

**EXPLORING THE VITALITY OF  
*STARE DECISIS* IN AMERICA**



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*STARE DECISIS* IN AMERICA**

**Debut Symposium Report for the  
Matthew Fogg Symposia on the Vitality  
of *Stare Decisis* in America**

**Zena D. Crenshaw-Logal, J.D., Esq.**



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*Exploring the Vitality of Stare Decisis in America: Debut Symposium Report  
for the Matthew Fogg Symposia on the Vitality of Stare Decisis in America*

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*The unsung hero of this project:*

To my husband, a true patriot and our greatest benefactor,  
Mr. Rodney A. Logal



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## FOREWORD

I found this debut report to be excellent and very scholarly. I myself don't speak in such scholarly tones . . . more of a call it like I see it person. But I believe the scholarly tone is a necessary element of court reform. I love Zena's writing and thought process.

I was particularly impressed with the report's emphasis on the need for media to be more responsible in differentiating between "judicial independence" and "judicial misconduct". I agree that reform needs to focus more on the latter, not the former. However, I disagree with what appeared to be a tendency on the part of the law professors to suggest that any citizen oversight would not be able to distinguish between the two.

I also found on point the area of inquiry into the homogenous professional background of those on the bench. This is true in State court systems as well as Federal. You generally need to be either a criminal prosecutor or high priced corporate attorney to get appointed to the bench.

It is true that judges tend to trivialize matters with which they are not familiar. Hence my whistleblower lawsuit focused on how San Diego, California judges were part of the problem in Domestic Violence cases as well as Sexual Abuse cases (family court and criminal court) because they have no training on the dynamics of this abuse. They are comfortably ignorant; just fine with their ignorant bliss.

Finally, I wholeheartedly confirm that the First Amendment concerns regarding criticism of the judiciary are legitimate. If judges and lawyers are not supposed to be openly critical of the system without potentially being called out for violating vague rules of ethics against disparaging the system, then how can real reform take effect?

*The Honorable DeAnn Salcido,  
retired California Superior Court Judge and  
founder of Judicial Action Watch Society (JAWS)*



## PREFACE

### *Bringing to Bear all the Relevant Perspectives*

“An audience slowly gathered on the morning of May 15, 2008 at the Capitol Hill mansion in Washington, D. C. of the now deceased philanthropist Stewart R. Mott, for an unprecedented ‘Citizens’ Forum on Judicial Accountability’ (CFOJA).” So begins the “Final Report and Recommendations” for our 2008 CFOJA.<sup>1</sup> The CFOJA report and recommendations became the foundation of National Forum On Judicial Accountability (NFOJA), a co-sponsor of The Matthew Fogg Symposia On The Vitality Of *Stare Decisis* In America.

Even in 2008, our goal was a comprehensive debate about judicial independence and accountability in America. Mr. Fogg<sup>2</sup> said of the Capitol Hill gathering, “the debate will likely continue, but our event will bring to bear all the relevant, legitimate considerations.” And his commitment to that balance continues as evidenced by him being “Legacy Sponsor” of our current program series.<sup>3</sup> For purposes of this book, the undertaking is dubbed “Exploring the Vitality of *Stare Decisis* in America”.

Rather than a non-fiction book, this debut symposium report would be grey literature were it not an important story more than the beginning of eventually bounded conference proceedings. What would be the report’s standard sections (such as Acknowledgments, Introduction, Sponsors, and Panelists), chronicle the history of a profound examination of American courts. The original report “Introduction” notes that “(c)onvening such a broad and, in many ways, diverse audience requires the program series to be worthwhile academically, yet have populist appeal.” However, audience diversity is much more significant when considering the proper operation of American courts.

The referenced 2008 CFOJA report laments that . . .

Since 2006, retired Supreme Court Justice Sandra Day O’Connor has periodically gathered with judicial officers, lawyers, and opinion leaders from the corporate, non-governmental organization, and media fields to develop and pursue strategies for increasing public confidence in the judiciary and promoting judicial independence. The logistics or criteria for joining Justice O’Connor’s group has not prompted the involvement

of what appears to be a significant number of grassroots advocates with relevant empirical data and sound views (in whole or part) on the proper scope of judicial accountability in America.

I often describe grassroots good government advocates as “the missing perspective” in judicial independence versus judicial accountability debates.

Of course our current focus is the vitality of *stare decisis* in America. The underlying predictability and efficiency of our court system are more fundamental considerations than whether a judge is conservative or liberal or appropriately deferential to executive and legislative branches of government. Yet, these latter concerns dominate high profile critiques of America’s judiciary.

