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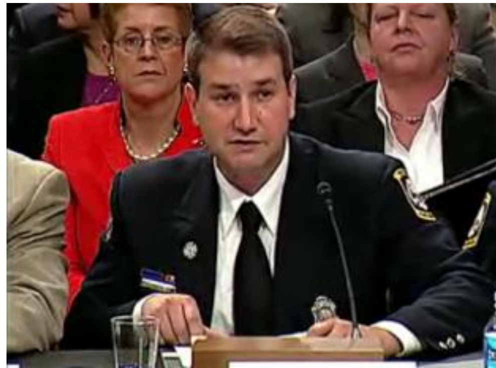
When Emotions Rule, We "RUSH TO JUDGMENT"



Frank Ricci, Testifying Before the Senate

In Ricci, et al., *v.* DeStefano, et al., 557 U. S. ____ (June 29, 2009), the U.S. Supreme Court heard a case that brought the worst fears many people have over the issue of "diversity in the workplace" to the forefront of this debate in America. This case directly addressed the greatest "MICRO" issue we all face:

JOBS

In Ricci, the New Haven Fire Department had eight (8) positions available for lieutenant and seven (7) positions available for captain. In keeping with its standard process, any firefighter who wanted to be considered for these positions was required to take these examinations.

Late in 2003, seventy-seven (77) candidates took the examination for the position of "lieutenant": 43 Whites, 19 Blacks, and 15 Hispanics. Out of those who took this test, 34 candidates passed: 25 Whites, 6 Blacks, and 3 Hispanics.

Since the White firefighters scored the highest on the lieutenant's exam, all of the lieutenant positions were filled by Whites.

At this same time, forty-one (41) candidates completed the examination for the position of "captain": 25 Whites, 8 Blacks, and 8 Hispanics. Out of those who took this test, 22 candidates passed: 16 Whites, 3 Blacks, and 3 Hispanics.

Again, since the White firefighters scored the highest on the captain's exam, all of the captain positions were filled by Whites.

But in January 2004, Thomas Ude, New Haven City's Legal Counsel, had a meeting with "Industrial/Organizational Solutions, Inc., " IOS," Vice President Chad Legel, who was the leader of the IOS team that developed and administered these tests for the New Haven Fire Department. Based solely

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on the test results, the New Haven City officials believed that the examinations had discriminated against minority candidates under the theory of "disparate impact," or unintentional discrimination. In this meeting, Legel defended the validity of both examinations.

In designing these examinations for the New Haven Fire Department, IOS began by performing job analyses to identify the tasks, knowledge, skills, and abilities that are essential for the lieutenant and captain positions. IOS representatives interviewed incumbent captains and lieutenants and their supervisors. They rode with and observed other on-duty firefighters. Based upon this information, IOS wrote job-analysis questionnaires and administered them to most of the incumbent battalion chiefs, captains, and lieutenants in the department. At every stage of the job analyses, IOS deliberately oversampled minority firefighters in an attempt to ensure that the results, which IOS would use to develop the examinations, would not unintentionally favor White candidates.

With this job-analysis information in hand, IOS developed the examination questions that would be used to measure the candidates' job-related knowledge.

For each written test, IOS compiled a list of training manuals, department procedures and other materials to use as sources for the test questions. IOS presented the proposed sources to the New Haven fire chief and assistant fire chief for their approval. Then, using only these approved sources, IOS drafted a multiple-choice test for each position. Each test had 100 questions, as required by the New Haven Civil Service Board ("CSB") rules.

Each test was written below a 10th grade reading level.

IOS then developed the oral examinations as well. These questions focused on the job skills and abilities that a candidate would need to successfully perform each of these jobs. Using the job analysis information, IOS wrote hypothetical situations to test incident-command skills, firefighting tactics, interpersonal skills, leadership, and management ability, among other things. Candidates would be presented with these hypothetical questions and asked to respond before a panel of three assessors.

After IOS prepared the tests, the city opened a three-month study period. IOS then gave the fire fighters a list that showed them where they could find all the answers to the examination's questions in the study materials they were given. Therefore, all the material for the examinations was taken directly from approved source materials, which were all derived directly from duties required to successfully perform these positions. In other words, IOS designed these tests to be as unbiased and as legally defensible as possible.

