Missouri Law Review

Volume 49
Issue 4 *Fall 1984*

Article 1

Fall 1984

# Special Pleading Rule for Civil Rights Complaints: A Step Forward or a Step Back, A

C. Keith Wingate

Follow this and additional works at: https://scholarship.law.missouri.edu/mlr

 Part of the Law Commons

## Recommended Citation

C. Keith Wingate, *Special Pleading Rule for Civil Rights Complaints: A Step Forward or a Step Back, A*, 49 Mo. L. Rev. (1984)
Available at: https://scholarship.law.missouri.edu/mlr/vol49/iss4/1

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

MISSOURI
LAW REVIEW

VOLUME 49 FALL 1984 NUMBER 4

# A SPECIAL PLEADING RULE FOR CIVIL RIGHTS COMPLAINTS: A STEP FORWARD OR A STEP BACK?

C. KEITH WINGATE*



## I. INTRODUCTION

Almost every lawyer, and indeed most law students past the first year, know that the notice pleading standards applied in the federal courts are relatively easy to meet and are designed to avoid the technical pitfalls of code and common law pleading. Many of these lawyers and law students would probably be surprised if they were told that some federal courts have begun to apply stricter and more onerous pleading requirements on plaintiffs alleging civil rights violations in the federal courts.

This special pleading rule will be explored in this article. The rationale for the rule will be examined and analyzed. Additionally, the impact of the special pleading rule on civil rights plaintiffs will be considered. Essentially, this article will consider the issue of whether this departure from the generally applicable pleading standard is warranted. However, before moving on to dis-

* Associate Professor of Law, University of California Hastings College of the Law. University of Illinois, B.S. 1974, University of Illinois College of Law, J.D., 1978.

cuss the strict pleading standard courts are imposing on civil rights complaints, I will describe the pleading standard that applies in most other civil matters in the federal courts.

## II. PLEADING GENERALLY IN THE FEDERAL COURTS

### A. *Rejection of the Code Pleading Standard*

The drafters of the Federal Rules refused to adopt the requirement imposed by code pleading that complaints set forth facts sufficient to state a cause of action. First, the word "claim" was substituted for "cause of action." One of the reasons for this substitution was to avoid use of the mysterious term "cause of action" and the confusion it had caused.[1] Rule 8(a) also was designed to eliminate the needless battles over forms of statements which delayed a trial on the merits or in some cases resulted in the loss of meritorious claims.[2] The drafters recognized the inefficiency and waste of judicial resources spent determining the often indeterminable questions of whether a certain phrase was a statement of an ultimate fact, an evidentiary fact, or a conclusion of law.[3] "These concepts tended to merge to form a continuum and no readily apparent dividing markers developed to separate them."[4] A related goal of Rule 8(a) was to deemphasize in general the role that pleadings played in the litigation process.[5]

Under the Federal Rules, pleadings serve quite limited functions. They "may simply be a general summary of the party's position that is sufficient to advise the other party of the event being sued upon, to provide some guidance as to what was decided for purposes of res judicata, and to indicate whether the case should be tried to the court or to a jury."[6]

Historically, pleadings had served more ambitious purposes. They were devices by which the parties presented their perceptions of the facts and narrowed the issues. The parties and the courts also used the pleadings to weed out sham complaints and insufficient defenses.[7] However, the Federal Rules provide other, more efficient mechanisms for performing such tasks.[8] The vari-

---

1. 2A MOORE'S FEDERAL PRACTICE § 8.13 at 8-102 (1984) (Acting Advisory Committee Report).
2. *Id.*
3. *See* Cook, *Statements of Fact in Pleading Under the Codes*, 21 COLUM. L. REV. 416, 417 (1921). *Compare* Clemmons v. Life Ins. Co. of Ga., 274 N.C. 416, 417, 163 S.E.2d 761, 764 (1968) (general allegation that defendant acted within the scope of his employment held to be a conclusion of law), *with* Ledman v. Colvert Iron Works, 92 Ga. App. 733, 735-36, 89 S.E.2d 832, 833 (1955) (general allegation that defendant acted within the scope of his employment held to be an ultimate fact).
4. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1218 (1969).
5. *See id.* § 1202.
6. *Id.* at 60.
7. *Id.*
8. *See* Conley v. Gibson, 355 U.S. 41, 47-48 (1957); 2A MOORE'S FEDERAL

ous discovery procedures may be used to identify the litigants' versions of the facts and to narrow the scope of the dispute. Pre-trial conferences and "partial summary judgment" also help refine issue definition or eliminate certain matters from the litigation.[9] Sham complaints and insufficient defenses can be disposed of through the motion for summary judgment. Consequently, notice is now the major purpose served by the pleadings.