Politicians and legal scholars regularly debate related topics, but average Americans, especially those who are grassroots good government advocates, have a keen, generally overlooked sense of what fosters predictable, efficient court proceedings. Hence, “The Matthew Fogg Symposia On The Vitality Of *Stare Decisis* In America” was touted as the most “. . . inclusive, authoritative, and important analysis of American courts . . .” in Fall 2011. Corresponding insights of average Americans (among other key players in the operation, use, and refinement of America’s judicial system) are essential in striking the appropriate balance between judicial independence and judicial accountability.

I was a civil trial attorney, but I became a judicial reform advocate largely because of my experiences as a litigant. I have literally studied the views of fellow judicial reform advocates and responses to that advocacy by judges and major media outlets. As a plaintiffs’ lawyer, I studied the mindset and strategies of both plaintiffs’ and defense lawyers.

Obviously in getting to know groups if not individuals shaping, molding, impacting legal process . . . we better understand and empathize with them. I try articulating the various perspectives to move related discussions beyond empty rhetoric. Rather than any of us thinking we hear, for example, anti-government rhetoric or pro-corporate rhetoric, I aspire to help audiences hear competing views on America’s legal system, much like researchers collecting data to identify relevant problems and meaningful solutions.

### *Understanding and Overcoming the Hysterics*

On May 19, 2005, the *Chicago Sun-Times* featured the headline “JUDGE LEFKOW TELLS SENATORS: STOP BASHING JUDGES – Harsh comments ‘can only encourage those who are on the edge.’” The referenced Judge Lefkow is, of course, the Honorable Joan Lefkow, Judge of the U.S. District Court for the Northern District of Illinois. On February 28, 2005, Judge Lefkow’s husband and mother were killed, apparently by a litigant whose case the judge dismissed. According to Lynn Sweet, reporting for the *Chicago Sun-Times*, Judge Lefkow urged the Senate Judiciary Committee to ‘publicly and persistently repudiate gratuitous attacks on the judiciary’. She reportedly testified that “. . . the fostering of disrespect for judges can only encourage those who are on the edge or on the fringe to exact revenge on a judge who displeases them’.”

The “revenge” Judge Lefkow references undoubtedly amounts to blatant unlawfulness. She accordingly went to Congress . . .

with a plea that (they) who have the power, continue to make judicial protection a priority as is reflected in the recent passage of the HR 1268, which includes \$12 million to the Marshals Service for increased security for federal judges, specifically for home intrusion detection systems. And that (they) be vigilant in monitoring judicial security so that sympathetic feelings translate into something real for us.

. . .

The situation highlighted a “need for intervention” according to Mark Brown of the *Chicago Sun-Times*.<sup>4</sup> Writing for the newspaper, Brown expressed a willingness to read every account of “failed court cases” if doing so would “keep (an unsuccessful litigant) from reaching for a gun”.

While any injustice may trigger the kind of “dangerously obsessive behavior” Mark Brown referenced, the order of a civilized society requires all people to develop coping skills and resolve conflicts within the bounds of law. Certainly some form of justice can be had sooner or later, without vigilante killing. Yet one need only look to the national grassroots legal reform community for people much less desperate than the Lefkows’ assailant, who have had their patience and emotional stability wrenched by seemingly unaccountable gov-

ernment agents and agencies. Hopefully this book sparks more “sympathetic feelings” and “translate(s) into something real” for these people.

Often I suspect a person in our national grassroots reform community has compelling evidence, but not conclusive proof of misconduct – or maybe the person has indisputable proof of something, but not everything he or she is claiming. I am certain government investigation is warranted to help prove a good deal of alleged legal system corruption that prosecutors have simply disregarded. I am more certain that the Fogg symposia get us closer to critical government investigations than what in many if not most instances can be no more than speculation about criminal activity within America’s legal system.

While lawyers and law professors often publicly critique America’s legal and/or judicial system, they are generally less inclined to speculate about criminal activity by lawyers or judges – even in the face of compelling evidence. The reluctance primarily relates to the fact that real proof of corruption is beyond reasonable doubt and emerges from a fair, impartial, adversarial trial with corresponding opportunities for discovery, cross-examination, etc. Until such trials are possible, we cannot “know” the extent of legal/judicial system corruption, despite the sage wisdom of many grassroots legal reform activists.

