Schiavone v. Fortune: A Clarification of the Relation Back Doctrine

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NOTES

SCHIAVONE v. FORTUNE: A CLARIFICATION OF THE RELATION BACK DOCTRINE

Although often accorded a heightened expectation of competence by the general public, attorneys are not infallible. Notwithstanding their specialized education and training, practitioners inevitably make mistakes, this fact being most clearly manifest in pleadings and filings. Without the means to adequately amend pleadings and correct errors, attorneys would be relegated to playing a highly technical game, with the winner being the more skillful pleader, not the more meritorious litigant.

Federal Rule of Civil Procedure 15 exists as one safeguard against this consequence. Subsection (c) of this rule was initially adopted to prevent the statute of limitations from barring a claim where, although the wrong party had been sued, the intended party nevertheless had been given sufficient notice of the commencement of the suit. Under amended rule 15(c), a claim is deemed to “relate back” to the date of the original pleading if it arose out of the same “conduct, transaction, or occurrence” as the initial claim. This concept of “relation back” permits the new claim or matter to be treated as if it was timely filed as part of the original pleading, thus avoiding the statute of limitations bar.

1. Amended rule 15(c) of the Federal Rules of Civil Procedure provides in pertinent part:
   Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.


3. Commentators have noted that rule 15(c) is based on the premise that once a suit has
While the importance to litigation of a clearly defined deadline for the filing of actions is undisputed, equally important are the policy considerations underlying the judgment of pleadings on the merits. It is this dichotomy that is at issue in the disposition of cases involving rule 15(c) motions.

Realizing the necessity of precision in creating the standards for balancing these policy considerations and recognizing the inconsistencies in the rule's applications resulting from imprecise language, the Advisory Committee on the Federal Rules suggested altering rule 15(c). Thus, in 1966 the rule was amended in an attempt to promote uniformity in the federal courts in the application of relation back to an amendment changing parties after the expiration of the statute of limitations.

Despite the expansion and clarification of the rule, however, inconsistencies in interpretations persisted. A major conflict among the federal circuits focused on the rule's requirement that the new party receive notice "within the period provided by law for commencing the action against him." The Supreme Court, although it had previously made general pronouncements

been commenced the parties are not protected by the statute of limitations against the later assertion by amendment of defenses or claims arising out of the same conduct, transaction, or occurrence as the initial claim. 6 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE CIVIL § 1496 (Supp. 1986). See Santana v. Holiday Inns, Inc., 686 F.2d 736, 738 (9th Cir. 1982) (amendment can relate back to time-barred complaint since existence of affirmative defense has no effect on whether notice has been given to opposing party). But see Doe v. O'Bannon, 91 F.R.D. 442, 447 (E.D. Pa. 1981) (relation back may never operate to enlarge or restrict federal jurisdiction). Accord USM Corp. v. GKN Fasteners Ltd., 578 F.2d 21 (1st Cir. 1978).


6. Id. The Advisory Committee states that "Rule 15(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall 'relate back' to the date of the original pleading." Id.

The Advisory Committee's Note indicates that the primary reason for the 1966 amendment was to counter the unjust results in situations where the wrong government agency was being sued and plaintiff moved to amend after the expiration of the limitations period. The unfairness resulted because of the unusually short limitations period applied in suits against government agencies. Rule 15(c) as amended applies equally, however, in cases involving nongovernmental defendants where an amendment seeks to correct an error in pleading. Id. at 83.

7. Compare Cooper v. United States Postal Serv., 740 F.2d 714, 716 (9th Cir. 1984); Watson v. Unipress, Inc., 733 F.2d 1386, 1390 (9th Cir. 1984); Trace X Chem., Inc. v. Gulf Oil Chem. Co., 724 F.2d 68, 70-71 (8th Cir. 1983); and Hughes v. United States, 701 F.2d 56, 58 (7th Cir. 1982) (all literally applied strict notice requirement) with Ringrose v. Engleberg Huller Co., 692 F.2d 403, 410 (6th Cir. 1982); Kirk v. Cronvich, 629 F.2d 404, 408 (5th Cir. 1980); and Ingram v. Kumar, 585 F.2d 566, 571-72 (2d Cir. 1978), cert. denied, 440 U.S. 940 (1979) (notice not required within statutory time period).

8. FED. R. CIV. P. 15(c).
about the function of pleadings, finally sought to resolve this conflict in *Schiavone v. Fortune.*

In *Schiavone,* the plaintiffs filed their complaints in federal court on May 9, 1983 instituting libel actions under the court's diversity jurisdiction. Those complaints, naming "Fortune" as the sole defendant, alleged that the magazine libeled each of the plaintiffs in a published article. The applicable statute of limitations required that the complaint be filed on or before May 19, 1983. Plaintiffs described the intended defendant, "Fortune," as "a foreign corporation having its principal offices at Time and Life Building, Sixth Avenue and 50th Street, New York, New York 10020." What the plaintiff did not realize, however, was that "Fortune" was only a trademark and the name of an internal division of Time, Incorporated (Time), a New York corporation.

On May 20, 1983, plaintiffs mailed their complaints to the registered agent for Time in New Jersey. Although they were received on May 23, 1983, Time’s agent refused service because Time was not specifically named as a party. Plaintiffs, therefore, amended their complaints on July 19, 1983 to charge "Fortune, also known as Time, Incorporated" as defendant instead of

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10. *See Schiavone v. Fortune,* 750 F.2d 15, 16 (3d Cir. 1984), aff'd, 106 S. Ct. 2379 (1986). This suit, arising out of an allegedly libelous article published in Fortune Magazine, is of considerable contemporary significance. One of the plaintiffs, former Secretary of Labor Raymond J. Donovan, was indicted for fraud in a current case which is now at trial in the Bronx, New York Supreme Court and is receiving substantial journalistic commentary.

Donovan, along with eight business associates, was charged with cheating the New York City Transit Authority out of $7.4 million by juggling funds intended for minority business firms. Donovan's firm, the Schiavone Construction Co., has been accused of using a fictitious minority business, "Jopel Contracting and Trucking," as a sham for inflated billings. The Schiavone Company has denied any knowledge of such actions. The company has, however, acknowledged that Schiavone retained $7.4 million of the $12.4 million actually charged by Jopel, telling the Transit Authority that the entire "$12.4 million had been paid to the minority business." Lardner, *Donovan Lawyers Lash Prosecution,* Wash. Post, Oct. 2, 1986, at A6, col. 1.

11. *Schiavone,* 750 F.2d at 16.
12. *Id.* at 18. The applicable New Jersey statute reads: "Every action at law for libel or slander shall be commenced within 1 year next after the publication of the alleged libel or slander." N.J. STAT. ANN. 2A:14-3 (West 1952).

According to the United States Court of Appeals for the Third Circuit, for purposes of determining the actual date of publication, a substantial distribution of the issue took place on May 19, 1982. Since the New Jersey statute of limitations for libel is one year, commencing on the date of publication, the statutory period expired in this case on May 19, 1983. *Schiavone,* 750 F.2d at 16.

14. *Id.*
15. *Id.*
merely "Fortune." These amended complaints were served by certified mail on Time's agent on July 21, 1983.

The district court granted Time's motion to dismiss the amended complaints, holding that the New Jersey statute of limitations barred the actions. The court concluded that because Time had not received notice of the action within the statutory time limits, the amendments to the initial complaints did not relate back to the date of the original filing.

Characterizing the language of rule 15(c) as "clear and unequivocal," the United States Court of Appeals for the Third Circuit affirmed the district court's ruling. The Third Circuit held that the applicable period within which a party to be added "must receive notice under rule 15(c) does not include the time available for service of process." The Supreme Court affirmed in a divided opinion and held that the July 1983 amendments to the complaints did not relate back to the original filing date. Writing for the majority, Justice Blackmun maintained that notice to Time did not occur "within the period provided by law for commencing the action against" Time as required by rule 15(c) since such notice occurred after the expiration of the one-year statute of limitations. In his

16. Schiavone, 750 F.2d at 17. An issue contested in the lower court and examined by the Supreme Court dissenters in Schiavone concerned the effect this alteration in plaintiff’s complaint had upon the litigation. Justice Stevens, contrary to the majority opinion, viewed the addition as tantamount to merely the correction of a misnomer. See Schiavone, 106 S. Ct. at 2388 (Stevens, J., dissenting).

On balance, the view that the amendment in Schiavone, from "Fortune" to "Fortune also known as Time, Incorporated" was merely the correction of a misnomer appears the more tenable.

17. Schiavone, 750 F.2d at 17. The United States Supreme Court decision in Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938) held that "[e]xcept as to matters governed by the Federal Constitution or by Acts of Congress, the federal courts, in diversity cases, must apply state law rather than federal law in determining substantive issues." Thus, in this case the New Jersey statute of limitations was applied.


20. Id. at 18. Plaintiffs contested this interpretation, arguing that rule 15(c) was instituted and amended “to ameliorate literal and rigid application of limitations periods to both claim and party amendments.” Schiavone, 106 S. Ct. at 2383. They further contended that the legislative purpose of the rule was to “allow[ ] relation back of a change in the name or identity of a defendant when, although the statutory period for filing had run, the period allowed by Rule 4 for timely service had not. . . .” Id. at 2382-83.

21. Schiavone, 106 S. Ct. at 2384-86.

22. Justice Blackmun’s opinion was joined by Justices Brennan, Marshall, Powell, Rehnquist, and O’Connor. Id. at 2380.

23. Id. at 2385. Relying predominantly on the Advisory Committee’s Note to the proposed Federal Rules of Civil Procedure, Justice Blackmun opined that “‘within the period provided by law for commencing the action’ means ‘within the applicable limitations period.’” Id. Citing the applicable provisions, he maintained that:
view, rule 15(c) as amended is clearly drafted, and any construction contrary to this unequivocal language would constitute an impermissible rewriting of the rule.\footnote{24}{See generally Schiavone, 106 S. Ct. at 2385.}

Finding the majority decision unsupported by the purposes of rule 15(c), Justice Stevens dissented for four reasons. First, he pointed out that under rule 4(j), service of the summons and complaint may be made within 120 days of the original filing.\footnote{25}{Id. at 2386 (Stevens, J., dissenting).} Thus, while an action may be timely filed, even an accurately named defendant may not receive notice until after the expiration of the statute of limitations.\footnote{26}{Id. at 2388 n.4.} Second, there was no evidence that Time was prejudiced by the amendment.\footnote{27}{Id. at 2387.} Third, he did not find that the amendment of the plaintiffs' complaint was one "changing a party" against whom petitioner's claim was asserted.\footnote{28}{Id. at 2388. The four part test articulated in rule 15(c) and interpreted by the majority is not applied unless the amendment is one "'changing the party' against whom a claim is asserted." Id.} Finally, Justice Stevens argued that the "liberalizing purpose" of rule 15(c)\footnote{29}{Id. at 2389. According to the dissenters, this "liberalizing purpose" is to allow a plaintiff to amend a pleading error subsequent to the tolling of the statute of limitations if the correction will not prejudice the defendant. Id. (Stevens, J., dissenting).} is circumvented if a construction of the rule effectively limits the number of allowable relation back cases.\footnote{30}{Id.}

This Note will evaluate the Supreme Court's holding in Schiavone in light of the purposes for which rule 15(c) was promulgated and the policy considerations underlying statutes of limitations. Further analysis will reveal the subsequent effects of the ruling upon the doctrine of "relation back." Finally, this Note will uncover possible flaws in the majority's analysis, but will nevertheless conclude that the decision is a judicially economic clarification of an imprecisely written rule.

An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of "arising out of the conduct ... set forth ... in the original pleading," and if, within the applicable limitations period, the party brought in by amendment, first, received such notice that ... he would not be prejudiced in defending the action ... .

\textit{Id.} (emphasis in original) (quoting FED. R. CIV. P. 15(c) advisory committee's note, 39 F.R.D. 69, 83 (1966) (proposed preliminary draft)).
Prior to the adoption of the Federal Rules of Civil Procedure, and in particular rule 15(c), the prevailing test among the federal courts regarding amendment of pleadings was the “cause of action” concept. Under this test, an amendment would not relate back and therefore would be barred by the statute of limitations if, in an amended pleading, a plaintiff attempted to assert an entirely new legal theory as the basis of his claim. Likewise, if the amendment stated a “new cause of action,” or one different from that in the original pleading, the new pleading would not survive the statutory bar under the relation back doctrine. For example, an amendment attempting to add or substitute a new claim would constitute the assertion of a new cause of action and would not be allowed. Conversely, if the amendment merely altered the form of the cause of action, added additional grounds for relief, or changed the jurisdictional bases of action, relation back would be permitted, provided the factual circumstances alleged remained unaltered. The federal rules, however, broadened the meaning of the “cause of action” precept by deemphasizing the theory of law and focusing instead on the defendant’s specific conduct upon which the plaintiff based his claim.

31. See generally Annotation, Change in Party After Statute of Limitations Has Run, 8 A.L.R.2d 6 (1949). At common law, a plaintiff failing to join a party as defendant or plaintiff could not amend his pleading to correct the error. Id. at 11. He was required to drop the suit and reinstitute the action. Id. Gradually, however, this burdensome practice was abandoned for a more liberal view allowing amendments which would not deprive the opposing party of any rights. Id. Amendments were generally allowed, provided the real parties in interest and the cause of action remained the same. Id.

32. See 3 J. Moore, Moore’s Federal Practice ¶ 15.15[3], at 15-151 (2d ed. 1985); see also Bowles v. Tankar Gas, Inc., 5 F.R.D. 230, 233 (D. Minn. 1946) (rule permitting a new cause of action in an amendment after the tolling of a statute of limitations would be beyond the power of the court).


34. See Griggs v. Farmer, 430 F.2d 638 (4th Cir. 1970) (no relation back where “entirely new claim” asserted).

35. See Note, supra note 33, at 85.

36. 3 J. Moore, supra note 32, at 15-151.

37. Id. at 15-154.

38. Id.

39. Id. at 15-151; see Smith v. Piper Aircraft Corp., 18 F.R.D. 169, 175 (M.D. Pa. 1955) (assertion of new legal theory is not new cause of action). Prior to the 1966 amendment of rule 15(c), the rule consisted of only the first sentence of the modern subdivision. It read “[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” See 3 J. Moore, supra note 32, ¶ 15.15[4.-1], at 15-156.
Accordingly, a new test—the same conduct, transaction, or occurrence test—replaced the former cause of action standard. Using this revised standard as a guide, federal courts began examining the facts of each relation back case and balancing the propriety of permitting the amendment against the policy considerations supporting statutes of limitations. Some factors the courts considered in determining the relation back status of an amendment are the relationship between parties and whether the party to be added had received adequate notice of the pending suit. Generally, absent prejudice, bad faith, or undue delay, amendment of a pleading has been allowed.

While rule 15 as a whole governs the general criteria and procedures for the amendment of pleadings, subsection (c) relates specifically to the operation of the rule in cases where a party seeks to amend a pleading after the tolling of the statute of limitations. In this context, it is apparent that the operation of rule 15(c) is in direct conflict with the policies underlying statutes of limitations since, in certain circumstances, it allows a party to avoid compliance with the statute.

The primary purpose of the statute of limitations defense is to compel the filing of a suit within a reasonable time period so that a defendant will have a fair opportunity to prepare his defense. If a clear and unambiguous deadline before which a plaintiff must institute an action were lacking, severe

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40. See Tiller v. Atlantic Coast Line R.R., 323 U.S. 574, 581 (1945) ("There is no reason to apply a statute of limitations when, as here, the respondent has had notice from the beginning . . ."); see also 3 J. Moore, supra note 32, at ¶ 15.15[4.-2], at 15-161 to -163.

41. See, e.g., Milner v. National School of Health Technology, 73 F.R.D. 628 (E.D. Pa. 1977) (Where employer changed from a proprietorship to a corporation after plaintiff's discharge, and plaintiff contended an identity of interest existed between the corporation and proprietorship, she was entitled to discovery as to whether such relationship existed.).

42. Goodrich v. England, 262 F.2d 298, 301 (9th Cir. 1958). In cases involving the change in description of parties, two tests are used. First, what entity did the plaintiff intend to sue? And second, was the defendant notified of the pending action and adequately served with process? Id.

43. See Note, supra note 33, at 87. As one court maintained:

The test should be, whether, on the basis of an objective standard, it is reasonable to conclude that the plaintiff had in mind a particular entity or person, merely made a mistake as to the name, and actually served the entity or person intended; or whether plaintiff actually meant to serve and sue a different person.


44. Note, supra note 33, at 84; see Housing Auth. v. Commonwealth Trust Co., 25 N.J. 330, 335, 136 A.2d 401, 403 (1957) (statutes of limitations are "practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost").
prejudice to the defendant could result. Information essential to a meaningful defense to a plaintiff's allegations may become increasingly unavailable as time elapses between the incident precipitating the cause of action and the filing of the complaint. Witnesses that may be indispensable to the defendant's case may die or move beyond the jurisdiction of the court. Moreover, even if witnesses are available, their recollection of the events giving rise to the suit may become distorted over time.

Several other policies are served by statutes of limitations. The most significant of these is judicial economy. In the absence of statutory mandates limiting the time for initiating causes of action, courts would bear the burden of ascertaining antiquated factual issues causing potentially ruinous expenditures of court time and resources. In their efforts to promote judicial economy courts might be inclined to shorten the statutory period to a minimum, thereby limiting the vast number of claims requiring adjudication. Nevertheless, limitations periods are statutorily, not judicially, prescribed. Accordingly, the time period in a statute of limitations is actually an arbitrary period determined by a state legislature and not by the judicial process.

II. THE 1966 AMENDMENT—COMPONENTS OF THE RELATION BACK TEST

Typically, the instances in which the relation back issue arose under the preamendment federal rules occurred in certain actions by private parties against officers or agencies of the United States. In these cases, claimants


46. 51 AM. JUR. 2d Limitation of Actions § 17.


48. 51 AM. JUR. 2d Limitation of Actions § 17.

49. F. JAMES, CIVIL PROCEDURE § 5.9, at 173-77 (1965). Statutes of limitation also serve significant public policy interests such as stimulating activity, punishing negligence, and providing consistency. Id.


[Statutes of limitation] are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate.

Id.

