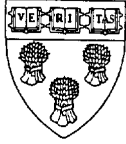

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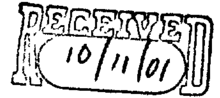

MARTHA L. MINOW
Professor of Law

GRISWOLD 407
(617) 495-4276

October 9, 2001

John K Rabeij, Chief
Rules Committee Support Office
Administrative Office of the United States Courts
Suite 4-170
One Columbus Circle, NE
Washington, D.C. 20544

Re: Fed. R. Civ. P. 15(c)(3)(B)

Dear Mr. Rebeij:

Because I thoroughly agree with the analysis of the Third Circuit Court of Appeals' slip opinion in Singletary v. PA Dept. of Corrections (3d Cir. Sept. 21, 2001)(skip op. No. 00-3579), I am writing to urge support of that opinion's proposal that the Judicial Conference Advisory Committee on Civil Rules amend Rule 15(c)(3)(B) to allow amendments to fall within the relation-back provision when the plaintiff seeks to substitute the name of an actual person for an "Unknown person" or "John Doe" named as defendant.

Each year, when I teach the mistakes element of Rule 15(c)(3), I am struck – as are my students – by the unfair and often impossible situation expressed especially by Section 1183 plaintiffs who do not know the name of the specific defendant but who have legitimate claims. The other provisions of Rule 15 adequately protect the real defendants by requiring notice within the time period allowed under the Rules and by reserving power to the court to guard against such amendment when the defendant would be prejudiced in a defense on the merits.

I do hope the Committee can correct the unfairness and lack of clarity in the current rule.

Sincerely,

Martha Minow
Professor of Law

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MILTON I. SHADUR
EVIDENCE RULES

October 18, 2001

Professor Martha L. Minow
Harvard Law School
Cambridge, Massachusetts 02138

Dear Professor Minow:

Thank you for your letter of October 9, 2001, suggesting to correct provisions that are unfair and unclear. A copy of your letter was sent to the chair and reporter of the Advisory Committee on Civil Rules for their consideration.

We very much welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,

Peter G. McCabe
Secretary

cc: Honorable David F. Levi
Professor Edward H. Cooper

Filed September 21, 2001

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-3579

DOROTHY SINGLETARY, individually, and as
Administrator of the Estate of Edward Singletary

v.

PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
S.C.I. ROCKVIEW INSTITUTION; JOSEPH
MAZURKIEWICZ, Superintendent of Rockview;
SEVERAL UNKNOWN CORRECTIONS OFFICERS

Dorothy Singletary, Appellant

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 99-cv-00255)
District Judge: Honorable Malcolm Muir

Argued April 16, 2001

Before: BECKER, *Chief Judge*, McKEE, *Circuit Judges*,
and POLLAK, *District Judge*.*

(Filed: September 21, 2001)

* Honorable Louis H. Pollak, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

defendants, and it was only after the case was transferred to the Middle District that attorney Neuhauser began his representation of the defendants and investigation of the case—well after the 120 day period had expired. Because there is no evidence or any reason to believe that the previous attorney for the defendants represented or even contacted Regan, the basis for finding sufficient notice that existed in *Jacobsen* is not present here.

Thus, we find ourselves in agreement with *Keitt* that, absent other circumstances that permit the inference that notice was actually received, a non-management employee like Regan does not share a sufficient nexus of interests with his or her employer so that notice given to the employer can be imputed to the employee for Rule 15(c)(3) purposes. For this reason, we reject the plaintiff's identity of interest argument, and conclude that the District Court did not err in denying the plaintiff leave to amend her complaint to add Regan as a defendant.

C. But for a Mistake Concerning the Identity of the Proper Party

Rule 15(c)(3)(B) provides a further requirement for relating back an amended complaint that adds or changes a party: the newly added party knew or should have known that "but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c)(3)(B). The plaintiff argues that this condition is met in her proposed amended complaint; but the District Court found otherwise. The defendants also contend that (1) the plaintiff did not make a *mistake* as to Regan's identity, and (2) Regan did not know, nor should he have known, that the action would have been brought against him had his identity been known, because the original complaint named "Unknown Corrections Officers" and Regan is not a corrections officer but a staff psychologist.

The issue whether the requirements of Rule 15(c)(3)(B) are met in this case is a close one. We begin by noting that the bulk of authority from other Courts of Appeals takes the position that the amendment of a "John Doe" complaint

—i.e., the substituting of real names for "John Does" or "Unknown Persons" named in an original complaint—does not meet the "but for a mistake" requirement in 15(c)(3)(B), because not knowing the identity of a defendant is not a *mistake* concerning the defendant's identity. *See Wilson v. United States*, 23 F.3d 559, 563 (1st Cir. 1994); *Barrow v. Wethersfield Police Dept.*, 66 F.3d 466, 469 (2d Cir. 1995), *amended by* 74 F.3d 1366 (2d Cir. 1996); *W. Contracting Corp. v. Bechtel Corp.*, 885 F.2d 1196, 1201 (4th Cir. 1989); *Jacobsen v. Osborne*, 133 F.3d 315, 320 (5th Cir. 1998); *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996); *Worthington v. Wilson*, 8 F.3d 1253, 1256 (7th Cir. 1993); *Powers v. Graff*, 148 F.3d 1223, 1226-27 (11th Cir. 1998). This is, of course, a plausible theory, but in terms of both epistemology and semantics is subject to challenge.

In *Varlack v. SWC Caribbean, Inc.*, 550 F.2d 171, 175 (3d Cir. 1977), this Court appeared to have reached the opposite conclusion insofar as we held that the amendment of a "John Doe" complaint met all of the conditions for Rule 15(c)(3) relation back, including the "but for a mistake" requirement. In *Varlack*, the plaintiff had filed a complaint against, *inter alia*, an "unknown employee" of a branch of the Orange Julius restaurant chain, alleging that this employee had hit him with a two-by-four in a fight, which caused him to fall through a plate glass window, injuring his arm so severely that it had to be amputated. After the statute of limitations had run, the plaintiff sought to amend his complaint to change "unknown employee" to the employee's real name, using Rule 15(c)(3) to have the amended complaint relate back to the original. The newly named defendant testified that he had coincidentally seen a copy of the complaint naming both Orange Julius and an "unknown employee" as defendants, and that he had known at that time that he was the "unknown employee" referred to. This Court affirmed the district court's grant of the 15(c)(3) motion, holding that the plaintiff met all the requirements of 15(c)(3), including the requirement that the newly named defendant "knew or should have known but for a mistake concerning the identity of the proper party." *See id.* at 175.

We are, of course, bound by *Varlack* insofar as it held

that the plaintiff's lack of knowledge of a particular defendant's identity can be a mistake under Rule 15(c)(3)(B). *See* Internal Operating Procedures of the United States Court of Appeals for the Third Circuit 9.1 (2000).[4] Moreover, as is also noted above, every other Court of Appeals that has considered this issue (specifically, the First, Second, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits) has come out contrary to *Varlack*; generally speaking, the analysis in these other cases centers on the linguistic argument that a lack of knowledge of a defendant's identity is not a "mistake" concerning that identity. However, even assuming that *Varlack* allows for amended "John Doe" complaints to meet Rule 15(c)(3)(B)'s "mistake" requirement, it is questionable whether the other parts of 15(c)(3)(B) are met in this case, namely, whether Regan knew or should have known that he would have been named in the complaint if his identity were known. Because the original complaint named "Unknown *Corrections Officers*," it is surely arguable that psychologist Regan would have no way of knowing that the plaintiff meant to name him.

These are sticky issues. Because, as we explained above, the plaintiff's argument on the applicability of Rule 15(c)(3) to her case fails on notice grounds, we do not need to

4. We note, however, that two district court cases from within this Circuit have seemingly concluded that *Varlack*'s holding does not entail that amended "John Doe" complaints meet Rule 15(c)(3)(B)'s "mistake" requirement, as these cases have followed the rule of the other Circuits in denying the relation back of amended complaints that replace "John Doe" defendants because there was no mistake involved in the original complaints. *See Gallas v. The Supreme Court of Pennsylvania*, 1998 WL 599249, at *4 (E.D. Pa. Aug. 24, 1998); *Frazier v. City of Philadelphia*, 927 F. Supp. 881, 885 (E.D. Pa. 1996). The majority of district court cases from within this Circuit that have considered this issue, however, have followed the broader interpretation of *Varlack* and thus allowed the relation back of amended "John Doe" complaints under Rule 15(c)(3). *See, e.g., Trant v. Towamencin Township*, 1999 WL 317032 at *5-*6 (E.D. Pa. 1999); *Trautman v. Lagalski*, 28 F. Supp. 2d 327, 330 (W.D. Pa. 1998); *Cruz v. City of Camden*, 898 F. Supp. 1100, 1110 n.9 (D.N.J. 1995); *Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc.*, 801 F. Supp. 1450, 1457 (E.D. Pa. 1992). We think this to be the better reading of *Varlack*.

decide these questions here. We do, however, take this opportunity to express in the margin our concern over the state of the law on Rule 15(c)(3) (in particular the other Circuits' interpretation of the "mistake" requirement) and to recommend to the Advisory Rules Committee a modification of Rule 15(c)(3) to bring the Rule into accord with the weight of the commentary about it.[5]

5. As we note in the text, some Courts of Appeals have held that proposed amended complaints that seek to replace a "John Doe" or other placeholder name in an original complaint with a defendant's real name do not meet Rule 15(c)(3)(B)'s "but for a mistake" requirement. We find this conclusion to be highly problematic. It is certainly not uncommon for victims of civil rights violations (e.g., an assault by police officers or prison guards) to be unaware of the identity of the person or persons who violated those rights. This information is in the possession of the defendants, and many plaintiffs cannot obtain this information until they have had a chance to undergo extensive discovery following institution of a civil action. If such plaintiffs are not allowed to relate back their amended "John Doe" complaints, then the statute of limitations period for these plaintiffs is effectively substantially shorter than it is for other plaintiffs who bring the exact same claim but who know the names of their assailants; the former group of plaintiffs would have to bring their lawsuits well before the end of the limitations period, immediately begin discovery, and hope that they can determine the assailants' names before the statute of limitations expires. There seems to be no good reason to disadvantage plaintiffs in this way simply because, for example, they were not able to see the name tag of the offending state actor.

The rejoinder to this argument is that allowing the relation back of amended "John Doe" complaints risks unfairness to defendants, who, under the countervailing *Varlack* interpretation of Rule 15(c)(3)(B), may have a lawsuit sprung upon them well after the statute of limitations period has run. But fairness to the defendants is accommodated in the other requirements of Rule 15(c)(3), namely the requirements that (1) the newly named defendants had received "such notice of the institution of the action" during the relevant time period "that the party will not be prejudiced in maintaining a defense on the merits"; and (2) the newly named defendants knew or should have known that the original complaint was really directed towards them ("the action would have been brought against the party"). These requirements generally take care of the "springing a claim on an unsuspecting defendant" problem. Because these other Rule 15(c)(3) requirements must be met before an amended complaint can relate back, the "mistake" requirement of 15(c)(3), as interpreted by the other Circuits, would be dispositive in disallowing

III. Conclusion

For the above reasons, the District Court's grant of summary judgment for the defendants and the court's

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relation back only when the to-be-added defendants had timely notice of the lawsuit and knew that the lawsuit was really meant to be directed at them. We do not think that fairness requires that a plaintiff be barred from adding newly named parties as defendants when these newly named parties (1) knew about the lawsuit within the relevant time period, (2) knew they were the ones targeted, and (3) had the information as to their correct names but withheld that information from the plaintiff —indeed, we believe that fairness requires that a plaintiff in such a situation should be allowed to add the newly named defendants to his complaint.

