

1 **Joy Bertrand, Esq.**
PO Box 2734
2 Scottsdale, Arizona 85252-2734
Telephone: 480-656-3919
3 Fax: 480-361-4694
joyous@mailbag.com
4 www.joybertrandlaw.com
Arizona State Bar No. 024181

5 **ATTORNEY FOR: DEFENDANT**

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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 United States of America,
11 Plaintiff,
12
13 v.
14 Jacqueline Parker, et al.,
15 Defendant.

10CR757-ROS-PHX

MOTION TO SEVER

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18 NOW COMES the Defendant, Jacqueline Parker, by and through her counsel of
19 record, to ask this Court to sever this matter from the trial of her husband, James
20 Parker. As further grounds therefore, the Defendant submits the following:

21 **INTRODUCTION**

22
23 Jacqueline Parker is a housewife. Her husband, James Parker, is a business man.
24 Mrs. Parker has dedicated her life to raising their children and literally making a home
25 for her family. As the assigned investigator for this case has concluded about Mrs.
26 Parker, "Jacqueline is a homemaker and has no known involvement with [her
27 husband's] business or any other known income producing activity." Gvt. Bates SAR
28 15751. Nonetheless, because of two signatures she made on two documents, the
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1 Government lumped Mrs. Parker in with her husband's complex business dealings.
2 Gvt. Bates SAR 15786.

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4 Mrs. Parker has stood by her husband for over twenty years. Likely, she would
5 stoically stand by him again at trial, but the law calls for their cases to be severed.
6 Because Mrs. Parker's involvement in the alleged illegal tax activity set forth in the
7 Indictment is so minute compared to her husband's, the Parker's must be tried
8 separately.
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10 UNDERLYING FACTS

11 A grand jury indicted the Defendant and her husband on June 8, 2010. In eight
12 felony counts, the Indictment alleges that Mr. Parker evaded the payment of income tax,
13 in violation of 26 U.S.C. 7201 (ECF Doc. 1 at 7,14) and made false statements to the
14 Internal Revenue Service (IRS), in violation of 26 U.S.C. 7206. *Id.* at 14-15. By contrast,
15 however, the Indictment only includes Mrs. Parker in two of those eight counts,
16 alleging that she also made false statements to the IRS. *Id.*
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19 The Indictment alleges that the Parker's filed joint income tax statements in 1997
20 and 1998 that the Government believes understated the Parker's income. *Id.* at 1,2. The
21 Indictment claims that the Parker's, "who were represented by legal counsel," also did
22 not file required income tax returns for 1999 and 2000. *Id.* at 2. The Indictment further
23 alleges that the Parker's returns understated their tax liability for 2001 and 2002. *Id.*
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26 As to Mr. Parker, the Indictment alleges that he - in the singular - "began to hide
27 the defendants' assets and income sources." *Id.* While the Government claims that both
28 Mr. and Mrs. Parker retained "sole use and control" over their Carefree, Arizona home,
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1 in which they lived, the Indictment specifies nothing Mrs. Parker did to shelter assets
2 and income from the IRS. The Indictment also alleges that Mrs. Parker travelled to
3 Belize eleven times between 2000 and 2008, but makes no indication that Mrs. Parker
4 was in any way involved in Mr. Parker's business in that country. ECF Doc. 1 at 7. The
5 Indictment focuses primarily on Mr. Parker's business dealing, but makes little mention
6 of Mrs. Parker. *See, e.g. Id.* at 3-5. Indeed, the best allegation the Government can
7 muster about Mrs. Parker about the couple's activities in a four-year period was that
8 she "inspected" and has "resided at time" in a Texas home purchased by her husband.
9 *Id.* at 3.

12 ARGUMENT

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14 This case presents two issues that support severance of Mr. and Mrs. Parker's
15 trials. First, Fed. R. Crim. Pro. 8 and Ninth Circuit case law, joinder is inappropriate in
16 a circumstance such as the case at bar where the Defendants' acts are starkly different.
17 Second, under Fed. R. Evid. 403, the evidence proffered against Mr. Parker may be
18 unfairly prejudicial against Mrs. Parker, their cases must be severed. Third, because the
19 Government likely will use Mr. Parker's statements at trial, though he may not testify,
20 also requiring severance.
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22 23 **I. Fed. R. Evid. 8 Requires Severance of these Defendants.**

24 Under Fed. R. Crim. Pro. 8(b) provides, "The indictment or information may
25 charge 2 or more defendants if they are alleged to have participated in the same act or
26 transaction, or in the same series of acts or transactions, constituting an offense or
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1 offenses. The defendants may be charged in one or more counts together or separately.
2 All defendants need not be charged in each count..”