In scoring the oral exams, IOS assembled a pool of 30 assessors who were superior in rank to the positions being tested. In order to reduce the controversy that is typically involved in such examinations, the City insisted that all of the assessors come from outside Connecticut. IOS submitted the assessors' resumes to City officials for approval. All of these assessors were battalion chiefs, assistant chiefs and chiefs from departments of similar sizes to New Haven's throughout the country. **Sixty-six percent of the panelists were minorities, and each of the nine three-member assessment panels contained two minority members.** Legal confirmed that IOS had selected oral-examination panelists so that each **three-member assessment panel included one White, one Black, and one Hispanic member.**

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IOS trained the panelists for several hours on the day before it administered the examinations, teaching them how to score the candidates' responses consistently using checklists of desired criteria.

Therefore, all of the material for the examinations was taken ***directly from approved source materials, which were all derived directly from duties required to successfully perform these positions.*** IOS also had third-party reviewers scrutinize the examination questions to ensure that the written test was drawn from the source material and that the oral test accurately tested real-world situations that captains and lieutenants would face on the job. This process used by IOS to design these examinations had the highest possible level of legal validity possible since all of the testing materials came directly from the actual duties that are going to be required on the job. This is called "content validity."

The oral part of the examinations accounted for 40% of the candidates' overall score, while 60% of the written portion counted for the rest.

This was the process used by IOS to design these examinations.

Now, in order to understand this area of the law, it is important to understand the two primary theories of illegal discrimination that exist under Title VII of the 1964 Civil Rights Act:

Disparate treatment and disparate impact.

Under disparate treatment ("bad treatment"), the theory is that an employer **intentionally** discriminated against an employee or prospective employee based upon his/her protected class status, such as race, color, religion, national origin, sex, age, disability or pregnancy, to mention a few. This is what most people think of when it comes to illegal discrimination.

However, under a theory of disparate impact ("bad result"), the employer did not ***intend*** to discriminate against anyone. Instead, an employer has adopted a policy, practice or procedure that has an unintended affect of systematically discriminating against a group of protected class individuals.

The Civil Rights Act of 1991, an amendment to Title VII, made disparate impact illegal. In order to first establish a "prima facie case" of disparate impact, the employees or prospective employees must show that the employer has used a particular employment practice that causes a disparate impact on the basis of a protected class. This is accomplished by making the following "80% Rule Calculation."

The 80% Rule says that if an employer's selection rate for any protected class is less than 80%, or 4/5ths, of the group with the highest selection rate, then an ***inference*** of disparate impact will be shown to exist.

The following illustration shows how to perform such calculations:

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

STEP 1

Calculate the employer's selection rates for each group:

	PASSED	TOTAL TAKING TEST

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Whites	25	divided by	43	=	58%
Blacks	6	divided by	19	=	32%

STEP 2

Identify the group with the highest selection rate: Whites, with a 58% selection rate.

STEP 3

Calculate the percentage difference between the selection rates of these two groups:

$$\frac{32\%}{58\%} = 55\%$$

If the ratio between the two groups is less than 80 percent, then an ***inference*** of disparate impact exists. In this case, 55 percent is less than 80 percent, so an ***inference*** that New Haven Fire Department's test for the lieutenant's exam ***may*** have "unintentionally discriminated" against the black firefighters exists under a disparate impact theory.

80 PERCENT RULE CALCULATIONS FOR THE CAPTAIN'S EXAM

STEP 1

First, you calculate the employer's selection rate for each group:

16 Whites passed the test divided by 25 Whites who took the test = 64%

3 Blacks passed the test divided by 8 Blacks who took the test = 38%

STEP 2

You then identify the group with the highest selection rate, which in this case, it would be the Whites with a 64% selection rate.

STEP 3

Calculate the percentage difference between the selection rates of these two groups:

$$\frac{38\%}{64\%} = 59\%$$

STEP 3

You then calculate the percentage difference between the selection rates of these two groups:

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38% pass rate of the Blacks divided by the 64% pass rate of the Whites =

59% difference between the two groups

If the ratio between the two groups is less than 80 percent, then an ***inference*** of disparate impact exists. In this case, 59 percent is less than 80 percent, so an ***inference*** that New Haven Fire Department's test for the captain's exam ***may*** have "unintentionally discriminated" against the Black firefighters exists under a disparate impact theory.

Therefore, an ***inference*** of disparate impact was shown to exist since the difference between the pass rates of the White and Black firefighters was below 80% in both the lieutenant's exam (55%) and the captain's exam (59%).

Still, it is important to note that under the law, failing the 80% Rule Calculation is ***not proof of illegal discrimination.*** Instead, it merely raises the ***inference*** that there ***might*** be illegal discrimination occurring here. Since failing this statistical test only suggests that adverse impact might exist, New Haven could still defend itself by showing that its tests were "job related for the position in question and consistent with business necessity."

If New Haven can show that these tests were valid, which means they were **"job related,"** then the Black firefighters must prove that New Haven had another **alternative employment practice** available that had less disparate impact and serves the employer's legitimate needs yet failed to use it. Therefore, the final burden of proof lies with the Black firefighters.

That is how disparate impact theory works under the law.

Of course, thanks to all the precautions IOS had taken to ensure these tests were free of bias and that they complied with all the necessary legal requirements for designing such tests, no such arguments existed.

Therefore, the final burden of proof lies with the black firefighters to show that another **alternative employment practice** was available for the city of New Haven to use that had ***less disparate impact*** and still served the employer's legitimate needs. Since no such system existed, the city of New Haven would prevail.

Also, after each firefighter examination is given in New Haven, the New Haven Civil Service Board ("CSB") is required to "certify," or approve, the ranked list of applicants who passed the test before the promotions are made effective. However, after meeting with Legel from IOS, Thomas Ude, New Haven City's Legal Counsel, sent a letter to the CSB telling them that under federal law, "a statistical demonstration of disparate impact … constitutes a sufficiently serious claim of racial discrimination." In other words, Ude believed that these tests presented a case of disparate impact against the City and therefore illegally discriminated against the Black firefighters.

Of course, as you now know, the city's attorney clearly misstated the law.

Now, wouldn't that make you pause and wonder why Ude would make such a mistake? How could he misinterpret the law on this issue so badly? Does it make you wonder if an alternative agenda is at work here? Read on, because the truth will come out later.

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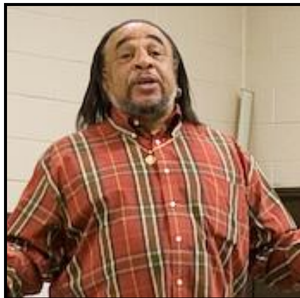
Ude therefore recommended that the Board ***not*** certify or approve the results of the examination, which would prevent the promotions of the White firefighters who scored the highest on the examinations.

At the first meeting of the CSB, although they did not know at that point whether they had passed or failed, some firefighter/candidates urged the CSB to certify the test results. Michael Blatchley, a White fire fighter, stated that "[e]very one" of the questions on the written examination "came from the [study] material. . . .[I]f you read the materials and you studied the material, you would have done well on the test."

Frank Ricci, also a White fire fighter who was also unaware of the results at the time, stated that the test questions were based on the Department's own rules and procedures and on "nationally recognized" materials that represented the "accepted standard[s]" for firefighting.

In preparing for the exam, Ricci quit his second job in order to study 8 to 13 hours a day. Since Ricci had several learning disabilities, one of which was dyslexia, he paid one of his neighbors $1,000 to read all of these materials onto audio tape so he could "give it [his] best shot." Later, Ricci discovered that he had finished with the sixth highest score and would have been promoted into the position of lieutenant if the Board has certified the test results.

At a CSB meeting held on February 5, 2004, the president of the New Haven firefighters' union asked the CSB to perform a validation study to determine whether the tests were truly job-related and therefore valid.



Donald Day

However, a representative from the International Association of Black Professional Firefighters, Donald Day from neighboring Bridgeport, Connecticut, "beseech[ed]" the CSB "to throw away that test," which he described as "inherently unfair" because of the racial distribution of the results. Day made no argument that the examinations were invalid or that they were not job-related, nor did he argue that the tests were administered unfairly or unequally. Day also did not argue that any other equally valid methods of testing these firefighters existed. Instead, based entirely on the statistical calculation that not enough Black firefighters passed the exam, he argued that the results should be "thrown out" and the White firefighters not be given their promotions.

