Syllabus

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 Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SKILLING *v.* UNITED STATES

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

No. 08–1394. Argued March 1, 2010—Decided June 24, 2010

Founded in 1985, Enron Corporation grew from its headquarters in Houston, Texas, into the seventh highest-revenue-grossing company in America. Petitioner Jeffrey Skilling, a longtime Enron officer, was Enron's chief executive officer from February until August 2001, when he resigned. Less than four months later, Enron crashed into bankruptcy, and its stock plummeted in value. After an investigation uncovered an elaborate conspiracy to prop up Enron's stock prices by overstating the company's financial well-being, the Government prosecuted dozens of Enron employees who participated in the scheme. In time, the Government worked its way up the chain of command, indicting Skilling and two other top Enron executives. These three defendants, the indictment charged, engaged in a scheme to deceive investors about Enron's true financial performance by manipulating its publicly reported financial results and making false and misleading statements. Count 1 of the indictment charged Skilling with, *inter alia,* conspiracy to commit "honest-services" wire fraud, 18 U. S. C. §§371, 1343, 1346, by depriving Enron and its shareholders of the intangible right of his honest services. Skilling was also charged with over 25 substantive counts of securities fraud, wire fraud, making false representations to Enron's auditors, and insider trading.

In November 2004, Skilling moved for a change of venue, contending that hostility toward him in Houston, coupled with extensive pretrial publicity, had poisoned potential jurors. He submitted hundreds of news reports detailing Enron's downfall, as well as affidavits from experts he engaged portraying community attitudes in Houston in comparison to other potential venues. The District Court denied the motion, concluding that pretrial publicity did not warrant a presump-

tion that Skilling would be unable to obtain a fair trial in Houston. Despite incidents of intemperate commentary, the court observed, media coverage, on the whole, had been objective and unemotional, and the facts of the case were neither heinous nor sensational. Moreover, the court asserted, effective *voir dire* would detect juror bias.

In the months before the trial, the court asked the parties for questions it might use to screen prospective jurors. Rejecting the Government's sparer inquiries in favor of Skilling's more probing and specific questions, the court converted Skilling's submission, with slight modifications, into a 77-question, 14-page document. The questionnaire asked prospective jurors about their sources of news and exposure to Enron-related publicity, beliefs concerning Enron and what caused its collapse, opinions regarding the defendants and their possible guilt or innocence, and relationships to the company and to anyone affected by its demise. The court then mailed the questionnaire to 400 prospective jurors and received responses from nearly all of them. It granted hardship exemptions to about 90 individuals, and the parties, with the court's approval, further winnowed the pool by excusing another 119 for cause, hardship, or physical disability. The parties agreed to exclude, in particular, every prospective juror who said that a preexisting opinion about Enron or the defendants would prevent her from being impartial.

In December 2005, three weeks before the trial date, one of Skilling's co-defendants, Richard Causey, pleaded guilty. Skilling renewed his change-of-venue motion, arguing that the juror questionnaires revealed pervasive bias and that news accounts of Causey's guilty plea further tainted the jury pool. The court again declined to move the trial, ruling that the questionnaires and *voir dire* provided safeguards adequate to ensure an impartial jury. The court also denied Skilling's request for attorney-led *voir dire* on the ground that potential jurors were more forthcoming with judges than with lawyers. But the court promised to give counsel an opportunity to ask follow-up questions, agreed that venire members should be examined individually about pretrial publicity, and allotted the defendants jointly two extra peremptory challenges.

Voir dire began in January 2006. After questioning the venire as a group, the court examined prospective jurors individually, asking each about her exposure to Enron-related news, the content of any stories that stood out in her mind, and any questionnaire answers that raised a red flag signaling possible bias. The court then permitted each side to pose follow-up questions and ruled on the parties' challenges for cause. Ultimately, the court qualified 38 prospective jurors, a number sufficient, allowing for peremptory challenges, to empanel 12 jurors and 4 alternates. After a 4-month trial, the jury

found Skilling guilty of 19 counts, including the honest-services-fraud conspiracy charge, and not guilty of 9 insider-trading counts.