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4 The circumstances of the present case are similar to those in *United States v.*
5 *Satterfield*, 548 F.2d 1341 (9th Cir. 1977). In that case, the Ninth Circuit held that a
6 defendant, who only participated in two of the five robberies set forth in the indictment,
7 was improperly joined with his codefendant, who committed all five of the robberies.
8 The Ninth Circuit wrote, “Other logical relationships might also be sufficient to
9 establish that a group of offenses constitutes a ‘series of acts or transactions,’ but a mere
10 showing that the events occurred at about the same time, or that the acts violated the
11 same statutes, is not enough.” *Id.* at 1344, citing *United States v. Friedman*, 445 F.2d 1076,
12 1083 (9th Cir. 1971).

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15 Here, the Government accuses both of the Parker’s with filing false statements
16 with the IRS. It is clear from the Indictment, however, that Mrs. Parker’s involvement
17 in the activities underlying was significantly less than that of her husband. Indeed, in
18 her Special Agent Report, the special agent assigned to the case did not seek
19 prosecution of Mrs. Parker. Gvt. Bates at 15751. Agent Giovanelli concluded that,
20 because Mrs. Parker was not involved with Mr. Parker’s business affairs, “The
21 investigation disclosed insufficient evidence to support a recommendation to prosecute
22 Parker’s spouse, Jacqueline R. Parker.”

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25 At some point, however, this case took a mean-spirited turn. Despite the special
26 agent’s initial, correct conclusion about Mrs. Parker’s criminal liability, the assigned
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1 AUSA to this case instructed the Agent to submit a supplemental report requesting the
2 prosecution of Mrs. Parker and the Parker's daughter, Rachel. Gvt. Bates SAR 15786.

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4 The Parker's acted in diametrically different manners in this case. While at first
5 glance the offenses alleged against the Parker's appear inextricably intertwined, the
6 detail set forth in the discovery shows that their alleged illegal conduct was quite
7 different. According to the Indictment, Mr. Parker directed several businesses,
8 purchased real estate, and structured financial transactions in an attempt to hide his
9 income from the IRS. Meanwhile, Mrs. Parker raised her children and kept a home for
10 her husband. As part of being James Parker's wife, she signed tax documents prepared
11 on their behalf.
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14 Because the actions of these two Defendants are so different, severance is
15 appropriate here. Otherwise, as in *Satterfield*, "[a]t a joint trial, where one defendant is
16 charged with offenses in which the other defendants did not participate, the detailed
17 evidence introduced to establish guilt of the separate offenses may shift the focus of the
18 trial to the crimes of the single defendant. In such cases, codefendants run a high risk of
19 being found guilty merely by association" *Id.* at 1346.
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21 **II. Fed. R. Evid. 403 Requires Severance**

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23 Because the evidence regarding Mr. Parker's misdeeds could be unfairly
24 prejudicial against Mrs. Parker, severance is appropriate here. Federal Rule of Evidence
25 403 provides, "[a]lthough relevant, evidence may be excluded if its probative value is
26 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or
27 misleading the jury, or by considerations of undue delay, waste of time, or needless
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1 presentation of cumulative evidence." Evidence is relevant if it has "any tendency to
2 make the existence of any fact that is of consequence to the determination of the action
3 more probable or less probable than it would be without the evidence." Fed.R.Evid.
4
5 401.

