

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	AARON M. STREETT, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF	
6	DAVID BOIES, ESQ.	
7	On behalf of the Respondent	25
8	ORAL ARGUMENT OF	
9	MALCOLM L. STEWART, ESQ.	
10	On behalf of United States, as amicus curiae,	
11	supporting Respondent	41
12	REBUTTAL ARGUMENT OF	
13	AARON M. STREETT, ESQ.	
14	On behalf of the Petitioners	50
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:17 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 this morning in Case 13-317, Halliburton Company v. The
5 Erica P. John Fund.

6 Mr. Streett?

7 ORAL ARGUMENT OF MR. AARON STREETT

8 ON BEHALF OF THE PETITIONERS

9 MR. STREETT: Mr. Chief Justice, and may it
10 please the Court:

11 Basic v. Levinson should be overruled
12 because it was wrong when it was decided and it is even
13 more clearly erroneous today. Basic substituted
14 economic theory for the bedrock common law requirement
15 of actual reliance that Congress embraced in the most
16 analogous express cause of action.

17 Basic's judicially created presumption
18 preserves an unjustified exemption from Rule 23 that
19 benefits only securities plaintiffs. Basic has proven
20 unworkable, has been undermined by later developments,
21 and has proven to have harmful consequences for
22 investors and companies alike.

23 The most direct course is to overrule Basic
24 altogether and require a showing of actual reliance.

25 JUSTICE GINSBURG: I believe that in Basic,

1 Justice Blackmun said that there is this economic
2 theory, but also the motivation for the Exchange Act and
3 probability and common sense would lead to this
4 presumption -- this rebuttable presumption. So he
5 wasn't relying strictly on an economic theory. I think
6 two or three times in the opinion, he tries to make that
7 plain.

8 MR. STRETT: Yes, Justice Ginsburg, but the
9 court in Basic recognized that Section 18(a) was the
10 proper analog, but then it immediately turned to its own
11 notions of public policy and the best way to further
12 congressional policy, instead of asking what sort of
13 reliance does Section 18(a) require.

14 JUSTICE GINSBURG: Where is that, that it
15 says that 18(a) is the proper --

16 MR. STRETT: I believe --

17 JUSTICE GINSBURG: -- reference?

18 MR. STRETT: I believe it's on page 245
19 where the court says, "We acknowledge the argument that
20 Section 18(a) is the proper analog, and we accept that
21 there is a reliance requirement under 10(b)."

22 But the court then jumps to creating a
23 presumption of reliance, rather than asking what sort of
24 reliance Section 18(a) requires, which has always been
25 understood to be actual eyeball reliance.

1 JUSTICE KAGAN: Mr. Streett, that argument,
2 of course, is just an argument that Basic was wrong
3 in -- in -- in not focusing on -- on Section 18, and
4 that's contestable. One could say actually, they were
5 right not to focus on Section 18, Section 9 is the
6 closer analog.

7 But let's put that aside. Are you just
8 saying Basic is wrong, or are you saying that something
9 has changed since Basic? Because usually that's what we
10 look for when we decide whether to reverse a case,
11 something that makes the question fundamentally
12 different now than when we decided it. And that's
13 especially so in a case like this one where Congress has
14 had every opportunity, and has declined every
15 opportunity, to change Basic itself.

16 So what has changed, in your view?

17 MR. STREETT: We're saying both that it was
18 wrong when decided and that certain things have changed.
19 At least three things, Your Honor.

20 First of all, this Court has fundamentally
21 changed its approach to interpreting the Section 10(b)
22 cause of action. It's consistently construed it
23 narrowly, and Basic stands out like a sore thumb among
24 that jurisprudence.

25 Second, this Court has consistently held in

1 Comcast and Wal-Mart that there cannot be presumptions
2 of classified issues; instead, classified issues must be
3 proved in fact. The Court addressed plaintiff's experts
4 in those cases who purported to establish class --
5 class-wide methodologies, and the Court tested those
6 with rigor to determine whether they proved, in fact,
7 that there were classified issues. And we're asking
8 this Court to give the Basic presumption the same rigor
9 that this Court gave the expert reports in Comcast and
10 Wal-Mart, at the very least because those -- those
11 expert reports only generated one class action. And
12 this has underlined all --

13 JUSTICE KAGAN: What is your third?

14 MR. STREETT: Pardon?

15 JUSTICE KAGAN: You said three. What is
16 your third?

17 MR. STREETT: Yes. And my third is that the
18 economics have changed. The economic premises of Basic,
19 in particular, the premise that investors rely in common
20 on the integrity of the market price. The government
21 and the fund do not even contend, they don't even
22 contest that that's the case anymore. Many investors,
23 such as hedge fund, rapid fire, volatility traders,
24 index fund investors, sophisticated value investors do
25 not -- they have investment strategies that do not rely

1 on the integrity of the market price whatsoever. So
2 that sort of reliance is the quintessential
3 individualized issue.

4 JUSTICE KAGAN: So -- so you are not relying
5 anymore on the notion that the efficient markets
6 hypothesis has been undermined. That is not one of the
7 three points that you're making because, essentially, I
8 think you -- you admit this in your reply brief. You
9 just say Halliburton has never said that market prices
10 -- has never contested that market prices generally
11 respond to new material information.

12 So you are agreeing with that, that market
13 prices generally do respond to new material information.

14 MR. STREETT: Cited at that general --
15 general level, we don't disagree with it.

16 The problem is that we now know that a
17 binary yes-or-no approach to market efficiency, like the
18 sentence you read, tells us very little about whether a
19 particular misrepresentation distorted the market price.
20 So Basic has become inconsistent with its own premises.

21 JUSTICE KAGAN: Well, but we don't have that
22 kind of binary approach. What we allow plaintiffs to do
23 is to try to establish a presumption, which they do by
24 showing that a particular market is efficient, and then
25 we allow defendants to rebut that presumption. So

1 there's no binary on/off switch.

2 It's actually -- it's a presumption, but
3 it's quite dependent on the facts in a particular case
4 as to whether there's an exception to this general rule
5 that market prices, in fact, do generally respond to new
6 material information.

7 MR. STREETT: It's -- it's binary in the
8 sense that the principal driver of class certification
9 is whether the market is efficient in a yes-or-no binary
10 sense, and that's why we have raised our second
11 position, which is if the Court were inclined to keep
12 the presumption in some sense, it should at least place
13 the burden on the plaintiff to establish that the
14 misrepresentation actually distorted the market price,
15 or to give defendants the full right of rebuttal at the
16 class certification stage to establish the price was not
17 impacted.

18 JUSTICE ALITO: Do we know how often
19 defendants have been successful in rebutting the
20 presumption?

21 MR. STREETT: It is -- it is virtually
22 impossible. It's very unusual outside of the context of
23 the Second Circuit which allows rebuttal with respect to
24 price impact. Outside of that circuit, I think as one
25 of the amicus briefs said, they're as rare as hen's

1 teeth. And that is another development.

2 Certainly this Court in Basic thought the
3 fact that the presumption was rebuttable was an
4 essential part of that holding, and it now turns out the
5 courts, especially the court below in this case, have
6 treated it as essentially irrebuttable, even with
7 respect to the fundamental premise of Basic, which is
8 price impact.

9 CHIEF JUSTICE ROBERTS: Could I ask you --

10 JUSTICE GINSBURG: Isn't the -- isn't the --
11 it's not a question of is it rebuttable. I thought that
12 that's already claimed from Basic. It's a question of
13 when. You're arguing that it should be rebuttable at
14 the class certification stage. The other side is
15 arguing, yeah, of course it's rebuttable, but that comes
16 in at the merits determination. It doesn't go to the
17 question whether there are individual issues that
18 predominate over class issues.

19 MR. STREETT: And we are not aware of a
20 single instance in which this Court allowed a
21 presumption to be invoked for the very purpose of one
22 stage of litigation, but held that the defendant's right
23 to rebut must be delayed to a later stage. And there
24 can be no doubt that Basic created the presumption of
25 reliance, among other reasons, for the very purpose of

1 allowing class certification of securities fraud cases.

2 CHIEF JUSTICE ROBERTS: I -- I understand
3 your friend on the other side to acknowledge that the
4 efficient market theory is not perfect, that there are
5 situations in which events are not reflected in the
6 market price.

7 I understand you to acknowledge that it's
8 accurate to some extent, but that the exceptions or
9 the -- the extent to which it's not accurate over --
10 override the extent to which it is. In other words,
11 you're each sort of dealing with at the -- at the -- if
12 not at the margins, you know, most of the time it's
13 sufficient, you say too much of the time it's not.

14 How am I supposed to review the economic
15 literature and decide which of you is correct on that?

16 MR. STRETT: We don't think the Court needs
17 to do that. We think the Court should get out of the
18 business of reviewing economic literature and requiring
19 district judges to make this binary yes-or-no market
20 efficient --

21 CHIEF JUSTICE ROBERTS: No, your submission
22 is that we should jettison the Basic test because
23 economists now believe that the efficient market theory
24 is not sufficient -- sufficiently accurate or true to
25 support it. So I thought -- I mean, you review a lot of

1 the economic literature in your briefs. I assume you
2 wanted me to look at it.

3 MR. STREETT: Of course, our principal
4 submission is that no economic theory should supplant
5 what Congress enacted in Section 18(a) in the most
6 analogous cause of action. The economic theory shows
7 that one of the basic premises is no longer even
8 defended. The second premise, that investors rely in
9 common on the integrity of the market price is not even
10 defended by the government and the Fund. And with that
11 premise knocked out, there's no remaining thread of
12 transaction causation because you have no common
13 reliance even on the price as a transmitter of the
14 information. In -- in that instance, then, fraud
15 becomes the quintessential individualized question.

16 I'd like to get --

17 JUSTICE SOTOMAYOR: In a class action, how
18 do you prove loss causation without proving price
19 impact? I know that there are some individual cases
20 with individual misrepresentations that have a different
21 form of loss causation. But I'm talking exclusively
22 on a -- in a class. How do you prove loss -- proximate
23 cause or loss causation without proving price impact?

24 MR. STREETT: A class under fraud in the
25 market theory could not do that. But the question under

1 Amgen is whether there would be individuals within the
2 class who could show that they actually heard and relied
3 upon the statement and --

4 JUSTICE SOTOMAYOR: Well, that makes no
5 sense.

6 MR. STRETT: Well, let me --

7 JUSTICE SOTOMAYOR: Because if they relied
8 on their statement, then that's -- they have to prove
9 loss causation in the same way that the class does.
10 It's only if they're relying on a separate statement,
11 which isn't part of the class, that would entitle them
12 to a different calculation of loss causation.

13 MR. STRETT: A plaintiff within the class
14 could still establish loss causation without price
15 impact in the same way that a plaintiff in the class
16 could establish loss.

17 JUSTICE SOTOMAYOR: How?

18 MR. STRETT: By --

19 JUSTICE SOTOMAYOR: With the same
20 misstatement at issue?

21 MR. STRETT: By purchasing in reliance on
22 that misstatement at a price that was not on the New
23 York Stock Exchange.

24 JUSTICE GINSBURG: Then how is such a
25 plaintiff's claim typical of the class? You have -- you

1 admitted that the 23(a) factors are met, commonality and
2 typicality. Well, if one is a member of this class that
3 says, we didn't rely individually, but we did rely on
4 the marketplace as being -- as having integrity, if you
5 have someone to whom a direct representation was made,
6 that person is not a proper member of this class as a
7 discrete question, not one common to the class, not one
8 typical. The typical investor in a Basic class is
9 somebody who no representation was made to that person
10 directly.

11 MR. STREETT: I'm relying on a case where
12 the misrepresentation was made in a way that's typical
13 to the class, but individual class members purchased off
14 of the exchange and therefore they purchased at a
15 different price, perhaps, than what was on the exchange.

16 But I think the real point is that this
17 Court emphasized and held in Amgen that plaintiffs
18 could -- that plaintiffs did need to establish that the
19 market was efficient and that the statement was public.

20 JUSTICE BREYER: Can you -- can -- to take a
21 totally different case, just thinking of the
22 announcement of the opinion I had, is a contract case.
23 We'll say it's the treaty that we're talking about. And
24 a group of plaintiffs say: We, Your Honor, would like
25 to show that the way that Argentina treated us was

1 unfair under the treaty. All right. And the other side
2 says: Well, what we think it's fair; we don't think the
3 treaty covers this.

4 Now, what we have here is a common issue.
5 So we don't have to decide, the judge, who's right.
6 We've just noticed it was common issue. And so they
7 make their case, at least prima facie, that they have a
8 side and the other side will rebut it on the merits.
9 Well, similarly, here, they're saying we don't have to
10 show that the markets incorporate every piece of
11 information. We think they incorporate this information
12 and as a general rule they do incorporate most
13 information.

14 The other side wants to show they didn't
15 incorporate this. That's fine. It's a common issue.
16 We'll decide it at the trial. All we're trying to say
17 is, is it a common issue and it's not a red herring to
18 throw in whether the markets incorporate information
19 because normally they do, period. Now, what's wrong
20 with what I said?

21 MR. STREETT: Because market efficiency and
22 publicity are also common issues that this Court
23 required to be considered at the class certification
24 stage. And this Court required those issues to be
25 considered because they are predicates for price impact.

1 JUSTICE KAGAN: Now, we've required them to
2 be considered because --

3 JUSTICE SCALIA: It's certainly not the rule
4 -- it's certainly not the rule that every -- every issue
5 that is common has -- has to be decided at the
6 preliminary -- or I'm sorry, must be left to the merits.
7 I mean, as you point out, the very issue of whether the
8 market is efficient is something that could be decided
9 for everybody at the merits stage, right?

10 MR. STRETT: That's absolutely correct.
11 And the reason this Court allowed market efficiency and
12 publicity to be considered is because without those
13 predicates, there's no reason to presume that there's
14 price impact.

15 JUSTICE KAGAN: Mr. Strett, there's a --
16 there's a real difference with respect to those issues
17 and I think that this was really what Amgen said. It
18 said that when you rule on those things, it essentially
19 splits up the class so that different members of the
20 class are left in very different positions, but that
21 when you rule on a question like materiality, which
22 leaves all members of the class in the exact same
23 position, either with a viable claim or with no claim,
24 and it doesn't split the class in the way that the
25 efficient markets theory do, that's the difference. And

1 here -- and this goes back to Justice Sotomayor's
2 question -- I just don't see how this splits the class
3 at all because if you can't prove price impact, you
4 can't prove loss causation and everybody's claims die.

5 MR. STREETT: Well, that same argument could
6 have been made against market efficiency or publicity.
7 If you don't have a public statement reaching the
8 market, there's no way the price could have been
9 impacted.

10 JUSTICE KAGAN: I think that the -- that the
11 difference is that even if you don't have market
12 efficiency and so you lose the ability to bring the -- a
13 claim with the fraud on the market presumption, you
14 might still have an individual reliance claim.

15 MR. STREETT: Yes. And if the market price
16 was not distorted, you could still have an individual
17 reliance claim for exactly the same reasons. If the
18 market's not efficient or the statement is not public,
19 you are, by necessity, not going to have price impact.
20 So market efficiency and publicity are precisely exactly
21 situated with respect to price impact. And the result
22 of disallowing price impact evidence at the class
23 certification stage, which this Court said was Basic's
24 fundamental premise, would mean automatic class
25 certification for all New York Stock Exchange companies.

1 Because those companies trade in an efficient market in
2 the binary yes or no sense that Basic states. And that
3 cannot be what this Court --

4 JUSTICE KENNEDY: Finish your sentence.

5 "And that cannot" --

6 MR. STREETT: Cannot be what this Court
7 intended in Basic when it created a rebuttable
8 presumption.

9 JUSTICE KENNEDY: Would you address briefly
10 the position taken by the law professors, I call it the
11 midway position, that says there should be an event
12 study. That might not take care of your first two
13 arguments of the narrow construction of 10(b)(5), and
14 the question of presumptions. But it does seem to me to
15 be a substantial answer to your economic analysis to
16 the -- to the -- challenge you make to the economic
17 premises of the Basic decision.

18 MR. STREETT: Yes. Our principal argument
19 is that the economic theories should not serve as a
20 stand-in for actual reliance. But if the Court were to
21 accept the continuing validity of the presumption in
22 some way, the law professors's position, which is also
23 our second question presented, at least makes Basic
24 consistent with its own premises. Because Basic's
25 premise is if a plaintiff buys at a price that is

1 distorted by the misrepresentation, he has relied upon
2 the misrepresentation. If we accept that as Basic's
3 premise, then it only makes sense to focus like a laser
4 on the only relevant question, whether the
5 misrepresentation distorted the market price.

6 JUSTICE KENNEDY: Am -- am I correct -- and
7 this would be more of a question for your friend
8 representing the Respondent. Am I correct that, even
9 under the -- the Basic framework, at the merits stage
10 there has to be something that looks very much like an
11 event study. Am I correct about that?

12 MR. STRETT: Yes. That's absolutely
13 correct, Your Honor.

14 JUSTICE KENNEDY: And so then the question
15 would be since you're going to have it anyway, why not
16 have it at the class certification stage.

17 MR. STRETT: Yes. And the Second Circuit
18 has correctly held that that must be proven at the class
19 certification stage because price impact is the glue
20 that holds common reliance together and the district
21 courts within that circuit have been very successfully
22 --

23 JUSTICE SOTOMAYOR: I don't see how this is
24 a midpoint. If you're going to require proof of price
25 impact, why not do away with market efficiency? The

1 whole premise of the other economic theory that you rely
2 on is that market efficiency is irrelevant. Some
3 information impacts the market, whether efficient or
4 not, and some doesn't, whether efficient or not. I
5 think that's the basic economic argument the other
6 side's making, correct?

7 MR. STREETT: Yes, Your Honor.

8 JUSTICE SOTOMAYOR: So why bother with Basic
9 at all if we're going to do what you're suggesting --

10 MR. STREETT: We agree --

11 JUSTICE SOTOMAYOR: -- turn the -- turn the
12 class certification into a full-blown merits hearing on
13 whether loss causation has been proven?

