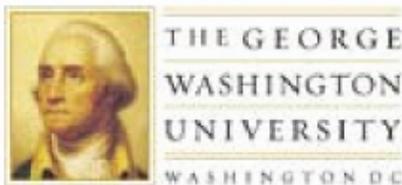


The Burger Court Opinion Writing Database

*General Telephone Co. of Southwest v.
Falcon*
457 U.S. 147 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: JUN 9 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-574

GENERAL TELEPHONE COMPANY OF THE SOUTH-
WEST, PETITIONER *v.* MARIANO S. FALCON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

CHIEF JUSTICE BURGER, concurring in part and dissenting
in part.

I agree with the Court's decision insofar as it states the general principles which apply in determining whether a class should be certified in this case under Rule 23. However, in my view it is not necessary to remand for further proceedings since it is entirely clear on this record that no class should have been certified in this case. I would simply reverse the Court of Appeals with instructions to dismiss the class claim.

As the Court notes, the purpose of Rule 23 is to promote judicial economy by allowing for litigation of common questions of law and fact at one time. *Califano v. Yamasaki*, 442 U. S. 682, 701 (1979). We have stressed that strict attention to the requirements of Rule 23 is indispensable in employment discrimination cases. *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U. S. 395, 405-406 (1977). This means that class claims are limited to those "fairly encompassed by the named plaintiff's claims." *Ante* at 8; *General Telephone Co. v. EEOC*, 446 U. S. 318, 330 (1980).

Respondent claims that he was not promoted to a job as field inspector because he is a Mexican-American. To be successful in his claim, which he advances under the "disparate treatment" theory, he must convince a court that those who were promoted were promoted not because they were

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1982

RE: No. 81-574 General Telephone v. Falcon

Dear John:

I agree.

Sincerely,



Justice Stevens

cc: The Conference

83 1-5 11 11

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1982

Re: 81-574 - General Telephone Co.
of the Southwest v. Falcon

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

85 JUN 3 1982

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1982

Re: No. 81-574 - General Telephone Co. of the
Southwest v. Mariano S. Falcon

Dear John:

Please join me.

Sincerely,

J.M.

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1982

Re: No. 81-574 - General Telephone Company
of the Southwest v. Falcon

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 29, 1982

81-574 General Telephone v. Falcon

Dear Chief:

At Conference I expressed a preference simply to reverse. I agree, however, with Bill Rehnquist that the way the opinion is written is more important than whether we remand or do not remand this case. Accordingly, my vote is to reverse and remand.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Brown 81

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

81-574 S-111 S8

June 2, 1982

81-574 General Telephone v. Falcon

Dear John:

Please join me.

Sincerely,



Justice Stevens

lfp/ss

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 2, 1982

Re: No. 81-574 General Telephone Co. v. Falcon

Dear John:

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference

85 711-5 81-574

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: JUN 1 '82

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-574

**GENERAL TELEPHONE COMPANY OF THE SOUTH-
WEST, PETITIONER v. MARIANO S. FALCON**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

[June —, 1982]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether respondent Falcon, who complained that petitioner did not promote him because he is a Mexican-American, was properly permitted to maintain a class action on behalf of Mexican-American applicants for employment whom petitioner did not hire.

I

In 1969 petitioner initiated a special recruitment and training program for minorities. Through that program, respondent Falcon was hired in July 1969 as a groundman, and within a year he was twice promoted, first to lineman and then to lineman-in-charge. He subsequently refused a promotion to installer-repairman. In October 1972 he applied for the job of field inspector; his application was denied even though the promotion was granted several white employees with less seniority.

Falcon thereupon filed a charge with the Equal Employment Opportunity Commission stating his belief that he had been passed over for promotion because of his national origin and that petitioner's promotion policy operated against Mexican-Americans as a class. 626 F. 2d 369, 372, n. 2 (CA5 1980). In due course he received a right to sue letter from the Commission and, in April 1975, he commenced this action

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 14, 1982

MEMORANDUM TO THE CONFERENCE

Re: Eckerd Drugs v. Brown, 81-1761

This petition was held for General Telephone Co. v. Falcon, 81-574.

The two named plaintiffs alleged in their Title VII complaint that they were terminated by petitioner on the grounds of their race. They brought an "across the board" class action, charging discrimination in hiring, firing, promotion, job assignment, and geographical assignment. After CA4 decided in Hill v. Western Electric Co., 596 F.2d 99 (1979), that unsuccessful applicants for employment generally could not be included in the same class as aggrieved employees, the DC certified a class consisting of past and present employees. After a trial, the DC permitted a witness, who had testified that she had suffered a discriminatory demotion, to intervene as a named plaintiff. The class ultimately was defined to include past or present employees who were discriminated against in petitioner's promotion or transfer practices. The class claims, and two of the three individual claims, were sustained. A divided panel of CA4 affirmed.

The first question presented is whether it was proper for the DC to certify a class of persons claiming discriminatory denial of promotions, when neither of the plaintiffs nor the intervenor ever suffered such an injury. The CA4 majority's position on this issue was stated as follows: "Where an employee presents a particularized claim of racial injury, she may represent a class of other employees in bringing a general challenge to workplace discrimination. The nature of employment discrimination injury is such that all minority employees suffer similar injury when unlawful practices governing the conditions of their workplace either perpetuate a discriminatory work environment or subject them to a substantial risk that they will be denied employment benefits in the future on account of their race."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

JUN 2 1982

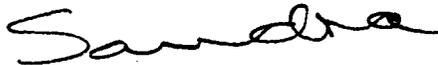
June 2, 1982

No. 81-574 General Telephone Company of the
Southwest v. Falcon

Dear John,

Please join me.

Sincerely,



Justice Stevens

Copies to the Conference