My writings increasingly emphasize that current government processes (and their reliance on *stare decisis* among other legal doctrines) do not adequately protect average Americans from even serious, blatant miscarriages of justice, once pivotal government agents align to deny that relief. Social scientists and legal scholars have largely compiled evidence that proves the inadequacy I reference. But the proverbial dots are not fully connected; probably because no one who could, has the nerve or motivation to publicly connect them.

Grassroots good government advocates could usher in reform reminiscent of our Founding Fathers’ quest for an even more perfect union by sharing certain indisputable data about our country’s administration of justice. Scholarly, detached analysis brings objectivity to our views and claims which is essential in rising above special interests to be a voice for “We The People”. And so our quest begins, courtesy of retired Chief Deputy U.S. Marshal Matthew Fogg and his symposia co-sponsors.

*Zena D. Crenshaw-Logal, J.D., Esq.*

## ACKNOWLEDGMENTS

The non-governmental organizations (NGOs) co-sponsoring “The Matthew Fogg Symposia On The Vitality Of *Stare Decisis* In America” are:

- **Government Accountability Project (GAP)**<sup>5</sup> - Founded in 1977, GAP is the nation’s leading whistleblower protection and advocacy organization. Located in Washington, D.C., GAP is a nonpartisan, public interest group. In addition to focusing on whistleblower support in its stated program areas, GAP leads campaigns to enact whistleblower protection laws both domestically and internationally. GAP also conducts an accredited legal clinic for law students, and offers an internship program year-round;
- **National Black Justice Coalition (NBJC)**<sup>6</sup> - Since 2003, NBJC has provided leadership at the intersection of mainstream civil rights groups and mainstream LGBT organizations, advocating for the unique challenges and needs of the African American LGBT community that are often relegated to the sidelines. NBJC envisions a world where all people are fully-empowered to participate safely, openly and honestly in family, faith and community, regardless of race, gender identity or sexual orientation;
- **National Forum On Judicial Accountability (NFOJA)**<sup>7</sup> - NFOJA is a grassroots, judicial reform initiative. It strives to get past debates on judicial integrity with workable solutions to help ensure America’s judiciary is unbiased, remains faithful to the Constitution, and follows the rule of law; and
- **POPULAR**<sup>8</sup> - POPULAR (formerly POPULAR, Inc.) is an acronym for “Power Over Poverty Under Laws of America Restored” and a legal reform organization, committed to helping poor and other disadvantaged people access affordable and competent legal representation, appropriate judicial oversight, and important civil and criminal justice system reforms.

I am a Co-Administrator of NFOJA and POPULAR as well as principal author of the debut symposium report modified to present as this nonfiction book. Dr. Andrew D. Jackson, who is also a NFOJA and POPULAR Co-Administrator, reviewed drafts of the report and this book, providing editorial comments for both. Only drafts of the symposium report were submitted for review by all panelists who participated in the October 20-21, 2011 symposium of “The Matthew Fogg’s Symposia On The Vitality of *Stare Decisis* In America” at the University of Baltimore. In addition to me, they were attorney Tom Devine of GAP; Professor Kylar W. Broadus of NBJC; Professor Jeffrey J. Rachlinski of Cornell University School of Law; Professor Drew Noble Lanier of Lou Frey Institute of Politics and Government, University of Central Florida; Professor Vincent R. Johnson of St. Mary’s University School of Law at San Antonio, Texas; and Professor Terri R. Day of Barry University, Dwayne O. Andreas School of Law.



## INTRODUCTION

Grassroots advocates, public interest attorneys, and legal scholars gathered in October 2011 at the University of Baltimore for the debut symposium of “The Matthew Fogg Symposia On The Vitality Of *Stare Decisis* In America.” As noted earlier, convening such a broad and in many ways diverse audience, requires the program series to be worthwhile academically, yet have populist appeal. Towards that end, the event website explains:

It is both scholarly and practical to examine the current vitality of *stare decisis* as a legal doctrine in America. That we use Latin to describe the concept suggests it is complex, mysterious, and beyond the cares of most Americans. Yet *stare decisis*, sometimes called the ‘doctrine of precedent’, arguably preserves what is among their most valued treasures, the legitimacy of America’s judiciary. Presumably our administration of justice remains stable, predictable, efficient, and welfare-enhancing by requiring courts to follow earlier resolutions of cases with comparable facts, circumstances, and/or law known as precedent.

Speaking for NFOJA, I added during opening remarks at the University of Baltimore: “This symposium has been promoted as a gathering of key players in America’s legal system, *i.e.* current and budding legal professionals, law professors, and litigants; These are the groups at the forefront of executing, utilizing, fashioning, and refining America’s legal system.”

On the first of each two day symposium<sup>9</sup> of the Fogg symposia, lawyers representing NGOs in the civil rights, judicial reform, and whistleblower advocacy fields are to share relevant work of featured legal scholars in lay terms; relate the underlying principles to real life cases; and propose appropriate reform efforts. Four (4) of the scholars spend the next day relating their featured articles to views on the vitality of *stare decisis*. Specifically, the combined panels of public interest attorneys and law professors consider whether compliance with the doctrine is reasonably assured in America given the:

1. considerable discretion vested in federal trial judges through the “plausibility pleading” requirements of *Bell Atlantic Corp. v. Twombly*<sup>90</sup> and *Ashcroft v. Iqbal*<sup>91</sup>;
2. dynamics of judicial self-discipline; and
3. impediments to effectively challenging apparent judicial motives and/or bias, including limitations on lawyer free speech rights.

In other words, “Can America’s administration of justice remain adequately stable, predictable, efficient, and welfare-enhancing given the foregoing factors?”

The website for Fogg’s debut symposium explains:

...

Our symposia assemble public interest advocates, legal practitioners, and law professors who have considered and perhaps addressed in writing one (1) or more of the above listed factors. In gathering, we not only witness their analyses of those factors in the context of *stare decisis*, but observe how the overall exchange impacts the analysis of each participant. The result should be an unprecedented – pardon our pun – mix of scholarship and practical considerations.

...

Ordinarily brief profiles of our symposium panelists would not be a substantive part of related writings. But the backgrounds brought to our discussion at hand are undoubtedly probative of the conclusions we reach. So consider:

**The representatives of our NGO co-sponsors:**

- **Attorney Tom Devine** is Legal Director of Government Accountability Project (GAP). He has been with GAP since January 1979. Attorney Devine has been a leader in campaigns to pass or defend major national and international whistleblower laws, including every one enacted over the last two decades. These include the Whistleblower Protection Act of 1989 for federal employees; seven breakthrough laws since 2002 creating the right to jury trials for corporate whistleblowers; and new U.N.,

World Bank and African Development Bank policies legalizing public freedom of expression for their own whistleblowers.

Attorney Devine has assisted over 5,000 whistleblowers in defending themselves against retaliation and in making a difference, such as shuttering accident-prone nuclear power plants, checkmating repeated industry ploys to deregulate government meat inspection, and blocking the next generation of bloated and porous “Star Wars” missile defense systems. He has served as “Ambassador of Whistleblowing” in over a dozen nations on trips sponsored by the U.S. State Department.

Attorney Devine has authored or co-authored numerous books, including *Courage Without Martyrdom* and *The Whistleblower’s Survival Guide*, law review articles, and newspaper op-eds, and is a frequent expert commentator on television and radio talk shows. In October 2011, his book, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth*, received the International Business Book of the Year award at the Frankfurt Book Fair. He is a recipient of the “Hugh Hefner First Amendment Award” and the “Defender of the Constitution Award” bestowed by the Fund for Constitutional Government. In 2006, Attorney Devine was inducted into the Freedom of Information Act Hall of Fame. He is a Phi Beta Kappa honors graduate of Georgetown University and earned his J.D. from the Antioch School of Law.

- **Professor Kylar W. Broadus** serves on the Board of Directors for *National Black Justice Coalition (NBJC)*. He is an associate professor of business law at Lincoln University of Missouri, a historically black college where he serves as chair of the business department. Professor Broadus has maintained a general practice of law in Columbia, Missouri since 1997. Formerly, Professor Broadus served as State Legislative Manager and Counsel at the Human Rights Campaign, the nation’s largest gay, lesbian, bisexual and transgender advocacy group.

Professor Broadus published “The Evolution of Employment Discrimination for Transgender People” in 2006 in *Transgender Rights* by Currah, Juag and Minter, among other publications.

In August 2005, Professor Broadus and two co-panelists were the first to present information before the American Bar Association regarding transgender clients. In 2004, he spoke at

the Regional Affirmative Action Conference on Transgender Issues and Affirmative Action.

In January of 2003, Professor Broadus was called before the American Association of Law Schools on transgender issues. In February of 2003, he presented at Georgetown Law School's Symposium on Gender and the Law on the same issue. He continues to speak and lobby on the national, state and local levels in the areas of transgender and sexual orientation law and advocacy.

- **Dr. Zena D. Crenshaw-Logal** is Co-Administrator of National Forum On Judicial Accountability (NFOJA) and POPULAR (Power Over Poverty Under Laws of America Restored).<sup>12</sup> She co-founded and serves on the Board of Directors, Executive Committee, of National Judicial Conduct and Disability Law Project, Inc., the nonprofit corporation that sponsors NFOJA, POPULAR, and OAK (Organizations Associating for the Kind of Change America Really Needs). OAK is a national coalition of grassroots advocates for which Dr. Crenshaw-Logal is Co-Administrator. She is author of "The Official End of Judicial Accountability Through Federal Rights Litigation: *Ashcroft v. Iqbal*", 35 *Am. J. Trial Advoc.* 125 (2012).

Prior to becoming a full-time good government and legal/judicial reform advocate, Dr. Crenshaw-Logal practiced general civil law consisting primarily of her prosecuting relatively complex, plaintiffs' personal injury claims and advising small to medium nonprofit as well as for-profit entities. She is presently a member of the bar for the Seventh Circuit Court of Appeals.

In coordinating the Fogg symposia, Dr. Crenshaw-Logal often quoted and quotes her former law school classmate, Dr. Ndiva Kofele-Kale. Dr. Kofele-Kale is an esteemed political scientist, an international law scholar, and the "University Distinguished Professor & Professor of Law" at Southern Methodist University, Dedman School of Law. He says "(a)n implicit or explicit call for change, resonating in the work of a country's brightest scholars, the discourse of its public policy thought leaders including mainstream as well as grassroots advocates, and the hearts of its most enlightened citizenry, is a mandate for government reform, no matter how dramatic."

Dr. Crenshaw-Logal completed a summer semester at the Notre Dame Law Centre in London, England and graduated from Northwestern University School of Law, distinguished as a Notre Dame as well as an Earl Warren Scholar. She has authored multiple online and print articles on grassroots advocacy, First Amendment issues, democracy, and the administration of justice in America. Dr. Crenshaw-Logal is a national spokesperson on tactics thwarting proper standards for regulating First Amendment activities among lawyers when their criticism of the judiciary or a judicial officer is involved.

### Our legal scholars:

- **Professor Jeffrey J. Rachlinski** is an innovator in both administrative law and in social psychology and the law. He is author of our featured article “*Iqbal* and the Role of the Courts: Why Heightened Pleading—Why Now?”, 114 *Penn St. Law Review* 1247 (Spring 2010).

Since he joined the Cornell Law School faculty in 1994, less than a year after receiving a Ph.D. in Psychology and a J.D. from Stanford University, Professor Rachlinski has offered new perspectives on the influence of human psychology on decision-making by courts, administrative agencies, and regulated communities. Professor Rachlinski’s unique analytical viewpoint has led him to explore varied topics in legal practice such as litigation strategies, punitive damages, administrative law, environmental law, and products liability. One of the most versatile scholars at Cornell Law School, Professor Rachlinski has taught social and cognitive psychology for lawyers, administrative law, environmental law, civil procedure, and torts.

Professor Rachlinski’s many publications include an article he co-authored, “Inside the Judicial Mind”, 86:4 *Cornell Law Review* (2001). It reports “the results of an empirical study designed to determine whether five common cognitive illusions (anchoring, framing, hindsight bias, inverse fallacy, and egocentric biases) would influence the decision-making processes of a sample of 167 federal magistrate judges.”

- **Professor Drew Noble Lanier** is Associate Professor of Political Science in the Department of Political Science at the University of Central Florida and a Fellow in the Lou Frey In-

stitute of Politics and Government. He co-authored our featured article “In The Eye Of The Hurricane: Florida Courts, Judicial Independence, And Politics”, 29 *Fordham Urb. L. J.* 1029 (2001-2002).

Professor Lanier concentrated in American politics with an emphasis on judicial politics for his Ph.D. in 1997 from the University of North Texas. He received his J.D. from DePaul University College of Law in 1990. Professor Lanier’s many publications include the 2003 book, *Of Time and Judicial Behavior: Time Series Analyses of United States Supreme Court Agenda-Setting and Decision-making, 1888-1997*, as well as a 2006 book, *The State of Judicial Selection*, which Professor Lanier co-authored with M.S. Hurwitz.

Professor Lanier has given over 150 interviews to local, regional, national and international media outlets. He has practiced law as a solo practitioner and as a civil litigator for Hughes, Watters & Askanase, L.L.P., Houston, Texas.