51. Id. See FED. R. CIV. P. 15(c) advisory committee’s note, 39 F.R.D. at 82; see also
commenced their suits within the statute of limitations period, but incor-
correctly named the government defendant. Upon discovering their mistake,
the claimants moved to amend their complaints after the statutory time pe-
riod had expired. The courts routinely denied these motions and used the
pre-1966 rule 15(c) to view the claimants' amendments as the commence-
ment of new actions, therefore not according them relation back status.\(^\text{5}\)

The Advisory Committee on the Federal Rules disagreed. The Commit-
tee recognized that in these cases the government had received adequate no-
tice of the action within the statutory period and that the policies of the
statute of limitations, therefore, would not have been offended by allowing
relation back.\(^\text{53}\) Furthermore, the Committee maintained that since such
amendments did not constitute entirely new actions it would be unjust to
deny the claimant his opportunity for litigation.\(^\text{54}\) Courts were also faced
with the problem of relation back of amendments that changed defendants in
actions involving private parties.\(^\text{55}\) Accordingly, the Advisory Committee
amended rule 15(c) to clarify whether relation back would be allowed where
a party sought to change a defendant or correct a misnomer by amending
the complaint.\(^\text{56}\)

The amended rule reveals that four requirements must be met before rela-

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5. See cases cited supra note 51.
52. See cases cited supra note 51.
53. FED. R. CIV. P. 15(c) advisory committee's note, 39 F.R.D. at 83.
54. Id. ("[C]haracterization of the amendment as a new proceeding is not responsive to
the reality, but is merely question-begging; and to deny relation back is to defeat unjustly
the claimant's opportunity to prove his case.").
55. Id. One of the most frequently used tests for determining the identity of causes of
action was articulated in Phoenix Lumber Co. v. Houston Water Co., 94 Tex. 456, 61 S.W. 707
(1901): "(1) Would a recovery had upon the original bar a recovery under the amended peti-
tion? (2) Would the same evidence support both of the pleadings? (3) Is the measure of dam-
gages the same in each case? (4) Are the allegations of each subject to the same defenses?"
Id. at 462, 61 S.W. at 709.
56. FED. R. CIV. P. 15(c) advisory committee's note, 39 F.R.D. at 82. The committee
determined to "state more clearly when an amendment of a pleading changing the party
tion back will be allowed: (1) the claim must have arisen out of the conduct alleged in the original pleading; (2) the party to be added must have received such notice that he will not be prejudiced; (3) the party must know or should know that but for a mistake of identity, the action would have been brought against him; and (4) requirements two and three must have been fulfilled within the period provided by law for the commencement of the action against the defendant. The conflicts in interpretation of the rule have arisen primarily in the context of the last three provisions because the first requirement merely incorporated the operation of rule 15(c) prior to its 1966 amendment.

**A. The Prejudice Requirement**

Rule 15(c) stipulates that the party to be added by amendment receive such notice that no prejudice will result in presenting his defense on the merits. Unfortunately, few guidelines have emerged which effectively define "prejudice" in the context of rule 15(c). Courts generally have reached conclusions concerning the prejudice requirement without adequate factual analysis.

One of the few attempts to distinguish and address the prejudice issue occurred in *Craig v. United States*. In *Craig*, a timely action was brought by a plaintiff whose husband was killed attempting to land a military plane. Subsequent to the expiration of the statute of limitations, the plaintiff sought to add a corporation as a defendant. The court held that the prejudice re-

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57. *Schiavone*, 106 S. Ct. at 2384. But see id. at 2388 (Stevens, J., dissenting). The majority in *Schiavone* stated this fourth requirement as: "(4) the second and third requirements must have been fulfilled within the prescribed limitations period." *Id.* at 2384. This reading of requirement (4) is nowhere explicitly stated in the rule itself. Rather, it represents the majority's interpretation of the language of rule 15(c). This language was viewed as so "clear and unequivocal" that the Court saw fit to incorporate this interpretation into the articulated four-part test. *Id.* at 2382. Justice Stevens, however, did not agree that the language was as clear as contended and did not endorse the majority's rendition of rule 15(c). *Id.* at 2388-89.

58. FED. R. CIV. P. 15(c).
60. *Id.* "The approach of most courts to the prejudice requirement has been to state rather bare conclusions without factual analysis." *Id.* Two reasons were posited for the lack of in-depth analysis of the prejudice requirement. First, the author surmised "that the prejudice requirement is not regarded as an independent criterion," but merely a restatement of the other three. *Id*. Second, it was reasoned that many decisions allowing relation back have been based upon the identity of interest exception (to be discussed *infra*) which presumed that no prejudice would result if the proposed defendant was closely related to the named defendant. *Id.* at 115-16.
requirement was not satisfied even though the corporation had investigated the relevant facts of a pending suit by another plaintiff injured in the same accident because it had not necessarily investigated all the facts relevant to the later suit involving the decedent. This decision reveals at least one element of the prejudice requirement. That is, defendant must be aware of more than just the incident giving rise to a lawsuit; he also must know specific facts of the suit to which he is to be added.

A second court found, similarly, that a proposed defendant would be prejudiced in maintaining a defense on the merits by the passage of an extended period of time between the events giving rise to the cause of action and notice of suit.

From cases specifically discussing prejudice in a 15(c) context, it follows that the focus of the prejudice requirement is upon the proposed defendant’s ability to obtain sufficient evidence that he may properly prepare his case to defend against the plaintiff’s allegations. To illustrate, in Bryant Electric Co. v. Joe Rainero Tile Co., relation back was allowed where the defendant could not show any prejudice regarding the presentation or preparation of his defense. The presentation and preparation of a defense necessarily involves obtaining facts and evidence. Thus, the major value served by the prejudice requirement is the assurance that, should the amendment be al-

62. Craig, 413 F.2d at 858. But cf. Meredith v. United Air Lines, 41 F.R.D. 34 (S.D. Cal. 1966) (defendant was not found to be prejudiced after he had conducted a complete investigation of the facts).

63. Craig, 413 F.2d at 858. Wright and Miller have proffered a different approach: “[T]he court should not give special treatment to the careless or myopic defendant whose alleged prejudice results from his own superficial investigatory practices or his poor preparation of a defense.” 6 C. Wright & A. Miller, supra note 3, § 1498, at 510.

64. Burns v. Turner Constr. Co., 265 F. Supp. 768, 770 (D. Mass. 1967) (Prejudice would result since the passage of nearly four years had obscured both accident site conditions and witnesses’ memories.).

65. See id.; Craig, 413 F.2d at 858 (defendant found prejudiced where no knowledge of facts relating to case at bar); In re Osage Exploration Co., 104 F.R.D. 45, 49 (S.D.N.Y. 1984) (type of prejudice invalidating an amendment is usually that which unfairly disadvantages a defendant); Bryant Elec. Co. v. Joe Rainero Tile Co., 84 F.R.D. 120, 123 (W.D. Va. 1979) (no prejudice found where defendant knew or should have known of initial complaint); Nevels v. Ford Motor Co., 439 F.2d 251, 257 (5th Cir. 1971) (one factor considered in prejudice requirement is that of last minute surprise).

66. See Note, supra note 33, at 115. “[T]he phrase [‘prejudice in maintaining his defense on the merits’] properly should be construed to mean that the proposed defendant will be deprived of the fair opportunity to obtain evidence before it becomes stale.” Id.

This “stale evidence” analysis has been employed by a number of courts. See Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945); see also Pearson v. Northeast Airlines, 309 F.2d 553, 559 (2d Cir. 1962), cert. denied, 372 U.S. 912 (1963). Still, an additional purpose inherent in the statute of limitations is the protection of the potential defendants from “protracted fear of litigation.” 51 Am. Jur. 2d Limitation of Actions § 17 (1970).


68. Bryant, 84 F.R.D. at 124.
allowed, the proposed defendant would not be prevented from obtaining adequate information and evidence regarding the pending suit.69

B. The Knowledge Requirement

In addition to receiving such notice to avoid prejudice, a proposed defendant must also know or be expected to know that, but for a mistake concerning identity, the particular action would have been instituted against him.70 Again, as with the prejudice requirement, courts have neglected to define distinctly when this knowledge requirement has been satisfied. The requirement is unquestionably fulfilled when, for example, a newly named defendant is served with process that merely misnames him.71 Relation back has also been allowed where a plaintiff mistakenly names the wrong party but correctly serves the intended defendant.72

The vagueness with respect to the knowledge criterion concerns the question of when a defendant "should have known" that a suit was pending.

69. See Taliferro v. Costello, 467 F. Supp. 33, 35 (E.D. Pa. 1979) (Evidence of prejudice requires showing that defendant "has been hindered in its ability to obtain relevant evidence needed to mount its defense.") (emphasis added).

70. See FED. R. CIV. P. 15(c).


In this context, it would be difficult for the defendant to convince any court that the allegations in the complaint were totally foreign. The factual context giving rise to the action as articulated in the complaint will undoubtedly be somewhat familiar to the defendant; familiar enough, therefore, to impute the requisite knowledge of the impending suit. A misnomer of the defendant would thus be insufficient to allow him to escape defending against the suit. This situation, as Justice Stevens indicated, remarkably parallels the facts of Schiavone. The newly named defendant, "Fortune also known as Time, Inc." was merely misdescribed as "Fortune." Justice Stevens did not construe the amendment as bringing in Time as a defendant. Moreover, "the difference between the description of the publisher of Fortune in the original complaints and the description of the publisher of Fortune in the amended complaints is no more significant than a misspelling . . . ." Schiavone, 106 S. Ct. at 2388 (Stevens, J., dissenting).

72. See Marino v. Gotham Chalkboard Mfg. Corp., 259 F. Supp. 983 (S.D.N.Y. 1966). See also Infotronics Corp. v. Varian Assocs., 45 F.R.D. 91 (S.D. Tex. 1968) (where the wrong defendant was originally served but the complaint was forwarded to the proper defendant).

As in the situation described in note 71, supra, where a defendant receives a copy of the summons and complaint accurately describing a factual situation with which he is familiar but errantly bearing the name of a completely different individual, the intended defendant again may find it difficult to argue that he does not have knowledge of the suit. The rule itself seems to address this very problem by providing that but for a mistake in identity, the defendant was so familiar with the factual context that he would not be surprised to be later named as the true party sued. See FED. R. CIV. P. 15(c).
against him. Courts have only provided cursory answers regarding this issue. In *Dutka v. Southern Railroad Co.*, the new defendant railroad was told it "should have known" that it would have been named as a defendant since it owned the train and employed the crew that was involved in the incident giving rise to the action. Similarly, in *Taliferro v. Costello*, the court allowed relation back of an amended complaint naming the city of Philadelphia as a defendant in a civil rights action since service was properly made on the city's deputy sheriff. The court determined that the city "should have known" that its joinder was possible. This "distinct possibility of joinder" standard was bolstered by the further recognition that it was unlikely that the city of Philadelphia was surprised by the amendment.

Courts denying relation back based upon the knowledge requirement have applied somewhat different criteria in their analyses. In *Hernandez Jiminez v. Calero Toledo*, a city employee alleged that he was wrongfully discharged for political reasons. After initially charging his supervisor and reviewing commission members, plaintiff moved to amend the complaint after the expiration of the limitations period to name the city's mayor and a local political party leader. The court held that the proposed defendants could not have been expected to know of their potential joinder since it was possible that they were not named as parties to the original complaint for tactical reasons or because of a lack of evidence when the complaint was filed.

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73. When a plaintiff names an incorrect party, it is likely that courts use a reasonable man test to determine whether a party "should have known" he was the intended defendant. C. WRIGHT & A. MILLER, supra note 3, § 1498, at 515 (Supp. 1986); see *Swann Oil Inc. v. M/S Vassilis*, 91 F.R.D. 267, 269 (E.D.N.C. 1981); *King & King Enter. v. Champlin Petroleum Co.*, 446 F. Supp. 906, 910 (E.D. Okla. 1978); *Romero v. Ole Tires Inc.*, 101 N.M. 759, 688 P.2d 1263, 1267 (Ct. App. 1984).


75. *Id.* at 378.


77. *Taliferro*, 467 F. Supp. at 34. The amendment was attempted after the tolling of the statute of limitations.

78. *Id.* at 36 (citing *Williams v. Avis Transp.*, 57 F.R.D. 53 (D. Nev. 1972)). In *Williams*, plaintiff's original complaint only named as a defendant the company from which plaintiff had rented an automobile. An amendment to join the tire manufacturer was held to relate back since, within the limitations period, plaintiff's counsel had notified the manufacturer of the action against the rental company and of plaintiff's belief that the car's tires were defective. 57 F.R.D. at 55 n.4.


80. 604 F.2d 99 (1st Cir. 1979).

81. *Id.* at 100; see *Larry v. Penn Truck Aids, Inc.*, 94 F.R.D. 708 (E.D. Pa. 1982) (amended complaint naming the international union as defendant would not relate back where affidavit of administrative assistant established that the union neither knew nor had reason to know of institution of action prior to service of amended complaint).

82. *Hernandez*, 604 F.2d at 103. Contrary to the standard used in *Taliferro* that relation back is allowed where a proposed defendant knows that his joinder is possible, the *Hernandez*
The final component of the knowledge requirement is that rule 15(c) provides not only that the proposed defendant knew or should have known of a pending action, but also that, absent a mistake concerning the identity of the proper party, the defendant knew the action would have been brought against him. This additional requirement has been interpreted to imply that (1) a mistake concerning identity must have occurred and (2) the proposed defendant knew or at least had reason to know of the mistake. In some instances, the mistake may be excused regardless of whether the defendant had the requisite knowledge. The inexcusability of the mistake, however, is not determinative of whether rule 15(c) is to be applied. Rather, it has been held that inexcusable error is merely a factor to be considered in determining whether prejudice to the defendant would result should relation back be allowed.

For example, in *Jacobs v. McClosky*, the district court noted that plaintiff bears the burden of finding the proper defendant. Thus, a plaintiff can neither complain about dismissal nor amend a pleading where failure to name the proper party was due to his own error and not caused by the defendant. The *Jacobs* court referred to the time of plaintiff's filing and stated that it was plaintiff's decision to file so close to the limitations dead-

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83. FED. R. CIV. P. 15(c).
86. 40 F.R.D. 486 (E.D. Pa. 1966). In *Jacobs*, plaintiff filed suit against the First Pennsylvania Banking and Trust Co., alleging negligence and personal injury. This complaint, filed nine days prior to the expiration of the two-year statute of limitations, alleged that the named defendant owned the building which was involved in the dispute. In actuality, however, it was owned by First Penco Realty, Inc., a wholly owned subsidiary of the First Pennsylvania Co. As a result of an error by defendant’s insurance carrier, both corporations were led to believe that ownership was vested in the First Pennsylvania Co. Upon discovering the error, First Pennsylvania moved, and was allowed, to amend its answer to deny an originally admitted allegation of ownership. Plaintiff's amended complaint, however, was denied relation back status.
87. See Bruce, 581 F. Supp. at 906.
line, a decision unaffected by any action of the defendant. Other courts, utilizing an inexcusable neglect analysis, have employed criteria such as conscious delay, failure to diligently pursue the action, and failure to diligently research the proper defendant to determine when an amendment will be barred.

The courts interpreting the prejudice and knowledge requirements have not reached the fourth element of the relation back test. This element involves ascertaining whether the defendant was given sufficient notice to overcome any prejudice and had the necessary knowledge of the suit within the period prescribed by the statute of limitations. Because this part of the relation back test has engendered great debate among the circuit courts of appeals, the issues surrounding it will be examined in the following section that focuses upon the various approaches adopted by those courts in applying rule 15(c).

III. CONFLICT AMONG THE CIRCUITS

The Supreme Court in Schiavone granted the petition for certiorari to resolve an apparent conflict among the circuits regarding application of the relation back doctrine. The dispute focused on four issues: (1) the precise meaning of "changing" a party; (2) the application of an identity of interest exception; (3) the degree of formality of notice required; and (4) the meaning of the rule's "within the period provided by law" language. Although all of these issues were not presented by Schiavone, each will be discussed to provide an essential analytical framework for an understanding of the relation back rule.

A. Changing a Party

The second sentence of rule 15(c) applies only when the amendment is one "changing the party against whom a claim is asserted." The precise mean-

89. See, e.g., Marchant v. City of Little Rock, 741 F.2d 201, 205 (8th Cir. 1984) (no attempt to add defendant after trial had begun); Nayer v. Robertshaw-Fulton Controls Co., 195 F. Supp. 704, 706 (D. Mass. 1961) (amendment after statute tolled was discretionary); McDonald v. Chrysler Motors Corp., 27 F.R.D. 442, 443 (W.D. Pa. 1961) (neglect excused where counsel unaware of answer to complaint); Hess v. Carmine, 396 A.2d 173, 177 (Del. Super. Ct. 1978) (neglect excused where failure to amend was due to mistaken belief that statute tolled based upon clerical error).
90. Moreover, discussing this remaining issue separately is also warranted by the fact that those courts interpreting the prejudice and knowledge requirements did not reach the timeliness issue. See Dutka v. Southern Ry., 92 F.R.D. 375, 377 (N.D. Ga. 1981); see also Taliferro v. Costello, 467 F. Supp. 33, 33 (E.D. Pa. 1979).
91. 6 C. WRIGHT & A. MILLER, supra note 3, § 1498, at 511.
ing of "changing," however, has been subject to varying interpretations as to whether relation back should be allowed where, for instance, an amendment seeks to "add" a new party rather than "change" a party.\footnote{See Taliferro, 467 F. Supp. at 34. The pertinent portion of rule 15(c) about which the dispute rages provides: "An amendment changing a party against whom a claim is asserted relates back if the foregoing provision is satisfied . . . ." FED. R. CIV. P. 15(c) (emphasis added).}