Again, that is **not** what the law requires. **THIS** is what happens when emotions overtake logic … and the law. Day's demand was simply illegal.

Another Bridgeport-based representative from the International Association of Black Professional Firefighters, Ronald Mackey, also argued that a validation study was necessary. However, he also suggested that the City could "adjust" the test results to "meet the criteria of having a certain amount of

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minorities get elevated to the rank of Lieutenant and Captain." In other words, Mackey was suggesting that the City give additional points to the Black firefighters who took the test so more of them could be promoted into these positions over some of the White firefighters.

However, this practice, which is called norming test scores, became illegal in 1991. So, when Mackey made this suggestion, it had already been illegal for over a decade.

Again, this is what happens when emotions overtake the logical brain, and the law. This recommendation was clearly illegal!

At the end of this meeting, the CSB members agreed to ask a panel of experts to review the examinations and advise the CSB whether to certify the results.

At the next meeting, on March 11, 2004, the CSB heard from several witnesses regarding the validity of these tests.

The first witness to address the CSB was Christopher Hornick, who spoke to the CSB by telephone. Hornick is an industrial/organizational psychologist from Texas who operates a consulting business that is a direct competitor with IOS. Hornick stated that the while the adverse impact on these exams were much higher than usual, they were still generally in the range of what he has seen across the country. Hornick concluded that the tests designed by IOS were reasonable, fair and that they should be certified.

The CSB then spoke to Vincent Lewis, a Black fire program specialist for the Department of Homeland Security and a retired fire captain from Michigan. Lewis looked "extensively" at the lieutenant exam and "a little less extensively" at the captain exam. After reviewing the material covered on the exam, Lewis stated that the candidates "should know that material." In Lewis's view, the "questions were relevant for both exams," and the New Haven candidates actually had an advantage because the study materials identified the particular book chapters from which the questions were taken. Lewis stated that in other fire departments, by contrast, "you had to know basically the . . . entire book."

In the end, Lewis concluded that any disparate impact that might have occurred was most likely due to a pattern that "usually Whites outperform some of the minorities on testing" because "more Whites . . . take the exam." In other words, Lewis contended that the statistics in such analysis are basically unreliable because the raw numbers are too small or disproportionate to be statistically significant.

In order to better understand what Vincent is saying, for example, let's say 80 Whites take a standardized test and 14 Blacks take the same test. (I chose these numbers because these are approximately the percentages of Whites and Blacks making up the total population of the United States according to the 2000 census, which is the census most applicable to this time period.) Let's then say that 40 Whites (50%) passed the test and 4 Blacks (29%) pass the test. These failure rates of the White and Black employees would present an ***inference*** of disparate impact under the law.

However, when you look at the raw numbers themselves, 40 Whites failed while only 10 Blacks failed. In other words, ***four times*** as many Whites failed the test as Blacks.

Does this mean that Whites are not as smart as Blacks?

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Does that mean that there is a racial prejudice against Whites? Not at all.

The issue Lewis was bringing to the CSB's attention is clear:

You cannot consider the statistical analysis in a vacuum.
At some point, the raw numbers become so disproportionate to one another that the statistical comparison between the two groups becomes meaningless.

The raw data itself must be statistically significant.

This is the same thing as if I walked up to ten children in New York and asked them where the Statue of Liberty is located. If five get it right and five get it wrong, I could come to the erroneous conclusion that half of the kids in New York do not know where the Statue of Liberty is located. So, I conclude that half of the kids in New York City are not very smart.

Of course, that is an inaccurate conclusion because asking only ten children is not a representative sample of the number of children living in New York City. However, that is basically what Lewis is saying happens when you compare the pass/fail rates between Whites and Blacks if the raw numbers do not represent a statistically significant number of applicants.

The final witness was Janet Helms, a professor at Boston College whose "primary area of expertise" is "not with firefighters per se" but in "race and culture as they influence performance on tests and other assessment procedures." Helms expressly declined the CSB's offer to review the examinations.

However, Helms stated that the results New Haven had on these tests were not inconsistent with standardized tests being administered across the country.