### B. *Dismissals For Failure to State a Claim*

Federal Rule 12(b)(6) authorizes a party to attack a complaint upon the ground of "failure to state a claim upon which relief can be granted." Such a motion challenges the formal sufficiency of the complaint and thus must be read jointly with Rule 8(a), which sets forth the requirements a complaint must meet in the federal courts.[10] Hence the Rule 12(b)(6) motion performs essentially the same role as the general demurrer of common law pleading. The well-pleaded allegations of the complaint are taken as admitted for purposes of the motion, but conclusions of law or unwarranted deductions of fact are not.[11]

*Conley v. Gibson*[12] was the first major Supreme Court case to define the standards to be applied to Rule 12(b)(6) motions, and consequently, the first major interpretation by the Court of the requirements of Rule 8(a). In *Conley*, black members of a union brought suit under the Railway Labor Act alleging that the union had failed to represent them and other black members fairly. The respondents argued, *inter alia*, that the complaint failed to state a claim upon which relief could be granted. The Court rejected that contention, referring to "the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief."[13] The respondents also contended that the complaint was inadequate because it failed to set forth specific facts in support of its general allegations of discrimination. The Court replied by asserting:

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To 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.[14]

What did the Court mean when it said that a complaint should not be

---

PRACTICE § 8.13 at 8-115 (1984).

9. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1202, at 60 (1969).

10. *Id.* § 1356, at 590.

11. 2A MOORE'S FEDERAL PRACTICE, § 12.08, at 2265-69 (1984).

12. 355 U.S. 41 (1957).

13. *Id.* at 45-46.

14. *Id.* at 47 (footnote omitted).

dismissed unless it appeared beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief? Perhaps the best answer can be found in *Leimer v. State Mutual Life Association Co.*,[15] one of the cases cited by the *Conley* court in support of that standard. The *Leimer* court indicated that a Rule 12(b)(6) motion should not be granted merely because a cause of action had been defectively stated, but rather the motion should be granted only if it appeared that a cause of action did not exist.[16] Thus, such a motion should be granted when the complaint does not set forth a wrong or sets forth a wrong for which there clearly is no legal remedy available to the plaintiff.[17] An example of the latter situation would be a complaint containing allegations conclusively showing that the claim is barred by the applicable statute of limitations.

However, federal courts have also granted Rule 12(b)(6) motions in cases where the pleading does not set forth sufficient facts to meet the liberal standards of Rule 8(a)(2).[18] Although the system of pleading operative under the federal rules is often referred to as "notice pleading," the pleader is required to provide a general statement of the case as opposed to a simple statement that he is entitled to relief. The pleader must disclose enough information to give the defendant fair notice of the events or transactions from which the claim arises.[19]

One might reasonably argue that in cases where the pleader has not provided sufficient factual information to meet the requirements of Rule 8(a)(2), a court still might not be able to assert that it appeared beyond doubt that the pleader could not prove any set of facts which would entitle him to relief. Therefore, the *Conley* test would not be met. However, the courts have not interpreted *Conley* in such a literal manner. The interpretation given the *Conley* rule by most federal courts is reflected in the following statement by the Court of Appeals for the First Circuit, in a case where the plaintiff alleged

---

15. 108 F.2d 302 (8th Cir. 1940).
16. *Id.* at 305 (citing Winget v. Rockwood, 69 F.2d 326, 329 (8th Cir. 1934)).
17. *See Leimer*, 108 F.2d at 305-06.
18. *See, e.g.*, Ostrer v. Aronwald, 567 F.2d 551 (2d Cir. 1977).
19. The forms which accompany the Federal Rules provide models which meet the pleading standards of the Federal Rules and "indicate the simplicity and brevity of statement which the rules contemplate." FED. R. CIV. P. 84. For example, Form 9 indicates that a model complaint in a negligence action would consist only of the following allegations:

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street, Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

3. As a result, plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of . . . . . dollars and costs.

that his constitutional rights had been violated:

> [We] do not think that *Conley* imposes a duty on the courts to conjure up unpleaded facts that might turn a frivolous claim of unconstitutional official action into a substantial one . . . . We are not holding the pleader to an impossibly high standard; we recognize the policies behind Rule 8 and the concept of notice pleading. A plaintiff will not be thrown out of court for failing to plead facts in support of every arcane element of his claim. But when a complaint omits facts that, if they existed, would clearly dominate the case, it seems fair to assume that those facts do not exist.[20]

Moreover, *Conley* does make it clear that the Rules require the pleader to provide his adversary with fair notice, and therefore, appears to contemplate dismissal when that standard is not met.

However, the next question which arises is whether Federal Rule 8 requires the pleader to state all the elements of the cause of action being asserted. The adoption of the word "claim" as opposed to "cause of action" does not necessarily address this issue. As one writer noted:

> The [Federal] Rules . . . speak in terms of "claims" rather than "cause of action," but this of itself decides nothing . . . . Does this dispense with stating all the elements? If the provision had stopped with requiring "a short and plain statement of the claim," there would be little argument that the answer must be in the affirmative. But the addition of the participle clause "showing that the pleader is entitled to relief" is disturbing. A fair argument could be made to the effect that the pleading would not show entitlement to relief if it omitted an essential element of what we have been accustomed to speak of as the cause of action, even though not necessary to conveying adequate notice of the claim, because in the absence of that element there could be no recovery . . . .[21]

Consequently, it is not surprising that some federal courts have held that the pleader must set forth the prima facie elements of a claim in order to meet the requirements of Rule 8.[22] However, the cases taken as a whole indicate that a pleader need not state each and every element needed to establish a basis for legal relief so long as the direct allegations are such that an inference reasonably may be drawn that evidence regarding the missing elements will be presented at trial.[23]

An example of this approach is *Garcia v. Hilton Hotels International*.[24] In that case, the plaintiff brought a defamation action against the defendant corporation. The defendant moved to dismiss contending that the complaint

---

20. O'Brien v. Di Grazia, 544 F.2d 543, 546 n.3 (1976) (citations omitted).

21. R. MILLER, CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 192 (1952).

22. *See, e.g.*, Local 1852, Waterfront Guard Ass'n v. Amstar Corp., 363 F. Supp. 1026, 1030 (D. Md. 1973).

23. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1216 (1969) (and cases cited therein).

24. 97 F. Supp. 5 (D.P.R. 1951).

failed to allege publication of the alleged slanderous statement and, therefore, did not state a claim upon which relief could be granted. The court disagreed, asserting:

> In the instant case, it is true that Paragraph 4, of the complaint, fails to state, in so many words, that there was a publication of the alleged slanderous utterance and, to that extent, the cause of action is defectively stated. However, it does not follow that the allegations do not state a claim upon which relief can be granted. It is alleged that plaintiff was "violently discharged" and was "falsely and slanderously accused" of procuring for prostitution. While in a technical sense, this language states a conclusion, it is clear that plaintiff used it intending to charge publication of the slanderous utterance and it would be unrealistic for defendant to claim it does not so understand the allegations . . . . Clearly, under such allegations it reasonably may be conceived that plaintiff, upon trial, could adduce evidence tending to prove a publication.[25]

This approach appears to be consistent with *Conley* and the intent of the Federal Rules to avoid technical pleading requirements.

On the other hand, the passage quoted from *Garcia* suggests that the court thought that the pleading of conclusions was improper. However, the pleading of conclusions is not improper under the Federal Rules, so long as the allegations as a whole provide the defendant with fair notice.[26] The Supreme Court made this point clearly in *United States v. Employing Plasterers Association.*[27] In that case, the district court had dismissed an antitrust complaint charging the defendants with violations of the Sherman Act. The district court found the complaint to be insufficient because there were no factual allegations showing that the alleged wrongful practices of the defendants had an adverse impact on interstate commerce. The Supreme Court reversed, stating:

> The complaint plainly charged several times that the effect of all these local restraints was to restrain interstate commerce. Whether these charges be called "allegations of fact" or "mere conclusions of the pleader," we hold that they must be taken into account in deciding whether the Government is entitled to have its case tried.[28]

In summary, a complaint will be dismissed for failure to state a claim upon which relief can be granted if it appears that a cause of action does not exist either because the law does not recognize the type of claim asserted or because the complaint discloses some fact which will necessarily defeat the asserted claim. Additionally, the courts will dismiss a complaint if it fails to provide the adversary with fair notice of the events or occurrences upon which the suit is based or if it neither directly alleges the elements of a cause of action nor gives rise to a reasonable inference that at trial the plaintiff could present evidence demonstrating the existence of a cause of action. With these

---

25. *Id.* at 8.

26. 2A MOORE'S FEDERAL PRACTICE ¶ 8.13, at 8-104 (1984); 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1218 (1969).

27. 347 U.S. 186 (1954).

28. *Id.* at 188.

general principles in mind we will examine the more stringent requirements that some courts have applied to civil rights complaints.

## III. Specificity and Detail Required In Civil Rights Complaints

The first case to announce a special pleading rule for civil rights cases was *Valley v. Maule*.[29] The plaintiffs alleged that the defendants conspired to deprive them of constitutionally guaranteed civil rights. The district court characterized the complaints in the two actions as "utterly devoid of any factual allegations which allege overt acts or purposeful deprivation of rights."[30] Plaintiffs argued that under the theory of "notice pleading" adopted by the Federal Rules a pleading need not contain a detailed statement of the facts constituting the claim. The court responded by asserting that an exception to the notice pleading standard had been created for cases brought under the civil rights acts.[31]

After announcing that the notice pleading standard was not applicable to civil rights complaints, the court sought to justify its approach. The court provided the following rationale for the special pleading rule:

> In recent years there has been an increasingly large volume of cases brought under the civil rights act. A substantial number of these cases are frivolous or should be litigated in the State courts; they all cause defendants—public officials, policemen and citizens alike—considerable expense, vexation and perhaps unfounded notoriety. It is an important public policy to weed out the frivolous and insubstantial cases at an early stage in the litigation, and still keep the doors of the federal courts open to legitimate claims.[32]

The *Valley* court did not assert any direct authority for the rule it announced. However, the opinion did cite a number of cases holding that a plaintiff alleging a conspiracy to deprive him of his constitutional rights pursuant to Sections 1983 or 1985 must allege with some degree of particularity overt acts which the defendants engaged in to promote the alleged conspiracy.[33] Since the plaintiff in *Valley* was asserting a conspiracy, the court's holding could have been based upon the plaintiff's failure to allege such overt acts. Nonetheless, the district court took the occasion to announce a broad pleading rule affecting not only conspiracy claims, but all complaints alleging violations of the civil rights statutes.