In King v. Udall,\footnote{266 F. Supp. 747 (D.D.C. 1967).} the court viewed rule 15(c) as limited to amendments changing a party defendant. It did not apply the rule to additional parties.\footnote{Id. at 749.} In contrast, the court in Meredith v. United Air Lines\footnote{41 F.R.D. 34 (S.D. Cal. 1966).} asserted that the "changing" concept necessarily embodies the naming of a new party.\footnote{Id. at 39. According to one commentator, the phrase "changing a party" may connote as many as four different meanings: "(1) substitution of a new defendant for the present defendant, (2) addition of a defendant, (3) changing the stated capacity of the defendant, and (4) changing a misdescription or misnaming (misnomer) of the defendant." Note, supra note 33, at 106. Regardless of the possible interpretations, one fact remains clear. No interpretation should be given to the phrase that fails to promote the values implicit in the statute of limitations concept because it was with these values in mind that the relation back doctrine was forged.\footnote{6 C. WRIGHT & A. MILLER, supra note 3, § 1498, at 260 ("changing" should be liberally construed).} The former view, in apparent contravention of the intent of the Advisory Committee, would not apply rule 15(c) unless a defendant has been misnamed or misdescribed.\footnote{Taliferro, 467 F. Supp. at 34. Such a restrictive view emerges as merely a game of legal and statutory semantics and totally ignores the recognized liberalizing purpose of the 1966 amendment to rule 15(c). Furthermore, Professor Benjamin Kaplan, now Justice Kaplan of the Massachusetts Supreme Judicial Court and former reporter to the Advisory Committee on the Civil Rules, prophetically commented that: I am a little discouraged to find a hint in decisions interpreting the revised rule—opposed by indications in others—that the phrase "changing the party against whom a claim is asserted" must be read as inevitably confined to cases where incorrect defendant A is eliminated and correct defendant B is brought in instead . . . . Kaplan, Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I), 81 HARV. L. REV. 356, 410 (1967).}

Prior to the 1966 amend-
ment the court in *Travelers Insurance Company v. Brown* adopted an even broader view than that of *Meredith* in recognizing the permissive nature of rule 15(c) and maintaining that new defendants and new theories of recovery would be allowed.

**B. The Identity of Interest Exception**

One exception to the disallowance of relation back of amendments changing parties subsequent to the expiration of the statute of limitations involves the relationship between the proposed and named defendants. Those jurisdictions recognizing this exception maintain that where the parties are intimately associated in their business operations or other activities, institution of an action against one serves as the requisite notice to the other. Thus, when the parties have such an identity of interest, an amendment adding the intended party will relate back assuming satisfaction of the remaining requirements of rule 15(c). For example, the court in *Dutka* allowed an

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100. 338 F.2d 229, 234 (5th Cir. 1964).
101. See 6 C. WRIGHT & A. MILLER, supra note 3, § 1498, at 513-14 ("when plaintiff seeks to correct the name or description of a defendant the amendment will relate back provided the proper defendant was served and the party before the court is the one plaintiff intended to sue").

See also Gabriel v. Kent Gen. Hosp. Inc., 95 F.R.D. 391, 394 (D. Del. 1982) (relation back allowed where new party is substituted or added as well as when intended defendant has been misnamed or misdescribed); but see Anderson v. Phoenix of Hartford Ins. Co., 320 F. Supp. 399, 405 (W.D. La. 1970) (relation back not allowed where no misnomer or misdescription of defendants, but where plaintiff attempted to name entirely different party as defendant).

Wright and Miller further cite Brittain v. Belk Gallant Co., 301 F. Supp. 478, 478-79 (D. Ga. 1969) stating that "the proper test is whether the complaint was served upon the proper party and whether the added party had notice of the suit."

102. 6 C. WRIGHT & A. MILLER, supra note 3, § 1498, at 516-17.

amendment by a plaintiff passenger who originally named one railroad as a defendant and sought to join a second railroad that was a subsidiary of the first. Because the second railroad had received constructive notice of the suit and should have known that it was, indeed, the intended defendant, the court permitted the amendment to relate back.\textsuperscript{105}

Other relationships exist that have been held to satisfy the identity of interest test. In addition to the parent-subsidiary relationship of Dutka, an identity of interest has also been found between related corporations,\textsuperscript{106} successor corporations,\textsuperscript{107} and, in one case, between an insurer and its insured.\textsuperscript{108}

Notwithstanding the recognition of relation back in the preceding instances, some courts have utilized a more exacting method of review to conclude that no identity of interest exists.\textsuperscript{109} In Martz v. Miller Brothers Co.,\textsuperscript{110} for example, the district court found no identity of interest and denied relation back where two stores shared virtually the same name, the same business activities, and overlapping officers and shareholders.\textsuperscript{111} The Martz plaintiff mistakenly served an agent of the named corporation who was not an agent of the entity intended as the defendant. The court found that, despite the commonalities, such service did not constitute institution of the action against the intended corporation, nor was it adequate notice within the period required by rule 15(c).\textsuperscript{112}

In any event, as one court pointed out just after the amendment of rule 15(c), many courts neglect to clearly define under what circumstances an

\begin{footnotesize}
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\begin{footnotes}{105.} Id.
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\begin{footnotes}{106.} 6 C. WRIGHT & A. MILLER, supra note 3, § 1499, at 518-19. Termed brother-sister companies, these corporations often share the same officers, directors, or shareholders. Also, these corporations usually have similar names or conduct their business from the same offices. See De Coelho v. Seaboard Shipping Corp., 535 F. Supp. 629, 636-37 (D.P.R. 1982).
\end{footnotes}

\begin{footnotes}{107.} 6 C. WRIGHT & A. MILLER, supra note 3, § 1499, at 519. Successor corporations generally constitute past and present forms of the same venture. The problem often arises in a rule 15(c) context where, unknown to the plaintiff, the ownership of defendant corporation has changed. See Ringrose v. Engelberg Huller Co., 692 F.2d 403, 411 n.14 (6th Cir. 1982).
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\begin{footnotes}{110.} 244 F. Supp. 246 (D. Del. 1965).
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\begin{footnotes}{111.} Id. at 248. The court concluded that identity of interest "requires that the two stores be regarded simply as enterprises of the Miller family. The court could then say that an employee of either store was ultimately beholden to the family . . . . Finally, on a more conceptual level, the corporations exist under Delaware Law as distinct entities . . . ." Id. at 255.
\end{footnotes}

\begin{footnotes}{112.} See id.
\end{footnotes}
\end{footnotesize}
identity of interest would exist between new and former parties such that allowing the addition of the new party would not be prejudicial.\textsuperscript{113} This statement remains true today.

\textbf{C. Formal v. Informal Notice}

An additional point of contention directly related to the prejudice requirement is whether formal or informal notice to the proposed defendant is necessary before an amendment will be allowed to relate back. The Advisory Committee's note states that while the party to be brought in by amendment must receive notice of the institution of the action, the requisite notice need not be formal.\textsuperscript{114} Nonetheless, some courts still have questioned the degree of formality required. It has been held that "notice of the institution of the action" means notice of the filing of the lawsuit and not merely knowledge of events giving rise to a cause of action.\textsuperscript{115} These cases construe the requirement as mandating actual, not constructive notice since it is traditionally service of process upon the defendant that will convey notice of the filing of the suit.

In \textit{Patterson v. White},\textsuperscript{116} however, the court took a notably different approach. In \textit{Patterson}, an action was brought against the trustees of a church. The plaintiff unsuccessfully attempted service upon the trustees and, after the expiration of the statute of limitations, amended the complaint to name instead the church itself as corporate defendant. Noting that the notice requirement should be liberally construed,\textsuperscript{117} the court allowed the plaintiff to show that the church or the trustees had received notice through means other than service.\textsuperscript{118}

\begin{itemize}
  \item \textsuperscript{113} Williams v. United States, 405 F.2d 234, 237-38 (5th Cir. 1968).
  \item \textsuperscript{114} FED. R. CIV. P. 15(c) advisory committee's note, 39 F.R.D. at 83.
  \item \textsuperscript{116} 51 F.R.D. 175 (D.D.C. 1970).
  \item \textsuperscript{117} Such liberal construction is illustrated in \textit{Meredith}, which held that a Civil Aeronautics Board inquiry conducted by the proposed defendant aircraft manufacturer coupled with a written report of the contested incident constituted sufficient notice. Meredith v. United Air Lines, 41 F.R.D. 34, 38 (S.D. Cal. 1966).
  \item \textsuperscript{118} This holding necessarily implies that actual notice received through service of process is not the sole means for a potential defendant to receive adequate notice. The courts allowing constructive notice as sufficient have recognized that the test of whether the proposed defendant knew or should have known of the action being brought against him should not be rigidly applied. A defendant need not receive a copy of the summons and complaint in order to know that he has engaged in some action giving rise to a lawsuit. Moreover, the language parenthetically inserted in the Advisory Committee's Note seems a convincing indicium that the Committee, too, contemplated this fact. See Kirk v. Cronvich, 629 F.2d 404, 407 (5th Cir. 1980).
\end{itemize}
D. Within the Period Provided by Law for Commencing the Action

Perhaps the most contested issue among the federal circuits is the 15(c) mandate that both notice and knowledge requirements be fulfilled "within the period provided by law for commencing the action against [the proposed defendant]."119 Although much confusion has resulted in the interpretation of this portion of the rule, the prevailing view seems to be that the "period provided by law" requires that notice to the defendant must have occurred within the statute of limitations period.120

The Seventh, Ninth, and Tenth Circuits have faithfully adhered to this literal interpretation of the notice requirement.121 In Hughes v. United States,122 the complaint, filed just before the expiration of the applicable statute of limitations, named the FBI and the United States Department of Jus-

("we do not believe that actual notice is required under Rule 15(c)"); see also Williams v. United States, 405 F.2d 234, 238 (5th Cir. 1968) (fair notice is sufficient); Ramirez v. Burr, 607 F. Supp. 170, 173-74 (S.D. Tex. 1984) (actual notice not required; service of original complaint upon agent of proposed defendant is adequate); Williams v. Ward, 553 F. Supp. 1024, 1026 (W.D.N.Y. 1983) (constructive notice is sufficient provided such notice encourages defendant to prepare a defense in anticipation of potential action against him); Taliferro v. Costello, 467 F. Supp. 33, 35 (E.D. Pa. 1979) (constructive notice is sufficient); United States v. G.H. Coffey Co., 100 F.R.D. 413, 416 (D. Me. 1983) (notice may be informal or constructive as well as actual); Mitchell v. Hendricks, 68 F.R.D. 564, 566 (E.D. Pa. 1975) (informal, as well as formal notice is sufficient).