While all of these experts stated that the statistical disparity between the passage rates of between the White and the Black firefighters was very high, none of these experts thought this disparity was enough to invalidate the tests. Interestingly, these experts consistently stated that minorities across the country score lower than Whites on standardized tests.

At the final CSB meeting, on March 18, 2004, Ude, New Haven's City Attorney, again argued against certifying the examination results, even though the CSB's investigation found that the test was valid. Ude told the CSB that because the tests failed the "disparate impact" statistical test (80% Rule Calculation") and that he believed other less discriminatory examinations could be used, although he never cited to the existence of any other more reliable methods, they should not certify these results. Ude argued that the White firefighters and the one Hispanic fire fighter who scored the highest on these tests should be denied their promotions.

In the final vote, the CSB failed to certify the examination results, which resulted in this lawsuit. Eighteen firefighters joined in filing this lawsuit, 17 of whom are White, including Frank Ricci, and Ben Vargas, who is Hispanic. All of these firefighters passed the examinations but were denied a chance at promotion when the CSB refused to certify the results.

Still, the city refused to certify the examination results, which resulted in this lawsuit.

The firefighters who scored the highest on these tests and were denied their promotions claimed that since the City failed to certify the results of the exam based upon their race, the City had committed

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racial discrimination against them under Title VII of the Civil Rights Act, which bars intentional race-based employment discrimination.

However, the U.S. District Court ruled for the City. Ricci then appealed to the 2nd Circuit Court of Appeals. By a 3-0 margin, the Second Circuit of Appeals upheld the lower court. Ricci then appealed to the U.S. Supreme Court and the Court decided to hear the case.

On June 29, 2009, the U.S. Supreme Court delivered its opinion in the *Ricci* case. In a 5 to 4 decision, the Court held for Ricci and his fellow White and Hispanic firefighters.

The U.S. Supreme Court, in a 5-4 decision, held for Ricci and his fellow White and Hispanic firefighters.

The City argued that it **chose** to not certify the results of the tests because it was afraid that it would be sued by the Black firefighters who did not pass the test under a theory of disparate impact. Therefore, the City argued that under the law:

> **It should be permitted to discriminate against the White firefighters and the one Hispanic fire fighter who scored the highest on the examinations in order to avoid getting sued by the Black fire fighters.**

Amazing.

Yes, the city actually **chose** to illegally discriminate against the Hispanic and White firefighters in order to avoid getting sued by the Black firefighters. The city was more than willing to ***knowingly*** break the law and illegally discriminate against the Hispanic and the White firefighters so they would not be sued by the Black firefighters.

According to the Court, you cannot illegally discrimination against one group in order to satisfy the wants of another group, even if it is to avoid a lawsuit.

Of course, in the alternative, the city did not seem to be too worried over getting sued by the Hispanic and the white firefighters who were denied their promotions, which would also prove devastating to their individual careers and their families.

So, do you agree with these controversial statements:

- **No one** should ever be denied a job or a promotion because of their demographics, such as race, color, religion, sexual orientation, and so on and

- Racism and bigotry are wrong, no matter who is doing it.

The U. S. Supreme Court agreed with these statements. However, the blatant and intentional discrimination committed by New haven, Connecticut, cannot be excised. It is disgraceful.

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The Court held that the city illegally discriminated against the Hispanic and White firefighters because it decided not to certify the results of the exams based on their race. The Court said that there was no evidence that these tests were flawed in any way. There was also no evidence presented by the city that showed there were other equally valid and less discriminatory methods available.

However, there was an abundance of evidence presented to show that these tests were in fact job-related and consistent with the "business necessity" of the New Haven Fire Department. The Court concluded that there was **no question these examinations were indeed valid**.

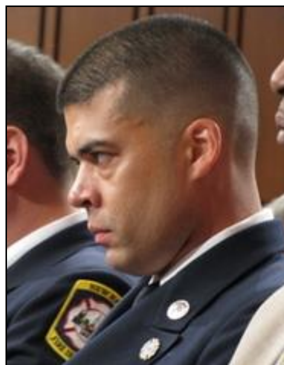
Therefore, the Court held that it was illegal for the city to fail to certify the results of these examinations and deny the White firefighters their promotions. Therefore, the city had committed illegal disparate treatment against the Hispanic and White firefighters.

