

Opinion of SCALIA, J.

SUPREME COURT OF THE UNITED STATES

No. 08–876

CONRAD M. BLACK, JOHN A. BOULTBEE, AND MARK
S. KIPNIS, PETITIONERS *v.* UNITED STATES

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

[June 24, 2010]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
concurring in part and concurring in the judgment.

I join the Court’s opinion with two exceptions. First, I do not join in its reliance, *ante*, at 7, on the Notes of the Advisory Committee in determining the meaning of Federal Rule of Criminal Procedure 30(d). The Committee’s view is not authoritative. See *Krupski v. Costa Crociere S. p. A.*, 560 U. S. ___, ___ (2010) (SCALIA, J., concurring in part and concurring in judgment) (slip op., at 1). The Court accurately quotes the text of the Rule, see *ante*, at 7, the meaning of which is obvious. No more should be said.

Second, I agree with the Court, *ante*, at 5, 8, that the District Court’s honest-services-fraud instructions to the jury were erroneous, but for a quite different reason. In my view, the error lay not in instructing inconsistently with the theory of honest-services fraud set forth in *Skilling v. United States*, *ante*, p. ___, but in instructing the jury on honest-services fraud *at all*. For the reasons set forth in my opinion in that case, 18 U. S. C. §1346 is unconstitutionally vague. *Skilling*, *ante*, p. ___ (SCALIA, J., concurring in part and concurring in judgment).