119. *FED. R. Civ. P. 15(c).*

120. Anderson v. Phoenix of Hartford Ins. Co., 320 F. Supp. 399 (W.D. La. 1970); Brennan v. Estate of Smith, 301 F. Supp. 307 (M.D. Pa. 1969). See *FED. R. Civ. P. 15(c)* advisory committee's note, 39 F.R.D. at 83. Several courts have interpreted the Advisory Committee's Note as specifically stating that "within the period provided by law for commencing the action" means "within the applicable limitations period." The Committee Note states:

An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of Rule 15(c) of "arising out of the conduct . . . set forth . . . in the original pleading," and if, within the applicable limitations period, the party brought in by amendment, first, received notice of the institution of the action . . . .

39 F.R.D. at 83 (emphasis added).

See also Cooper v. United States Postal Serv., 740 F.2d 714, 717 (9th Cir. 1984) (notice to substitute party must occur within limitations period); Stewart v. United States, 655 F.2d 741, 742 (7th Cir. 1981) (relation back requires that actual notice be received within the limitations period); accord Hughes v. United States, 701 F.2d 56, 58-59 (7th Cir. 1982) (actual notice must be received within limitations period).

121. See Watson v. Unipress, Inc. 733 F.2d 1386, 1389-90 (10th Cir. 1984); Cooper, 740 F.2d at 716; Stewart, 655 F.2d at 741.

122. 701 F.2d at 56. The case concerned an alleged "sting" operation conducted by defendant, Joseph Meltzer, with the aid of the FBI. Plaintiffs contended that Meltzer misrep-resented himself as being president of a fictional company. In reliance on his assurances, as well as on confirmation by the FBI, plaintiffs entered into a financing agreement to manufacture and sell cable television equipment and invested $10,000.
tice as defendants. After the tolling of the limitations period the plaintiffs filed an amended complaint naming the United States and others as defendants. The plaintiffs argued that the amended complaint merely corrected a misnomer in the original complaint (because of the similarity between "United States" and "United States Department of Justice") and that rule 15(c)'s requirement of notice "within the period provided by law for commencing the action" includes reasonable time allowed for the service of process. As to plaintiff's first argument, the court denied the amendment because a substitution, not merely a correction, occurred when a defendant was changed. Regarding the second contention, the crux of the disagreement among the circuits, the court denied relation back and required that actual notice be received by the government within the limitations period.

In the Second, Fifth, and Sixth Circuits, however, a less literal interpretation of rule 15(c) has emerged. These jurisdictions have refused to read the rule literally to require notice to the substitute party within the limitations period. In Ingram v. Kumar, the most frequently cited case asserting the liberalized view of rule 15(c), Judge Feinberg allowed relation back even where notice to the proper defendant was not received until after the tolling of the statute of limitations. He recognized that several jurisdictions allow the implementation of service of process even after the statute's expiration. Thus, under this view, it is possible that actual notice to a defendant might not be effected within the limitations period.

123. Id. at 57.
124. Id.
125. Id. at 58 (citing Simmons v. Fenton, 480 F.2d 133, 136 (7th Cir. 1973); Stewart, 655 F.2d at 742.
126. Hughes, 701 F.2d at 58 (citing Stewart, 655 F.2d at 742).
127. See Ringrose v. Engelberg Huller Co., 692 F.2d 403, 410 (6th Cir. 1982) (allowed reasonable period for service of process following expiration of statute of limitations).
128. 585 F.2d 566 (2d Cir. 1978). In this medical malpractice action, plaintiff mistakenly named a Dr. Vijaya N. Kumar instead of the intended Vijay S. Kumar. Although plaintiff filed its complaint naming the wrong defendant before the end of the applicable two-year limitations period, the intended defendant knew nothing of the attempted service on the wrong party and did not himself receive notice until after the limitations period had run.
129. Ingram, 585 F.2d at 571. The court maintained that:

Although on its face the phrase "within the period provided by law for commencing the action against him" seems to mean the applicable statute of limitations period, such a literal interpretation is unjustified in jurisdictions where timely service of process can be effected after the statute of limitations has run. In those jurisdictions, even an accurately named defendant may not receive actual notice of the action against him prior to the running of the statute of limitations. Yet, there is no doubt that the action against him is timely commenced. There is no reason why a misnamed defendant is entitled to earlier notice than he would have received had the complaint named him correctly.

Id.
Judge Feinberg reasoned that it would be unjust to force a plaintiff who has made a mistake in naming a party to give the intended defendant more timely notice than that the plaintiff could provide to an adequately named defendant. \(^{130}\) Moreover, such a literal interpretation of the rule ignores the mandate of rule 15(a) that amendments shall be freely allowed where justice would thereby be served. \(^{131}\) Accordingly, the court held that the period within which a proposed defendant must receive notice includes time allowed for service of process. \(^{132}\)

Early in the history of rule 15(c), the Supreme Court indicated a pronounced reluctance to prevent adjudication based upon mere technical error. \(^{133}\) In *Conley v. Gibson*, \(^{134}\) the Court announced that the purpose of pleadings is not to test the practical skill of attorneys, but rather to facilitate adjudication based upon the merits of the case. \(^{135}\) In articulating this policy, the *Conley* Court communicated the powerful message that, when balancing the equities of cases, it would be unfair to allow procedural technicalities to obstruct otherwise meritorious actions. \(^{136}\)

The Court reiterated its position regarding pleadings and technical error in *Foman v. Davis*. \(^{137}\) This ruling again emphasized that mere technicalities should not preclude otherwise meritorious actions. \(^{138}\) Moreover, the federal rules themselves require that the rules should be construed to ensure that claims are adjudicated fairly and expeditiously. \(^{139}\) The differing interpretations of rule 15(c) in the lower federal courts despite these pronouncements prompted the Supreme Court in *Schiavone* to squarely address the “period provided by law” issue in hopes of resolving the disagreement.

\(^{130}\) See id.

\(^{131}\) Id. (citing FED. R. CIV. P. 15(a)). Rule 15(c) must, therefore, be analyzed in light of the other subsections of rule 15. The overriding intent of the entire rule is to sanction the amendment of pleadings to ensure the proper presentation of the case and to promote the disposition of the litigation on the merits. *Conley*, 355 U.S. at 48. Subsection (c) more clearly defines when an amendment will be allowed in furtherance of the rule’s purpose despite the contrary operation of the statute of limitations.

\(^{132}\) *Ingram*, 585 F.2d at 572.

\(^{133}\) As the Supreme Court has often reiterated, the federal rules are not to be construed formally. Rather, they should be interpreted with an emphasis upon the merits of the case. See, e.g., Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 373 (1966); Foman v. Davis, 371 U.S. 178, 181-82 (1962); Conley v. Gibson, 355 U.S. 41, 48 (1957); see also Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 334-35 (1971).

\(^{134}\) 355 U.S. 41 (1957).

\(^{135}\) Id. at 48 (“The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.”).

\(^{136}\) See id.

\(^{137}\) 371 U.S. 178 (1962).

\(^{138}\) Id. at 181.

\(^{139}\) Id. at 181-82 (citing FED. R. CIV. P. 1).
IV. THE SUPREME COURT DECISION IN SCHIAVONE v. FORTUNE: 
CLARIFICATION OF RELATION BACK

The plaintiffs in Schiavone instituted libel actions in federal district court naming "Fortune" magazine as the sole defendant. Service was effected upon the registered agent of the parent corporation, Time Inc., but the agent refused process because Time was not specifically named as a party. Hence, after the tolling of the statute of limitations, the plaintiffs moved to amend the complaints to name instead "Fortune also known as Time Inc." The district court rejected the amendment and denied relation back noting that Time had not received notice of the action within the statutory time limits. The court of appeals subsequently affirmed the ruling.

In offering a final resolution of the rule 15(c) "period provided by law" conflict, the Supreme Court in Schiavone employed what may best be described as a plain language interpretation of rule 15(c). Writing for the majority, Justice Blackmun concluded that relation back was prevented by consideration of the clear language of the rule; Time simply did not receive the necessary knowledge and notice within the required time. The majority's premise rests on the notion that the "plain language" of rule 15(c) precludes an interpretation allowing relation back where no notice has been given within the statutory period.

Although the majority sought to deemphasize a liberal-technical distinction by emphasizing, instead, a plain language analysis, Justice Blackmun seemingly ignored one significant fact. The interpretation given rule 15(c) in the decision, although purporting to be neither liberal nor technical, nevertheless has the effect of restricting the prior operation of the rule. Furthermore, the "plain language" of rule 15(c) has been conspicuously subject to varying constructions. Prior to the decision in Schiavone several federal jurisdictions interpreted rule 15(c) liberally to include the time for service of process in the "period provided by law for the commencement of the action." Henceforth, this application of rule 15(c) is effectively curtailed.

