MONDAY, JULY 16, 2018

Statements Concerning the Disbarment of the Honorable Snowbleed

Memorandum of Justice Roberts, with whom Chief Justice Holmes, Justice Marshall, and Justice Bork join.

The Supreme Court, charged with the awesome constitutional responsibility of issuing the final word on some of the most controversial issues of the day, has found a new duty: Disbarring judges from its legal bar out of spite. A slim majority of my colleagues has decided that a judge on the court below them is not worthy of practicing before our Court. What was their justification? Perhaps, as a reasonable observer might hypothesize, it was because of a breach by this individual of his "private and professional character," *In re Rouss*, 221 N. E. 81, 84 (1917). Or, maybe, he was indicted and found guilty of a crime by a court of law. None of these is the premise for our action here.

Instead, Snowbleed has been disbarred—after a mere few days of membership—because he "has no business advocating for anyone in any Court of law, except for himself . . . he [would] serve no purpose on [the Supreme Court] bar." I find this lacking—indeed, suspicious. Notwithstanding such a self-aggrandizing reason posed—that one need practice enough for our likings as Justices to be afforded the privilege of membership on our Bar—I see a different, more nefarious action underneath this jibber-jabber.

Telling it is, that in the cases of two lawyers whose names were put forward for disbarment, my colleague who advanced the motion about which I write said for them that disbarment would be a step too far; such an action would disqualify, and effectively shame, the attorneys from practicing in any court. Yet Snowbleed was not afforded that same consideration. If it is true that the only reason my colleagues have played this card is because as a judge he cannot—for now—practice privately before us, then it begs the question: Why motion for his disbarment instead of a temporary suspension? (Never mind that practicing actively has never been a requirement of bar membership—just as Chief Justice Roberts, whose membership on ours is alive and well 12 years after his confirmation to the Court.)

The truth is that this move by my colleagues signals an attitude

that our Bar is nothing more than a vanity trip. And it is not a trip for those practicing under it; evidently, it is a trip for ourselves. I look forward to my colleagues who proposed this disbarment to do the same for all federal judges and Justices. JUSTICE MARSHALL, JUSTICE BORK, JUSTICE O'CONNOR, JUSTICE KAGAN, and JUSTICE WHITE—I regret to inform you that your disbarments, if we are to be consistent, must lie not too far ahead.

Memorandum of JUSTICE BORK, with whom JUSTICE ROBERTS joins except as to the final paragraph.

Although I voted in favor of the motion in question (after much revision from its original form), I find myself mostly in agreement with the position taken by my dear colleague, JUSTICE ROBERTS, and therefore join his statement in full.

The policy of removing judges from our Bar, of course, was not pulled out of thin air by the proponents of the motion: Judge Danfly was disbarred; many other judges were as well, and all for similar reasons—the inability to practice law imposed by their office. And some judges, for example JUSTICE STEWART, have also willingly relinquished their membership upon joining the bench. But as JUSTICE ROBERTS points out, we have been very selective in how we enforce that policy.

"JUSTICE MARSHALL . . . JUSTICE O'CONNOR, JUSTICE KAGAN . . . JUSTICE WHITE" and I, *ante*, at ——, are all still members of this Court's bar. I'm sure an even greater number of Justices are members of the Federal bar. Other details about this specific disbarment, furthermore, raise the question of whether it had anything to do with the policy at all. Originally, the motion accused the Honorable Snowbleed of being "incompetent," "immature," and "inactive," among other things. When each of these charges was debunked, the motion came to rely only on the fact that he was a federal judge and the aforementioned, associated policy. Was the motion's invocation of the policy merely a means to a desired end, or were we actually trying to enforce it?

I believe we should either uniformly apply or abandon that policy. Nevertheless, I concur in the disbarment.