- **Professor Vincent R. Johnson** teaches and writes principally in the areas of Tort Law, Legal Ethics, Remedies, and Legal Malpractice at St. Mary’s University School of Law at San Antonio, Texas. He is author of our featured article “The Ethical Foundations of American Judicial Independence”, 29 *Fordham Urban L. J.* 1007 (2001-2002).

After completing his studies at Yale Law School, Professor Johnson served as a Law Clerk to the Honorable Bernard S. Meyer of the New York Court of Appeals and the Honorable Thomas E. Fairchild, Chief Judge of the United States Court of Appeals for the Seventh Circuit.

Professor Johnson is a recipient of the “Administration of Justice Award”, presented at the Supreme Court of the United States in 2006, by the Supreme Court Fellows Alumni Association “in recognition of many contributions to the understanding of the American legal system through a distinguished career teaching law.”

Professor Johnson is a prolific writer. His articles have been cited, quoted, and discussed in more than 145 law reviews. He has authored and edited multiple books including *A Concise Restatement of the Law Governing Lawyers*, (ALI 2007) co-edited with Susan Saab Fortney. Professor Johnson received his J.D. from the University of Notre Dame School of Law and his

LL.M. from Yale University School of Law. His many professional associations include the “Association of Professional Responsibility Lawyers”.

- **Professor Terri R. Day** teaches in the areas of Constitutional Law, Torts, Professional Responsibility, and First Amendment at the Barry University, Dwayne O. Andreas School of Law. She is author of our featured article “Speak No Evil: Legal Ethics v. First Amendment”, 32 *J. Legal Prof.* 161 (2008). Professor Day has authored several law review articles and has been cited by other articles and the Ninth Circuit Court of Appeals.

Professor Day was Editor-in-Chief of *The Florida Law Review*. After earning her J.D. degree, she served as Law Clerk to the Honorable Patricia C. Fawsett, U.S. District Court Judge, Middle District of Florida. Professor Day then received her LL.M. at Yale Law School. She is founding faculty of Barry Law School.

Professor Day is a member of the Florida Bar, was a member of the Florida Bar Standing Committee on Professionalism, and has served as chair of the Unlicensed Practice of Law Committee.

Professor Day has written in the areas of torts, professional responsibility, and First Amendment. Prior to becoming a lawyer, Professor Day worked in the areas of social work and the media. She co-chaired a project which documented the testimonies of Holocaust survivors and co-produced a documentary on the subject. She has also implemented a consumer hotline with a local TV station.

Professor Day was a visiting Fulbright Professor at the University of Sarajevo from October 2000 to July 2001 and again from February 2002 to August 2002. She has written in the area of Restorative Justice and its application to Bosnia Herzegovina. In addition to teaching in Bosnia, Professor Day has been a guest lecturer in Lithuania and Serbia.





## PROLOGUE

### *Overview of Stare Decisis*

“(I)n (America,) *stare decisis* is generally understood to mean that precedent is presumptively binding. In other words, courts cannot depart from previous decisions simply because they disagree with them. However, they can disregard precedent if they offer some special justification for doing so.”<sup>13</sup>

### *The Twombly and Iqbal Backdrop*

In its 1957 decision, *Conley v. Gibson*,<sup>14</sup> the U.S. Supreme Court confirmed that “Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim”, noting “(t)o the contrary, all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”<sup>15</sup>

A 2010 “Issue Brief” by lawyers for the NAACP Legal Defense Fund explains that . . .

(f)or five decades after *Conley*, the Supreme Court repeatedly affirmed this ‘fair notice’ approach designed to prevent excessive obstacles at the pleading stage and facilitate adjudication of civil rights claims and other litigation on the merits.

...

Cracks in *Conley*’s foundation emerged (five) years ago in *Bell Atlantic Corp. v. Twombly*. The 7-2 majority opinion, . . . held that, at least with respect to antitrust claims, *Conley*’s no-set-of-facts language ‘has earned its retirement.’ Instead, *Twombly* promulgated a new and stricter ‘plausibility’ standard, ruling that a plaintiff in an antitrust case will survive a motion to dismiss only if he or she pleads ‘enough facts to state a claim to relief that is plausible on its face.’

*Twombly* left open whether this new plausibility standard broadly applied to all civil cases. (In a 2009 decision,) *Ashcroft v. Iqbal*, the U.S. Supreme Court made clear that it did.

...