In other words, the City made this employment decision based upon race, which is ***intentional*** discrimination and is illegal under Title VII of the Civil Rights Act of 1964. In other words, the City rejected the test results ***solely*** because the higher scoring candidates were not Black.

Therefore, the Court held that it was illegal for the City to fail to certify the results of these examinations and deny the White firefighters their promotions. Therefore, the City had committed illegal disparate treatment against the White firefighters.

RICCI AND THE AFTERMATH

In July 2009, both Ricci and Lt. Ben Vargas testified before the United States Senate Judiciary Committee. Ricci stated that he studied harder for this exam than he had ever studied before in his life. As a result from all of this time he spent studying, he was a "virtual absentee father and husband" for months. Ricci argued that the City of New Haven reduced people to "racial statistics" and divided people on racial lines.



Lt. Ben Vargas

In July 2009, both Ricci and Lt. Ben Vargas testified before the United States Senate Judiciary Committee.

Ricci stated that he studied harder for this exam than he had ever studied before in his life. Since he spent so much time studying, he was a "virtual absentee father and husband" for months. Again, in preparing for the exam, Ricci studied eight to thirteen hours a day and even paid one of his neighbors to read all of the massive examination materials into a tape recorder so he could listen to them later.

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Ricci testified that the City of New Haven reduced people to “racial statistics” and divided people on racial lines.

Lt. Ben Vargas, who scored the sixth highest on the captain’s examination, then testified. Vargas stated, “I am Hispanic, and proud of my Heritage. I am the proud father of three young sons. For them, I sought to better myself.” Vargas then stated, “I do not want my sons to think their father became a captain because he was Hispanic and used his ethnicity to get ahead. Worse still is to jump the line ahead of others who are more qualified. There is no honor in that.”

Vargas said he spent three months studying every day for the captain’s exam. He said he “holed up” in a hotel at one point, bringing photos of his children so he could focus on studying.

“I was shocked when I was not rewarded for this hard work and sacrifice, but actually penalized for it,” said Vargas. “I became not Ben Vargas, the fire lieutenant who proved himself qualified to be a captain, but a racial statistic.”

Vargas said, “We did not ask for sympathy or empathy. We asked only for even-handed enforcement of the law.”

As you could imagine, tensions ran high throughout the trial. Ricci and his fellow plaintiffs were openly called Klansmen, a reprehensible attack that any decent white person would find personally offensive. *1*

Also, before the lawsuit was even filed, Ben Vargas was physically attacked from behind in a public restroom. It was retaliation against him for helping to get these tests certified. *2*

I can personally relate to what these men are saying. I too know what it is like to isolate yourself from your family for months on end, to study late into the night and to go to class after working all day until you can barely walk, much less concentrate. For me, I will suffer the health effects for the rest of my life for torturing my body while I was in school and then building my career. It is the permanent price I have paid for getting where I am today, and it is unfair and illegal to tell me that I am the wrong color, just like it was wrong and illegal what the city of New Haven did to Ricci, Vargas and the others in this case.

I also wonder how hard the firefighters studied who did not score as well on these exams, black and white alike? Did they see their families? Did they eat bad food while they were studying? Did they seal themselves up in a motel room so they could learn these materials? Did they pay someone to record the materials for them so they could study them later? What price did they pay?

If I was one of the Black leaders in this community who really wanted to help the Black firefighters, I would have started getting involved way before these tests were even administered. I would have set up study groups, practice groups and practice tests. I would have drilled everyone in everything that was going to be covered until the firefighters were sick of it. If some of the firefighters did not know how to study for such a test, I would teach them how to do it.

I would have been proactive rather than reactive.

RICCI AND WHY THE STATISTICS ARE “OFF”

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According to Vincent Lewis, the Black fire program specialist for the Department of Homeland Security and a retired fire captain from Michigan who testified before the New Haven CSB, one reason as to why Blacks statistically score lower on standardized tests than Whites most likely lies in the "raw" numbers. Since there are many more raw numbers of Whites taking these tests than Blacks, when one Black person passes or fails a test, it has a much greater impact on the statistics than when one White person passes or fails the test.