Because a technical reading of the rule restricts this liberal interpretation, technical and liberal readings seem necessarily to be inconsistent. The ma-

140. See supra notes 10-24 and accompanying text.
141. Schiavone v. Fortune a.k.a. Time, Inc., 106 S. Ct. 2379, 2385 (1986). "[N]otice to Time and the necessary knowledge did not come into being 'within the period provided by law for commencing the action against' Time, as is so clearly required by Rule 15(c)." Id.
142. See id. "We do not have before us a choice between a 'liberal' approach toward Rule 15(c), on the one hand, and a 'technical' interpretation of the Rule, on the other hand. The choice, instead, is between recognizing or ignoring what the Rule provides in plain language." Id.
143. See supra notes 127-32 and accompanying text.
majority, however, did not deny that technical and liberal interpretations are antipolar; rather it maintained that no such interpretations properly exist at all. For Justice Blackmun, the language of the rule as written is so clear that there is but one possible meaning that can neither be expanded nor constricted.

In addition to the majority's predilection for a strict reading of the rule, the criteria by which the petitioners' actions were gauged also significantly affected the outcome of the case. Apparently, Justice Blackmun had little sympathy for the petitioners, for he questioned the propriety of their amendment even before rendering an interpretation of the rule itself. He could not rationalize why plaintiffs neglected to name Time specifically as the defendant. The tone of his inquiry was a subtle indication that the plaintiffs, and more precisely their attorneys, would not be looked upon favorably.

The first issue addressed by the majority concerned the petitioners' argument that Fortune's status as a division of Time allowed application of the "identity of interest" exception since institution of an "action against the former constituted notice of the action to the latter, as a related entity." The Court noted that the purpose of the exception is to avoid the application of the statute of limitations when the party being added would suffer no prejudice. Justice Blackmun, however, artfully managed to dodge the identity of interest issue altogether by eloquently stating that even if the Court were to adopt the concept, the facts would preclude its application in the present context. Justice Blackmun maintained that notice may be imputed to a sufficiently related party only if the complaint has been timely filed and notice given within the limitation period. He noted that neither Fortune nor Time received notice within the statutory period as the summons and complaint were received four days after the period had expired.

144. Schiavone, 106 S. Ct. at 2383. "We cannot understand why, in litigation of this asserted magnitude, Time was not named specifically as the defendant in the caption and in the body of each complaint. This was not a situation where the ascertainment of the defendant's identity was difficult for plaintiffs." Id.

The masthead of the May 31, 1982 issue of Fortune Magazine in question states at page 2:


Id. at 2384 n.6.

145. Id. at 2384.

146. Id. The court of appeals in Schiavone v. Fortune, 750 F.2d 15 (3d Cir. 1984), rejected the application of an identity of interest exception in this case.

147. Schiavone, 106 S. Ct. at 2384. "Timely filing of a complaint, and notice within the limitations period . . . permits imputation of notice to a subsequently named and sufficiently related party." Id.

148. Id.
Thus, adequate notice could not be imputed to Time by virtue of notice to Fortune.

At the core of the majority's reasoning is the notion that the only proper notice is that which occurs prior to the expiration of the statute of limitations. As Justice Stevens' dissent points out, however, under rule 4(j) of the Federal Rules of Civil Procedure, a defendant may receive service of the summons and complaint up to 120 days after the filing of the original complaint. Since the federal rules require only that notice be adequate, the only notice petitioners were required to provide Time was that which a correctly named defendant would have received. Moreover, notice to such a defendant should be sufficient under rule 4(j) if received within 120 days of the original filing. In the dissent's view, since notice to Time was received within this period, it should have been adequate. The majority, on the other hand, reasoned that rule 4 was inapplicable since it dealt only with service of process.

The Court further maintained that petitioners' amendment would not be allowed to relate back to the date of the original filing because of the failure to satisfy all four requirements of rule 15(c). Specifically, the majority held that since petitioners failed to amend within the statute of limitations period their claim was barred. The Court reasoned, therefore, that the amendment would not relate back because neither Fortune nor Time received actual notice within the limitation period. Nevertheless, under rule 4(j) it is not necessary for defendants to receive actual notice prior to the tolling of the statute for the action to retain its force and effect. As Justice Stevens made clear, rule 15(c)'s imposition of a relation back deadline refers not to the statute of limitations, but rather to the period mandated for commencing the action against the proposed defendant. The dissent maintained that the disputed period includes two components. The first is the time for commencing the action by the filing of the complaint and the second, the time in which the action "against him" must be carried out through

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149. Id. at 2386 (Stevens, J., dissenting). Rule 4(j) states:
If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

150. Schiavone, 106 S. Ct. at 2385.

151. Id.; see supra note 57 and accompanying text.

152. Schiavone, 106 S. Ct. at 2388 (Stevens, J., dissenting).
service of process. Justice Stevens subsequently revealed an anomalous situation to which the majority offered no convincing explanation. The majority stated that had the initial complaint named "Fortune also known as Time, Inc.," it would have been timely. Nevertheless, as the dissent noted, Time would have known nothing different had the complaints named "Fortune, also known as Time, Incorporated" than what it knew from the complaints as filed, with their reference merely to "Fortune." As a matter of law, the correctly named defendant could have legitimately received proper notice after the limitation period. Agreeing with Judge Feinberg in Ingram, Justice Stevens could not rationalize the majority entitling a defendant added by amendment to earlier notice than he would have received had the complaint named him in the first instance.

In apparent response, the majority stated that it envisioned rule 15(c) as emphasizing "the period provided by law for commencing the action against" the defendant. However, the rule's overriding purpose is to assure that a proposed defendant will not be prejudiced in maintaining his defense on the merits. As previously described, the prejudice requirement embodies the concept of preventing the defendant's loss of access to evidence. In this respect, the majority in no way indicated that Time would have suffered any prejudice had relation back of petitioners' amendment been allowed. In fact, as Justice Stevens made clear, it was never argued that Time or its agent was misled or confused by the caption on the complaints. Noting an additional requirement of rule 15(c), Justice Stevens impliedly argued that Time Incorporated indeed knew or at least should have known that, but for a mistake in identity, Time was the intended defendant.

153. Id.
154. Id. at 2389.
155. See supra note 7.
156. Schiavone, 106 S. Ct. at 2385.
157. Id. at 2387 (Stevens, J., dissenting).
158. See supra notes 58-69 and accompanying text.
159. Schiavone, 106 S. Ct. at 2387 (Stevens, J., dissenting). This lack of surprise or confusion is readily apparent from the cover letter accompanying the summons and complaint received by Time's agent and forwarded to Time Incorporated's law department: "Remarks: Discrepancy in corporate title noted. Letter from Att. indicates that papers are for Time, Incorporated as publisher of Fortune. Service was made by mail pursuant to Rule 4(c) of the Federal Rules of Civil Procedure." Id. (citations omitted).
160. See id. Justice Stevens saw the essence of the question as whether petitioners' complaints was untimely despite the fact that they were filed prior to the tolling of the statute of limitations, and that Time, Inc. had received adequate notice. In light of these considerations, it was untenable to him how these complaints could be deemed untimely. Moreover, the fact that Fortune is only a trademark and an internal division of Time only
The purpose of rule 15(c) is to enable a plaintiff to correct pleading errors after the statute of limitations has run if the correction will not prejudice the defendant. This purpose seemingly is defeated by the majority’s holding. It is curious that the majority would embrace the rather obvious attempt of Time, Incorporated to avoid culpability by raising a technical defense and arguing that it had no idea that plaintiffs intended to sue the corporation.\textsuperscript{161}

The final argument propounded by Justice Stevens rests on the premise that the four-part 15(c) relation back test applies only if the amendment is one “changing the party against whom a claim is asserted.”\textsuperscript{6}\textsuperscript{2} A party is “changed” if the amendment alters the understanding of the identity of the defendant. Thus, the relation back test is irrelevant if such an alteration fails to occur. The dissent contended that in this case, the plaintiff’s technical correction did not change the understanding of the entity to be hailed before the courts,\textsuperscript{163} and that, therefore, the relation back test was inapplicable.\textsuperscript{164}

One can infer from the decision in \textit{Schiavone} that the Court, without reaching the merits of the plaintiffs’ claim, viewed the prejudice to the defendant in allowing relation back as outweighing the policy considerations implicit in the purposes of rule 15(c)—those of liberalizing allowance of relation back of amendments to promote adjudication on the merits rather than dismissal based on technical pleading flaws.\textsuperscript{165} The majority implied that the potential prejudice to defendant, Time, superseded the merits of plaintiffs’ claim of libel. It is almost as if Justice Blackmun regarded petitioners’ suit as mere pretense; for he questioned the petitioners’ actions in “litigation of this asserted magnitude.”\textsuperscript{166}