On appeal, Skilling raised two arguments relevant here. First, he contended that pretrial publicity and community prejudice prevented him from obtaining a fair trial. Second, he alleged that the jury improperly convicted him of conspiracy to commit honest-services wire fraud. As to the former, the Fifth Circuit initially determined that the volume and negative tone of media coverage generated by Enron's collapse created a presumption of juror prejudice. Stating, however, that the presumption is rebuttable, the court examined the *voir dire,* found it "proper and thorough," and held that the District Court had empaneled an impartial jury. The Court of Appeals also rejected Skilling's claim that his conduct did not indicate any conspiracy to commit honest-services fraud. It did not address Skilling's argument that the honest-services statute, if not interpreted to exclude his actions, should be invalidated as unconstitutionally vague.

Held:

1. Pretrial publicity and community prejudice did not prevent Skilling from obtaining a fair trial. He did not establish that a presumption of juror prejudice arose or that actual bias infected the jury that tried him. Pp. 11–34.

(a) The District Court did not err in denying Skilling's requests for a venue transfer. Pp. 11–19.

(1) Although the Sixth Amendment and Art. III, §2, cl. 3, provide for criminal trials in the State and district where the crime was committed, these place-of-trial prescriptions do not impede transfer of a proceeding to a different district if extraordinary local prejudice will prevent a fair trial. Pp. 11–12.

(2) The foundation precedent for the presumption of prejudice from which the Fifth Circuit's analysis proceeded is *Rideau* v. *Louisiana*, 373 U. S. 723. Wilbert Rideau robbed a small-town bank, kidnaped three bank employees, and killed one of them. Police interrogated Rideau in jail without counsel present and obtained his confession, which, without his knowledge, was filmed and televised three times to large local audiences shortly before trial. After the Louisiana trial court denied Rideau's change-of-venue motion, he was convicted, and the conviction was upheld on direct appeal. This Court reversed. "[T]o the tens of thousands of people who saw and heard it," the Court explained, the interrogation "in a very real sense *was* Rideau's trial—at which he pleaded guilty." *Id.,* at 726. "[W]ithout pausing to examine . . . the *voir dire,*" the Court held that the "kangaroo court proceedings" trailing the televised confession violated due process. *Id.,* at 726–727. The Court followed *Rideau* in two other cases in which media coverage manifestly tainted criminal

prosecutions. However, it later explained that those decisions "cannot be made to stand for the proposition that juror exposure to . . . news accounts of the crime . . . alone presumptively deprives the defendant of due process." *Murphy* v. *Florida*, 421 U. S. 794, 798–799. Thus, prominence does not necessarily produce prejudice, and juror *impartiality* does not require *ignorance*. See, *e.g., Irvin* v. *Dowd*, 366 U. S. 717, 722. A presumption of prejudice attends only the extreme case. Pp. 12–16.

(3) Important differences separate Skilling's prosecution from those in which the Court has presumed juror prejudice. First, the Court has emphasized the size and characteristics of the community in which the crime occurred. In contrast to the small-town setting in *Rideau*, for example, the record shows that Houston is the Nation's fourth most populous city. Given the large, diverse pool of residents eligible for jury duty, any suggestion that 12 impartial individuals could not be empaneled in Houston is hard to sustain. Second, although news stories about Skilling were not kind, they contained no blatantly prejudicial information such as Rideau's dramatically staged admission of guilt. Third, unlike *Rideau* and other cases in which trial swiftly followed a widely reported crime, over four years elapsed between Enron's bankruptcy and Skilling's trial. Although reporters covered Enron-related news throughout this period, the decibel level of media attention diminished somewhat in the years following Enron's collapse. Finally, and of prime significance, Skilling's jury acquitted him of nine insider-trading counts. Similarly, earlier instituted Enron-related prosecutions yielded no overwhelming victory for the Government. It would be odd for an appellate court to presume prejudice in a case in which jurors' actions run counter to that presumption. Pp. 16–18.