Although *Valley* was decided by a district court in the Second Circuit, the special pleading rule it announced has been much more widely adopted in

---

29. 297 F. Supp. 958 (D. Conn. 1968). A number of federal courts have refused to adopt such a rule. *See, e.g.*, United States v. Gustin-Bacon Div., Certain-Teed Prods., 426 F.2d 539 (10th Cir. 1970).

30. *Id.* at 960.

31. *Id.* at 960-61.

32. *Id.*

33. *See* Powell v. Workmen's Compensation Bd., 327 F.2d 131, 137 (2d Cir. 1964); Hoffman v. Halden, 268 F.2d 280, 295-96 (9th Cir. 1959).

the Third Circuit. One of the first Third Circuit cases to speak directly of the rule was *Kauffman v. Moss*.[34] In *Kauffman*, the plaintiff had been convicted, in a state court, of conspiracy to commit burglary and larceny. He brought a federal action pursuant to 42 U.S.C. § 1983 against the district attorney of the county where he was tried and three law enforcement officers, alleging that they had conspired to secure his convictions by the knowing use of perjured testimony. The district court dismissed the complaint on the ground, *inter alia*, that the complaint was made up of broad conclusory allegations unsupported by specific facts. The Third Circuit panel reviewing the case pointed to the circuit's alleged adoption of the special pleading rule for civil rights cases,[35] citing *Negrich v. Hohn*.[36] However, the *Kauffman* court concluded that despite the special pleading rule, the liberal policy favoring amendments stated in Rule 15(a) remained in force. Although the plaintiff did not have a right to amend his complaint, the court indicated that it would be an abuse of discretion to deny him the opportunity to do so. Indeed, most courts which have applied a stricter pleading standard to civil rights complaints have given the plaintiff at least one opportunity to amend his complaint to meet the stricter standard.

Although cited by the court in *Kauffman*, *Negrich* did not purport to apply a special pleading rule. The plaintiff in that case had entered a guilty plea to charges of assault and prison breach. He contended that the defendants inflicted cruel and unusual punishment upon him to coerce him into signing a statement regarding the charges against him. Further, he alleged that he pleaded guilty because he was in fear for his life as a result of the defendants' conduct. *Inter alia*, the plaintiff charged that the defendants repeatedly beat him and put him on a diet of bread and water for some thirty days. The court held that the complaint was insufficient because it was broad and conclusory and failed to state facts in support of its conclusions. Specifically, the court pointed out that while the allegations of beatings were made against the defendants generally and not against any particular defendant, all the defendants could not have inflicted the beatings at the times and places stated.[37] While *Negrich* does not expressly adopt a special pleading standard for civil rights claims, it perhaps does suggest that some courts have been applying the fair notice standard of Federal Rule 8(a) to require more factual detail in civil rights complaints than in others. Nonetheless, cases such as *Negrich* do not expressly reject the fair notice standard in favor of a rule requiring the pleading of detailed facts regardless of whether fair notice is provided with a more general statement of facts. On the other hand, the courts adopting the special pleading rule appear to have done just that.

Of course, in some of the cases where the courts have imposed the stricter

34. 420 F.2d 1270 (1970).
35. *Id.* at 1275.
36. 379 F.2d 213 (3d Cir. 1967).
37. *Id.* at 215.

pleading standard on civil rights complaints, a strong argument can be made that even the general relaxed pleading requirements applicable in the federal courts had not been met. For example, in *Rotolo v. Borough of Charleroi*,[38] the plaintiff brought two actions pursuant to section 1983. The plaintiff alleged that he had been employed by the defendant municipal corporation and that the four individual defendants, borough councilmen, voted to terminate his employment "because the Plaintiff had exercised his First Amendment privileges."[39] The opinion first points out that plaintiffs in the Third Circuit must plead facts with specificity in civil rights cases[40] and then concluded that that standard had not been met by the allegations of the plaintiff's complaint. The court noted that the allegations failed to indicate when, where, and how Rotolo had "exercised his First Amendment privilege."[41] Additionally, the allegations of the complaint did not make clear whether plaintiff's alleged exercise of his first amendment privileges took the form of an utterance or some other form.[42] Given these defects, the court could have found that the complaint simply did not give the defendant fair notice of the events or occurrences upon which the suit was based and thus dismissed the complaint without relying upon a special pleading rule for civil rights cases.

However, courts applying the stricter pleading standard have dismissed some complaints which appear to satisfy the liberal pleading standard of *Conley* and Federal Rule 8(a). One such case is *LaPlant v. Frazier*.[43] In that case, the plaintiff sued certain police officers of the City of Philadelphia and the City itself. He alleged that at a specific time and place, he was struck on the head with a night stick by one of the defendant police officers. He further alleged that the officer's use of excessive force constituted a violation of his constitutional rights and section 1983.

