

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

UNITED STATES *v.* SHABANI

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

No. 93-981. Argued October 3, 1994—Decided November 1, 1994

Respondent Shabani was convicted of conspiracy to distribute cocaine in violation of 21 U. S. C. §846 after the District Court refused to instruct the jury that proof of an overt act in furtherance of a narcotics conspiracy is required for conviction under §846. The Court of Appeals reversed, holding that, under its precedent, the Government must prove at trial that a defendant has committed such an overt act.

Held: In order to establish a violation of §846, the Government need not prove the commission of any overt acts in furtherance of the conspiracy. The statute's plain language does not require an overt act, and such a requirement has not been inferred from congressional silence in other conspiracy statutes, see, e.g., *Nash v. United States*, 229 U. S. 373. Thus, absent contrary indications, it is presumed that Congress intended to adopt the common law definition of conspiracy, which "does not make the doing of any act other than the act of conspiring a condition of liability," *id.*, at 378. Moreover, since the general conspiracy statute and the conspiracy provision of the Organized Crime Control Act of 1970 both require an overt act, it appears that Congress' choice in §846 was quite deliberate. *United States v. Felix*, 503 U. S. ___, distinguished. While Shabani correctly asserts that the law does not punish criminal thoughts, in a criminal conspiracy the criminal agreement itself is the *actus reus*. The rule of lenity cannot be invoked here, since the statute is not ambiguous. Pp. 3-8.

993 F. 2d 1419, reversed.

O'CONNOR, J., delivered the opinion for a unanimous Court.