiction “to receive and investigate allegations of improper conduct which may reflect upon the Senate” and “recommend disciplinary action.”¹⁰ See *Improper Conduct Reflecting Upon othe Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E, p. 432. This rule is intended to protect the integrity and reputation of the Senate as a whole.” The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct....” Id. at 433.

⁹ <https://www.c-span.org/video/?469905-5/senator-mcconnell-senator-schumers-supreme-court-justice-remarks>

¹⁰ <https://www.ethics.senate.gov/public/index.cfm/jurisdiction>

By publicly threatening two members of the Supreme Court regarding the outcome of a case pending before the Court, there can be no doubt that Senator Schumer, who spoke in his role as the Minority Leader of the Senate, clearly engaged in “improper conduct which may reflect upon the Senate.”

And while Senate Majority Leader issued a rebuke on the Senate floor, this Committee has a duty to the entire Senate as an institution to immediately investigate this matter and impose sanctions on Senator Schumer for his conduct. At a minimum, NLPC demands that the Committee reprimand Senator Schumer and require that he issue a formal apology to the Senate, to Associate Justices Gorsuch and Kavanaugh, and to the Chief Justice for questioning his motives in issuing the rebuke.

Grounds for Attorney Disciplinary Action

As a member of the New York Bar, Senator Schumer is subject to Part 1200 Rules of Professional Conduct for the New York State Unified Court System and in particular, Rule 8.4 *Misconduct*.

Rule 8.4(d) makes it a violation of professional conduct for an attorney to “engage in conduct that is prejudicial to the administration of justice.”¹¹

Similarly, the American Bar Association Rules of Professional Conduct, Rule 8.4(d) prohibits engaging “in conduct that is prejudicial to the administration of justice.”¹² As noted above, the ABA issued a strong rebuke of Senator Schumer for his threatening comments which clearly are “prejudicial to the administration of justice.” In addition, as noted above, the New York City Bar President rebuked Senator Schumer for his statements that “risk compromising the independence and even the personal safety of our judges.”

Accordingly, it is also incumbent upon the Grievance Committee to issue a formal reprimand to Senator Schumer for his threatening comments which are “prejudicial to the administration of justice.”

Conclusion

For the foregoing reasons, NLPC requests that both the U.S. Senate Select Committee on Ethics and the Attorney Disciplinary Committee take appropriate disciplinary action against Senator Charles Schumer for his threatening comments to Associate Justices Gorsuch and Kavanaugh, and questioning the motives of Chief Justice Roberts in issuing the rebuke.

¹¹ <https://nysba.org/attorney-resources/professional-standards/>

¹² https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/