14 MR. STREETT: It is not loss causation.
15 It's just whether the price was distorted at the time of
16 the misstatement and at the time the purchases were
17 made. Loss causation deals with the later price
18 declines after a corrected disclosure. And we agree
19 that it is a midpoint because the question should be
20 whether the market price was distorted. We don't think
21 looking at whether the market is efficient as a whole,
22 how many shares are trading, how many analysts are
23 following the stock is very relevant or instructive.
24 And, in fact, this would remedy some of Basic's
25 underinclusiveness and overinclusiveness.

1 JUSTICE KENNEDY: Can you tell me, based on
2 your experience, compare the -- the cost, the extent of
3 time, the difficulty of showing under Basic the
4 efficient -- that there is an efficient market, and
5 compare and contrast that with undertaking an event
6 study. Is the latter much more costly, much more
7 time-consuming?

8 MR. STRETT: No, Your Honor. They're about
9 the same. And, in fact, plaintiffs are commonly using
10 event studies right now as part of their market
11 efficiency showing, because one of the factors courts
12 are requiring for market efficiency is showing a
13 reaction between price and unexpected corporate
14 information throughout the class period. So, in fact,
15 they're running these events studies for the entire
16 class period, where all our position would do is require
17 them to look at the alleged misrepresentations in the
18 case, that is to say what really matters, and look at
19 whether they distorted the market price as opposed to --

20 CHIEF JUSTICE ROBERTS: Well, how hard is it
21 to show that the New York Stock Exchange is an efficient
22 market?

23 MR. STRETT: Well, the courts look at
24 several factors. Now, admittedly, virtually all of the
25 time, those lead to a finding of yes, but --

1 CHIEF JUSTICE ROBERTS: So I would think the
2 event study they are talking about would be a lot more
3 difficult and laborious to demonstrate than market
4 efficiency in a typical case.

5 MR. STREETT: Well, just to take this case
6 for an example, the plaintiff's expert used an event
7 study of all of the unexpected corporate news throughout
8 the entire class period to prove market efficiency
9 because courts have said that's one important factor to
10 show market efficiency. We would just focus the event
11 study like a laser on the only thing that matters to
12 show whether or not the misrepresentation distorted the
13 market price.

14 JUSTICE BREYER: What happens if the -- if
15 the plaintiffs say, Your Honor, I have 5,000 people
16 here, all of whom bought the stock on the New York Stock
17 Exchange between March 15 and April 15, and as far as
18 people who had other kinds of reliance, we'll bring a
19 separate case about them later. But everybody in this
20 case bought on the New York Stock Exchange and our
21 theory of this case is that the stock exchange did
22 absorb the information and the price went up and then
23 went down.

24 Now, what -- what reason is there for
25 purposes of certification to go beyond the efficient

1 market? Is it good enough? I mean, why not? They all
2 bought on the exchange. It's not an irrelevancy.
3 Everybody would have to say it's certainly relevant to
4 the case and they all have the issue in common.

5 MR. STREETT: Yes --

6 JUSTICE BREYER: Why go into the event
7 study? Why?

8 MR. STREETT: Because even in a generically
9 efficient market in a binary sense, misrepresentations
10 may not distort the market price. As both lower courts
11 have --

12 JUSTICE BREYER: Of course that's true.
13 Indeed, that's the defense. The defense is, well, Your
14 Honor, here it didn't. And the plaintiffs say, you're
15 right; we think it did, but if he's right and it didn't,
16 he wins. But you have to concede if they're right, you
17 win.

18 So why is that -- I don't understand why
19 that's an appropriate issue. I can -- I don't
20 understand still. Maybe it's the same. Why is that an
21 appropriate issue at the certification stage?

22 MR. STREETT: For precisely the same reasons
23 that common issues of market efficiency and publicity
24 are essential at the class certification stage.

25 JUSTICE SCALIA: How many -- how many of

1 these cases -- what percentage of these cases continue
2 once there has been class certification? Do you have
3 any idea?

4 MR. STRETT: Very few. Once there's been
5 class --

6 JUSTICE SCALIA: Very few. Once you get the
7 class certified, the case is over, right?

8 MR. STRETT: Yes. And less than one third
9 of one percent actually go to a verdict.

10 JUSTICE BREYER: I see that and I understand
11 that. But that still strikes me as a different legal
12 issue, and your answer is, well, we decide other things
13 at the class certification stage. Now, I might put in
14 parenthesis: Which don't belong there? So if -- why
15 are we deciding any of -- why, in other words? I still
16 have my question, why?

17 MR. STRETT: Because if market efficiency
18 and publicity were not considered at the class
19 certification stage, then the plaintiff would just have
20 to plead an efficient market and would immediately go,
21 you know, to collect \$200 and pass go and get right to
22 class certification. That cannot be what Basic meant
23 when it said the presumption of reliance depends on
24 plaintiffs relying in common on a misrepresentation that
25 distorted the market price.

1 And I would just point out that the
2 government and the Fund have conceded that price impact
3 evidence can be considered at the class certification
4 stage.

5 JUSTICE ALITO: Can I ask you a question
6 about these event studies to which you referred. How
7 accurately can they distinguish between the effect of
8 the -- the effect on price of the facts contained in a
9 disclosure and an irrational reaction by the market, at
10 least temporarily, to the facts contained in the
11 disclosure?

12 MR. STREETT: Event studies are very
13 effective at making that sort of determination. In
14 fact, in this particular case, the expert testified that
15 she had done that sort of separation of effects before,
16 but she was not asked to do so in this case. And that's
17 at JA 410 to 411. And the law professors and others
18 have explained in great detail how the event studies
19 work.

20 But in any event, that's a proper burden to
21 place on the plaintiff because they are the ones that
22 are invoking this powerful presumption to bypass the
23 requirement of common actual reliance. They are the
24 ones who should have to show that it's the
25 misrepresentation that distorted the market price and

1 not some other irrational reaction.

2 But I wanted to mention that at page 26 of
3 the government's brief and page 53 of the Fund's brief,
4 they concede that price impact evidence should come in
5 at class certification, but they want to make it only
6 one factor in determining whether the markets were
7 efficient. Well, why would you extend all your time
8 looking at market efficiency and looking at price impact
9 as only one factor instead of looking at the thing that
10 actually matters, whether the price was distorted.

11 And if I could reserve the balance of my
12 time, Mr. Chief Justice.

13 CHIEF JUSTICE ROBERTS: Thank you, counsel.
14 Mr. Boies.

15 ORAL ARGUMENT OF DAVID BOIES.

16 ON BEHALF OF THE RESPONDENT

17 MR. BOIES: Mr. Chief Justice, and may it
18 please the Court:

19 I want to begin by emphasizing, as this
20 Court did in Basic, that the premise of the Basic
21 decision was not economic theory; it was commerce. This
22 Court said the premise was Congress's premise. And I
23 think that when this Court decided the Amgen case, it
24 said that the fraud on the market presumption was a
25 substantive doctrine of Federal securities law. This is

1 something that has been embedded in the law. It has
2 been ratified by Congress in the PSLRA and in SLUSA. It
3 is something that Congress has legislated assuming that
4 this was the law.

5 For example, in SLUSA, what Congress did, as
6 this Court is aware of from last month's decision, is
7 that it moved securities class actions out of State
8 courts and into Federal courts. It said you can't bring
9 class actions under State law.

10 JUSTICE ALITO: What do you make of
11 Section -- what do you make of Section 203 of the PSLRA,
12 which says that "Nothing in this Act or the amendments
13 made by this Act shall be deemed to create or ratify any
14 implied private right of action"? Do you think that was
15 a ratification of Basic?

16 MR. BOIES: Well, Your Honor, what this
17 Court said in Amgen afterwards is that what the -- what
18 Congress did was it did ratify the private cause of
19 action. And whether that was right or wrong, that is
20 what this Court held in Amgen just a year or so ago.

21 JUSTICE SCALIA: Did we refer to Section 203
22 --

23 MR. BOIES: You did not.

24 JUSTICE SCALIA: -- in connection with that
25 dictum?

1 MR. BOIES: I do not -- I do not believe
2 that you did, Your Honor.

3 JUSTICE SCALIA: I think maybe we didn't
4 know about it, as the parties here seemingly did not
5 know about it. I don't think it was cited in the
6 briefs.

7 MR. BOIES: But whether or not you conclude
8 that that was ratified or not, Your Honor, I think
9 what -- what you must conclude is that when Congress
10 acted both with respect to the PSLRA and even more so
11 with respect to SLUSA, it acted on the assumption that
12 they were legislating on the backdrop of the
13 fraud-on-the-market theory. The SLUSA -- the SLUSA
14 decision -- the SLUSA legislation makes no sense without
15 the fraud on the market.

16 JUSTICE SCALIA: Of course. But -- but to
17 act on the assumption that the courts are going to do
18 what they've been doing is quite different from
19 approving what the courts have been doing. As I
20 understand the history of these things, there was one
21 side that wanted to overrule Basic and the other side
22 that wanted to endorse Basic, and they did neither one.
23 They simply enacted a law that assumed that the courts
24 were going to continue Basic. I don't see that that
25 is -- is necessarily a ratification of it. It's just an

1 acknowledgment of reality.

