

Sotomayor Hearing, Day 4 (07/16/2009), Parts 67 to 75

(Ricci testimony begins at 73)

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XXX do it, anyway."

MCDANIEL: But clearly the Supreme Court thought that it was ripe for review, and they also thought that it was ripe to change the law, which is their purview.

WHITEHOUSE: That's an interesting point, and many observers, including prominent observers who have had their views expressed in the public media about this, have indicated that that decision changed the landscape of civil rights law.

If a judge is a cautious and small "c" conservative jurist on a circuit court, do you believe it's appropriate for the circuit court to change the landscape of civil rights law?

MCDANIEL: Absolutely not. I don't think that the 2nd Circuit did anything short of what it had to do, which was to apply the existing law.

The fact that the majority, a bare majority in the United States Supreme Court decided to change existing law, frankly, that would have been inappropriate for the 2nd Circuit to take that responsibility on itself.

WHITEHOUSE: Thank you, Attorney General.

SESSIONS: Thank you.

Mr. McDaniel (inaudible) attorney general, and it was a great honor.

With regard to the Ricci case, are you aware that the panel attempted to decide this case on a summary order, writing no opinion, not even a per curiam opinion?

MCDANIEL: I am aware of that.

SESSIONS: And are you aware that, by chance, one of the other members of the circuit found out about that and an uproar of sorts occurred because the people -- the other members -- other members of the circuit were very concerned about the opinion and thought it was an important opinion? Are you aware of that?

MCDANIEL: I know that the -- I know that the panel, or at least the body of judges chose to review the matter and they voted not to meet en banc and that there was a per curiam that was issued...

(CROSSTALK) SESSIONS: That's correct. That's correct.

Now, you say that there was 2nd Circuit opinion and authority to uphold this case. But -- but on rehearing, the slate is wiped clean and the panel can develop or formulate new authority or determine clearly whether or not that previous case may have applied.

And are you aware that when they voted, the vote was 6-6, and Judge Sotomayor was the key vote in deciding not to rehear the case? And therefore we can conclude that not only did she decide this case, but it's really not accurate to say she was just following authority since it was her vote that didn't allow that authority to be reevaluated.

MCDANIEL: Well, Senator, she was in the majority, so it's fair to say that any one of those judges could be the deciding vote...

(CROSSTALK)

SESSIONS: That is correct. But it's not fair, I think, to say that she didn't have an opportunity to reevaluate it. She was simply applying law that she was bound to follow when she could have, if she felt differently, she could have allowed it to have been rediscussed.

MCDANIEL: I also think that there were Supreme Court cases, not just 2nd Circuit cases.

SESSIONS: Well, are you aware the Supreme Court says there were not. Are you aware the Supreme Court, in their opinion, said there was no Supreme Court authority on this matter?

MCDANIEL: I have read their opinion and I tend to agree with the minority that this was, in fact, squarely within the...

(CROSSTALK)

SESSIONS: Now, you filed, which I give you credit for, and I did some of these things when I was attorney general, you -- you joined with 32 other state attorneys general in submitting an amicus brief to the U.S. Supreme Court on the Heller case.

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XXX the Heller case.

GRAHAM: You took the provision -- the brief argues that the right to keep and bear arms is among the most fundamental of rights because it is essential to securing all other liberties, close quote.

I see the mayor not happily listening to that.

(LAUGHTER)

You -- but -- so you believe that the Second Amendment is a fundamental right.

Are you aware that Sandy Froman, the former president of the NRA -- you're probably not familiar with this letter, but she's a lawyer and pointed out that Heller was just a 5-4 opinion, with some justices arguing that the Second Amendment does not apply to private citizens or that, if it does, even a total gun ban would be upheld if a legitimate government interest could be found.

The dissenting justices also found that D.C.'s absolute gun ban on handguns within the home a reasonable restriction. That wouldn't play too well in Alabama; probably not Arkansas, Oklahoma or Texas. But most places.

So I guess I'm saying, are you concerned that -- and are you aware, of course, the Maloney case, in which Judge Sotomayor -- and I think she can contend there was authority in that case that justified her concluding the Second Amendment does not apply to the states. But I was disappointed in the -- and the way she wrote it gave me concern.

So are you aware that one vote on the Supreme Court could make the difference on the question of whether or not the right to keep and bear arms is protected against mayors or legislatures of states who disagree?

MCDANIEL: Well, I was proud to join Arkansas into the brief on Heller v. The District of Columbia. I intend to join again in the NRA v. Chicago in the attempt to have the Supreme Court review and take up the question, which I believe is ripe, as to whether or not the Second Amendment is applied to the states, as incorporated by the Fourteenth Amendment.

I do believe that the Second Amendment is a fundamental right, and I do believe that it is an individual right, not one tied to participation in a militia.

The attorney general -- the current attorney general in Texas, Senator Cornyn's successor and I have spent some time on that issue, even recently, and I am not, nonetheless, concerned with Judge Sotomayor's position. I am confident that her answers that she's provided to this committee and her record are consistent with one another, and I do not believe that the right to keep and bear arms is at risk with this nominee or, frankly, I wouldn't testify for her.

SESSIONS: Well, thank you. And I think it is.

WHITEHOUSE: Now that the panel is assembled, I will swear the entire panel in. We will return to regular order. You can all give your opening statements, and then questioning will begin at the conclusion of those opening statements.

Would you please stand to be sworn?

Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Please be seated.

I will recognize Senator Schumer for a moment to welcome his constituent and the mayor of New York City, Michael Bloomberg.

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XXX City, Michael Bloomberg.

SCHUMER: Well, it's my honor to welcome two very distinguished constituents here. I want to thank every witness for coming, but particularly extend a welcome to two of New York's greatest public servants, Mayor Bloomberg and District Attorney Morgenthau.

SCHUMER: As you know, this nomination is a source of enormous pride to all New Yorkers. And your support for Judge Sotomayor has been extremely helpful to this committee, to the Senate as a whole, and to the nation, in understanding what kind of justice she will be, and very much appreciate your being here.

Thank you, Mr. Chairman.

Welcome.

(UNKNOWN): Mayor Bloomberg is the mayor of New York City. He is currently serving in his third term as mayor. He founded Bloomberg, L.P., a New York City company that now has employees in more than 100 cities.

Mayor Bloomberg's a graduate of Johns Hopkins University, located in Baltimore, Maryland, and Harvard Business School. We look forward to your testimony.

BLOOMBERG: Mr. Chairman, thank you. Ranking Member Sessions, thank you very much. Senator, Senator, Senator.

Senator Sessions, I must say, as a former gun owner, a former member of the NRA, and also a staunch defender of the second amendment, we probably don't disagree very much, if we really had a chance to talk.

In any case, I wanted to thank everyone for the opportunity to testify before you today.

I'm Mike Bloomberg, and I'm here not only as the mayor of New York City, the city where Judge Sonia Sotomayor has spent her entire career, but also as someone who has appointed or reappointed more than 140 judges to New York City's criminal and family courts.

So I do appreciate the job before you.

About three months ago, when President Obama invited Governor Schwarzenegger and Rendell and me to the White House to discuss infrastructure policy, I did find an opportunity to tell him what many of the best legal minds in New York were telling me: Judge Sonia Sotomayor would be a superb Supreme Court justice.

I strongly believe that she should be supported by Republicans, Democrats and independents. And I should know because I've been all three.

(LAUGHTER)

Judge Sotomayor has all of the key qualities that I look for when I appoint a judge. First she is someone with a sharp and agile mind, as her distinguished record and her testimony, I think, made clear.

And as a former prosecutor, commercial litigator, district court judge and appellate judge, she certainly brings a wealth of unique experience.

Second, she is an independent jurist who does not fit squarely into an ideological box. A review of her rulings by New York University's Brennan Center found that judges on the second circuit court (ph) who were appointed by Republicans agreed with her more than 90 percent of the time when overruling a lower court decision and when ruling a governmental action unconstitutional.

So this is clearly someone whose decisions have cut across party lines, which is something I think the Supreme Court could use more of.

And, third, whether you agree or disagree with her on particular cases, she has a record of sound reasoning.

In interviewing judicial candidates, I like to ask questions that have no easy answers and then listen to how they develop their responses. I want to know that they are open-minded enough to change their views if they hear compelling evidence and to see if they can provide a strong rationale for their legal conclusions, even if I disagree with it.

The fact is, you are never going to agree with a judicial candidate on every issue. I have appointed plenty of judges whose answers I don't agree with at all. And I should point that includes times when Judge Sotomayor has ruled against New York City, as she has done on a number of cases.

So I'm not here as someone who agrees with the outcome of her decisions 100 percent of the time. And I don't think that that should be the standard.

Now, I'm not a lawyer or a constitutional scholar, but I think the standard should be, does she apply the law based on rational legal reasoning, and is she within the bounds of mainstream thinking on issues of basic civil rights?

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XXX basic civil rights?

BLOOMBERG: And on both questions, I think the answer is unequivocally yes.

It's impossible to know how she will rule on cases in the future, or even what those cases might be. Given that a Supreme Court judge is likely to serve for decades, focusing on the issues du jour rather than intellectual capacity, analytical ability and just plain common sense would miss what this country clearly needs -- someone who has the ability to provide us with the legal reasoning and guidance that will be necessary to navigate the uncharted waters of tomorrow's great debate. And I'm very confident that Judge Sotomayor has that ability.

Finally, as the mayor of her hometown, I would just like to make two brief points. First, on the issue of diversity, the Supreme Court currently includes one member who grew up in Brooklyn and one who grew up in Queens. And so there's no doubt that having someone who comes from the Bronx would improve the diversity of this court.

(LAUGHTER)

And if you disagree with me, you haven't been to Brooklyn, Queens and the Bronx.

(LAUGHTER)

But seriously, Sonia Sotomayor is the quintessential New York success story. She has beaten all the odds and rose to the top. If that's not the American dream, I don't know what is. And however, I don't believe she should be confirmed on the strength of her biography, but I do think that her life story tells an awful lot about her character and ability.

And second, I just want to add a caution against those who would suggest that Judge Sotomayor's service to the Puerto Rican Legal Defense and Education Fund is somehow a negative.

That's an organization that is well respected for its civil rights work in New York City, and although I certainly have not always seen eye-to-eye on every issue with them, there is no question that they make countless contributions to our city. And Judge Sotomayor should be based solely on her record, and not on the record of -- of others in the group.

So thank you very much for the opportunity to testify. And I urge you to confirm Sonia Sotomayor as a justice of the United States Supreme Court. ACTING CHAIRMAN: Mayor Bloomberg, thank you very much for your testimony.

We'll now hear from Robert Morgenthau. Mr. Morgenthau has been the district attorney of New York County since 1975 and is the longest-serving incumbent of that position. During his nine terms in office, his staff has conducted about 3.5 million criminal prosecutions in homicides in Manhattan and has been -- and has a rate of 90 percent success. A graduate of Yale Law School, District Attorney Morgenthau served aboard a naval destroyer through World War II.

It's a real pleasure to have you before our committee.

MORGENTHAU: Thank you, Mr. Chairman. I appreciate the opportunity of testifying today. I am pleased to join those who endorse the nomination of Judge Sotomayor to the United States Supreme Court.

I first came to know Judge Sotomayor when I was on a recruiting trip for the Yale Law School. At that time, Jose Febrenes (ph) was Yale's general counsel, and he also tailored the law school.

I asked him if he knew anyone special I should speak with, and he said, yes. He said the remarkable student named Sonia Sotomayor was deciding where to work. And while he did not know whether she'd given any thought to being a prosecutor, it would be well worth my while to meet her. He was decidedly correct.

I'm happy to be able to say that the judge joined my office and remained with us for five years. In my conversations with her, I learned about the compelling story of her life, with which you are now familiar.

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XXX are now familiar.

MORGENTHAU: In a nutshell, she was raised by a mother in a working-class home in South Bronx and as a teenager worked the evening shift in a garment factory to help make ends meet. She went on through hard work, force of will to overcome her initial difficulties with English composition to win Princeton University's highest undergraduate honor, the Pine Prize and to graduate with honors from the Yale Law School.

In the district attorney's office, the Judge was immediately recognized by trial (inaudible) supervisors as someone a step ahead of her colleagues, one of the brightest and most mature, hard-working, standout who was marked for rapid advancement. Ultimately, she took on every kind of criminal case that comes into an urban courthouse, from turnstile-jumping to homicide.

One of those cases, the Tarzan murder case, involved an addicted burglar named Richard Maddicks, who would terrorize the neighborhood during a crime spree that left three dead and involved his swinging into apartment windows from rooftops, shooting anyone in his way. He is now serving 137 years to life sentence.

