

New Haven Register

Opinion

Apology owed city firefighters

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By Karen Torre

IN a Forum column, New Haven Corporation Counsel Victor Bolden gave a grossly inaccurate account of Ricci v. DeStefano.

The city advanced a new defense of the firefighters' race discrimination case, which is before the U.S. Supreme Court, contradicting its admissions and arguments in lower courts. That was annoying enough. It now circulates this confection in the media.

Bolden said two of the 50 minority candidates for promotion, neither black, would have been eligible for promotion based on results of a 2003 exam. That is false.

Fifteen minorities were eligible. Of these, five qualified for promotion in 2004, with others eligible for additional vacancies during the two-year life of eligibility lists. One of the successful black candidates submitted an affidavit expressing his disapproval of the city's actions.

The city also asserted that racial disparities in the 2003 exam were more "severe" than in prior tests. In fact, the evidence showed they were remarkably consistent in distinguishing among those who took previous tests together.

The few unsuccessful black candidates who complained the loudest and demanded a repeat of the competition are individuals who failed or barely passed previous exams. Are all tests they take flawed? Their refusal to accept responsibility for their failure hurt many, including fellow minorities. All were given the equal opportunity the law requires.

City officials blocked production of their own experts' report validating both tests and later had the gall to assert they acted in good faith. They solicited three other experts to address the civil service board in 2004, but none could impugn the exams.

One of the experts was a highly credentialed fire and homeland security official who was black. When he advised that the tests measured for knowledge commanders should

possess, the city's lawyer turned on him.

The city contacted a rival of the company that developed the 2003 exam, which suggested an alternative testing method that might produce better racial results, although it did not study the exams or validity data. The suggestion was discredited by its own publications. Not surprisingly, the city never used it as an expert witness in court.

There is a reason Lt. Matthew Marcarelli scores at the top in every exam he takes and Firefighter Frank Ricci succeeded despite his dyslexia. They are dedicated to excellence.

Another key fact, which the city and the National Association for the Advancement of Colored People take pains to avoid publicizing, is that a minority-dominated group of 30 high-ranking fire service professionals from around the nation rated the candidates in the situation-based phase of both exams. The city admitted the group's ratings were fair and accurate. To suggest they discriminated against fellow minorities is ludicrous.

The city and the NAACP dishonestly omit this fact from their rhetoric and will not explain how these job-related exams were unfair to some, but not all, black firefighters.

The exams did not, as Bolden asserts, "discriminate on the basis of race." They discriminated on the basis of qualifications. The civil service board deadlocked, but its chairman, a lawyer, voted to certify the eligibility lists, stating the evidence called for it.

The city admitted in the lower courts that it had no basis to impugn the exams. Before the Supreme Court, city lawyers backpedaled and admitted exam "flaws" for the first time.

In a carefully parsed statement, most charitably described as cagey, Bolden implies that a "group of testing experts" advised the city that the exams were indefensible. Hogwash. What Bolden omits is that this "group" is but five individuals who had never been involved in this case.

These individuals never even saw these exams, much less the job analyses and scoring data, and had the gall to disparage the reputable testing company that did possess this and other critical information.

One of them had provoked multiple litigations in Bridgeport with a controversial practice of race-based adjusting of exam results.

Mere weeks before the Supreme Court hearing, they filed a brief supporting the city. It does not represent the views of their professional organization and was insulated from cross-examination.

Of the thousands of such experts, these few chose to criticize a reputable testing company whose exams have never been invalidated in court and are well defensible, according to respected leaders in the industry.

City officials admitted they never expected the case to get to the Supreme Court. The evidentiary record in the lower courts may be problematic for them, but that is no excuse for attempting to concoct a new one and whipsaw the courts with new arguments.

Instead of offering a freshly fabricated case, Bolden should offer my clients the city's apology for wrecking their careers, gutting the Fire Department's command structure and endangering their lives and public safety.

The city deprived five minorities of promotions because it could not meet a quota of promoting four more who failed and who happened to be connected to City Hall? Who is Bolden trying to kid? He disingenuously denies both the existence of these minority victims and that they were thrown under a bus, paradoxically in consequence of city officials' race-mongering for political gain.

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