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Notes from editor (not for publication):

Thank you, Judge Wesley. Note spelling of Rodgers and Hashim. Please let me know if you'd like any changes in your bio. —Jeff



HEADLINE ELEMENTS:

####BEGIN HED####

1 Going along to get along

####END HED####

####BEGIN SUBHED####

2 Michael Drescher's acceptance of fundamental
3 constitutional violations makes him unfit to serve on the Vermont
4 Supreme Court

####END SUBHED####

5 TEXT BODY:

####BEGIN TEXT####

6 ON FEB. 3, in an extraordinary session in the Vermont
7 Senate, Gov. Scott's nomination of First Assistant United States
8 Attorney Michael Drescher to fill one of two vacancies on the
9 Vermont Supreme Court was confirmed by the tie-breaking vote

10 of Republican Lt. Gov. John Rodgers, after the Senate vote was
11 evenly divided, 15–15.

12 The division was largely along party lines. All 13
13 Republican senators voted to confirm. Fifteen of the 17 Senate
14 Democrats opposed the nomination. The equal division was
15 caused when each Democratic senator from Bennington County,
16 Seth Bongartz and Rob Plunkett, voted to confirm.

17 Remarkably, in lengthy remarks on the floor explaining
18 his vote, each senator said that he began considering Drescher’s
19 nomination with the expectation that he would oppose it.

20 I write to take issue with the reasons Sen. Bongartz and
21 Sen. Plunkett gave for each one’s failure to shore up his initial
22 instincts.

23 * * *

24 *“The process had become distastefully political”*: Sen.
25 Kesha Ram-Hinsdale rebutted this claim convincingly. The
26 process was only politicized because Gov. Scott and all 13
27 Republican senators refused to acknowledge that the
28 constitutional rights of Rümeyşa Öztürk and Mohsen Mahdawi
29 had been blatantly violated, aggravated by the illegal deprivation
30 of their freedom.

31 Critically, Drescher raised no substantive basis for these
32 outrages. He resisted plaintiffs’ requests for release pending
33 further proceedings at every step.

34 He continued to rely only on the claim that the federal
35 court was without jurisdiction, even after that issue had been
36 decided against him. He admitted during the Senate Judiciary
37 proceedings that the U.S. Justice Department is out of control,
38 and that the two cases he undertook to defend stemmed from
39 those untenable policies.

40 Yet plaintiffs’ detention was prolonged for weeks while
41 Drescher continued “doing his job,” as he said to the Senate
42 Judiciary Committee.

43 To have taken any other course would have made a bad
44 situation worse — Sen. Phil Baruth asked Drescher to assess this

45 claim from the point of view of the detained plaintiffs. How were
46 their rights any better vindicated by Drescher, than would have
47 been the case if someone else was making essentially the same
48 arguments?

49 No, to redress what he knew were fundamental
50 constitutional violations, Drescher could have admitted the
51 petitions. At the very least, he could have agreed to releasing the
52 petitioners pending further proceedings. That was the only
53 honorable action, even if it risked being fired.

54 If there was to be a fight for the soul of the U.S.
55 Attorney's Office in Vermont, Drescher should have taken up that
56 cause waving a banner he believed in. Instead, he capitulated by
57 going along to get along.

58 Sen. Bongartz related an anecdote he said Drescher told
59 him in a private meeting the weekend before the vote, to the
60 effect that Drescher claimed responsibility for intervening on
61 behalf of Öztürk when it seemed her release was being delayed
62 due to ICE's insistence she wear a GPS monitor.

63 Drescher made no mention of this role during his Senate
64 Judiciary hearings. In his [May 16, 2025 opinion](#), restating his
65 May 9, 2025 bench ruling, Judge Sessions emphasizes that his
66 conditions of release did not include wearing a GPS monitor.
67 There is no mention of any concession of the part of Drescher in
68 that written opinion.

69 In any event, it is clear that Drescher never conceded
70 that Öztürk was entitled to bail until Judge Sessions overruled his
71 persistent objections to release.

72 * * *

73 *"The insistence that Drescher be disqualified by his*
74 *representation of the government in the Öztürk and Malawi*
75 *petitions unfairly elevates those cases in disregard of a*
76 *distinguished career":* This lament was characterized by Sen.
77 Bongartz as spurring his distaste for "letting Mr. Drescher hang
78 out to dry." Others, including Lt. Gov. Rodgers, have insisted that
79 the Judicial Nominating Board's recommendation ought to be

80 given great, if not determinative, weight as to Drescher’s
81 character and fitness.

82 Of course, if that were the test, there would be no reason
83 to continue making judicial appointments subject to Senate
84 confirmation.

85 And it is here that the nub of the divide is truly revealed.
86 As Sen. Nader Hashim, chair of the Senate Judiciary Committee,
87 explained, “At what point is the argument of ‘I was just doing my
88 job’ no longer acceptable?”

89 It is now.

90 No one is comfortable with the comparisons. But the
91 actions prompting the petitions for extraordinary relief by
92 Rümeyşa Öztürk and Mohsen Mahdawi — coupled with
93 repetitions of such tactics across the country and culminating
94 with the armed occupation of one of our great cities by
95 government agents acting far outside any legitimate authority —
96 force us to admit the obvious.

97 To refuse to acknowledge a great wrong — a wrong that
98 is in your power to correct — is to condone that wrong.

99 That is “the banality of evil” our culture is in danger of
100 tolerating.

101 The example is starkly posed by Drescher’s nomination
102 and confirmation. He lacks the moral fiber to serve on the
103 Vermont Supreme Court.

####END TEXT####

BIO/COATTAIL:

####BEGIN BIO/COATTAIL####

104 **JOHN P. WESLEY** retired in 2015 as the presiding judge
105 of the Vermont Superior Court.

####END BIO/COATTAIL####

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