Another case prosecuted by Assistant D.A. Sotomayor in 1983 involved a Times Square child pornography operation. That was the first child prosecution in New York after a landmark 1982 Supreme Court decision, *People v. Ferber*, upholding New York's new child pornography laws. Assistant D.A. Sotomayor left the jurors in tears over what the defendants had done to child victims.

These cases happened to grab the public's attention. But Judge Sotomayor -- Assistant D.A. Sotomayor understood that every case is important to the victim and appropriately gave undivided

attention to the proper disposition of all of them.

Assistant District Attorney Sotomayor soon developed a reputation. Unlike many prosecutors, she simply would not be pushed around by judges or by attorneys. Some judges were eager to dispose of cases cheaply to clear their calendars. ADA Sotomayor instead fought for the right conclusion in each case. Maybe that experience from the criminal court in New York City helped her prepare for these hearings.

After leaving my office, Judge Sotomayor joined a prominent law firm and also accepted a part-time appointment as a member of the New York City Campaign Finance. While there, she continued to earn a reputation for being tough, fair, non-political in an arena where those characteristics were sorely needed. And she has taken those characteristics with her to the federal bench, where they are equally important.

Judge Sotomayor's career in the law spans three decades, and she has worked in almost every level of our judicial system -- prosecutor, private litigator, trial court judge, and an appellate court judge, and what I think is the second-most important court in the world. She has been an able champion of the law, and her depth of experience will be invaluable on our highest court.

Judge Sotomayor is highly qualified for any position in which a first-rate intellect, common sense, collegiality and good character would be assets. I might add that the judge will be the only member of the Supreme Court with experience trying criminal cases in the state courts. The overwhelming majority of American prosecutions occur in state courts.

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XXX in state courts.

MORGENTHAU: Judge Sotomayor will bring to the court a full understanding of the problems faced by prosecutors in those cases as well as a firsthand knowledge of the trauma faced by victims and of the legitimate needs of police officials that work in the state law enforcement system.

She will also understand the impact of federal judicial decisions on state prosecutions. In short, the judge is uniquely qualified by until that, experience and commitment to the rule of law to be an outstanding -- and I repeat outstanding -- member of the court.

President Obama, and for that matter the United States, should be proud to see once more the realization of that central American credo that in this country a hard-working person with talent can rise from humble beginnings to one of the highest positions in the land.

Thank you, Mr. Chairman, for the opportunity to testify today.

ACTING CHAIRMAN: Thank you very much for your testimony.

We'll now hear from Wade Henderson, a familiar person to this committee. Wade Henderson is the president and CEO of the Leadership Conference on Civil Rights and counsel to the Leadership Conference Education Fund. He is a professor of public interest law at the University of the District of Columbia. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau director of the NAACP. Mr. Henderson is a graduate from Rutgers University School of Law.

Mr. Henderson?

HENDERSON: Thank you, Mr. Chairman, Ranking Member Sessions, members of the committee.

I have the privilege of representing the views of the Leadership Conference, the nation's leading civil and human rights coalition, consisting of more than 200 organizations working to build an America that's as good as its ideals.

This afternoon I will briefly address four of the points that have figured in the debate about Judge Sotomayor's nomination: first, her qualifications for serving on the nation's highest court; second, her personal background and her empathy for others who have had to work hard to succeed; third, her role in the unanimous ruling by a three-judge panel in the case of Ricci vs. DeStefano; and fourth, her past membership on the board of one of the Leadership Conference's member organizations, the Puerto Rico Legal Defense and Education Fund.

First, let me rejoice in what is self-evident. The nomination of Judge Sotomayor to be an associate justice on our nation's highest court is a milestone by many standards. The nation's first African-American president has nominated the first Hispanic-American, only the third woman, and only the third person of color to serve on the Supreme Court.

While great challenges remain on our nation's quest for equal opportunity, we have truly reached an historic marker on the journey toward our goal of equal justice for all, the phrase inscribed not far from here on the front of the Supreme Court building.

But hopeful and historic as her nomination has been, Judge Sotomayor should herself be judged not by who she is, but by what she has done. Now, let me be as clear as I can. There is no question that she is qualified.

Judge Sotomayor's eloquent and thoughtful testimony before this committee speaks for itself. Her distinguished career at Princeton and Yale Law School have been much stated.

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XXX been much stated.

HENDERSON: She then spent five years as a prosecutor, as we've heard, in Manhattan, working for the legendary district attorney, Robert Morgenthau -- pleased to have him here today -- and eight years as a corporate litigator, 17 years as a federal district court judge and appellate court judge add up to an individual who was one of the most qualified to have overcome before this committee.

Second, as with other nominees across the philosophical spectrum, including Justices Thomas and Alito, Judge Sotomayor has spoken of her family history and her personal struggles. These experiences help her to understand others and to do justice. They further qualify her for the highest court, and she has said and done nothing that could reasonably be understood otherwise.

Third, Judge Sotomayor has participated in thousands of cases and authored hundreds of opinions, but much of the debate about her nomination has concentrated on the difficult case of Ricci v. Destefano. Whatever one may feel about the facts of this case, we all agree that the Supreme Court, in its Ricci decision, set a new standard for interpreting Title VII of the '64 Civil Rights Act. Using this one decision to negate Judge Sotomayor's 17 years on the bench does a disservice to her record and to this country.

Fourth, I must speak to the attacks on Judge Sotomayor because of her service on the board of one of our nation's leading civil rights organizations. These attacks do an injustice not only to Judge Sotomayor and to the Puerto Rican Legal Defense and Education Fund, but also to the entire civil rights community and to all those who look to us for a measure of justice.

Make no mistake - legal defense funds play an indispensable role in American life. They are private attorneys general that assist individuals, often those with few resources and no other representation, to become full shareholders in the American dream. When Justice Thurgood Marshall was nominated, there were those who questioned his role with the NAACP Legal Defense Fund. But history does not remember their quibbles kindly.

Judge Sotomayor has lived the American dream, and she understands all who aspire to it. Her qualifications are unquestioned, and the lessons that she has learned in her life, as well as in libraries, will serve her and our country well in the years ahead. All those who walk through the entrance to the Supreme Court seeking what is inscribed above its door, "Equal Justice Under Law," can be confident that a Justice Sotomayor will continue to do her part to keep the promise of our courts and our country. Thank you very much.

ACTING CHAIR: Well, thank you very much for your testimony.

We'll now hear from Frank Ricci, a name that's been mentioned second only to Sotomayor during this hearing. Frank Ricci has over a decade of experience as a firefighter with the New Haven Fire Department, and was the plaintiff in the case of Ricci v. Destefano. He's a contributing author of two books on firefighting.

It's a pleasure to have you before the committee.

RICCI: Thank you, Senator.

Thank you for the opportunity to appear before this distinguished committee. I accepted, with honor, the invitation to tell my story. Many others have a similar story, and I feel I'm speaking for them, as well.

The New Haven firefighters were not alone in their struggle. Firefighters across the country have had to resort to the federal courts to vindicate their civil rights.

Technology and modern threats have challenged our profession. We have become more effective and efficient, but not safer. The structures we respond to today are more dangerous, constructed with lightweight components that are prone to early collapse, and we face fires that can double in size every 30 to 60 seconds.

Too many think that firefighters just fight fires. Officers are also responsible for mitigating vehicle accidents, hazardous material incidents, and handling complicated rescues.

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XXX handling complicated rescues.

RICCI: Rescue works can be very technical. All of these things require a great deal of knowledge and skill. Lieutenants and captains must understand the dynamic fire environment and the critical boundaries we operate in. They are forced to make stressful decisions based on imperfect information and coordinate tactics that support our operational objectives.

Almost all our tasks are time-sensitive. When your house is on fire or your life is in jeopardy, there are no time for do-overs.

The lieutenant's test that I took was without a doubt a job-related exam that was based on skills, knowledge and abilities needed to ensure public and the firefighters' safety.

We all had an equal opportunity to succeed as individuals, and we were all provided a road map to prepare for the exam.

Achievement is neither limited nor determined by one's race but by one's skills, dedication, commitment and character. Ours is not a job that can be handed out without regard to merit and qualifications.

For this reason, I and many others prepared for these positions throughout our careers. I studied harder than I ever had before, reading, making flash cards, highlighting, reading again, all while listening to prepared tapes.

I went before numerous panels to prepare for the oral assessment. I was a virtual absentee father and husband for months because of it.

In 2004 the City (ph) of New Haven felt not enough minorities would be promoted and that the political price for complying with Title VII (ph), the city civil service rules, and the charter, would be too

high.

Therefore they chose not to fill the vacancies. Such action deprived all of us the process set forth by the rule of law. Firefighters who earned promotions were denied them.

Despite the important civil rights and constitutional claims we raised, the Court of Appeals panel disposed of our case in an unsigned, unpublished summary order that consisted of a single paragraph that made mention of my dyslexia and thus led many to think that this was a case about me and a disability.

This case had nothing to do with that. It had everything to do with ensuring our command officers were competent to answer the call and our right to advance in our profession based on merit, regardless of race.

Americans have the right to go into our federal courts and have their cases judged based on the Constitution and our laws, not on politics or personal feelings.

The lower court's belief that citizens should be reduced to racial statistics is flawed. It only divides people who don't wish to be divided along racial lines. The very reason we have civil service rules is to root out politics, discrimination and nepotism.

Our case demonstrates that these ills will exist if the rules of merit and the law are not followed.

Our courts are the last resorts for Americans whose rights are violated. Making decisions on who should have command positions solely based on statistics and politics, where the outcome of the decision could result in injury or death, is contrary to sound public policy.

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XXX sound public policy.

RICCI: The more attention our case got, the more some people tried to distort it. It bothered us greatly that some perceived this case as involving a testing process that resulted in minorities being completely excluded from promotions.

That was entirely false, as minority firefighters were victimized by the city's decision as well. As a result of our case, they should now enjoy the career advancement that they've earned and deserve.

Enduring over five years of court proceedings took its toll on us and our families. That case was longer -- was no longer just about us, but about so many Americans who have lost faith in the court system.

When we finally won our case and saw the messages we received from every corner of the country,

we understood that we did something important together. We sought basic fairness and evenhanded enforcement of the laws, something all Americans believe in.

Again, thank you for the honor and privilege of speaking to you today.

ACTING CHAIRMAN: Mr. Ricci, thank you very much for your testimony.

We'll now hear from Lieutenant Ben Vargas. Ben -- Benjamin Vargas is a lieutenant in the New Haven Fire Department and was a plaintiff in the case of Ricci vs. DeStefano. He also worked part-time as a consultant for a company that sells equipment to firefighters.

Mr. Vargas?

VARGAS: Thank you. Members of this committee, it is truly an honor to be invited here today.

Notably, since our case was summarily dismissed by both the District Court and the Court of Appeals panel, this is the first time I am being given the opportunity to sit and testify before a body and tell my story. I thank for this -- thank you to this committee for the opportunity.

Senators of both parties have noted the importance of this proceeding, because decisions of the United States Supreme Court Greatly impact the everyday lives of ordinary Americans. I suppose that I and my fellow plaintiffs have shown how true that is. I never envisioned being a plaintiff in a Supreme Court case, much less one that generated so much media and public interest. I am Hispanic and proud of their heritage and background that Judge Sotomayor and I share. And I congratulate Judge Sotomayor on her nomination.

But the focus should not have been on me being Hispanic. The focus should have been on what I did to our new promotion to captain and how my own government and some courts responded to that. In short, they didn't care. I think it important for you to know what I did, that I played by the rules and then endured a long process of asking the courts to enforce those rules.

I am the proud father of three young sons. For them I sought to better my life, and so I spent three months in daily study, preparing for an exam that was unquestionably job-related. My wife, a special education teacher, took time off from work to see me and our children through this process.

I knew we would see little of my sons during these months, when I studied every day at a desk in our basement, so I placed photographs of my boys in front of me. When I would get tired and wanted to stop -- wanted to stop, I would look at the pictures, realize that their own future depended on mine, and I would keep going. At one point I packed up and went to a hotel for a day to avoid any distractions, and those pictures came with me.

I was shocked when I was not rewarded for this hard work and sacrifice, but I actually was penalized for it. I became not Ben Vargas, the fire lieutenant who proved themselves qualified to be captain, but a racist statistic. I had to make decisions whether to join those who wanted promotions to be based on race and ethnicity or join those who would insist on being judged solely on their qualifications and the content of their character.

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