The plaintiff also sought to plead municipal liability under *Monell v. Department of Social Services*.[44] He alleged that the City of Philadelphia did not train its police officers to engage in lawful conduct, and that it generally did not punish officers who engaged in unlawful conduct. The plaintiff then alleged that these practices caused the defendant police officers to engage in the misconduct which was the subject of the suit. However, the district court dismissed the claim against the City because the plaintiff failed to meet the stricter pleading standards imposed on civil rights complaints. Discussing the

38. 532 F.2d 920 (3d Cir. 1976).
39. *Id.* at 921.
40. *Id.* at 922.
41. *Id.* at 923.
42. *Id.* at 923 n.5.
43. 564 F. Supp. 1095 (E.D. Pa. 1983).
44. 436 U.S. 658 (1978). In *Monell*, the Supreme Court held that a municipality could be held liable under section 1983. However, the Court stated that municipal liability could not be based solely on a theory of respondeat superior. Instead, a city's liability must be based upon its own conduct. Thus, a plaintiff has to prove that an official policy, custom or practice was causally related to the conduct of the city's employee and the resulting injury to the plaintiff. *Id.* at 691-94.

allegations in the complaint relating to the claim against the City, the court asserted:

> Although these allegations address the elements for a § 1983 claim against the City, they do not contain sufficient specifics upon which I can weigh the substantiality of the claim. For instance, there is no allegation that Officers Frazier or Stroud previously engaged in misconduct but were not disciplined because of the alleged policy of the City. In short, the complaint provides no factual basis to support a finding of an "affirmative link" between any custom or policy of the City of Philadelphia and to alleged misconduct of Officers Frazier and Stroud.[45]

In *Means v. City of Chicago*,[46] a district judge rejected the imposition of a special pleading standard in civil rights cases and denied a motion to dismiss a section 1983 claim against a city which was based on allegations very similar to those in *LaPlant*. In *Means*, the plaintiff, administratrix of the estate of Gary Lee, alleged that two defendant police officers arrested Lee without probable cause and shot him in the head without provocation, killing him. Additionally, the plaintiff alleged that the City of Chicago proximately caused Lee's death by improperly hiring, screening, and training officers, by failing to discipline the officers for past misconduct, and by encouraging officers to use deadly or excessive force. Judge Marshall held that the allegations were sufficient to withstand the City's motion to dismiss. He went on to assert:

> This is not to say that simply reciting that the actions of an individual employee were pursuant to the "policies, customs, and usages" of the City is sufficient to state a claim under the statute. The plaintiff must allege what the policy is that is being challenged and demonstrate that it may, under some set of facts, be a proximate cause of the injury in the particular case . . . . But the test is not whether the plaintiff has pleaded factual instances demonstrating that an unconstitutional policy exists, but rather whether the policy, custom or practice, once pleaded can be proved.[47]

The analysis employed by Judge Marshall seems to comply with the pleading standard of Federal Rule 8(a) as interpreted by the Supreme Court in *Conley*. At first blush some might argue that the absence of a specific allegation that the individual police officers had engaged in illegal conduct prior to the incident which gave rise to the suit and had not been punished distinguishes *LaPlant* from *Means*. However, applying the *Means* test, it seems that a general policy of not punishing misconduct, even when the individual police officers who engaged in the specific conduct before the court had not benefitted therefrom, could be a proximate cause of the misconduct before the court. The real difference between the two cases is that the *LaPlant* court apparently wants the plaintiff to go beyond merely identifying the alleged policy which is the basis of the city's liability and to allege specific facts which demonstrate that the policy exists and that it was indeed a proximate cause of the injury

45. *La Plant*, 564 F. Supp. at 1098.
46. 535 F. Supp. 455 (N.D. Ill. 1982).
47. *Id.* at 459 (citation omitted).

suffered by the plaintiff.

*LaPlant* is not unusual in this regard. In cases in which the plaintiff alleges municipal liability on the basis of past incidents of police misconduct, the courts applying the special pleading rule require that the complaint set forth specific episodes of police misconduct in sufficient number and in a sufficiently narrow time frame to support an inference of municipal liability.[48] Essentially, the plaintiff must plead evidence in support of the factual allegations in the complaint. Even common law pleading did not impose such an onerous burden on the plaintiff. Without the benefit of discovery, the plaintiff must prove his claim in the complaint or face dismissal of his action.

Perhaps the most surprising application of the special pleading rule can be found in *United States v. City of Philadelphia*.[49] The Attorney General of the United States brought suit against the City of Philadelphia seeking equitable relief against practices and policies which allegedly promoted police brutality. The complaint alleged, *inter alia*, that the defendants discriminated on the basis of race in administering federal funds going to Philadelphia's police department. The Third Circuit affirmed the district court's dismissal of the complaint on the grounds that it lacked the specificity required of civil rights complaints.[50] Before the appeal was filed, the district court had offered the government an opportunity to amend its complaint, but it declined.

