

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ZAFIRO ET AL. v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 91-6824. Argued November 2, 1992—Decided January 25, 1993

Petitioners were indicted on federal drug charges and brought to trial together pursuant to Federal Rule of Criminal Procedure 8(b), which provides that defendants may be charged together "if they are alleged to have participated . . . in the same series of acts or transactions constituting . . . offenses." At various points during the proceeding, they each argued that their defenses were mutually antagonistic and moved for severance under Rule 14, which specifies that, "[i]f it appears that a defendant or the government is prejudiced by a joinder of . . . defendants . . . for trial . . . , the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires." The District Court denied the motions, and each petitioner was convicted of various offenses. Although acknowledging other lower court cases saying that a severance is required when defendants present "mutually antagonistic defenses," the Court of Appeals found that petitioners had not suffered prejudice and affirmed the denial of severance.

Held: Rule 14 does not require severance as a matter of law when codefendants present "mutually exclusive defenses." While the Rule recognizes that joinder, even when proper under Rule 8(b), may prejudice either a defendant or the Government, it does not make mutually exclusive defenses prejudicial *per se* or require severance whenever prejudice is shown. Rather, severance should be granted only if there is a serious risk that a joint trial would compromise a specific trial right of a properly joined defendant or prevent the jury from making a reliable judgment about guilt or innocence. The risk of prejudice will vary with the facts in each case, and the Rule leaves determination of the risk, and the tailoring of any necessary

remedy, to the sound discretion of the district courts. Although separate trials will more likely be necessary when the risk is high, less drastic measures, such as limiting instructions, often will suffice. Because petitioners, who rely on an insupportable bright-line rule, have not shown that their joint trial subjected them to any legally cognizable prejudice, the District Court did not abuse its discretion in denying their motions to sever. Moreover, even if there were some risk of prejudice, here it is of the type that can be cured with proper instructions, which the District Court gave. Pp. 3-7.

ZAFIRO v. UNITED STATES

Syllabus

945 F. 2d 881, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, BLACKMUN, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment.