EIR National

AN UNAVOIDABLE DUTY:

On Ricci vs. DeStefano

by Lyndon H. LaRouche, Jr.

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Since I am, implicitly, posing the possible need to bring about the impeachment of a recently elected President of the United States, President Barack Obama, I must present a certain comment on the account of the case of Ricci vs. DeStefano *as presented, admittedly, by today's issue of the* Washington Post, *a journal which I must admit does not command awesome credibility.*

If there is no fatal error of fact in the ***Washington Post***'s account in the edition of Sunday, May 31st, and if the examination was competent and fairly conducted and scored, slippery avoidance of this fact can not be fairly used to exclude Mr. Ricci's certification as a candidate to be considered for appointment, on the grounds that no African American passing the examination was available to be certified.

I take up Ricci vs. DeStefano here, because there is a significant suggestion of a much deeper, more urgent and ugly issue lurking behind the curtains of justice, to be seen from reading the ***Post***'s version of the case.

Racial discrimination has been an evil since the Anglo-Dutch Liberal, and, later, the Spanish monarchy, had introduced the extensive marketing of captured Africans as slaves into what became the territory of the U.S.A. As we have seen since the conclusion of the U.S. Civil War, merely removing the shackles of slavery was not sufficient means for meeting those objectives of our Declaration of Independence from Britain respecting the despicable and deleterious effects of its slave-trafficking on our economy and on our public conscience respecting matters of domestic and foreign affairs.

It is admittedly difficult, today, to provide the right of suitable opportunities of education and employment under the present, post-1968, downwards drift in the available quality of education, employment, and social security, when a murderous cut-back in the right to life of citizens is being taken away systemically under the implications of the present, intrinsically predatory HMO legislation introduced by the Nixon Administration. However the remedies for the problem of civil rights could be available, if we are willing to reverse the policies which are responsible for the decline in the conditions of life of our citizenry as a whole under the regime of de-industrialization that has reigned since the election of that same President Richard Nixon under whose administration the predatory HMO law was enacted, and implemented.

If we really cared about civil rights in practice, we would have, and could have reversed the policies re-

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Ricci v. DeStefano was argued before the Supreme Court on April 22; a decision is expected later this Summer.

sponsible for the decadence of our national economy over the course of the 1969-2009 interval to date.

My Argument

I do not foresee the necessary ultimate outcome of the plea on Mr. Ricci's behalf, nor do I pretend to know all of the possibly relevant facts to be taken into account, or of the particular statutes and precedents which might be relevant. I am, however, deeply concerned with any appearance of a threat to a decent standard of practice in writing or enforcing of law by our Federal government. Ricci vs. DeStefano concerns me, not only as a matter affecting an individual, but in my sensed responsibility as one among notable public figures who knows the importance and the present difficulties in securing an honest judgment in certain areas of the practice of law under recent U.S. Federal administrations and the courts associated with them.

Whether Mr. Ricci's reported dyslexia should have been considered as a physical disqualification for the duties to be performed, is a different matter. If Mr. Ricci were qualified as having passed the examination, that remains a true fact in the judgment of any fair and intelligent citizen. The absence of a qualified African American for the award on that occasion, should have no bearing on the qualification of Mr. Ricci himself. There are other routes by which the intent of the fairness statute could have been served.

Our Constitutional system should never have pretended to treat persons of different human ancestry as if they were representatives of a different race than any other member of the human race. No law should be allowed to stand if such a distinction is made, except in the case of preventing racial discrimination against a human individual. The appropriate legislation required was always available, but the intent to bring it actually into play was at fault.

What Legislation Is Needed?

The problems and failures of the implementation of the objectives of anti-discrimination measures must be addressed from the following standpoint, or they will never be realized at all.

Admittedly, denying Mr. Ricci the right to claim the degree of qualification he had earned, is not to be compared, in itself, as comparable to the Nazi-like euthanasia practices of the Adolf Hitler regime. Nonetheless, the case of Ricci vs. DeStefano suggests the same kind of systemic error of intent in application of statutes and precedents which, carried into the domain of the citizen's right to life itself, has already resulted in the notorious crimes against humanity by the Hitler regime, and which is also the clearly fatal implications of any toleration for the current health-care proposals of the Obama Administration. It is the system of law which is in need of defense, even without considering the relative magnitude in the effect of a possible injustice, defense against the assault by the Obama Administration, presently, against a decent consideration of the individual's sacred right to life.

The Remedy In Ricci

If the account presented by the ***Washington Post*** were not in error, then the only reason for withholding Mr. Ricci's prospect for appointment would bear upon his capability of performing the duties for which he would have been fairly designated as a suitable candidate for a relevant appointment to some available position.

The most urgent issue of civil rights is posed by the declared intent of the Obama Administration itself. We are currently presented with a proposition uttered

by the incumbent President of the United States, who has presented himself, repeatedly, as committed to establishing the adoption and hotly pressed implementation of a particular evil, proposed body of law which would introduce the methods of discrimination against the very right to life of the category of persons who are given an accelerated ride to death on grounds of their age or by the use of comparable, evil standards of practice under the currently proposed U.S. law, presented by the Obama Administration.

Unless the so-called health-care reforms presently proposed by President Obama are prevented, all talk of civil rights were an ugly farce in the tradition of Adolf Hitler's *Tiergarten-4.*

Ricci v. DeStefano: Facts of the Case

May 31—The subject case of Lyndon LaRouche's May 31 comment "On Ricci vs. DeStefano," involves a promotion test administered to firefighters by the city of New Haven, Conn. After reviewing the results, the city decided to throw out the test, on the ground that no African-Americans, and only two Hispanic-Americans advanced, but cited no particular flaws in the test itself. The white firefighters who passed the test sued, essentially arguing that they were denied the promotion they had earned, because of the color of their skin.

The Federal district judge dimissed the suit without even taking it to trial, ruling that the city was justified, under the law, in junking the test even if it could not explain what was wrong with it. The white firefighters appealed to a three-judge panel of the 2nd Circuit Court of Appeals, a panel that included Supreme Court nominee Judge Sonia Sotomayor. That panel affirmed the lower court ruling in a 134-word summary order that explained that although Frank Ricci (the plaintiff) appeared to have scored highly on the test, despite having dyslexia, the results were invalidated for reasons having nothing to do with his qualification for the position he was applying for.

The Court's ruling stated, "it simply does not follow that he has a viable claim" under Title VII of the 1964 Civil Rights Act. The panel ruled that, by refusing to validate the test, since the city "was simply trying to fulfill its obligations under Title VII when confronted with the test results that had a disproportionate racial impact, its actions were protected."

New Haven, Conn. firefighter Frank Ricci was denied a promotion based on a faulty application of Title VII of the 1964 Civil Rights Act.

The appellate court ruling was roundly criticized for its lack of reasoning, by none other than Sotomayor's mentor on the court, Judge José A. Cabranes. Cabranes wrote, on behalf of the Republican-appointed judges on the court, that, "The opinion contains no reference whatsoever to the constitutional claims at the core of this case. This perfunctory disposition rests uneasily with the weighty issues presented by this appeal."

The case is now before the U.S. Supreme Court, which could rule on it as early as the end of June.

—*Carl Osgood*