The Third Circuit panel discussed the special pleading rule in a manner which suggested that it was merely an application of the fair notice standard, stating, "[t]he rule is well established in this circuit that a civil rights complaint that relies on vague and conclusory allegations does not provide 'fair notice' and will not survive a motion to dismiss."[51] Nonetheless, the court made it clear that it was adopting the rule enunciated in *Valley v. Maule* and the rationale offered to justify it.[52]

One of the surprising aspects of the case is that the government's claim, based upon racial discrimination in a program receiving federal funds, did not rely on any of the civil rights acts, but rather upon other federal statutes. However, the panel concluded that the *Valley v. Maule* rationale was equally relevant in this context and that "[l]ike a civil action under 42 U.S.C. § 1983, this action seeks relief against a local government and its officials for the protection of citizens' constitutional rights; and like a § 1983 action, this action threatens massive federal interference with a local government."[53] Addition-

48. *See* Schramm v. Krischell, 84 F.R.D. 294 (D. Conn. 1979); Smith v. Ambrogio, 456 F. Supp. 1130 (D. Conn. 1978).

49. 644 F.2d 187 (3d Cir. 1980).

50. The defendants moved to dismiss under FED. R. CIV. P. 12(b), but their motion was untimely since the complaint had already been answered. Consequently, the district court treated the motion as one for judgment on the pleadings. 644 F.2d at 203-04 n.25.

51. 644 F.2d at 204.

52. *Id.*

53. *Id.*

ally, the court believed that the stricter pleading standard would in this case aid in the implementation of the congressional policy against federal control of local police departments.[54]

Having decided that the stricter pleading standard was applicable, the court then discussed why it had not been met. First, the panel pointed out that the complaint had not identified any specific program or activity of the police department which had expended federal funds in a discriminatory manner. Moreover, the complaint failed to allege facts which showed a connection between the cases of police abuse and the expenditure of federal funds or how the city qua city had been guilty of discrimination.

However, by the time the district court granted the motion to dismiss, the government had filed a set of answers to defendants' interrogatories which totalled 836 pages. These answers referred to hundreds of specific cases of police abuse and revealed that the victims of certain categories of police misconduct were primarily members of racial minorities. As one of the judges dissenting from the order denying the petition for rehearing en banc asserted, if the complaint had contained such detailed reference to specific incidents, the district court might have dismissed it for prolixity.[55]

## IV. Analysis of the Rule

The cases discussed above require that a complaint asserting a claim under one of the civil rights acts (and in certain circumstances other complaints as well) set forth specific and detailed facts which form the basis of the claim and not rely on conclusions. This approach is a significant departure from the one normally used to evaluate federal complaints. As mentioned previously, one of the basic purposes of Rule 8 was to avoid battles over whether a certain statement was a "conclusion" or a "fact." Such battles were sought to be avoided by the drafters of the Federal Rules since they cannot be decided logically and delay litigation substantially. Moreover, the *Conley* Court made it clear that Rule 8 does not require a detailed statement of facts. Conclusions generally are acceptable as allegations in federal pleadings so long as the complaint as a whole meets the "fair notice" requirement of Rule 8. The question becomes whether such a departure from the letter and spirit of the Federal Rules is permissible or justified.

The *Valley* court asserted that the large numbers of frivolous civil rights suits justified a stricter pleading standard in such cases. Nonetheless, there is little or no hard evidence to show that civil rights suits are more likely to be frivolous than other types of litigation. It is apparently true that a number of judges have reached this conclusion from their own experience, but no systematic studies have been uncovered. Moreover, the judges' perceptions of civil rights litigation may reflect some judicial hostility to the assertion of such

54. *Id.*
55. 644 F.2d at 213 (Gibbons, J., dissenting).

claims, especially against public officials.[56]

Even if a higher percentage of civil rights suits are frivolous than other types of litigation, it does not necessarily follow that the use of stricter pleading standards is justified. Whenever any lawsuit is frivolous, Federal Rule 56 authorizes the use of a summary judgment motion to terminate the litigation. Since a defendant may move for summary judgment at any time, is a strict pleading standard needed to terminate a frivolous civil rights suit at an early point in the litigation?

While a motion for summary judgment may be made by a defendant at any time, a court may well deny the motion or order a continuance in order to permit the plaintiff a reasonable opportunity to complete discovery.[57] The courts applying the stricter pleading standard have argued that it protects defendants from being intimidated by burdensome discovery and enables the trial court to prevent overbroad and irrelevant discovery requests.[58] Consequently, from a defendant's viewpoint the stricter pleading standard may be a more effective device to weed out frivolous suits because it may allow them to avoid the discovery process.

On the other hand, opponents of the stricter pleading standards have argued that it imposes upon plaintiffs the burden of making specific and detailed factual allegations in support of their claims, without the benefit of discovery, when the information necessary to make such allegations is in the hands of the defendants. The *Means* case discussed previously is a good example. In attempting to state a section 1983 claim against the City of Chicago, the plaintiff alleged that the individual police officers who shot her husband had not been adequately disciplined for past misconduct, thereby encouraging the misconduct which led to her husband's death.[59] In support of its motion to dismiss, the city submitted materials intended to demonstrate that it actually had acted on previous complaints against the police officers involved. In rejecting the city's call for detailed factual pleading, the court asserted:

> Absent the inclusion of the officers' records in the motion to dismiss, plaintiff lacked the information necessary to identify specific instances of failure to discipline which form a part of the basis for her allegations of official policy. We are at a loss as to how any plaintiff, including a civil rights plaintiff, is supposed to allege with specificity prior to discovery acts to which he or she personally was not exposed, but which provide evidence necessary to sustain the plaintiff's claim, i.e., that there was an official policy or a de facto custom which violated the Constitution.[60]

---

56. Rotolo v. Borough of Charleroi, 532 F.2d 920, 925 (3d Cir. 1976) (Gibbons, J., concurring in part and dissenting in part).