6 The Seventh Circuit Court of Appeals has aptly described the Rule 403 analysis,
7 "Evidence is considered unfairly prejudicial, not merely because it damages the
8 opposing party's case, but its admission makes it likely that the jury will be induced to
9 decide the case on an improper basis, commonly an emotional one, rather than on the
10 evidence presented on the crime charged." *United States v. Connelly*, 874 F.2d 412, 418
11 (7th Cir.1989).
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14 Here, the risk of unfair prejudice described by the Seventh Circuit will be created
15 in this case, because the Government will devote a large amount of time in its case-in-
16 chief to Mr. Parker's business dealings and alleged tax evasion. By contrast, is rarely
17 mentioned in any of the Government's discovery. The Indictment's charges against her
18 appear to be almost an afterthought, given the lengthy recitation of facts directed at her
19 husband.
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22 If the Parkers' trial continues to be joined, then this highly prejudicial evidence
23 would be presented ostensibly only against Mr. Parker. The risk that the jury will not
24 discern between the evidence against only Mr. Parker and not against Mrs. Parker,
25 however, requires separate trials for these Defendants.
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2 **III. *Bruton* Requires Severance**

3 A. *Bruton and its Progeny*

4 The Supreme Court has maintained that “the substantial risk that the jury,
5 despite [jury] instructions to the contrary, looked to the incriminating extra-judicial
6 statements in determining petitioner’s guilt, admission of [the] confession in the joint
7 trial violated petitioner’s right of cross-examination secured by the Confrontation
8 Clause of the Sixth Amendment. *Bruton v. United States*, 391 U.S. 123, 126 (1968). The
9 Ninth Circuit reviews claimed violations of the Confrontation Clause *de novo*. *United*
10 *States v. Orellana-Blanco*, 294 F.3d 1143, 1148 (9th Cir. 2002).

13 Even a redacted statement that does not explicitly name a co-defendant, is
14 forbidden if it makes the naming of the co-defendant obvious to the jury. *Gray v.*
15 *Maryland*, 523 U.S. 185, 192 (1998). The Ninth Circuit has held that there can be an
16 inadmissible inference that a non-testifying co-defendant’s names a co-defendant based
17 upon evidence previously admitted at the trial. *United States v. Mayfield*, 189 F.3d 895,
18 898 (9th Cir. 1999). Further, “The combination of an obviously redacted statement with
19 the language implying the existence of a third person reasonably could lead the jury to
20 conclude that the unnamed third person must be the co-defendant before them.” *United*
21 *States v. Parks*, 285 F. 3d 1185, 1187 (9th Cir. 2002).

25 While the trial court can deliver a curative instruction, as the Ninth Circuit noted
26 in *Parks*, that instruction may act “as an additional catalyst, providing the jury with a
27 reason for the redaction –i.e., the co-defendant is the person named in the redacted
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1 portion - and making it difficult for the jury to consciously and unconsciously follow its
2 instruction. *Id.* at 1187.

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4 B. *Because the Government Likely will Present the Statements of Mr. Parker at a Joint
Trial, Bruton Requires Severance.*

5 Here, the Government's case-in-chief likely will include the statements of Mr.
6 Parker, be they to investigators or third parties.¹ Meanwhile, it is unclear at this time
7 whether or not either or both of the Defendants will testify at trial. In that circumstance,
8 failure to sever these Defendants creates constitutional error.
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11 **CONCLUSION**

12 For the foregoing reasons, the Defendant respectfully asks this Court to grant her
13 Motion to Sever.

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15 RESPECTFULLY SUBMITTED on April 22, 2011.

16
17 s/Joy Bertrand
18 Joy Bertrand
19 Attorney for Defendant
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28 ¹ The *Bruton* rule also applies to testimony by a witness concerning a codefendant's out-of-court
29 statement that implicates a defendant. *Monachelli v. Warden*, 884 F.2d 749, 753 (3rd Cir. 1989).

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CERTIFICATE OF SERVICE

On April 21, 2011, I, Joy Bertrand, attorney for the Defendant, Jacqueline Parker, filed the Defendant’s Motion to Sever with the Arizona District Court’s electronic filing system. Based on my training and experience with electronic filing in the federal courts, it is my understanding that a copy of this request will be electronically served upon opposing counsel, Peter Sexton and Walter Perkel, and codefendant counsel Michael Minns, Ashley Arnett, and John McBee upon its submission to the Court.

Respectfully submitted this 21st day of April, 2011.

s/Joy Bertrand
Joy Bertrand
Attorney for Defendant