return. Offering the preliminary hearing testimony violated the defendant's right of confrontation. In *Douglas v. Alabama*,[210] the prosecution called as a witness the defendant's alleged accomplice, and when the accomplice refused to testify, pleading his privilege against self-incrimination, the prosecutor read to him to "refresh" his memory a confession in which he implicated the defendant. Because the defendant could not cross-examine the accomplice with regard to the truth of the confession, the Court held that the Confrontation Clause had been violated. In *Bruton v. United States*,[211] the use at a joint trial of a confession made by one of the defendants was held to violate the confrontation rights of the other defendant who was implicated by it because he could not cross-examine the codefendant.[212]

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[210] 380 U.S. 415 (1965). *See also* Smith v. Illinois, 390 U.S. 129 (1968) (Confrontation Clause was violated by allowing an informer as to identify himself by alias and to conceal his true name and address because the defense could not effectively cross-examine); Davis v. Alaska, 415 U.S. 308 (1974) (state law prohibiting disclosure of the identity of juvenile offenders could not be applied to preclude cross-examination of a witness about his juvenile record when the object was to allege possible bias on the part of the witness). *Cf.* Chambers v. Mississippi, 410 U.S. 284 (1973); United States v. Nobles, 422 U.S. 233, 240–41 (1975).

[211] 391 U.S. 123 (1968). The Court in this case equated confrontation with the hearsay rule, first emphasizing "that the hearsay statement inculpating petitioner was clearly inadmissible against him under traditional rules of evidence," id. at 128 n.3, and then observing that "[t]he reason for excluding this evidence as an *evidentiary* matter also requires its exclusion as a *constitutional* matter." Id. at 136 n.12 (emphasis by Court). *Bruton* was applied retroactively in a state case in Roberts v. Russell, 392 U.S. 293 (1968). Where, however, the codefendant takes the stand in his own defense, denies making the alleged out-of-court statement implicating defendant, and proceeds to testify favorably to the defendant concerning the underlying facts, the defendant has not been denied his right of confrontation under *Bruton*. Nelson v. O'Neil, 402 U.S. 622 (1971). In two cases, violations of the rule in *Bruton* have been held to be "harmless error" in the light of the overwhelming amount of legally admitted evidence supporting conviction. Harrington v. California, 395 U.S. 250 (1969); Schneble v. Florida, 405 U.S. 427 (1972). *Bruton* was held inapplicable, however, when the nontestifying codefendant's confession was redacted to omit any reference to the defendant, and was circumstantially incriminating only as the result of other evidence properly introduced. Richardson v. Marsh, 481 U.S. 200 (1987). *Bruton* was held applicable, however, where a blank space or the word "deleted" is substituted for the defendant's name in a co-defendant's confession, making such confession incriminating of the defendant on its face. Gray v. Maryland, 523 U.S. 185 (1998).

[212] In Parker v. Randolph, 442 U.S. 62 (1979), the Court was evenly divided on the question whether interlocking confessions may be admitted without violating the clause. Four Justices held that admission of such confessions is proper, even though neither defendant testifies, if the judge gives the jury a limiting instruction. Four Justices held that a harmless error analysis should be applied, although they then divided over its meaning in this case. The former approach was rejected in favor of the latter in Cruz v. New York, 481 U.S. 186 (1987). The appropriate focus is on reliability, the Court indicated, and "the defendant's confession may be considered at trial in assessing whether his codefendant's statements are supported by sufficient 'indicia of reliability' to be directly admissible against him (assuming the 'unavailability' of the codefendant) despite the lack of opportunity for cross-examination." 481 U.S. at 193–94.