We also note that Rule 15(c)(3)(B)'s mistake requirement has been held to be met (and thus relation back clearly permitted) for an amended complaint that adds or substitutes a party when a plaintiff makes a mistake by suing the state but not individual officers in a § 1983 action. *See Lundy v. Adamar of New Jersey, Inc.*, 34 F.3d 1173, 1192 n.13 (3d Cir. 1994) (Becker, J., concurring in part and dissenting in part) (listing cases in which plaintiffs have been permitted to have their complaints relate back when they made mistakes in the naming of defendants in their complaints, including naming states and state agencies instead of state officials in § 1983 cases). We think that it makes no sense to allow plaintiffs who commit such a clear pleading error to have their claims relate back, while disallowing such an option for plaintiffs who, usually through no fault of their own, do not know the names of the individuals who violated their rights. This disparity of treatment of § 1983 plaintiffs seems to have no principled basis and should not be codified in our Rules of Civil Procedure.

All of the commentators who address this issue (at least those that we found in our research) call for Rule 15(c)(3) to allow relation back in cases in which a "John Doe" complaint is amended to substitute real defendants' names. *See* Edward H. Cooper, Rule 15(c)(3) Puzzles at 3-5 (November 1999) (unpublished manuscript, on file with the Administrative Office of the United States Courts, Rules Committee Support Office); Carol M. Rice, *Meet John Doe: It is Time for Federal Civil Procedure to Recognize John Doe Parties*, 57 U. Pitt. L. Rev. 883, 952-53 (1996); Steven S. Sparling, Note, *Relation Back of "John Doe" Complaints in Federal Courts: What You Don't Know Can Hurt You*, 19 Cardozo L. Rev. 1235 (1997) (arguing that the structure, purpose, history and development of Rule 15(c) all cut in favor of allowing relation back of amended John Doe complaints).

order denying the plaintiff's motion to amend her complaint will be affirmed. The Clerk is directed to send copies of this opinion to the Chairman and Reporter of the Judicial Conference Advisory Committee on Civil Rules and the Standing Committee on Practice and Procedure, calling attention to footnote 5.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Third Circuit

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In his manuscript "Rule 15(c)(3) Puzzles," Professor Edward H. Cooper of the University of Michigan Law School suggests the following alteration (in italics) in subsection 15(c)(3)(B) of the Rule in order to make it clear that the relation back of "John Doe" amended complaints is allowed: "the party to be brought in by amendment . . . knew or should have known that, but for a mistake *or lack of information* concerning the identity of the proper party . . . ." Cooper, *supra*, (manuscript at 8). We believe that a change in Rule 15(c)(3) along the lines advocated by Professor Cooper would fix the lack of fairness to plaintiffs with "John Doe" complaints that currently inheres in the other Circuits' interpretation of the Rule, and would bring the Rule more clearly into alignment with the liberal pleading practice policy of the Federal Rules of Civil Procedure.

For these reasons, we encourage the Rules Advisory Committee to amend Rule 15(c)(3) so that it clearly embraces the Cooper approach to the relation back of "John Doe" complaints. As the Supreme Court has said, "the requirements of the rules of procedure should be liberally construed and . . . 'mere technicalities' should not stand in the way of consideration of a case on its merits." *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316 (1988). Rule 15(c)(3) is clearly meant to further the policy of considering claims on their merits rather than dismissing them on technicalities, and this policy is substantially furthered by the Cooper approach to Rule 15(c)(3)(B).

"Tom Rowe"
<TROWE@law.duke.edu>

12/12/2001 05:49 PM

To: <John_Rabiej@ao.uscourts.gov>
cc:
Subject: Further on Judge Becker's recent suggestion

John--It was good to see you at the excellent Chicago conference. Afterward Judge Becker sent me a copy of his opinion in Singletary v. Pennsylvania Department of Corrections, 266 F.3d 186 (3d Cir. 2001), with its call, id. at 201-03 n.5, for an amendment to Civil Rule 15(c). What he says sounds sensible to me (the more so since he relies on a proposal that Ed has already drafted for the Committee!). Anyway, I thought it might be useful for the Committee's file to have a citation to a recent student piece on the subject, Rebecca S. Engrav, Comment, Relation Back of Amendments Naming Previously Unnamed Defendants Under Federal Rule of Civil Procedure 15(c), 89 Calif. L. Rev. 1549 (2001). At page 1586 the author recommends a rule amendment that'd be slightly more cumbersome than Ed's but to the same effect.

Best wishes for the holidays and New Year--

Tom

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