(4) The Fifth Circuit presumed juror prejudice based primarily on the magnitude and negative tone of the media attention directed at Enron. But "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Assn.* v. *Stuart*, 427 U. S. 539, 554. Here, news stories about Enron did not present the kind of vivid, unforgettable information the Court has recognized as particularly likely to produce prejudice, and Houston's size and diversity diluted the media's impact. Nor did Enron's sheer number of victims trigger a presumption. Although the widespread community impact necessitated careful identification and inspection of prospective jurors' connections to Enron, the extensive screening questionnaire and follow-up *voir dire* yielded jurors whose links to Enron were either nonexistent or attenuated. Finally, while Causey's well publicized decision to plead guilty shortly before trial created a danger of juror prejudice, the District Court took appropri-

ate steps to mitigate that risk. Pp. 18–19.

(b) No actual prejudice contaminated Skilling's jury. The Court rejects Skilling's assertions that *voir dire* did not adequately detect and defuse juror prejudice and that several seated jurors were biased. Pp. 20–34.

(1) No hard-and-fast formula dictates the necessary depth or breadth of *voir dire*. Jury selection is "particularly within the province of the trial judge." *Ristaino* v. *Ross*, 424 U. S. 589, 594–595. When pretrial publicity is at issue, moreover, "primary reliance on the judgment of the trial court makes [especially] good sense" because the judge "sits in the locale where the publicity is said to have had its effect" and may base her evaluation on her "own perception of the depth and extent of news stories that might influence a juror." *Mu'Min* v. *Virginia*, 500 U. S. 415, 427. The Court considers the adequacy of jury selection in Skilling's case attentive to the respect due to district-court determinations of juror impartiality and of the measures necessary to ensure that impartiality. Pp. 20–21.

(2) Skilling failed to show that his *voir dire* fell short of constitutional requirements. The jury-selection process was insufficient, Skilling maintains, because *voir dire* lasted only five hours, most of the District Court's questions were conclusory and failed adequately to probe jurors' true feelings, and the court consistently took prospective jurors at their word once they claimed they could be fair, no matter any other indications of bias. This Court's review of the record, however, yields a different appraisal. The District Court initially screened venire members by eliciting their responses to a comprehensive questionnaire drafted in large part by Skilling. That survey helped to identify prospective jurors excusable for cause and served as a springboard for further questions; *voir dire* thus was the culmination of a lengthy process. Moreover, inspection of the questionnaires and *voir dire* of the seated jurors reveals that, notwithstanding the flaws Skilling lists, the selection process secured jurors largely uninterested in publicity about Enron and untouched by the corporation's collapse. Whatever community prejudice existed in Houston generally, Skilling's jurors were not under its sway. Relying on *Irvin* v. *Dowd*, 366 U. S., at 727–728, Skilling asserts the District Court should not have accepted jurors' promises of fairness. But a number of factors show that the District Court had far less reason than the trial court in *Irvin* to discredit jurors' assurances of impartiality: News stories about Enron contained nothing resembling the horrifying information rife in reports about Leslie Irvin's rampage of robberies and murders; Houston shares little in common with the rural community in which Irvin's trial proceeded; circulation figures for Houston media sources were far lower than the 95% saturation level

recorded in *Irvin;* and Skilling's seated jurors exhibited nothing like the display of bias shown in *Irvin*. In any event, the District Court did not simply take venire members at their word. It questioned each juror individually to uncover concealed bias. This face-to-face opportunity to gauge demeanor and credibility, coupled with information from the questionnaires regarding jurors' backgrounds, opinions, and news sources, gave the court a sturdy foundation to assess fitness for jury service. Pp. 22–30.

(3) Skilling's allegation that several jurors were openly biased also fails. In reviewing such claims, the deference due to district courts is at its pinnacle: " 'A trial court's findings of juror impartiality may be overturned only for manifest error.' " *Mu'Min*, 500 U. S., at 428. Skilling, moreover, unsuccessfully challenged only one of the seated jurors for cause, "strong evidence that he was convinced the [other] jurors were not biased and had not formed any opinions as to his guilt." *Beck* v. *Washington*, 369 U. S. 541, 557–558. A review of the record reveals no manifest error regarding the empaneling of Jurors 11, 20, and 63, each of whom indicated, *inter alia,* that he or she would be fair to Skilling and would require the Government to prove its case. Four other jurors Skilling claims he would have excluded with extra peremptory strikes, Jurors 38, 67, 78, and 84, exhibited no signs of prejudice this Court can discern. Pp. 31–34.

2. Section 1346, which proscribes fraudulent deprivations of "the intangible right of honest services," is properly confined to cover only bribery and kickback schemes. Because Skilling's alleged misconduct entailed no bribe or kickback, it does not fall within the Court's confinement of §1346's proscription. Pp. 34–51.

(a) To place Skilling's claim that §1346 is unconstitutionally vague in context, the Court reviews the origin and subsequent application of the honest-services doctrine. Pp. 34–38.

(1) In a series of decisions beginning in the 1940s, the Courts of Appeals, one after another, interpreted the mail-fraud statute's prohibition of "any scheme or artifice to defraud" to include deprivations not only of money or property, but also of intangible rights. See, *e.g., Shushan* v. *United States*, 117 F. 2d 110, which stimulated the development of the "honest-services" doctrine. Unlike traditional fraud, in which the victim's loss of money or property supplied the defendant's gain, with one the mirror image of the other, the honest-services doctrine targeted corruption that lacked similar symmetry. While the offender profited, the betrayed party suffered no deprivation of money or property; instead, a third party, who had not been deceived, provided the enrichment. Even if the scheme occasioned a money or property gain for the betrayed party, courts reasoned, actionable harm lay in the denial of that party's right to the offender's

"honest services." Most often these cases involved bribery of public officials, but over time, the courts increasingly recognized that the doctrine applied to a private employee who breached his allegiance to his employer, often by accepting bribes or kickbacks. By 1982, all Courts of Appeals had embraced the honest-services theory of fraud. Pp. 34–37.

(2) In 1987, this Court halted the development of the intangible-rights doctrine in *McNally* v. *United States*, 483 U. S. 350, 360, which held that the mail-fraud statute was "limited in scope to the protection of property rights." "If Congress desires to go further," the Court stated, "it must speak more clearly." *Ibid.* P. 37.

(3) Congress responded the next year by enacting §1346, which provides: "For the purposes of th[e] chapter [of the U. S. Code that prohibits, inter alia, mail fraud, §1341, and wire fraud, §1343], the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." Pp 37–38.

(b) Section 1346, properly confined to core cases, is not unconstitutionally vague. Pp. 38–51.

(1) To satisfy due process, "a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender* v. *Lawson*, 461 U. S. 352, 357. The void-for-vagueness doctrine embraces these requirements. Skilling contends that §1346 meets neither of the two due-process essentials. But this Court must, if possible, construe, not condemn, Congress' enactments. See, *e.g., Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 571. Alert to §1346's potential breadth, the Courts of Appeals have divided on how best to interpret the statute. Uniformly, however, they have declined to throw out the statute as irremediably vague. This Court agrees that §1346 should be construed rather than invalidated. P. 38–39.

(2) The Court looks to the doctrine developed in pre-*McNally* cases in an endeavor to ascertain the meaning of the phrase "the intangible right of honest services." There is no doubt that Congress intended §1346 to refer to and incorporate the honest-services doctrine recognized in Courts of Appeals' decisions before *McNally* derailed the intangible-rights theory of fraud. Congress, it bears emphasis, enacted §1346 on the heels of *McNally* and drafted the statute using that decision's terminology. See 483 U. S., at 355, 362. Pp. 39–40.

(3) To preserve what Congress certainly intended §1346 to cover, the Court pares the pre-*McNally* body of precedent down to its core: In the main, the pre-*McNally* cases involved fraudulent schemes to deprive another of honest services through bribes or kickbacks

supplied by a third party who had not been deceived. In parsing the various pre-*McNally* decisions, the Court acknowledges that Skilling's vagueness challenge has force, for honest-services decisions were not models of clarity or consistency. It has long been the Court's practice, however, before striking a federal statute as impermissibly vague, to consider whether the prescription is amenable to a limiting construction. See, *e.g.*, *Hooper* v. *California*, 155 U. S. 648, 657. Arguing against any limiting construction, Skilling contends that it is impossible to identify a salvageable honest-services core because the pre-*McNally* cases are inconsistent and hopelessly unclear. This Court rejected an argument of the same tenor in *Letter Carriers*, 413 U. S., at 571–572. Although some applications of the pre-*McNally* honest-services doctrine occasioned disagreement among the Courts of Appeals, these decisions do not cloud the fact that the vast majority of cases involved offenders who, in violation of a fiduciary duty, participated in bribery or kickback schemes. Indeed, *McNally* itself presented a paradigmatic kickback fact pattern. 483 U. S., at 352–353, 360. In view of this history, there is no doubt that Congress intended §1346 to reach *at least* bribes and kickbacks. Because reading the statute to proscribe a wider range of offensive conduct would raise vagueness concerns, the Court holds that §1346 criminalizes *only* the bribe-and-kickback core of the pre-*McNally* case law. Pp. 41–45.

(4) The Government urges the Court to go further by reading §1346 to proscribe another category of conduct: undisclosed self-dealing by a public official or private employee. Neither of the Government's arguments in support of this position withstands close inspection. Contrary to the first, *McNally* itself did not center on nondisclosure of a conflicting financial interest, but rather involved a classic kickback scheme. See 483 U. S., at 352–353, 360. Reading §1346 to proscribe bribes and kickbacks—and nothing more—satisfies Congress' undoubted aim to reverse *McNally* on its facts. Nor is the Court persuaded by the Government's argument that the pre-*McNally* conflict-of-interest cases constitute core applications of the honest-services doctrine. Although the Courts of Appeals upheld honest-services convictions for some conflict-of-interest schemes, they reached no consensus on which schemes qualified. Given the relative infrequency of those prosecutions and the intercircuit inconsistencies they produced, the Court concludes that a reasonable limiting construction of §1346 must exclude this amorphous category of cases. Further dispelling doubt on this point is the principle that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Cleveland* v. *United States*, 531 U. S. 12, 25. The Court therefore resists the Government's less constrained construc-

tion of §1346 absent Congress' clear instruction otherwise. "If Congress desires to go further," the Court reiterates, "it must speak more clearly than it has." *McNally,* 483 U. S., at 360. Pp. 45–47.

(5) Interpreted to encompass only bribery and kickback schemes, §1346 is not unconstitutionally vague. A prohibition on fraudulently depriving another of one's honest services by accepting bribes or kickbacks presents neither a fair-notice nor an arbitrary-prosecution problem. See *Kolender*, 461 U. S., at 357. As to fair notice, it has always been clear that bribes and kickbacks constitute honest-services fraud, *Williams* v. *United States*, 341 U. S. 97, 101, and the statute's *mens rea* requirement further blunts any notice concern, see, *e.g., Screws* v. *United States*, 325 U. S. 91, 101–104. As to arbitrary prosecutions, the Court perceives no significant risk that the honest-services statute, as here interpreted, will be stretched out of shape. Its prohibition on bribes and kickbacks draws content not only from the pre-*McNally* case law, but also from federal statutes proscribing and defining similar crimes. Pp. 48–49.

(c) Skilling did not violate §1346, as the Court interprets the statute. The Government charged Skilling with conspiring to defraud Enron's shareholders by misrepresenting the company's fiscal health to his own profit, but the Government never alleged that he solicited or accepted side payments from a third party in exchange for making these misrepresentations. Because the indictment alleged three objects of the conspiracy—honest-services wire fraud, money-or-property wire fraud, and securities fraud—Skilling's conviction is flawed. See *Yates* v. *United States*, 354 U. S. 298. This determination, however, does not necessarily require reversal of the conspiracy conviction, for errors of the *Yates* variety are subject to harmless-error analysis. The Court leaves the parties' dispute about whether the error here was harmless for resolution on remand, along with the question whether reversal on the conspiracy count would touch any of Skilling's other convictions. Pp. 49–50.

554 F. 3d 529, affirmed in part, vacated in part, and remanded.

GINSBURG, J., delivered the opinion of the Court, Part I of which was joined by ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, and ALITO, JJ., Part II of which was joined by ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., and Part III of which was joined by ROBERTS, C. J., and STEVENS, BREYER, ALITO, and SOTOMAYOR, JJ. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, and KENNEDY, J., joined except as to Part III. ALITO, J., filed an opinion concurring in part and concurring in the judgment. SOTOMAYOR, J., filed an opinion concurring in part and dissenting in part, in which STEVENS and BREYER, JJ., joined.