Moreover, the Court implied that if the asserted irreparable harm were so grave, the attorneys for plaintiffs should have expended the extra time, ef-

\begin{itemize}
  \item There is authority which suggests, however, that notice must be received within the statute of limitations to avoid depriving a new party of his right to invoke the statute of limitations defense, thereby raising a question of procedural due process. Thomas v. Home Credit Co., 133 Ga. App. 602, 607, 211 S.E.2d 626, 630 (1974); Sims v. American Casualty Co., 131 Ga. App. 461, 482, 206 S.E.2d 121, 135 (1974).
  \item \textit{Schiavone}, 106 S. Ct. at 2387 (Stevens, J., dissenting).
  \item \textit{Id.} at 2388.
  \item \textit{Id.}
  \item Additionally, the Court maintained that the policy considerations underlying the statute of limitations concept preempted relation back in this context. As previously stated, these considerations most notably include the prevention of prejudice and judicial economy. Thus, the Court necessarily implies that the goals of preventing prejudice to defendant and fostering judicial economy should prevail. But, as also noted previously, the majority fails to identify the specific prejudice likely to burden defendant Time.
  \item See \textit{Schiavone}, 106 S. Ct. at 2383 (emphasis added).
\end{itemize}
fort, and care to avoid making such an error. Agreeing with the district
court, the majority apparently lacked any sympathy for the plaintiffs because
it was their own attorneys who incurred the risk by filing suit so close to the
limitations deadline. In contrast, the Supreme Court in Conley favored deci-
sions on the merits and rejected such a strict approach to pleading.167

To harmonize its decision with Conley, the Schiavone Court applied what
might properly be termed an “inexcusable neglect” analysis. This method of
analysis takes the view that a plaintiff’s own inexcusable error may be con-
sidered in determining whether allowing relation back would prejudice a
proposed defendant.168 Although never explicitly using this terminology,
Justice Blackmun appears to have adopted this concept and applied it in
Schiavone. The application of an inexcusable neglect or avoidable error
analysis here may be misplaced, however, for even a more diligent effort on
the part of the plaintiffs’ attorneys may not have produced a more substan-
tively accurate complaint. It is true that Jacobs asserted that it is the plain-
tiff’s responsibility to name the proper defendant. Nevertheless, as Justice
Stevens’ dissent repeatedly noted, while technically the caption “Fortune
also known as Time, Inc.” was the more accurate, it added nothing of
substance to the identity of the proper defendant. Hence, the dissent drew a
subtle but significant distinction between naming the proper and
properly naming the defendant. Furthermore, the question arises as to what
constitutes “inexcusable” error and precisely what criteria will be
determinative.

An underlying consideration operating in this case concerns the Court’s
decision to the procedure for promulgating the federal rules.169 Citing the

167. See supra note 133 and accompanying text. If Justice Stevens is correct in his analysis
of the plaintiffs’ amendment, then the correction was merely a technical error and not one of
substance. Should the Court allow a plaintiff’s technical error—one causing no cognizable
prejudice to the intended defendant—and prevent the plaintiff from fairly litigating his claim?
The Supreme Court in Conley thought not.


169. The present Federal Rules of Civil Procedure were promulgated by the Supreme
Court and adopted by Congress. Hicklin v. Edwards, 226 F.2d 410, 413 (8th Cir. 1955). Orig-
inally, courts professed inherent power to set their own rules. Later, legislatures began to
regulate judicial procedure, the notion being that authority to promulgate rules could be vested
in courts only by the legislature.

Subsequently, 28 U.S.C.A. §§ 723b, 723c were passed on June 19, 1934, which conferred
upon the Supreme Court the authority to prescribe the rules of practice and procedure in all
civil actions in the district courts. This grant of power resulted in the promulgation and adop-
tion of the Federal Rules of Civil Procedure in 1938. The consequence is that today the
Supreme Court exerts tremendous influence over the rules of procedure in the United States
district courts.

The process of promulgating the Federal Rules, however, involved not only the Supreme
Court, but also the entire legal profession. Holtzoff, Participation of the Bar in Judicial Rule-
district court's decision, Justice Blackmun emphasized that the Court should not allow its policy preferences to influence a decision to change procedural rules. He also noted that any possible doubt about the interpretation of rule 15(c) should have been resolved by the Advisory Committee's 1966 Note on rule 15(c). As elucidated in Justice Stevens' dissent, however, though the majority relied on the interpretation of the Advisory Committee's Note, it ignored the viewpoint of the Committee's reporter, Professor Kaplan, who offered perhaps the most informed contemporary insight into the Committee's intent.

V. RULE 15(c)—PRECEDENTIAL IMPLICATIONS FOR APPLICATION OF RULE 15(c)

The most obvious effect of the Court's decision in Schiavone is that the actual number of cases in which relation back will be allowed will decrease. Relation back will no longer be permitted in cases where a plaintiff attempts to amend his complaint after the tolling of the statute of limitations if it has given inadequate notice to the proposed defendant during the limitations period. Justice Stevens recognized the impact of the majority's decision, noting that the purpose of the 1966 amendment to rule 15(c) was to increase the number of cases permitting relation back. The majority holding frustrates this purpose.

A second ramification of the Schiavone holding is that the law in at least three federal jurisdictions concerning relation back of amendments is effectively overruled. The Second, Fifth, and Sixth Circuits must now alter their practice of allowing the period for rule 15(c) notice to include the time available for service of process. Such notice must now be tendered within the statutory limitations period.

Schiavone may also be construed as narrowing the category of harmless pleading errors. Should one devise a list of such errors, misnaming a defend-

Making, 3 F.R.D. 165 (1943). The Supreme Court appointed the Advisory Committee to prepare a draft of the Rules. Bar committees were formed in each judicial district and comments were solicited from bar members in these jurisdictions. This process consisted of numerous drafts and commentary-induced redrafts, with the Supreme Court ratifying the final product. Holtzoff, 3 F.R.D. at 166.

Thus, in Schiavone the Court arguably deferred to this burdensome process by hesitating to second guess the original Advisory Committee and Court promulgating Rule 15(c).

170. Schiavone, 106 S. Ct. at 2382 (citing Schiavone, 750 F.2d at 15).
171. Id. at 2385.
172. Id. at 2388-89 n.4. "It is curious that the majority, in relying on the Advisory Committee interpretation, ignores the reporter's almost contemporaneous understanding." Id. at 2389.
173. Id. at 2389.
ant by a trademark or internal corporate division name will be conspicuously absent. It is no longer considered harmless error for a plaintiff to name a technically improper party, convey nonprejudicial notice to the new party, and seek to amend his error after the statute of limitations.

The final effect of Schiavone concerns the operation of the identity of interest exception. Since Justice Blackmun failed to offer a definitive statement on the doctrine, the conflict remains unresolved among the federal circuits. While some jurisdictions perceive that an identity of interest that exists between the named defendant and the intended defendant fosters notice to the latter, others, such as the Third Circuit in Schiavone, reject this approach. Although Justice Blackmun was careful to avoid explicitly embracing either view, it is apparent that, at least in this case, he thought identity of interest inapplicable.  

In addition to the more obvious implications of the Schiavone ruling, several more subtle ramifications are foreseeable. First, the language the majority used to question the form of plaintiffs' complaint implies that a plaintiff will find it more difficult to amend a complaint pursuant to rule 15(c) if he has made avoidable pleading errors. The positive impact of this judicial predilection for precision is that attorneys will now be more inclined, where possible, to mitigate the risk of being barred by the statute of limitations by avoiding filing too close to the deadline. The Court also attempts to foster more careful pleading by essentially penalizing plaintiffs for conducting inadequate research. Second, the Court's decision weakens its own propositions in Conley v. Gibson and Foman v. Davis that mistakes by counsel causing no prejudice to the defendant should not preclude proper decisions on the merits and that the rules should be liberally construed to assure just and speedy litigation. Justice Stevens pointed out that the majority artfully steered clear of this approach that the Court previously considered appropriate.  

Finally, should the interpretation of rule 15(c) set forth by the Schiavone Court be as implicitly contrary to the intent of constitutional due process as Justice Stevens suggests, it is foreseeable that the Advisory Committee may again suggest amending the rule to clarify even further whether proper rule 15(c) notice includes time for service of process. Such an event may be unlikely, however, because the 1966 amendment was not spurred by a definitive interpretation of the rule by the Supreme Court, but rather by sporadic application of the rule in the lower federal courts.

174. See id. at 2384.
175. See supra note 144 and accompanying text.
176. Schiavone, 106 S. Ct. at 2389 n.6 (Stevens, J., dissenting).
VI. CONCLUSION

Rule 15(c) serves as the guide for determining "when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall 'relate back' to the date of the original pleading." All four of the rule's requirements must be satisfied before relation back will be allowed.

The United States Supreme Court, in Schiavone v. Fortune, settled a major conflict among courts of appeals concerning the interpretation of the rule's requirement that notice to the party to be added must occur "within the period provided by law for commencing the action against him." The Court concluded that this period does not include reasonable time for service of process, thereby altering the law in several jurisdictions.

As the relation back doctrine of rule 15(c) is balanced against the statute of limitations policies of prevention of prejudice and judicial economy, and it is not in this case specified what particular prejudice was likely to result, it follows that the Schiavone decision is based predominantly upon concerns of judicial economy. In an effort to prevent further litigation concerning the "period provided by law" question, the Supreme Court has set the standard that hereafter must be applied. Regardless of the apparent injustice of the application of this standard to this particular case, the decision provides a much needed clarification of an imprecisely written rule.

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177. FED. R. CIV. P. 15(c) advisory committee's note, 39 F.R.D. at 82.
178. FED. R. CIV. P. 15(c).