2 MR. BOIES: I think, obviously, the Court
3 will decide. But I think that when you look at what
4 Congress has done, and they have legislated based on the
5 assumption of what the law is and they have made a
6 decision that, as I think the Court recognizes, would
7 never have been made in SLUSA if -- if they did not --
8 if Congress did not believe that the fraud-on-the-market
9 theory exists.

10 JUSTICE SOTOMAYOR: Mr. Boies, I don't know
11 that I fully understood your point in your brief as to
12 why proving price impact was so difficult. Is it equal
13 to proving market efficiency? Is it less burdensome,
14 more burdensome? Why can't it be done at the class
15 certification stage?

16 MR. BOIES: Sure.

17 JUSTICE SOTOMAYOR: And the question I asked
18 your adversary: If we believe price impact is
19 necessary, why keep Basic if we're going to put it in a
20 class certification?

21 MR. BOIES: Let me answer in the context of
22 this particular case. In this particular case,
23 Halliburton repeatedly said to analysts that their
24 insurance and other reserves were adequate to cover any
25 asbestos exposure. Those assertions proved to be not

1 accurate. The day that it was clear that they were not
2 accurate, December 7, 2001, the stock price dropped 42
3 percent. There were no confounding factors. Their
4 expert says December 7th was all about asbestos.

5 Now, we have a dispute as to what their --
6 their news that was revealed on December 7th was
7 expected or unexpected. They said it was unexpected.
8 They were caught unaware. We said they knew it all the
9 time and we've got some documents that indicate that.
10 But whether we are right or they are right, that is
11 clearly a merits decision. That's clearly not a class
12 certification issue.

13 JUSTICE KENNEDY: But why couldn't that same
14 showing be made under the law professors' theory of an
15 event study at the certification stage?

16 MR. BOIES: You could, Your Honor, and with
17 respect to December 7th, I think that would not be so
18 difficult. But there are nine dates and with respect to
19 five of those nine dates when there was news revealed,
20 they claim confounding factors. So what you have to do
21 is you have to separate out the confounding factors, the
22 allegedly confounding factors, with respect to each one
23 of those dates, and you've got to do a detailed event
24 study and in addition --

25 JUSTICE KENNEDY: For each one of -- of --

1 MR. BOIES: For each -- for each day --

2 JUSTICE KENNEDY: Oh, each day.

3 MR. BOIES: -- you've got to look at what
4 the confounding factors are and you have to try to
5 separate them. That's very complicated. It takes a lot
6 of time. It's very expensive. It's a lot of expert
7 testimony. It is why these things, for example, at the
8 summary judgment stage, are very complicated.

9 Now, an event study that demonstrates the
10 efficiency of the market is far simpler. Halliburton
11 conceded the efficiency of this market. This is not a
12 case in which there is any doubt about the efficiency of
13 the market. Halliburton has repeatedly conceded the
14 efficiency of this market. And I think that when you
15 are trying to prove market efficiency, all you have to
16 do is demonstrate that the basic premise that generally
17 markets take into account, well-developed markets, take
18 into account publicly available news, and you can do
19 that relatively simply. Trying to separate out all of
20 the factors that you need to separate out in order to
21 determine whether a culpable misrepresentation was the
22 cause of a price change and how much of that price
23 change was due to that culpable information is very
24 complicated.

25 JUSTICE KENNEDY: But even if Basic did not

1 rely on economic theory, and there is a dispute on
2 that -- I think the opinion is not quite clear on that
3 one way or the other -- if later economic theories show
4 that the market doesn't react in the way Basic assumed
5 it automatically did, then certainly Congress would not
6 wish to foreclose the Court from considering that new
7 evidence if it was a strong, clear and convincing, et
8 cetera.

9 MR. BOIES: Well, first, Your Honor, I'd say
10 three things about that. First, I would say that
11 Basic's premise is not an economic theory. It's not a
12 premise of economic theory. It is a premise of
13 Congress. That's what Basic held, and I think correctly
14 held, that the -- the whole premise of the securities
15 laws is that when you make fraudulent
16 misrepresentations, you make them public, it affects the
17 market price.

18 The second thing is there hasn't been
19 anything that has changed since Basic that makes Basic
20 less applicable.

21 JUSTICE ALITO: But, Mr. Boies, to say that
22 false representation affects the market price is quit
23 different from saying that it affects the market price
24 almost immediately, and it's hard to see how the Basic
25 theory can be sustained unless it does affect the market

1 price almost immediately in what Basic described as an
2 efficient market. Isn't that true? Why should someone
3 who purchased the stock on the day, shortly you know, an
4 hour or two after the disclosure, be entitled to
5 recovery if in that particular market there is some lag
6 time in incorporating the new information.

7 MR. BOIES: I think -- I think Your Honor is
8 right that if there is lag time in a particular market
9 somebody who has purchased immediately after the
10 misrepresentation would not be entitled to recover.
11 However, in this case and in most cases that isn't an
12 issue because in most cases, what the class-action
13 period is, is something that gives all of the
14 misrepresentations full-time to permeate into the
15 market, so it is theoretically possible that you could
16 have a market where there is a lag time. Although, I
17 will say that since Basic was decided that lag time has
18 gotten shorter and shorter. Whatever -- whatever the
19 truth is about how efficient markets were, they are
20 massively more efficient today than they were in 1988.
21 In 1988, people were still sitting home reading Barron's
22 to try to figure out what was happening in the stock
23 market. Today you have real-time information. You have
24 all sorts of ways of communicating information.
25 People -- people strive to be able to trade in a second

1 faster.

2 JUSTICE KENNEDY: But the Petitioners say
3 that this has produced a whole new genre of investors
4 that are quite different from the fellow that's sitting
5 at home reading the Wall Street Journal.

6 MR. BOIES: But all of those --

7 JUSTICE KENNEDY: And your theory doesn't
8 seem to take that into account.

9 MR. BOIES: It does, Your Honor, because all
10 of those people rely on the integrity of the market.
11 They talk about these high-frequency traders that trade
12 in and out. Well, if they trade in and out during a
13 day, most of them will not be affected by this because
14 they will have gone in and come out with the
15 misrepresentation intact. It's only when somebody buys
16 when the price is inflated or artificially depressed and
17 then sells after the corrected disclosure that there is
18 damage. These people are all buying and selling based
19 on the integrity of the market price. In fact, when you
20 talk about these trading programs, those trading,
21 programs, even more than the Barron's reader at home, is
22 relying on the integrity of the market price because
23 that's all they have to rely on.

24 If you think about it, if you went to one of
25 these people with these trading programs and said,

1 you're going to trade on this stock, would you trade on
2 the stock if you knew that it was artificially inflated,
3 of course they wouldn't. Everybody who buys assumes
4 that that market price is -- is fraud- free.

5 JUSTICE KENNEDY: Well, you're saying that
6 the events -- that the law professors' event study
7 theory is flawed, then?

8 MR. BOIES: No. You can have event studies,
9 and one of the things that an event study does is it
10 attempts to determine whether or not a particular price
11 movement was related to a particular piece of
12 information. That will tell you whether that price
13 movement is related to something that is culpable or not
14 culpable.

15 JUSTICE ALITO: I didn't understand what you
16 just said. Are you saying there are not categories of
17 investors who might say to themselves, You know what?
18 There is a possibility that the price of this stock on
19 this particular day might be artificially inflated by
20 some statement that was made in the past that isn't
21 true, but I'm going to buy it anyway because I still
22 think it's either, it's undervalued or because there are
23 some other statistics regarding the market that tell me
24 that this price is going to go up.

25 You tell me that there are -- there are not

1 large categories of investors who think that way?

2 MR. BOIES: I think there are not large
3 categories of investors that think that way, and I think
4 there is absolutely no empirical evidence at all that
5 there are large categories of investors that think that
6 way.

7 Could there be somebody who says, I know
8 this is fraudulent, but I think I can buy; I know it's
9 artificially inflated, but I think I can buy and ride it
10 up and I can get out before the market knows that there
11 is an artificial inflation. There might be somebody
12 like that and that's why Basic provides for a rebuttable
13 presumption. You can --

14 JUSTICE GINSBURG: May I ask you about the
15 rebuttable presumption, Mr. Boies. You agree that the
16 Basic is a presumption and that it can be rebutted, but
17 you say that's a question for the merits. What
18 difference does it make at what stage the rebuttal is
19 allowed? What practical difference does it make if the
20 inquiry is made at the certification stage rather than
21 the merits stage?

22 MR. BOIES: I think it makes -- it makes two
23 differences, Your Honor. One is it would inevitably put
24 off the class certification stage because now you would
25 have to have a discovery on issues that are ordinarily

1 considered to be merits issues. The way an action now
2 works is that you will have just very limited class
3 certification discovery and you won't get to the full
4 merits discovery until you get past class certification.
5 Now, a lot of cases fail class certification. The idea
6 that the class certification is not a -- a important
7 step is simply wrong.

8 A lot of cases fail class certification.
9 But once you have passed class certification, now you go
10 into merits discovery. If you were going to decide
11 these issues that are ordinarily today decided at the
12 merits stage, you would have to delay class
13 certification until you had that merits discovery.

