COMMENTS ON *IQBAL*

by Tom Watson (5-18-09)

This is information all jailhouse lawyers, and any prisoner with a section 1983 lawsuit, or contemplating such a lawsuit should read. This will effect the pleading standards necessary to survive a motion to dismiss for every PERSON, prisoner or citizen, in the United States filing a civil rights lawsuit against the police, the prisons, or a government official.

The US Supreme Court issued the long awaited decision in ***Ashcroft v. Iqbal*** on May 18, 2009.

The conditions of confinement for civil commitment case of Hydrick v. Hunter has been trailed behind this case. Those who are civilly committed in California have been awaiting results of this case since 2007.

As it turns out, this case will have far reaching effects to all persons filing Title 42 USC Section 1983 civil rights lawsuits.

This case clarifies ***Bell Atlantic Corp. v. Twombly***, 550 U. S. 544, for evaluating whether a complaint is sufficient to survive a motion to dismiss. Because it is a clarification, it will reach back to many pending lawsuits.

Here are some quotes from the ***Iqbal*** decision:

> "Because vicarious liability is inapplicable to ***Bivens*** and §1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."
>
> "In a §1983 suit or a ***Bivens*** action—where masters do not answer for the torts of their servants—the term "supervisory liability" is a misnomer. Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct."
>
> "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." (***Twombly***, 550 U. S. 544, at 570)
>
> "The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid."
>
> "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."
>
> "Under ***Twombly's*** construction of Rule 8, we conclude that respondent's complaint has not "nudged [his] claims" of invidious discrimination "across the

line from conceivable to plausible." Ibid.

"We hold that respondent's complaint fails to plead sufficient
facts to state a claim for purposeful and unlawful discrimination against
petitioners.
The Court of Appeals should decide in the first instance whether to remand to the
District Court
so that respondent can seek leave to amend his deficient complaint. The judgment
of the Court of Appeals is reversed, and the case is remanded for further
proceedings consistent with this opinion.
It is so ordered."

What this appears to mean is that it will be very difficult to sue any supervisor unless you can directly tie that supervisor to the specific action or inaction. The case appears to overrule the previous pleading standard where one would plead a generic allegation that a supervisor was liable if he or she was aware of the unconstitutional action and yet failed to act to stop that unconstitutional action. Under this old standard, it was assumed that supervisors knew what their subordinates were doing. The Supreme Court has specifically rejected this, see the quotes above.

Under this new (clarified) standard, as I read it, one would need to plead a very specific and direct connection to that supervisor, e.g., just exactly when and where this particular supervisor gained direct knowledge of the unconstitutional practice, and have specific evidence to prove this that would have to be provided to oppose a motion to dismiss. And specific evidence that even after gaining the knowledge, the supervisor refused to stop the practice. This in my opinion will be an impossible task, as bureaucratic supervisors have many layers of insulation between themselves and the doers of the misdeeds.

The preceding is only a quick summary and contains my opinion. I strongly urge anyone with an active civil rights lawsuit, or anyone contemplating such a lawsuit, to read this case for themselves.