57. *See* Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 783, 787-88 (D.C. Cir. 1971); FED. R. CIV. P. 56(f).

58. *See, e.g.*, United States v. City of Philadelphia, 644 F.2d 187, 204-05 (3d Cir. 1980); Smith v. Ambrogio, 456 F. Supp. 1130, 1137 (D. Conn. 1978).

59. Means v. City of Chicago, 535 F. Supp. at 460.

60. *Id.*

Thus, in many cases the strict pleading standard apparently would impose upon those seeking vindication for violations of their constitutional rights the difficult or impossible burden of making specific factual allegations about events known only to defendants before discovery.[61] The Supreme Court has indicated that in situations where proof lies largely in the hands of the defendants, the federal courts should rarely dismiss the complaint without affording the plaintiff an opportunity for discovery.[62] Yet the strict pleading standard leads to dismissals in such cases. There is also a real danger that such an approach will result in the dismissal of a substantial number of meritorious suits, because the plaintiffs cannot allege facts they can only find out through discovery.

Additionally, the 1983 amendments to the Federal Rules of Civil Procedure provide other vehicles to reduce the burden of the discovery process on defendants. Rule 16 now requires the district court to issue a scheduling order within 90 days of the filing of the complaint in most cases. The scheduling order limits the time for the parties to complete discovery and is intended to encourage litigants to establish priorities for discovery and conduct the most important discovery first.[63] Rule 26(b) allows the district court to limit the frequency and extent of discovery to prevent unreasonably duplicative, burdensome, or expensive discovery.[64] The amended version of Rule 26 also empowers the district court to impose sanctions on parties and attorneys who abuse the discovery process by serving such requests.[65]

The 1983 amendments to Rule 11 also seem to address the concerns which gave rise to the special pleading rule. These amendments make it clear that the signature of a party or of an attorney to a complaint certifies that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the complaint is well grounded in fact and is warranted by existing law or a good faith argument for a change in existing law. If a complaint is filed in violation of the rule, it directs the court to impose sanctions upon the party or the attorney, or both. Such sanctions may include an order to pay the expenses incurred by the defendant in defending the suit, including a reasonable attorney's fee. Consequently, a plaintiff or attorney who files a frivolous suit faces the possibility of being forced to pay the resulting expenses incurred by the defendant. Rule 11 discourages frivolous lawsuits while avoiding the danger of preventing the litigation of meritorious claims presented by the special pleading rule.

Rule 12(b)(6) motions should be granted if it appears from the complaint that the plaintiff does not have a claim upon which relief can be granted. In this sense it does serve the purpose of a simple summary judgment motion[66]

61. Hill v. City of Atlanta, 91 F.R.D. 528, 532 (N.D. Ga. 1981).
62. *See* Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 746 (1976).
63. *See* FED. R. CIV. P. 16 Advisory Committee Note to 1983 Amendments.
64. FED. R. CIV. P. 26(b).
65. FED. R. CIV. P. 26 Advisory Committee Note to 1983 Amendments.
66. Clark, *Pleading Under the Federal Rules*, 12 WYO. L.J. 177, 194 (1958).

and may be used to terminate frivolous lawsuits. But the rule is not designed to reach situations where the plaintiff may well have a valid claim but simply has failed to meet some highly technical pleading standard. Thus, the strict pleading rule that has been applied to civil rights complaints upon challenge by Rule 12(b)(6) motions uses the Rule in the very manner it was explicitly designed to avoid.

The need to terminate frivolous and insubstantial cases at an early point in the litigation does not justify such a perversion of the Rules when both the standards applied normally to Rule 12(b)(6) motions and the summary judgment procedure are available. If a defendant is unable to terminate a lawsuit through one of these devices, then in most cases the plaintiff should indeed be granted a trial on the merits and an opportunity to prove his claim.

One aspect of the *Valley* rationale for the strict pleading rule is the notion that a substantial number of the civil rights cases should be litigated in the state courts. The courts taking this position have failed to explain or justify it. This suggestion is surprising since the rights being vindicated in civil rights suits are an important part of federal court jurisdiction. The civil rights legislation and the constitutional amendments adopted after the Civil War represented a basic change in the federal system which established the federal government and the federal courts as the principal guarantors of federal rights against incursions by state power.[67] While some contend that the state courts should share responsibility in the vindication of federal constitutional and civil rights with the federal courts,[68] few have argued that the role of federal courts in protecting basic federal rights should be completely eliminated.

