

The Second Circuit Eliminates *Iqbal* Hearings

The Second Circuit has breathed new life into Sarah Palin's case against the *New York Times* by rejecting the use of an unusual "*Iqbal*" hearing to determine the plausibility of her allegations.

As reported here, Palin charges the *Times* with defamation due to an op-ed linking her PAC with Jared Lee Loughner's fatal shooting spree at a political rally, which it published the evening of James Hodgkinson's subsequent attack on members of Congress. When the *Times* filed a motion to dismiss, SDNY Judge Rakoff found an evidentiary hearing was necessary determine whether it is plausible the op-ed author had actual malice—a necessity for defaming a public figure like Palin. After the hearing, the court dismissed her case with prejudice finding Palin could not plausibly plead actual malice.

Writing for a unanimous panel on appeal, Second Circuit Senior Judge Walker found this "case is ultimately about the First Amendment, but the subject matter implicated in this appeal is far less dramatic: rules of procedure and pleading standards." The Second Circuit found the lower court took an "unusual procedural turn" by holding an evidentiary hearing on a motion to dismiss, which "runs headlong" into the federal rules of procedure. For starters, the district court erred by relying upon facts outside the pleadings to dismiss Palin's complaint, and did so without even converting the *Times*' motion into one for summary judgment. The district court also wrongfully determined the credibility of the op-ed author's testimony from the hearing, which is impermissible at any time before trial.

Vacating the district court's dismissal, the Second Circuit found Palin's proposed amended complaint plausibly states a claim for defamation under the strictures of *Iqbal*, and listed a number of reasons why Palin sufficiently pled it is plausible the author knew the contents of his op-ed were false, or that he at least acted recklessly regarding its falsity.

While the Second Circuit of course declined to take a position on the merits of Palin's case, it held: "District courts are not free to bypass rules of procedure that are carefully calibrated to ensure fair process to both sides."