14 CHIEF JUSTICE ROBERTS: You don't dispute,
15 though, that you usually don't get to the merits stage
16 once the class has been certified, do you?

17 MR. BOIES: That is true, Your Honor, but a
18 lot of that is because there are summary judgment
19 motions. Remember, you have -- you have three merit
20 stages already, a pleading stage, which under the PSLRA,
21 under this Court's decision in Dura, is a real obstacle;
22 second, you have summary judgment; and then third, you
23 have the trial. More than half of all securities class
24 actions, summary judgment is granted in whole or in
25 part, 37 percent wholly, another 25 percent in part. So

1 the summary
2 judgments --

3 CHIEF JUSTICE ROBERTS: Where -- where is
4 certification in that timeline?

5 MR. BOIES: It goes -- it goes both ways.
6 Generally, you have summary judgment after class
7 certification.

8 CHIEF JUSTICE ROBERTS: Right.

9 MR. BOIES: You could have summary judgment
10 at the class certification stage. I mean, for example,
11 if you wanted to move in a particular case, if you
12 wanted to move price impact or materiality or any issue
13 into an earlier time frame, there's nothing that
14 prevents a defendant from making a motion for summary
15 judgment on that issue. And, in fact, if -- if there's
16 any doubt about that, this Court could easily clarify
17 that. That would allow you to have class certification
18 in a temporal way at the same time that you were dealing
19 with the merits. But -- but the issue on the merits is
20 that if you don't have a discovery, you can't decide
21 these issues obviously. And second, the cost and
22 expense at the class action certification stage and the
23 time delay would increase enormously, because now you
24 would have to have these detailed event studies not just
25 to prove efficiency of the market, which was conceded

1 here, and if it hadn't been conceded, we could have
2 demonstrated it, you also have to show what the impact
3 was of the particular allegedly culpable
4 misrepresentation and disclosure.

5 And, for example, in -- in the -- in the
6 case that -- that we have here, with respect to eight of
7 the nine disclosure dates, we would -- we would have a
8 detailed disagreement and detailed expert reports and
9 expert testimony that would go to what was the price
10 impact, what was the damage in this particular case.

11 JUSTICE SCALIA: Mr. Boies, you've said
12 that -- that a lot of class certification motions are
13 denied. I had thought that your friend said that that
14 is very rare except in the Second Circuit.

15 MR. BOIES: Well --

16 JUSTICE SCALIA: Did I hear that wrong,
17 or --

18 MR. BOIES: -- I mostly --

19 JUSTICE SCALIA: -- is he wrong?

20 MR. BOIES: Well, I think he's wrong. My
21 personal experience is mostly with the Second Circuit in
22 cases like the Deutsche Bank case. But the Deutsche
23 Bank case did not relate to rebutting on the basis
24 of price impact. In the Deutsche Bank case, Judge
25 Forest held that there was not an efficient market.

1 JUSTICE KENNEDY: Well, my question along
2 the same lines is: If the misrepresentation is
3 established from that category of cases, are there many
4 that are still not certified? Because that would be
5 inconsistent with your whole theory that the market is
6 almost always efficient.

7 MR. BOIES: Well, you know, we don't argue
8 that the market is -- is always efficient, Your Honor.
9 There is a lot of litigation about whether particular
10 markets are efficient, less so with respect to New York
11 Stock Exchange markets, more with respect to NASDAQ and
12 other markets, but there is a lot of litigation as to
13 whether particular markets are or are not efficient.
14 And, indeed, we went to the expense in this particular
15 case of doing an event study because we were concerned
16 that they would challenge the efficiency of the market.
17 They didn't, but because they could and because that was
18 a normal kind of thing for a defendant to do --

19 JUSTICE SOTOMAYOR: I thought --

20 MR. BOIES: -- we did that.

21 JUSTICE SOTOMAYOR: -- I thought there were
22 two questions, and I don't know that you've really
23 answered the two. I thought your colleague was talking
24 about less than one percent, whatever the figure was, is
25 of cases that were certified as classes, how many go to

1 trial. You said something different, which is that not
2 every class is certified.

3 Do you have a percentage for the amount --
4 the number -- for that number?

5 MR. BOIES: I don't have -- I don't have a
6 percentage of the classes that are not certified, Your
7 Honor. But Your Honor is completely correct, that what
8 he was talking about was the number of these cases that
9 actually go to trial. As I say, more than half of them,
10 a summary judgment is granted in whole or in part. A
11 very large number of them are now wiped out at the
12 pleading stage as well. So the idea that there are not
13 significant merits filters that prevent cases from going
14 to trial is simply wrong, both at the pleading stage and
15 at the summary judgment stage. And the question really
16 is: Are you going to have a fourth?

17 JUSTICE SOTOMAYOR: Do you know any article
18 that talks about that -- those numbers?

19 MR. BOIES: I -- I don't, Your Honor. I
20 apologize.

21 JUSTICE SCALIA: Mr. Boise, you and I both
22 agree that the PSLRA assumes Basic. Now, we differ on,
23 you know, what that means, but it does assume it.
24 What -- and -- and so those provisions would -- would
25 sort of be useless if Basic were entirely overruled.

1 What if we adopted the professor's, what,
2 Basic writ small, if -- if we adopted their approach,
3 would those provisions of the PSLRA still be effective?

4 MR. BOIES: I think -- I think the
5 provisions of the PSLRA would still be effective, Your
6 Honor. I think with respect to SLUSA, it's a somewhat
7 different issue. I think that -- I think if you -- if
8 you adopted those -- those provisions with respect to
9 what's proposed, the PSLRA still would make sense, but I
10 don't think SLUSA would.

11 JUSTICE SCALIA: All right.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.

13 MR. BOIES: Thank you.

14 CHIEF JUSTICE ROBERTS: Mr. Stewart.

15 ORAL ARGUMENT OF MALCOLM L. STEWART

16 ON BEHALF OF UNITED STATES

17 AS AMICUS CURIAE, SUPPORTING RESPONDENT

18 MR. STEWART: Mr. Chief Justice, and may it
19 please the Court:

20 I'd like to begin by addressing two of the
21 respects in which the Petitioners's counsel argued that
22 circumstances have changed since this Court's decision
23 in Basic. And the first -- one of these was that
24 investors have adopted new strategies that, in his view,
25 don't rely on the integrity of the market price. And I

1 think it's certainly true that investors have devised a
2 wide array of strategies in an effort to beat the
3 market, but it's hard to imagine one that would render
4 irrelevant evidence that the market price had been
5 distorted by fraud.

6 For example, a particular investor might
7 think there are particular types of information that the
8 market doesn't react to quickly enough, and if I'm
9 following that information in realtime and I can trade
10 before the market catches on, then I can make money, I
11 can buy low and sell high. Now, that strategy is
12 certainly going to be undermined if there is other
13 information bearing on the market price, the falsity of
14 which that investor is not aware of that caused the
15 market price to be inflated.

16 Now, I'd -- would agree with you, Justice
17 Alito, that in theory, there could be an investor who
18 says in a particular circumstance, I think the gain that
19 I can make by taking advantage of the new information to
20 which the market price has not yet reacted will more
21 than counterbalance the loss I will suffer when the
22 truth about the unrelated information comes to light.
23 That could happen, but even for an investor of that
24 sort, the distortion wouldn't be irrelevant. It would
25 just be a factor that could be counteractive.

1 And the other thing I would say about the
2 efficiency of the market is that even an investor who is
3 attempting to make money by being the first to take
4 advantage of new information is relying, in essence, on
5 the ultimate ability and tendency of the market to
6 incorporate the information; that is, an investor who
7 thinks that a stock is currently undervalued based on
8 the information he has presumably thinks that in time,
9 the -- the stock will no longer be undervalued, the
10 market will come to appreciate the significance of the
11 new information. That would be the basis for his
12 anticipating that the stock price will rise. And so
13 even that strategy is dependent in a fundamental way on
14 the propensity of new information to -- to change the
15 market price.

16 The second thing I wanted to respond to was
17 Petitioners's assertion that Basic is out of keeping
18 with this Court's more recent decisions regarding the
19 requirements of Rule 23. And I think that in fact, with
20 -- at least with respect to the interaction between the
21 merits and Rule 23, the court in Basic did precisely
22 what this Court's decisions in Wal-Mart and Comcast tell
23 courts they ought to do; that is, the court in Basic was
24 ruling on an appeal from a class certification decision,
25 and it was confronted with two competing visions of what

1 the reliance requirement of the Section 10(b) action
2 should comprise.

3 One of them was the defendant's view that to
4 establish reliance, a plaintiff had to show that he or
5 she actually read the relevant disclosure and took it
6 into account in making a trading decision. The other
7 vision of reliance was the fraud-on-the-market
8 presumption that the -- the court ultimately adopted.
9 And the court in Basic recognized that it had to decide
10 this merits question at the class certification stage
11 because the answer to that question would control
12 whether the reliance element was susceptible of common
13 proof.

14 CHIEF JUSTICE ROBERTS: Counsel?

15 MR. STEWART: If the -- I'm sorry.

16 CHIEF JUSTICE ROBERTS: Sorry to interrupt
17 your train of thought, but were the feasibility and
18 prevalence of event studies something that was around
19 when Basic was decided?

20 MR. STEWART: I don't know exactly what
21 mode. I believe that event studies in some form were
22 used to establish both the efficiency of the market and
23 the potential impact of the misstatement on the price.
24 I don't know the extent to which their sophistication
25 matched the sophistication of event studies today. I

1 would tend to assume that they were much less
2 sophisticated than they are now.

3 JUSTICE ALITO: Could you explain how the
4 requirement that Basic imposed of proving publicity at
5 the certification stage is consistent with the Court's
6 theory in Amgen?

7 MR. STEWART: I think the -- the theory in
8 Amgen is that in order to decide whether something has
9 to be proved at the class certification stage, you ask
10 first, is it susceptible of common proof; and second, if
11 the class is certified and the -- the statement or the
12 fact is ultimately disproved down the road, is the
13 effect going to be that the class splinters or that all
14 plaintiffs lose in common? And the Court's theory in
15 Amgen, the rationale for saying that publicity had to be
16 proved at the class certification stage, was that if it
17 were proved down the road that the statement was not
18 made publicly, some plaintiffs might still have good
19 claims because they would have heard and relied upon the
20 information, even though it wasn't communicated to the
21 public, and therefore the effect of disproof of
22 publicity would not be to cause all class members to
23 lose; it would be to cause the class to splinter.

24 JUSTICE ALITO: Do you think that's a
25 realistic -- that is something that's likely to happen

1 in other than extremely rare cases?

2 MR. STEWART: Well, there -- there are
3 certainly plenty of securities fraud cases over the
4 years that involved private misrepresentations made
5 one-on-one by a broker, a salesperson, etcetera. I take
6 your point that in terms of practical significance it is
7 the case that the recoveries in the large class actions
8 dwarf the ones in individual suits.

9 JUSTICE BREYER: Yes, that's -- that's
10 what's nagging at me that I don't fully understand. It
11 may be elementary, but if we had a case where all the
12 plaintiffs had in fact, and every one in the class had
13 bought on the New York Stock Exchange at such and such a
14 period, then I guess in principle neither would be
15 appropriate for the classification stage --
16 certification stage.

17 MR. STEWART: I'm sorry?

18 JUSTICE BREYER: Neither would be
19 appropriate for the certification stage. You wouldn't
20 have to prove efficient markets; all you would have to
21 do is allege them; because, after all, if they do exist
22 then the reliance element is proved subject to rebuttal;
23 and if the rebuttal wins, it's not. And that's not a
24 question if it's all in common, it's all in common.
25 That's -- that's the conceptual point I haven't quite

1 understood.

2 MR. STEWART: Well, at least to the
3 efficiency of the market, it wouldn't be the case that
4 disproof of efficiency would defeat the claim of every
5 class member.

6 JUSTICE BREYER: Why not?

7 MR. STEWART: Because a particular class
8 member, even without showing an efficient market could
9 show that he or she personally --

10 JUSTICE BREYER: If we had a class, they all
11 conceded that they bought it on the market at the same
12 time, had no information, then it would go to the later
13 stage?

14 MR. STEWART: If the class were defined in
15 that manner, as people who had no such information, then
16 -- then the class wouldn't splinter.

17 JUSTICE KAGAN: Mr. Stewart, can I just --
18 can I ask a more general question? You're representing
19 the SEC here, the principal regulators of the securities
20 markets and the securities industry. So if -- I guess
21 it's a two-part question. If Basic were overruled, what
22 is -- what is the view as to what, how that would affect
23 the securities industry and how it would affect
24 individual decisionmaking with respect to securities?
25 And same question for, if the law professors' position

1 was adopted.

2 MR. STEWART: Well, let me take the first
3 part first, because I think in part it illustrates an
4 important aspect of this case that tends to get lost.
5 We are arguing about this as though it's procedure, but
6 really what is fundamentally at issue is what is the
7 class of, what is the category of investors who would
8 have a potentially valid Section 10(b)(5) action. That
9 is, the Petitioners' view is the only people who could
10 be proper plaintiffs in a Section -- in a private
11 Section 10(b) suit, whether a class action or an
12 individual action, are people who personally read,
13 reviewed, subjectively took account of the false
14 information. And the view on the other side, the view
15 under -- under Basic, is that any person who bought
16 stock at the inflated price on the market, a price
17 inflated by fraud, and subsequently lost money as a
18 result when the truth was made known, any such person
19 would have a remedy; and if Basic were overruled, if
20 people were told, if you buy without doing this sort of
21 research into primary sources, you will have no
22 potential recovery at the end of the day, I don't know
23 that the SEC has a defined view about exactly what the
24 consequences would be; but certainly the consequences
25 are potentially dramatic.

1 You have an amicus brief filed by
2 institutional investors, many of whom rely on indexing
3 strategies, and they try to save management fees by not
4 doing all the research into the primary sources, by
5 allowing the market to do most of the work and then
6 buying stocks that are broadly representative of the
7 market. And they've at least --

8 JUSTICE SCALIA: If the -- if the SEC brings
9 a fraud action, can it -- can it rely on the -- on the
10 market theory, fraud-on-the-market theory?

11 MR. STEWART: Well, the SEC would have no --
12 wouldn't and would have no need to do so, because
13 reliance wouldn't be an element of the SEC's cause of
14 action. The SEC would have to establish that there was
15 a violation, but it wouldn't have to establish that it
16 or any individual investor relied; and so the
17 institutional investors at least have represented to the
18 Court that their investment strategies will need to
19 change if they have to choose between saving money by
20 relying on indexing strategies and having available
21 potential avenues for recovery if it turns out --

22 JUSTICE KENNEDY: Can you get to part two of
23 Justice Kagan's question? Which is what is your view of
24 the -- of the consequences if we adopt the law
25 professors' view?

1 MR. STEWART: I understand the law
2 professors, there were a few law professors' briefs. I
3 understand the one you're referring to be the one that
4 basically advocated a shift away from analyzing the
5 general efficiency of the market and focusing only on
6 the effect or lack of effect on the -- the particular
7 stock. I don't think that the consequences would be
8 nearly so dramatic. In fact if anything, that would be
9 a net gain to plaintiffs, because plaintiffs already
10 have to prove price impact at the end of the day.

11 CHIEF JUSTICE ROBERTS: Thank you, counsel.
12 Mr. Streett, you have 5 minutes remaining.

13 REBUTTAL ARGUMENT OF AARON M. STREETT

14 ON BEHALF OF THE PETITIONERS

15 MR. STREETT: Thank you. I'd like to start
16 with one statistical matter that was -- that was raised
17 by Justice Sotomayor. The most recent studies by NERA
18 and Stanford show that 75 percent of class certification
19 motions are granted in securities cases; and that number
20 is much, much higher with respect to New York Stock
21 Exchange companies that essentially have no way to
22 dispute market efficiency,

23 Now, I want to turn to the argument that --
24 that Basic --

25 JUSTICE GINSBURG: How many of those drop

1 out at the summary judgment stage?

2 MR. STRETT: Only 7 percent even make it to
3 the summary judgment stage, Your Honor. So out of
4 those, I think Mr. Boies is correct that maybe half are
5 granted and half are denied. But only 7 percent even
6 make it to that stage, because once the case gets passed
7 class certification, as this Court has recognized time
8 and again, there is an in terrorem effect that requires
9 defendants to settle even meritless claims.

10 Basic did not look to what Congress
11 intended. Congress did not even have a private cause of
12 action in Section 10(b), and the most analogous cause of
13 action for somebody who purchased in the after-market
14 context required a showing of actual reliance. So the
15 idea that this was somehow based on interpreting the
16 statute is nonsensical.

17 JUSTICE GINSBURG: Whatever it might have
18 been at the beginning, given the most recent
19 legislation, Congress took a look at the 10(b)(5) action
20 and it made a lot of changes. It made pleading
21 requirements. It's difficult to say that this --
22 Congress would have legislated all these constraints if
23 it thought there was no action to begin with.

24 MR. STRETT: The PSLRA includes securities
25 actions under both the 1993 and 1934 Act. It's not just

1 limited to 10(b)(5). So to Justice Scalia's point,
2 there is actually not a single provision of the PSLRA
3 that would be rendered inoperable.

4 Congress did take a look at it, Your Honor,
5 that's absolutely correct. It shows it thought about
6 embracing Basic and it thought about overruling Basic;
7 and it chose to do neither. When Congress wanted to
8 codify one of the judicially created elements of the
9 10(b)(5) cause of action, it did so expressly.

10 JUSTICE BREYER: What is to prevent now a
11 defendant from going in after the efficient market is
12 shown, and saying, well, we have our event study; and
13 our event study shows that this particular piece of
14 information had no impact, and therefore they are not
15 going to be able to prove reliance by just relying upon
16 efficient markets; and therefore don't certify the
17 class. Why couldn't you do that right now under Basic?

18 MR. STRETT: That is what we are asking
19 this Court to hold under our --

20 JUSTICE BREYER: Well, is there anything --
21 is there any court that said, no, you can't do that; we
22 forbid you even though it says in Basic that you're
23 allowed to rebut?

24 MR. STRETT: Yes, Your Honor, that's
25 precisely what the Fifth Circuit held in this case,

1 relying on Amgen to prohibit us from putting on our own
2 price impact evidence; and it acknowledged that there
3 was no price impact in this case. But it said: We have
4 to turn a blind eye to that fact.

5 And to Justice Breyer's point, I think
6 Justice Breyer is exactly correct, that market
7 efficiency, publicity and price impact are all in
8 precisely the same boat. They are all common issues,
9 and if one of those is missing, you do not have loss
10 causation if the class is limited to the exchange. But
11 I don't think this Court should do away with market
12 efficiency, publicity; and I think it should allow price
13 impact at the class certification stage. Otherwise the
14 fraud-on-the-market presumption is reduced to a pleading
15 requirement, not -- not something that must be
16 established at the class certification stage, as
17 Wal-Mart requires.

18 JUSTICE SOTOMAYOR: So your preference would
19 be to make the plaintiff bear the burden or just for
20 defendants to be able to rebut the price impact --

21 MR. STRETT: It would be most consistent
22 with Rule --

23 JUSTICE SOTOMAYOR: -- at a class
24 certification?

25 MR. STRETT: It -- it would be most

1 consistent with Rule 23 to place that burden on the
2 plaintiff because it's the plaintiff's duty to show that
3 common issues of reliance predominate. And the way the
4 plaintiff gets there is by showing that the plaintiff's
5 relied on -- in common on the misrepresentation at the
6 time it distorted the market price.

7 Congress recognized that the presumption was
8 created by this Court essentially sitting as a common
9 law court. Congress chose to remain silent, which
10 leaves the issue with this Court, where it began, to
11 consider under traditional principles of stare decisis,
12 in light of intervening developments, whether it should
13 be overruled.

14 The -- and it should be overruled for one
15 additional reason that we haven't gotten to this
16 morning, which is that the Basic-generated regime of
17 class actions is harming the very investors that it's
18 supposed to help. It is the small investors and the
19 shareholders that are paying these judgments out of
20 their own pocket, often to other shareholders, with a
21 huge cut for both sides' lawyers and insurance costs.

22 The Basic regime of class actions is a huge
23 net loss for shareholder wealth. And it's frequently
24 the small investors who bought before the class period
25 and held all the way through who are paying the judgment

1 because they hold at the time of the settlement, whereas
2 it's the large institutional frequency traders who
3 bought and sold many times during the class period that
4 are getting the money but are not having to pay any
5 because they don't hold at the end of the class period.

6 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

7 The case is submitted.

8 (Whereupon, at 11:18 a.m., the case in the
9 above-entitled matter was submitted.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A				
\$200 23:21	4:25 17:20	allows 8:23	1:7	aware 9:19 26:6
a.m 1:16 3:2	24:23 51:14	altogether 3:24	Argentina 13:25	42:14
55:8	addition 29:24	amendments	argue 39:7	
AARON 1:18	additional 54:15	26:12	argued 41:21	B
2:3,13 3:7	address 17:9	Amgen 12:1	arguing 9:13,15	back 16:1
50:13	addressed 6:3	13:17 15:17	48:5	backdrop 27:12
ability 16:12	addressing	25:23 26:17,20	argument 1:15	balance 25:11
43:5	41:20	45:6,8,15 53:1	2:2,5,8,12 3:3	Bank 38:22,23
able 32:25 52:15	adequate 28:24	amicus 1:24	3:7 4:19 5:1,2	38:24
53:20	admit 7:8	2:10 8:25	16:5 17:18	Barron's 32:21
above-entitled	admitted 13:1	41:17 49:1	19:5 25:15	33:21
1:14 55:9	admittedly	amount 40:3	41:15 50:13,23	based 20:1 28:4
absolutely 15:10	20:24	analog 4:10,20	arguments	33:18 43:7
18:12 35:4	adopt 49:24	5:6	17:13	51:15
52:5	adopted 41:1,2,8	analogous 3:16	Armonk 1:20	basic 3:11,13,19
absorb 21:22	41:24 44:8	11:6 51:12	array 42:2	3:23,25 4:9 5:2
accept 4:20	48:1	analysis 17:15	article 40:17	5:8,9,15,23 6:8
17:21 18:2	advantage 42:19	analysts 19:22	artificial 35:11	6:18 7:20 9:2,7
account 30:17	43:4	28:23	artificially 33:16	9:12,24 10:22
30:18 33:8	adversary 28:18	analyzing 50:4	34:2,19 35:9	11:7 13:8 17:2
44:6 48:13	advocated 50:4	announcement	asbestos 28:25	17:7,17,23
accurate 10:8,9	affect 31:25	13:22	29:4	18:9 19:5,8
10:24 29:1,2	47:22,23	answer 17:15	aside 5:7	20:3 23:22
accurately 24:7	after-market	23:12 28:21	asked 24:16	25:20,20 26:15
acknowledge	51:13	44:11	28:17	27:21,22,24
4:19 10:3,7	ago 26:20	answered 39:23	asking 4:12,23	28:19 30:16,25
acknowledged	agree 19:10,18	anticipating	6:7 52:18	31:4,13,19,19
53:2	35:15 40:22	43:12	aspect 48:4	31:24 32:1,17
acknowledgm...	42:16	anymore 6:22	assertion 43:17	35:12,16 40:22
28:1	agreeing 7:12	7:5	assertions 28:25	40:25 41:2,23
act 4:2 26:12,13	AL 1:3	anyway 18:15	assume 11:1	43:17,21,23
27:17 51:25	alike 3:22	34:21	40:23 45:1	44:9,19 45:4
acted 27:10,11	Alito 8:18 24:5	apologize 40:20	assumed 27:23	47:21 48:15,19
action 3:16 5:22	26:10 31:21	appeal 43:24	31:4	50:24 51:10
6:11 11:6,17	34:15 42:17	APPEARAN...	assumes 34:3	52:6,6,17,22
26:14,19 36:1	45:3,24	1:17	40:22	54:22
37:22 44:1	allege 46:21	applicable 31:20	assuming 26:3	Basic's 3:17
48:8,11,12	alleged 20:17	appreciate	assumption	16:23 17:24
49:9,14 51:12	allegedly 29:22	43:10	27:11,17 28:5	18:2 19:24
51:13,19,23	38:3	approach 5:21	attempting 43:3	31:11
52:9	allow 7:22,25	7:17,22 41:2	attempts 34:10	Basic-generated
actions 26:7,9	37:17 53:12	appropriate	automatic 16:24	54:16
36:24 46:7	allowed 9:20	22:19,21 46:15	automatically	basically 50:4
51:25 54:17,22	15:11 35:19	46:19	31:5	basis 38:23
actual 3:15,24	52:23	approving 27:19	available 30:18	43:11
	allowing 10:1	April 21:17	49:20	bear 53:19
	49:5	ARCHDIOC...	avenues 49:21	bearing 42:13

