

# ON THE EVE OF SOTOMAYOR: RICCI IS IRRELEVANT

Tomorrow, Monday morning July 13, 2009, Judge Sonia Sotomayor begins the hearing portion of her confirmation process. So far, there has been the expected (sadly) partisan yammering on her nomination. Then, on Friday, there suddenly emerged something that might seem to take hold as the focus of the obligatory partisan sniping. Frank Ricci. It came from Dahlia Lithwick at Slate:

Ricci is invariably painted as a reluctant standard-bearer; a hardworking man driven to litigation only when his dreams of promotion were shattered by a system that persecutes white men. This is the narrative we will hear next week, but it somewhat oversimplifies Ricci's actual employment story. For instance, it's not precisely true, as this one account would have it, that Frank Ricci "never once [sought] special treatment for his dyslexia challenge." In point of fact, Ricci sued over it.

According to local newspapers, Ricci filed his first lawsuit against the city of New Haven in 1995, at the ripe old age of 20, for failing to hire him as a firefighter. That January, the Hartford Chronicle reported that Ricci sued, saying "he was not hired because he is dyslexic." The complaint in that suit, filed in federal court, alleged that the city's failure to hire Ricci because of his dyslexia violated the Americans with Disabilities Act. Frank Ricci was one of 795 candidates interviewed for 40 jobs. According to his complaint, the reason he was not hired was that he disclosed his dyslexia in an interview. That case was settled in 1997 with a confidential

settlement in which Ricci withdrew his lawsuit in exchange for a job with the fire department and \$11,143 in attorney's fees.

In 1998, Ricci was talking about filing lawsuits again, this time over a dispute with his new employer, Middletown's South Fire District—which had hired him in August of 1997. According to a Hartford Courant report of Aug. 11, 1998, Ricci was dismissed from the Middletown fire department after only eight months. He promptly appealed his dismissal, claiming that fire officials had retaliated against him for conducting an investigation into the department's response to a controversial fire. A story in the Hartford Courant dated Aug. 9, 1997, has Ricci vowing "to pursue this to the fullest extent of the law."

From that already tangential report by Lithwick, has come the claptrapping by those wanting to buck up the Sotomayor nomination, unfortunately by mostly liberal voices, that Ricci is now to be tarred and feathered as a "serial plaintiff".

I am in complete accord with Digby:

Ricci may very well have been justified in filing all those law suits against his employers for different reasons. Some people are just unlucky. And it has no bearing on the facts of the case in question, obviously, at least at the appellate level which is where Sotomayor heard it.

But let's face facts. Mr Ricci is obviously not the tough, manly public servant who was cheated out of his rightful job by a the lazy "you know whos" that free ride on the system. It looks like this guy would be a much better poster boy for tort reform than

reverse discrimination. Maybe somebody in wingnut central got the file mixed up.

As far as I can tell, both sides are full of manure here. The Republicans should not be parading Frank Ricci around as if he is significant to the question of the nomination; he is not, it is sheer exploitation, what he personally has to say here doesn't mean squat. But by the same token, for Democrats to be bringing up the Ricci character assassination tact is contemptible. That history had nothing whatsoever to do with his case as it involves Sonia Sotomayor, nor the facts underlying it from my look at the decisions of both Sotomayor and subsequently the Supreme Court. Beating him up with it is bullying and asinine.

One prior lawsuit the City of New Haven settled by giving Ricci the relief he sought and the award of attorney fees does not, by any convoluted stretch of the imagination, make Mr. Ricci some sort of despicable "serial plaintiff". The fact he contemplated later actions and never proceeded to filing a complaint means nothing either. And it sure as heck is not contained in either the factual statement of Sonia Sotomayor's decision, nor is it in the facts of the Supreme Court opinion.

By the same token, Mr. Ricci has nothing admirable nor tangible bearing on any argument the Republicans have against the nomination of Judge Sotomayor. The use of him as a front man is cowardly and cheap. It is a shameful and distracting dog and pony show by both sides. They should both knock it off and focus on the legitimate merits.

UPDATE: In light of many of the comments, I thought I should add a little discussion to clarify why Ricci is irrelevant to consideration of Sotomayor's nomination.

For all those that have not actually read the Ricci decision, it is not that long; you should

read it. First off, the case was not about Ricci individually in any regard; as the case was postured in front of Judge Sotomayor and her appellate panel, he was one of a co-equal group of 17 plaintiffs. Ricci's name by whatever happenstance simply ended up being the first name in the caption. The case is NOT about Ricci, it is about a testing process for the promotion of firefighters in New Haven.

Secondly, Ricci himself was not complaining about the test, nor did he argue that his alleged dyslexia affected his performance on the test whatsoever; that fact and the first lawsuit he filed in the 1990s had nothing to do with the case in front of Sotomayor or the Supreme Court. Nothing could be further from the truth; in fact Ricci was adamant that the test was fair and he strongly thought *ought* to be determinative in the promotion debate. In fact that is why he was a member of the group of 17 plaintiffs.