"Mapping Supreme Court Doctrine" is a video presentation that accompanies our article on federal civil pleading requirements appearing in the *Federal Courts Law Review*. We are Professors Scott Dodson and Colin Starger. In this presentation, we will graphically demonstrate the genealogy and evolution of civil pleading standards in the U.S. Supreme Court.

Let's begin with the basics of the mapping schema we'll be using. The idea is to plot relationships between Supreme Court opinions on an X-Y axis. The X-axis plots the date of an opinion, while the Y-axis plots the relative liberality of the opinion's pleading standard: the higher on the Y-axis, the more liberal the pleading standard in that opinion. We'll also show—via arrows—the citations of one decision to another, with a green arrow representing a positive citation that follows the cited case and a yellow arrow representing one that limits the cited case or calls it into question. Finally, we'll indicate the results of cases using shapes. Downward-facing triangles represent cases where a claim was found insufficient and dismissed under Rule 12(b)(6). Upward-facing triangles represent cases where the claim was sufficient as a matter of law and thus survived a motion to dismiss.

Before plotting the decisions themselves, let's start with the backdrop of federal civil pleading and that of course is Rule 8 of the Federal Rules of Civil Procedure. That rule states that a plaintiff's complaint need only set out a short and plain statement showing that the pleader is entitled to relief.

The seminal case interpreting Rule 8's language is *Conley v. Gibson*, decided in 1957. This case interpreted Rule 8 very liberally indeed, which is why it appears near the top of our Y-axis. *Conley* said Rule 8 merely requires a complaint give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests, and *Conley* famously stated that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief.

The Court decided two important cases after *Conley—Leatherman v. Tarrant County*, in 1993, and *Swierkiewicz v. Sorema*, in 2002. Each case unanimously reaffirmed *Conley* and disapproved of lower courts attempting to set a stricter pleading standard.

In 2007, however the Court decided *Bell Atlantic v. Twombly*, which abrogated Conley's "no set of facts" standard and held that the plaintiff must go beyond mere notice to state a claim for relief that is plausible. *Twombly* thus also called into question *Leatherman* and *Swierkiewicz*, which both relied heavily on *Conley*. Because *Twombly* set a stricter pleading standard, we have plotted this case lower on the Y-axis than *Conley*.

Two years later, in *Ashcroft v. Iqbal*, the Court confirmed *Twombly*'s plausibility standard, and it further tightened the pleading standard by directing courts to disregard conclusory allegations. Interestingly, *Iqbal* did not even cite directly to *Conley*, *Leatherman* or *Swierkiewicz*.

This is the conventional narrative of pleadings standards at the Supreme Court level. The map depicts a relatively unadulterated liberality from *Conley* to *Swierkiewicz* suddenly sliding down to a stricter pleading standard imposed by *Twombly* and *Iqbal*.

Yet this conventional narrative of the law of federal pleading is actually complicated by *Twombly*'s progenitors and progeny. As we will show, the general trend remains the same: pleading standards have, at least at the Supreme Court level of doctrine, tightened. But, there is more to this story than just *Conley*, *Twombly* and *Iqbal*.

To begin with, *Twombly* did not create stricter pleading out of whole cloth. *Twombly* relied on three other pleadings decisions for support. First, in 1983, the Court decided *Associated General Contractors v. California State Council of Carpenters* . Although the Court found that the conduct alleged was not unlawful—and therefore the claim was insufficient as a matter of law—the Court opined that if the conduct had been unlawful, then a district court could insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.

In 1986, the Court decided *Papasan v. Allain*, a case challenging wealth disparities in public education. To state a constitutional claim, the plaintiffs alleged that the disparities deprived schoolchildren of a minimally adequate education. The Court disregarded this allegation because, the Court said, such an allegation without factual support was merely a legal conclusion.

Finally, in 2005, the Court decided *Dura Pharmaceuticals v. Broudo*, holding that a plaintiff pleading federal securities fraud must allege some factual description of the economic loss and its causal connection. Otherwise, the Court predicted, a plaintiff with a largely groundless claim could force an unjust settlement without a reasonably founded hope that the discovery process would reveal relevant evidence.

Rather than *Leatherman* or *Swierkiewicz*, *Twombly* relied on each of these three cases to justify its doctrinal conclusion. *Twombly* cited *Papasan* to disregard the allegation of a conspiracy as merely a legal conclusion. And, citing *Associated General* and *Broudo*, *Twombly* emphasized the need for additional facts before allowing a claim without a reasonably founded hope of evidentiary support to proceed and impose discovery costs or force an unjust settlement.

In addition to these oft-overlooked early cases, there is a blip in the middle, and that's *Erickson*. *Erickson v. Pardus*, decided just a month after *Twombly*, seemed to apply a more lenient pleading standard to a pro se prisoner suit. And that's why we've plotted it higher up on the Y-axis. But, in that case, the allegations easily satisfied even *Twombly*'s plausibility standard. And pro se plaintiffs are historically given some leniency in pleading. Further, *Iqbal*, the case right after *Erickson*, continued the downward trend in pleading liberality, and it relied heavily on *Twombly* without even mentioning *Erickson*. In fact, *Erickson* has not been cited by any other opinion in our map. *Erickson*, the map shows, is just a red herring.

The final complication that we introduce in this map is the post-*Iqbal* cases, which seem to show a bit of genuine uptick in pleading liberality. In *Matrixx Initiatives v. Siracusano*, a unanimous Court reaffirmed the plausibility-pleading standard of *Twombly* and *Iqbal* but nevertheless held that the relatively bare allegations satisfied that standard. And, in *Skinner v. Switzer*, the Court cited *Swierkiewicz* in upholding the complaint.

These cases do not retract the *Twiqbal* standard, but they do offer data points that could be seen as less strict. All told, then, our map shows a more complicated—and perhaps quite unfinished—picture of civil pleading standards as set out by the Supreme Court.

We hope this video presentation and map have been useful. And in the meantime, we look forward to the Court's next pronouncement.