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An Employment Discrimination Rap

I was thrilled to see that the January 16 *Bar News* published a study by The American Constitution Society for Law and Policy (ACS) whose data showed what employment law practitioners have known and experienced for some 20 years: **"The federal courts disfavor employment discrimination plaintiffs, who are now forswearing use of those courts."**

As a plaintiff's employment law attorney, I've cited that study in federal pleadings seeking remand to state court; the data is that shameful.

There are hundreds, and I've personally experienced one: *"It's a close call, but summary judgment granted,"* federal decision in a case defendants removed (a/k/a "yanked") to federal court. If it's a close call, the jury's supposed to decide, not the judge! Paper affidavits upon which summary judgments are granted don't show the witness shifting in his seat, sweating profusely or rolling his eyes, or smirking, all body language recognized world-wide to convey mendacity.

I have testified, written and rapped about (and generally cursed) the "advantage enjoyed by employment case defendants in federal court." Never, I repeat never, has a defense attorney disagreed with my observation of their federal court advantage, (Nor has any federal judge with whom I have dared discuss the topic.) Here's my 2007 Rap (updated for the 2009 Inauguration) to be chanted to a solid, driving beat:

The federal courts give punishment
by killing claims on summary judgment
for just about each bad excuse
employers have for turning loose
the workers who have dared to tell
their harassing bosses to go to, well...
classes for their sad, bad acts
'cuz the feds can't find a dispute of facts!
They know better than the jury–
Why have a trial? Why have that worry?

Defendants' lawyers love the way,
by removing from the state courts they
explode the costs by (tens of) thousands of dollars.
They get well paid, so they don't holler.

The plaintiffs are fired, so funds are nay,
so it's plaintiffs' attorneys who get no pay.
We labor for weeks on affidavits' fruition, yet:
"SJ" Granted! (There goes tuition.)

So when removed, we speed-seek remand, but
if it's a diversity case, the feds demand
that plaintiffs promise to not ask for more
than $75 Grand. ("ARGH, OK!" I roar!)

But who will pay the plaintiffs' fees
for freeing the case from the "killer bees"?
"No fees for remand!" the courts here say,
"we could— but we won't –
make defendants pay."

Geeze I just do not know why
the federal courts diss the "working guy"
who works and works and works and works
for bosses aptly titled "jerks".

This New Congress WILL help out -
Employees shafted will get clout!
Then JUSTICE IN THE WORKPLACE may be had –
and employee advocates will be glad.

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