

Opinion of KENNEDY, 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 KENNEDY, concurring in part and concurring in the judgment.

I join the Court’s opinion except for those parts stating that 18 U. S. C. §1346 “criminalizes only schemes to defraud that involve bribes or kickbacks.” *Ante*, at 5. For the reasons set forth in JUSTICE SCALIA’s separate opinion in *Skilling v. United States*, *ante*, p. ____ (opinion concurring in part and concurring in judgment), §1346 is unconstitutionally vague. To convict a defendant based on an honest-services-fraud theory, even one limited to bribes or kickbacks, would violate his or her rights under the Due Process Clause of the Fifth Amendment.