



# PENN STATE LAW REVIEW

## Symposium

### Introduction

One of the goals of the 2009-2010 Editorial Board of *Penn State Law Review* has been fostering a culture in which the law review serves as the catalyst for scholarly discussion among all the stakeholders in the legal community—academics, practitioners, jurists, and students. In that spirit, *Penn State Law Review* is pleased to present this symposium issue, *Reflections on Iqbal: Discerning Its Rule, Grappling with Its Implications*. This issue preserves, in written form, the lively debate concerning the various dimensions of *Ashcroft v. Iqbal*, which were articulated at the symposium held at Penn State University, The Dickinson School of Law, on March 26, 2010.

The *Iqbal* case emerged out of the FBI's and INA's round-up and detention of Javaid Iqbal, along with hundreds of other men of Muslim descent, following the 9/11 attacks. Approximately eight years later, in the summer of 2009, a majority of the Supreme Court found that Mr. Iqbal's claims against former U.S. Attorney General John Ashcroft and FBI Director Robert Mueller were not sufficiently plausible to defeat the defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted. The decision created a firestorm of debate in many different sectors. Members of the public, as well as critical race scholars, noticed racial undertones (or perhaps overtones) in the decision. Constitutional tort and employment lawyers and scholars raised concerns regarding the decisions' implications for the scope of judicial protection of government officials and supervisory liability more generally. Civil litigators and academics expressed varying views

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regarding *Iqbal*'s effect on access to the courts and the appropriateness of *Iqbal* as a mechanism to respond to claims of abusively expensive discovery. Meanwhile, some federal legislators, apparently worried about the decision and perceiving that it could undermine the rule-making process established to revise the Federal Rules of Civil Procedure, introduced bills to return to a pre-*Iqbal* (and pre-*Bell Atlantic Corp. v. Twombly*) understanding of pleading requirements.

This symposium approached *Iqbal* from three of these perspectives as highlighted in the panels—*Iqbal* and the Role of the Courts, *Iqbal* and Constitutional Torts, and *Iqbal* and Race. Eleven distinguished academics discussed these subjects: Mark Brown, Ray Campbell, Gary Gildin, Ramzi Kassem, Kit Kinports, James Maxeiner, James Pfander, Jeffrey Rachlinski, Victor Romero, Shoba Wadhia, and Nancy Welsh. We also were honored by the presence of three prominent federal judges and their willingness to share their insights and participate in the discussion: The Honorable Anthony Scirica, Chief Judge of the U.S. Court of Appeals for the Third Circuit and Chair of the Executive Committee of the U.S. Judicial Conference; The Honorable Lee Rosenthal of the U.S. District Court for the Southern District of Texas, Chair of the Judicial Conference Committee on the Rules of Practice and Procedure; and The Honorable D. Brooks Smith of the U.S. Court of Appeals for the Third Circuit, who is also an alumnus and adjunct faculty member of The Dickinson School of Law.

Reflections on *Iqbal* was also the first symposium to implement the law review's new online companion, *Penn Statim*. The online companion played an integral role in the symposium, hosting a live feed of the presentations and addresses. It will also host archived material from the symposium, and digital copies of this issue (as well as other issues of *Penn State Law Review*), biographical material from the authors, and much more. The *Iqbal* Portal serves as a key reference for information concerning new developments affecting *Iqbal* jurisprudence, and also hosts numerous online responses to the articles included in this symposium issue, at least one of which will be published by *Penn State Law Review* at a future date. The online companion can be found at [www.pennstatelawreview.org](http://www.pennstatelawreview.org).

This symposium would not have been possible without the dedicated support of many people who brought together many elements to create a wonderful event. We would like to extend special thanks to The Honorable D. Brooks Smith, who tirelessly assisted in the symposium efforts, and Professors Kit Kinports and Victor Romero who organized their panels and helped generally in planning the symposium. We also are extremely grateful for the support of the administration and staff of the Dickinson School of Law, in particular, Dean Philip J.

McConnaughay, who caught our vision for this symposium and was instrumental in its support; Assistant Dean Nancy LaMont and Kar Souders, Director of Business Services, whose support for the logistical planning of the symposium was invaluable; Sherry Miller, who devoted her precision to the formatting of this issue; and Brenda Johnson, Pam Knowlton and Ellen Foreman, whose assistance with organizing and publicizing the symposium brought it to fruition.

One of the innovations of this symposium was its technological implementation in the context of our unique two-location law school. Though all of the speakers gathered in our Carlisle location, audience members in both Carlisle and University Park viewed the proceedings and participated actively in them. In addition, those who could not attend the symposium in person also were able to view the proceedings through their live streaming online. None of this would have been possible without the excellent support of Assistant Dean Matt Gardner, Director John Davie, Tom Dennis, Daren Brodish, Tim McCarthy and the entire IIT Department.

Finally, we greatly appreciate the work of the Law Review Board and Staff members who served in so many vital ways to bring about the symposium. Special thanks go to Stas Getmanenko for his work in coordinating the symposium and *Penn Statim*. Our deepest thanks and praise, however, go to Stephen J. Fleury, *Penn State Law Review* Symposium Coordinator, whose efforts in this regard were so spectacular that his work inspired the Law Review Board to create a new position to institutionalize the methods he brought to his efforts in overseeing the symposium.

If we have omitted anyone in the above list, the error rests with us and we humbly ask forgiveness. This symposium could not have occurred without the expertise and dedicated commitment of everyone involved.

We present to you, therefore, Reflections on *Iqbal*. We intend it to continue the century-old tradition of excellence of the *Penn State Law Review* and hope it will serve as an informative guide on the subject for generations to come.

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Editor-in-Chief

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