

**Written Testimony of Janet Caldero,  
New York City Department of Education Custodian Engineer and Beneficiary in  
*United States v. New York City Board of Education,***

Before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
of the  
Committee on the Judiciary  
U.S. House of Representatives

Oversight Hearing  
on the Employment Section of the Civil Rights Division of the  
U.S. Department of Justice

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My name is Janet Caldero, and I work as a Custodian in a public school in Queens. In New York City, Custodians are the building managers for public schools. They are responsible for supervising a staff that maintains the physical plant and the heating and cooling in each school building. These are good-paying management jobs with civil service protections, and I am proud to do the work I do. I am especially proud to be one of the few women in New York City doing this work.

When I first began to work as a Custodian, in 1992, I was one of about 10 women in a workforce of close to 900. Before I became a Custodian, I had worked in public schools for over a decade as a secretary and then eventually a handyman. In all those years, I had seen a single female Custodian. At the time I began to do this work, there were also only about 35 Black Custodians, 30 Hispanic Custodians, and 4 Asian Custodians in the entire public school system in New York City, one of the most diverse cities in the world.

Many of the few women and minorities who worked as Custodians in the nineties were employed provisionally. I was one of these provisional Custodians. Being provisional meant that you were not a civil service employee and had no job security. It meant that you could be transferred from one school to another without warning. It also meant that you weren't eligible for the extra assignments available to permanent Custodians that bring temporary salary increases and that you weren't eligible to bid to transfer to larger schools, where you can earn a larger salary and supervise more people.

As I understand it, it was about the time I was hired that the Justice Department had begun to investigate the New York City Board of Education's Custodian hiring practices. In fact, I always heard the Board of Education began to hire women and minorities as provisional Custodians *because* the Justice Department was investigating whether the way the Board hired Custodians was discriminatory.

In 1996, after several years of investigation, the Civil Rights Division of the Justice Department sued the Board of Education. The lawsuit alleged that the way the Board recruited Custodians discriminated against women and minorities. At that time the Board of Education really didn't do much to recruit people for the job at all. As a result, individuals learned what the job of Custodian was and what you had to know to take the civil service examination by word of mouth, from the male Custodians currently on the job. Custodians told their sons and brothers and often whole families would get into the Custodian business. It was hard to break in and learn how to get the job if you were an outsider.

The lawsuit also alleged that the civil service exams that the City gave for the Custodian job discriminated against blacks and Hispanics, because blacks and Hispanics were much less likely than whites to pass the test and because the test wasn't crafted in a way to really measure your ability to do the job.

While the case was being litigated, I talked to attorneys for the Justice Department many times, as did several of the other women who were working provisionally. I gave them information about the job and how it worked and they answered my questions about the progress of the lawsuit. I understood the Justice Department attorneys to be working on my behalf and on behalf of other women like me who were working hard to succeed in a place where a lot of our male colleagues thought we didn't belong. I thought of them as my attorneys. When I had questions about the case, I turned to them.

In about 2000, I learned that the Justice Department and the Board of Education had settled the lawsuit, and as part of the settlement, the Board of Education had agreed to extend various benefits to women and minorities who had been hired provisionally. We all received retroactive seniority, either back to our provisional hire date or back to a date tied to the first civil service exam we had taken to try and become a Custodian. Those of us who hadn't become permanent in the meantime also received permanent jobs. Because of my additional seniority, I was able to work in larger schools, which meant that I had more supervisory responsibilities and a higher salary. Specifically, because of my retroactive seniority, I have transferred to a larger school than the one I worked in at the time of the settlement agreement, which increased my salary about \$9,000 per year. And in general, the awards allowed women and minorities to move up in the profession. As a result, those of us on the job were more visible, and I think it sent a message to other women and minorities that they could do this work too.

Shortly after the settlement, a small group of white male Custodians objected to it, arguing that the settlement discriminated against them as white men. I knew about their claim and that a court was hearing it, but it seemed unlikely to me that it would change anything.

Then, in 2002, long after the Justice Department had signed the settlement, I got a call from an American Civil Liberties Union lawyer who I had never met. She told me that the Justice Department had changed its position and was no longer defending parts of the settlement in the face of the white male custodians' attacks, including the awards to me and most of the other beneficiaries, including almost all the women. I didn't believe her. None of the attorneys I had worked with through the years had told me anything about this. I had heard nothing from the Justice Department.

I immediately called the attorney at the Justice Department who I had talked to many times before about this case. I wasn't put through to him. Instead, I spoke to a different lawyer, who I had never met or heard of before. I asked him whether it was true that the Department of Justice was no longer defending my interests or the interests of other individuals like me. He said this was not true and that the Department of Justice was continuing to defend the settlement agreement.

I called the attorney for the ACLU back and asked her if she had any proof of what she was claiming. She sent me a brief the Justice Department had filed in court that listed the names of the beneficiaries it was still defending. Fewer than half of us were on

that list. I wasn't on it. Very few of the women were on it. When I again called the new Justice Department lawyer, he refused to answer any of my questions.

Later that day, yet another Justice Department attorney who I had never met called me at home. He told me that the Justice Department had decided that there wasn't enough evidence to continue to defend my award under the settlement or the awards of thirty-one other beneficiaries.

A few months later, the ACLU entered into the case, representing me and more than 20 of the other beneficiaries whom the Justice Department had abandoned. Since 2002, the Justice Department has argued in court that the awards it gave to us under the settlement agreement illegally discriminated against white men. For the past five years, we have been fighting back as the Justice Department has actively attacked its own settlement agreement in court. We have had to live with the possibility that we might lose our seniority and be returned to smaller schools or have our salary reduced. Those who received permanent employment under the agreement have worried about losing their jobs.

If I lost my seniority and had to move back to the smaller school where I previously worked, with its smaller salary, I would have to sell my house because I would no longer be able to afford to live where I do now. I also worry that given the Justice Department's refusal to defend the agreement that every time I obtain a transfer because of my retroactive seniority, any male Custodian who also wanted the transfer will file a lawsuit about it, and I will have to continue to live under this cloud of uncertainty every time I advance in my career. I also have often talked to the other women who received awards under the agreement, who have found the Justice Department's switch in position to be extremely stressful and frightening. Over the years, the ones who received permanent employment under the settlement have continued to be scared that if the settlement agreement were found to be illegal, that they would lose their permanent positions and have to start over in their careers.

Last year, the trial court ruled against the Justice Department and the white male Custodians, holding that the awards to the female beneficiaries and to most, but not all, of the male beneficiaries were legal. But more than eight years after the settlement agreement was signed, this fight still isn't over. I understand that the Justice Department and the white male Custodians will almost certainly appeal this ruling and so our uncertainty on the job continues.

I am told that this case raises important legal issues, and I admit, I don't fully understand them. But what I do understand is that this is a hard job for a woman to get and a hard job for a woman to do, because too many people feel that women aren't up to doing the work and so you have to prove yourself again and again. And I understand that the Justice Department came to me saying that the United States government wanted to change this. I trusted the Justice Department and helped it as much as I could, and then it betrayed and abandoned me and many others. I understand that this was unjust and unfair and I hope that no one else ever has to go through this experience.