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Point/Counterpoint

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Topic 1: Detail in Pleadings

Point

Texas Rule of Civil Procedure 47 requires only a "short statement of the cause of action sufficient to give fair notice of the claim involved." Federal Rule of Civil Procedure 8(a) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." That's all I am giving opposing counsel—a short statement of the claim.

Hold on. *Twombly* said it did "not require heightened fact pleading of specifics," only enough to "nudge[ ] the[ ] claims across the line from conceivable to plausible."[2] And that's all I am willing to do—nudge.

Even *Iqbal* acknowledged that Rule 8 doesn't require "detailed factual allegations."[4]

Counterpoint

But *Twombly* and *Iqbal* changed all that. Now, according to *Twombly*, we have to plead "enough facts to state a claim to relief that is plausible on its face."[1]

Yes, the Supreme Court said that. But then in *Iqbal* it said "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'"[3] So now we have to "show" that we're entitled to relief, not just allege it, with well-pleaded facts.

[1] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
[2] *Id.*
[3] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration in original, internal citation omitted).
[4] *Id.*

Yes, but the Court specified that Rule 8 "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation."[5]

But Rule 8 also says pleadings must be "simple, concise, and direct."

Okay, but be careful about how "simple" you are. The court in *Iqbal* said "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."[6]

I still don't think that means the courts want me to write a novel. Look what Judge Sparks did with the initial complaint filed in Lance Armstrong's case against the United States Anti-Doping Agency. By 2:45 p.m. the same day the case was filed, Judge Sparks had written and filed an order dismissing the case.[7]

Okay, but he dismissed the case without prejudice to re-filing. He didn't dismiss for failure to state a claim.

No, it was dismissed for saying too much. Judge Sparks noted that "vast swaths of the complaint could be removed entirely, and most of the remaining paragraphs substantially reduced, without the loss of any legally relevant information."[8]

Those "vast swaths" appeared in a complaint that was 80 pages and 261 numbered paragraphs. That's not your typical complaint.

It may not be typical, but that doesn't mean judges want to read irrelevant facts in any cases. Judge Sparks said he was "not inclined to indulge Armstrong's desire for publicity, self-aggrandizement, or vilification of Defendants, by sifting through eighty mostly

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[5] *Id.*
[6] *Id.*
[7] Order, *Armstrong v. Tygart*, No. A-12-CA-606-SS (W.D. Tex. July 9, 2012).
[8] *Id.* at 2.

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