In other words, if one is going to look at "the numbers" of this issue, which is what New Haven based its case upon, one must also take a hard look at not only the statistical calculations but also the ***raw data***. Are the raw numbers large enough for each group so that a meaningful comparison can be made and analyzed? In other words, is the raw data itself statistically significant? If not, then the statistical analysis will not be reliable.

For example, let's say 80 Whites take a standardized test and 14 Blacks take the same test. (I chose these numbers because these are approximately the percentages of Whites and Blacks making up the total population of the United States according to the 2000 census.) Let's then say that 40 Whites (50%) passed the test and 4 Blacks (29%) pass the test. Such failure rates of the Whites and Blacks would present a strong inference of disparate impact under the law.

However, when you look at the raw numbers themselves, 40 Whites failed while only 10 Blacks failed. In other words, ***four times*** as many Whites failed the test as Blacks.

Does this mean that Whites are not as smart as Blacks?

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Of course, that is an unfair conclusion because ten children is not a representative sample of the number of children living in New York. However, that is basically what Lewis is saying happens when you compare the pass/fail rates between Whites and Blacks.

RICCI AND THE RISE OF BIGTORY IN AMERICA

The Ricci case demonstrates the greatest fears of both Whites and Blacks: Will they be discriminated against as they try to get a job, promoted, raises, bonuses and so on? Do qualifications matter … or do the statistics count most … regardless of whether they are reliable or not?

If I was one of the Black leaders in this community who was upset over these test results, I would want to get to the reason ***why*** do Blacks routinely score as a group than Whites to when examined form a statistical basis. If you don't realize that the raw numbers play a significant role here, which skews the

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validity of the statistics, then you are playing into the worst kinds of stereotypes. It gives White bigots all the fodder they need to say,

"See, I told you Blacks are not as smart as Whites,"

or

"See, I told you Blacks are lazy and won't study when they need to,"

or

"See, I told you Blacks have an entitlement mentality and want everything handed to them."

I know the true answer does not lie in any of these stereotypes, but many who already harbor these prejudices see this case as "proof" of everything they have always thought about minorities. Being a White person who teaches diversity and tolerance, I have already had this case "shoved down my throat." I have had fellow Whites and even some Hispanics tell me, "I don't know why you waste your time with this stuff. See, I told you they were like that."

We are still struggling to find that "level playing field" today and many White folks are afraid that the field they end up playing on will be unfairly tilted in favor of minorities. The Ricci case demonstrated how widespread and prevalent that fear still is today in the 21st century.

How bad is this wave of fear in America? It is increasing at unprecedented proportions.

In the February 2009 edition of the "Intelligence Report," the Southern Poverty Law Center reported on the continued growth of hate groups in America. It reported that fueled by fears of immigration, the economic crisis and the election of a Black president, racist hate groups are increasing their numbers by leaps and bounds. SPL Center has documented a staggering 926 hate groups operating in our country, which is more than a 50% increase since 2000 ... and those are just the groups we know of and can track. **1**

The SPL Center reported that hate group leaders are exploiting the difficult economic times to swell their ranks, and their anti-Semitic, White supremacist propaganda is promoting violence. The SPL Center quoted a neo-Nazi leader from a story in USA Today as saying, "When the economy suffers, people are looking for answers. ...We are the answer for White people." **2**

The civil rights movement was all about obtaining "***equal***" rights for ***everyone*** … ***not*** "***special***" rights for ***anyone***. Before the civil rights movement, minorities of all kinds across this country were denied the right to vote, to use bathroom facilities, to educate their children, to dine whenever they wanted and, by far the most important of all, to obtain and maintain employment. Whites and Blacks alike marched together, were beaten and even killed in order to attain equal rights for everyone.

That was the basis of Martin Luther King's "dream": **Equal rights**.

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1 Southern Poverty Law Center's February 2009 "Intelligence Report"; http://www.splcenter.org/center/petitions/standstrong/index.jsp
2 Southern Poverty Law Center's February 2009 "Intelligence Report"; http://www.splcenter.org/center/petitions/standstrong/index.jsp

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Those who opposed the reforms of the civil rights movement at the time argued that granting equal rights to minorities would ultimately result in the erosion of the rights of White Americans. In other words, those who opposed the civil rights movement were afraid of losing their rights.

Today, that is once again the rallying cry of the Klan and other hate groups … and it is working.

Unfortunately, as the Ricci case shows, the leadership of the City of New Haven did in fact purposely choose to discriminate against 41 White firefighters and six Hispanic firefighters. The City of New Haven did this because they were afraid of being sued by the minority firefighters.

Even though the White firefighters eventually won their case at the U.S. Supreme Court, the Ricci case presents itself as a tremendous recruiting tool for the hate groups in this country. All the bigots have to do is point to the facts of this case and say, "See! There is no such thing as 'equal' rights. What these minorities really want are 'special' rights, and that means you and your children are going to be passed over for jobs and promotions because they are White … regardless if you and your children are the most qualified. 'Reverse' discrimination is what they really want … and these employers are giving it to them because they are afraid of the minorities!"

Now, think about how these fears are reinforced when our diversity and tolerance programs workplaces and present the typical culturally based diversity training that occurs every day in this country. Far too many diversity trainers focus on such issues as "race" and "religion," leaving most White Americans sitting there thinking, at best, "What does this have to do with me?"

At worst, it leaves many White Americans thinking, "Well, here are some more 'special' rights for the minorities. No one ever seems to be too concerned over offending or discriminating against White folks. We never have a class on that. I guess I had better keep my mouth shut, because if I speak up, I will be labeled a White bigot."

So much for a trusting workplace where a "Diversity of Ideas" is encouraged.

To make matters worse, far too many diversity trainers then blame one group or another for the problems the organization is experiencing, which does nothing but alienate one group of people or the other. Unfortunately, most Americans have had this type of experience, which only reinforces these feelings of "special" rights rather than "equal" rights.

In the end, these hate groups need only to look at cases like Ricci and the typical kinds of diversity training that occurs in American workplaces as "proof" that the true goal of the civil rights movement was "special" rights … not "equal" rights. Unfortunately, we are giving the hate groups all the fodder they need to not only reach but exceed their goals for recruitment.

Why is this approach to recruitment working for hate groups? What is the issue driving all of this fear and hate? It is the same issue Jackie Robinson faced in 1947. It is **the** issue that causes not only much violence, but riots and revolutions:

JOBS

Remember: The issue with Jackie Robinson playing in the majors had nothing to do with whether he was good enough to play major league baseball. The real issue was that now one White ball player would not be able to play and make a living.

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Now … having said all of that, you announce that the company is going to start this great new Diversity/Tolerance Program that is really going to help the company.

How much support do you think you will get from the White Anglo Saxon Protestant straight guys after they read the Ricci case?

What fears then race through many White people's minds?

- "I am not going to be able to express my opinions anymore."
- "This new Diversity/Tolerance Program is going to tell me how to think … what to believe. They are going to force me to sacrifice my beliefs and accept lifestyles that I do not approve."
- "What's really happening here is that we are becoming 'Politically Correct,' so I will have to walk on eggshells all the time because the hypersensitive minorities will run the place from now on. Soon, I won't be able to put up a little Christmas tree on my desk because it might 'offend' someone."
- "This program is going to take away all of ***my*** rights."

If you want to get real buy in from the organization and the individual employees, then you need to address both the "MACRO" issues of the organization and the "MICRO" issues of the individual employees.

Therefore, even if upper management does support the program, that does not mean the individual managers, supervisors and workers on the front lines will be equally supportive. If they support such a program and it helps the organization but it costs them a promotion, then why in God's name would they ever support it?

They won't. That is why the "MICRO" issue must be addressed, which is:

What is in this for ME?

That sounds selfish, but that is just how it is. Diversity people must realize this hurdle exists or they will surely trip over it. In order to implement a "Diversity of Ideas," "Tolerance" or "Emotional Intelligence" program, the organization must buy into it from a "MACRO" level ("What is in it for the organization from a tangible and immediate standpoint to reach its corporate goals?") and also from a "MICRO" level ("What is in this for me personally?")

So, what is in it for a White Anglo Saxon Protestant straight guy like me? Why would someone like me support these types of programs condoning illegal tactics?

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1 William Kaempffer, Top 50: New Haven firefighters' case set national precedent, New Haven Register, July 14, 2018, https://www.nhregister.com/news/article/Top-50-New-Haven-firefighters-case-set-13070745.php. Retrieved September 26, 2020.

2 *Ibid.*

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