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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

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BLACK ET AL. *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

No. 08–876. Argued December 8, 2009—Decided June 24, 2010

Petitioners (hereinafter Defendants)—executives of Hollinger International, Inc. (Hollinger), a publicly held U. S. company—were indicted for mail fraud, 18 U. S. C. §§1341, 1346, and other federal crimes. At trial, the Government pursued alternative mail-fraud theories, charging that (1) Defendants stole millions from Hollinger by fraudulently paying themselves bogus “noncompetition fees”; and (2) by failing to disclose those fees, Defendants deprived Hollinger of their honest services. Before jury deliberations began, the Government proposed special-verdict forms that would reveal, in the event that the jury voted to convict on a mail-fraud count, the particular theory or theories accounting for the verdict. Defendants resisted, preferring an unelaborated general verdict. The Government ultimately acquiesced. The District Court instructed the jury on each of the alternative theories. As to honest-services fraud, the court informed the jury, over Defendants’ timely objection, that a person commits that offense if he misuses his position for private gain for himself and/or a co-schemer and knowingly and intentionally breaches his duty of loyalty. The jury returned general verdicts of “guilty” on the mail-fraud counts, found that one Defendant was also guilty of obstruction of justice, and acquitted Defendants on all other charges.

On appeal, Defendants urged the invalidity of the honest-services-fraud jury instructions. Seeking reversal of their mail-fraud convictions, Defendants relied on *Yates v. United States*, 354 U. S. 298, 312, which held that a general verdict may be set aside “where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected.” The Seventh Circuit found no infirmity in the honest-services instructions, but further determined that even if those instructions were wrong, Defendants could not pre-

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vail. By opposing the Government-proposed special-verdict forms, the Court of Appeals declared, defendants had forfeited their objection to the instructions. Their challenge would have become moot, the court observed, had the jury received special-verdict forms separating the alternative fraud theories, and reported on the forms that Defendants were not guilty of honest-services fraud. Defendants, the Court of Appeals therefore reasoned, bore responsibility for the obscurity of the jury's verdict.

Held:

1. In *Skilling v. United States*, decided today, *ante*, p. ___, this Court vacated a conviction on the ground that the honest-services component of the federal mail-fraud statute, §1346, criminalizes only schemes to defraud that involve bribes or kickbacks. That holding renders the honest-services instructions given in this case incorrect. P. 5.

2. By properly objecting to the honest-services jury instructions at trial, Defendants secured their right to challenge those instructions on appeal. They did not forfeit that right by declining to acquiesce in the Government-proposed special-verdict forms. The Federal Rules of Criminal Procedure do not provide for submission of special questions to the jury. In contrast, Federal Rule of Civil Procedure 49 provides for jury interrogatories of two kinds: special verdicts, Rule 49(a); and general verdicts with answers to written questions, Rule 49(b). While the Criminal Rules are silent on special verdicts, they are informative on objections to instructions. Criminal Rule 30(d) provides that a “party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate.” Defendants here, it is undisputed, complied with that requirement. The Seventh Circuit, in essence, added a further requirement for preservation of a meaningful objection to jury instructions. It devised a forfeiture sanction unmoored to any federal statute or criminal rule. And it placed in the prosecutor’s hands authority to trigger the sanction simply by requesting a special verdict. To boot, the appeals court applied the sanction to Defendants, although they lacked any notice that forfeiture would attend their resistance to the Government’s special-verdict request. Criminal Rule 57(b) is designed to ward off such judicial invention. It provides: “No sanction . . . may be imposed for noncompliance with any requirement not in federal law [or] federal rules . . . unless the alleged violator was furnished with actual notice of the requirement before the noncompliance.” Pp. 5–8.

3. As in *Skilling*, the Court expresses no opinion on whether the honest-services instructional error was ultimately harmless, but

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leaves that matter for consideration on remand. P. 8.
530 F. 3d 596, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment.