

*Morning Mail*  
**Richards-Stowers' New Rap: *Ashcroft v. Iqbal***

Dear Editor:

Last year, in *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S.Ct. 1937 (2009), the U.S. Supreme Court stepped way back from its “notice pleading” standards for civil complaints, and thus made it even more difficult for civil rights plaintiffs to get to trial.

In years past I’ve railed against the federal courts’ dismissals on summary judgment of important civil rights employment cases which would have resulted in significant verdicts had plaintiffs been allowed to get jury trials. After *Iqbal*, which expanded into the general civil law the pleading standard which *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) had applied to anti-trust pleadings, courts can kill civil rights cases right after they are filed, on a motion to dismiss, before any discovery can be served. Arggh! The new *Iqbal* anti-plaintiff standard is whether the allegations on the face of the complaint constitute a “plausible” claim to the federal district court judge. Double Arggh!

Why worry? Why care? Why be afraid? (I haven’t felt this concerned by the Supreme Court’s ability to change life as we know it since *Bush v. Gore*.) Why? Because what is plausible to federal judges, an undisputedly, statistically narrow class of citizens (mostly white, mostly male and mostly upper middle-class), will be far different from what is plausible to the victims of discrimination, subjected to daily indignities, whom I have the privilege of representing.

So I rap my take on *Iqbal*, and like my Rap on Summary Judgment (Bar News - February 13, 2009) it should be read passionately (though respectfully) in a strong, loud, driving beat.

*Ashcroft v. Iqbal*

Each new year I do a Lawyer’s Rap  
On th’ federal courts’ penchant to slap  
Employee Rights we struggled to build  
Since the 60’s (in that hopeful world).

Since last year’s very-fine CLE  
We got *Iqbal* and defendants’ glee  
‘Cuz courts can now kill all your rights  
Even before th’ summary judgment fight.

On the basis of a white, male’s view  
Of what is “plausible” is the new  
Way to kill the rights of one  
Whose complaint may lack a smoking gun.

Women from Venus, Men from Mars,  
Rich live in privilege, poor folks in cars;  
Isn’t it clear that what we see  
Is blurred from the prism of where we be?

Can you dispute the Prism Fact  
That a federal judge’s experience lacks  
Daily indignities brought to bear  
By sexists and racists and others who tear  
At the lives of those not sharing The Power  
Of the judges who sit in their marble towers?

So after the health care, bailouts and wars  
Are debated on Congress’ most hallowed floors,  
We hope our Reps will focus on the fates  
Of bias victims who just want dates  
With juries of their peers like the rich guys get—  
That *Ashcroft v. Iqbal* did quite upset.

Let Discovery First be there for all  
And not let a court’s “Plausibility Call”  
Determine the fate of the civil rights  
Of job bias victims willing to fight.

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Merrimack