If the concern is that some civil rights complaints do not assert valid federal claims, then the general pleading standards appear to be adequate. If it appears beyond doubt that the plaintiff will be unable to prove facts that would entitle him to relief pursuant to his federal claims, the court can dismiss them upon a Rule 12(b)(6) motion by the defendant. Any remaining state law claims would then have to be litigated in the state courts absent an alternative basis for federal jurisdiction.[69] If the plaintiff may be able to prove his federal claim at trial, he should be given an opportunity to do so in a federal court.

The courts applying the special pleading rule also have expressed concern about the "considerable expense, vexation and perhaps unfounded notoriety" caused public officials, policemen, and others named as defendants in civil rights complaints. However, such concerns have been addressed by the courts in other, more appropriate ways. For example, the courts have long held that government officials are entitled to some form of immunity from civil rights actions seeking money damages.[70] Indeed, some officials who engage in special functions or have a special constitutional status have been found to enjoy abso-

67. *See* Mitchum v. Foster, 407 U.S. 225, 238 (1972).
68. *See* Steffel v. Thompson, 415 U.S. 456, 460-61 (1974).
69. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).
70. *See* Harlow v. Fitzgerald, 457 U.S. 800, 806 (1982).

lute immunity from such suits.[71] Even in cases where public officials are not absolutely immune from suit, they are generally allowed to take advantage of a qualified or good faith immunity defense.[72]

In order to facilitate the termination of insubstantial and frivolous civil rights claims against public officials without a full trial, the Supreme Court has recently changed the standards applicable to the qualified immunity defense. Thus, under current doctrine, public officials cannot be liable for damages so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[73] The Court went on to counsel that "[u]ntil this threshold immunity question is resolved, discovery should not be allowed."[74] "Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment."[75] Consequently, abandonment of the liberal pleading philosophy of the Federal Rules is not required in order to protect public officials from frivolous suits.

Finally, a strong argument can be made that the judicial development of a strict pleading standard in civil rights cases is inappropriate in light of the liberal pleading standards approved by Congress.[76] When the Federal Rules of Civil Procedure were being drafted, special pleading requirements were suggested for various kinds of cases.[77] But neither the Advisory Committee, the Supreme Court, nor Congress concluded that such an approach was required except in regard to allegations of fraud or mistake.[78] Imposing stricter pleading standards on civil rights cases despite the adoption of this policy has been criticized as judicial legislation. As one district court judge asserted:

> [T]he Court finds it difficult to reconcile such judicial legislation with the mandates of Rule 8(a) and such cases as *Conley*. When a requirement of specific allegations is needed, the Rules know how to impose it—see Rule 9(b), requiring particularity as to circumstances constituting fraud or mistake, and Rule 9(g), requiring specific statements of items of special damages. There is a necessary negative implication from a failure to specify a comparable requirement for Section 1983 cases—and certainly the Rules do not so specify.[79]

Thus, if there is a need for a special rule on civil rights cases, then an amendment to the Federal Rules should be proposed and undergo the same process

---

71. *See id.* at 807.
72. *See id.*
73. *Harlow*, 457 U.S. at 818.
74. *Id.*
75. *Id.* (footnote omitted).
76. *See* Rotolo v. Borough of Charleroi, 532 F.2d 920, 925 (3d Cir. 1976) (Gibbons, J., concurring in part and dissenting in part).
77. Nagler v. Admiral Corp., 248 F.2d 319, 322-23 (2d Cir. 1957).
78. FED. R. CIV. P. 9(b).
79. Thompson v. Village of Evergreen Park, 503 F. Supp. 251, 252 (N.D. Ill. 1980).

as other rule changes.

## V. CONCLUSION

There is little, if any, rationale for the adoption of the stricter pleading rule in civil rights cases. Moreover, the strict pleading standard is directly contrary to "the spirit and purpose of Rule 8(a) and the general concept of modern federal pleading."[80] Such an approach reimposes technical pleading rules which are difficult to meet. It leads to prolixity which is itself a ground for dismissal.[81] It requires a plaintiff to plead evidentiary facts which are often in the control of defendants and not available to a plaintiff until discovery has taken place. The strict pleading rule for civil rights complaints seeks to allow public officials to terminate frivolous actions against them at an early point in the litigation, but ignores the protection offered to public officials by the immunity doctrine and the summary judgment procedure.

Additionally, the rule can serve to delay a trial on the merits or even deny a trial to a plaintiff with a meritorious claim. A court adopting the stricter pleading standard will almost always give the plaintiff an opportunity to amend the complaint to meet the stricter standard. If the plaintiff can amend the complaint, the only real purpose which has been served is delay. If the plaintiff is not able to meet the requirements, he may lose an opportunity to vindicate a violation of his constitutional or statutory rights. Consequently, it appears that the courts which have refused to adopt the stricter pleading standard for civil rights cases have been wise to do so. The rule represents a new kind of judicial activism that appears to be improper, unwarranted, and unwise.

80. United States v. Gustin-Bacon Div., Certain-Teed Prods., 426 F.2d 539, 542 (10th Cir. 1970).

81. *See* Agnew v. Moody, 330 F.2d 868, 870 (9th Cir. 1964).