

SUPREME COURT OF THE UNITED STATES

No. 91-872

UNITED STATES, PETITIONER v. ANTHONY SALERNO ET
AL.

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

[June 19, 1992]

JUSTICE BLACKMUN, concurring.

I join the Court's opinion with the understanding that it does not pass upon the weighty concerns, expressed by JUSTICE STEVENS, underlying the interpretation of Rule 804(b)(1)'s similar-motive requirement. The District Court appeared to hold as *a matter of law* that "the motive of a prosecutor in questioning a witness before the grand jury in the investigatory stages of a case is far different from the motive of a prosecutor in conducting the trial." App. to Pet. for Cert. 51a. Because "similar motive" does not mean "identical motive," the similar-motive inquiry, in my view, is inherently a *factual* inquiry, depending in part on the similarity of the underlying issues and on the context of the grand jury questioning. It cannot be that the prosecution either *always* or *never* has a similar motive for questioning a particular witness with respect to a particular issue before the grand jury as at trial. Moreover, like other inquiries involving the admission of evidence, the similar-motive inquiry appropriately reflects narrow concerns of ensuring the reliability of evidence admitted at trial—not broad policy concerns favoring either the Government in the conduct of grand jury proceedings or the defendant in overcoming the refusal of other witnesses to testify. Because this case involves factual issues unusual in complexity and in number and because neither the District Court nor the Court of Appeals apparently engaged in the type of factual inquiry appropriate for

resolution of the similar-motive inquiry, I join the majority in remanding the case for further consideration.

91-872—CONCUR

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