<p>beat 42:2 bedrock 3:14 began 54:10 beginning 51:18 behalf 1:18,20 2:4,7,10,14 3:8 25:16 41:16 50:14 believe 3:25 4:16,18 10:23 27:1 28:8,18 44:21 belong 23:14 benefits 3:19 best 4:11 beyond 21:25 binary 7:17,22 8:1,7,9 10:19 17:2 22:9 Blackmun 4:1 blind 53:4 boat 53:8 Boies 1:20 2:6 25:14,15,17 26:16,23 27:1 27:7 28:2,10 28:16,21 29:16 30:1,3 31:9,21 32:7 33:6,9 34:8 35:2,15 35:22 36:17 37:5,9 38:11 38:15,18,20 39:7,20 40:5 40:19 41:4,13 51:4 Boise 40:21 bother 19:8 bought 21:16,20 22:2 46:13 47:11 48:15 54:24 55:3 Breyer 13:20 21:14 22:6,12 23:10 46:9,18 47:6,10 52:10 52:20 53:6</p>	<p>Breyer's 53:5 brief 7:8 25:3,3 28:11 49:1 briefly 17:9 briefs 8:25 11:1 27:6 50:2 bring 16:12 21:18 26:8 brings 49:8 broadly 49:6 broker 46:5 burden 8:13 24:20 53:19 54:1 burdensome 28:13,14 business 10:18 buy 34:21 35:8,9 42:11 48:20 buying 33:18 49:6 buys 17:25 33:15 34:3 bypass 24:22</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 calculation 12:12 call 17:10 care 17:12 case 3:4 5:10,13 6:22 8:3 9:5 13:11,21,22 14:7 20:18 21:4,5,19,20 21:21 22:4 23:7 24:14,16 25:23 28:22,22 30:12 32:11 37:11 38:6,10 38:22,23,24 39:15 46:7,11 47:3 48:4 51:6 52:25 53:3 55:7,8 cases 6:4 10:1</p>	<p>11:19 23:1,1 32:11,12 36:5 36:8 38:22 39:3,25 40:8 40:13 46:1,3 50:19 catches 42:10 categories 34:16 35:1,3,5 category 39:3 48:7 caught 29:8 causation 11:12 11:18,21,23 12:9,12,14 16:4 19:13,14 19:17 53:10 cause 3:16 5:22 11:6,23 26:18 30:22 45:22,23 49:13 51:11,12 52:9 caused 42:14 certain 5:18 certainly 9:2 15:3,4 22:3 31:5 42:1,12 46:3 48:24 certification 8:8 8:16 9:14 10:1 14:23 16:23,25 18:16,19 19:12 21:25 22:21,24 23:2,13,19,22 24:3 25:5 28:15,20 29:12 29:15 35:20,24 36:3,4,5,6,8,9 36:13 37:4,7 37:10,17,22 38:12 43:24 44:10 45:5,9 45:16 46:16,19 50:18 51:7 53:13,16,24 certified 23:7 36:16 39:4,25</p>	<p>40:2,6 45:11 certify 52:16 cetera 31:8 challenge 17:16 39:16 change 5:15 30:22,23 43:14 49:19 changed 5:9,16 5:18,21 6:18 31:19 41:22 changes 51:20 Chief 3:3,9 9:9 10:2,21 20:20 21:1 25:12,13 25:17 36:14 37:3,8 41:12 41:14,18 44:14 44:16 50:11 55:6 choose 49:19 chose 52:7 54:9 circuit 8:23,24 18:17,21 38:14 38:21 52:25 circumstance 42:18 circumstances 41:22 cited 7:14 27:5 claim 12:25 15:23,23 16:13 16:14,17 29:20 47:4 claimed 9:12 claims 16:4 45:19 51:9 clarify 37:16 class 6:4,11 8:8 8:16 9:14,18 10:1 11:17,22 11:24 12:2,9 12:11,13,15,25 13:2,6,7,8,13 13:13 14:23 15:19,20,22,24 16:2,22,24</p>	<p>18:16,18 19:12 20:14,16 21:8 22:24 23:2,5,7 23:13,18,22 24:3 25:5 26:7 26:9 28:14,20 29:11 35:24 36:2,4,5,6,8,9 36:12,16,23 37:6,10,17,22 38:12 40:2 43:24 44:10 45:9,11,13,16 45:22,23 46:7 46:12 47:5,7 47:10,14,16 48:7,11 50:18 51:7 52:17 53:10,13,16,23 54:17,22,24 55:3,5 class-action 32:12 class-wide 6:5 classes 39:25 40:6 classification 46:15 classified 6:2,2,7 clear 29:1 31:2,7 clearly 3:13 29:11,11 closer 5:6 codify 52:8 colleague 39:23 collect 23:21 Comcast 6:1,9 43:22 come 25:4 33:14 43:10 comes 9:15 42:22 commerce 25:21 common 3:14 4:3 6:19 11:9 11:12 13:7 14:4,6,15,17</p>
--	---	--	---	---

<p>14:22 15:5 18:20 22:4,23 23:24 24:23 44:12 45:10,14 46:24,24 53:8 54:3,5,8 commonality 13:1 commonly 20:9 communicated 45:20 communicating 32:24 companies 3:22 16:25 17:1 50:21 Company 3:4 compare 20:2,5 competing 43:25 completely 40:7 complicated 30:5,8,24 comprise 44:2 concede 22:16 25:4 conceded 24:2 30:11,13 37:25 38:1 47:11 conceptual 46:25 concerned 39:15 conclude 27:7,9 confounding 29:3,20,21,22 30:4 confronted 43:25 Congress 3:15 5:13 11:5 26:2 26:3,5,18 27:9 28:4,8 31:5,13 51:10,11,19,22 52:4,7 54:7,9 Congress's 25:22 congressional 4:12</p>	<p>connection 26:24 consequences 3:21 48:24,24 49:24 50:7 consider 54:11 considered 14:23,25 15:2 15:12 23:18 24:3 36:1 considering 31:6 consistent 17:24 45:5 53:21 54:1 consistently 5:22,25 constraints 51:22 construction 17:13 construed 5:22 contained 24:8 24:10 contend 6:21 contest 6:22 contestable 5:4 contested 7:10 context 8:22 28:21 51:14 continue 23:1 27:24 continuing 17:21 contract 13:22 contrast 20:5 control 44:11 convincing 31:7 corporate 20:13 21:7 correct 10:15 15:10 18:6,8 18:11,13 19:6 40:7 51:4 52:5 53:6 corrected 19:18 33:17 correctly 18:18</p>	<p>31:13 cost 20:2 37:21 costly 20:6 costs 54:21 counsel 25:13 41:12,21 44:14 50:11 55:6 counteractive 42:25 counterbalance 42:21 course 3:23 5:2 9:15 11:3 22:12 27:16 34:3 court 1:1,15 3:10 4:9,19,22 5:20,25 6:3,5,8 6:9 8:11 9:2,5 9:20 10:16,17 13:17 14:22,24 15:11 16:23 17:3,6,20 25:18,20,22,23 26:6,17,20 28:2,6 31:6 37:16 41:19 43:21,23 44:8 44:9 49:18 51:7 52:19,21 53:11 54:8,9 54:10 Court's 36:21 41:22 43:18,22 45:5,14 courts 9:5 18:21 20:11,23 21:9 22:10 26:8,8 27:17,19,23 43:23 cover 28:24 covers 14:3 create 26:13 created 3:17 9:24 17:7 52:8 54:8 creating 4:22</p>	<p>culpable 30:21 30:23 34:13,14 38:3 curiae 1:24 2:10 41:17 currently 43:7 cut 54:21</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 D.C 1:11,23 damage 33:18 38:10 dates 29:18,19 29:23 38:7 DAVID 1:20 2:6 25:15 day 29:1 30:1,2 32:3 33:13 34:19 48:22 50:10 dealing 10:11 37:18 deals 19:17 December 29:2 29:4,6,17 decide 5:10 10:15 14:5,16 23:12 28:3 36:10 37:20 44:9 45:8 decided 3:12 5:12,18 15:5,8 25:23 32:17 36:11 44:19 deciding 23:15 decision 17:17 25:21 26:6 27:14 28:6 29:11 36:21 41:22 43:24 44:6 decisionmaking 47:24 decisions 43:18 43:22 decisis 54:11</p>	<p>declined 5:14 declines 19:18 deemed 26:13 defeat 47:4 defendant 37:14 39:18 52:11 defendant's 9:22 44:3 defendants 7:25 8:15,19 51:9 53:20 defended 11:8 11:10 defense 22:13,13 defined 47:14 48:23 delay 36:12 37:23 delayed 9:23 demonstrate 21:3 30:16 demonstrated 38:2 demonstrates 30:9 denied 38:13 51:5 Department 1:23 dependent 8:3 43:13 depends 23:23 depressed 33:16 Deputy 1:22 described 32:1 detail 24:18 detailed 29:23 37:24 38:8,8 determination 9:16 24:13 determine 6:6 30:21 34:10 determining 25:6 Deutsche 38:22 38:22,24 development 9:1</p>
---	---	--	--	---

developments 3:20 54:12	19:20 20:19 21:12 23:25	18:25 19:2 20:11,12 21:4	entitle 12:11	26:5 30:7
devised 42:1	24:25 25:10	21:8,10 22:23	entitled 32:4,10	37:10 38:5
dictum 26:25	42:5 54:6	23:17 25:8	equal 28:12	42:6
die 16:4	distortion 42:24	28:13 30:10,11	Erica 1:6 3:5	exception 8:4
differ 40:22	district 10:19	30:12,14,15	erroneous 3:13	exceptions 10:8
difference 15:16	18:20	37:25 39:16	especially 5:13	exchange 4:2
15:25 16:11	doctrine 25:25	43:2 44:22	9:5	12:23 13:14,15
35:18,19	documents 29:9	47:3,4 50:5,22	ESQ 1:18,20,22	16:25 20:21
differences	doing 27:18,19	53:7,12	2:3,6,9,13	21:17,20,21
35:23	39:15 48:20	efficient 7:5,24	essence 43:4	22:2 39:11
different 5:12	49:4	8:9 10:4,20,23	essential 9:4	46:13 50:21
11:20 12:12	doubt 9:24	13:19 15:8,25	22:24	53:10
13:15,21 15:19	30:12 37:16	16:18 17:1	essentially 7:7	exclusively
15:20 23:11	dramatic 48:25	19:3,4,21 20:4	9:6 15:18	11:21
27:18 31:23	50:8	20:4,21 21:25	50:21 54:8	exemption 3:18
33:4 40:1 41:7	driver 8:8	22:9 23:20	establish 6:4	exist 46:21
difficult 21:3	drop 50:25	25:7 32:2,19	7:23 8:13,16	exists 28:9
28:12 29:18	dropped 29:2	32:20 38:25	12:14,16 13:18	expected 29:7
51:21	due 30:23	39:6,8,10,13	44:4,22 49:14	expense 37:22
difficulty 20:3	Dura 36:21	46:20 47:8	49:15	39:14
direct 3:23 13:5	duty 54:2	52:11,16	established 39:3	expensive 30:6
directly 13:10	dwarf 46:8	effort 42:2	53:16	experience 20:2
disagree 7:15		eight 38:6	et 1:3 31:7	38:21
disagreement	E	either 15:23	etcetera 46:5	expert 6:9,11
38:8	E 2:1 3:1,1	34:22	event 17:11	21:6 24:14
disallowing	earlier 37:13	element 44:12	18:11 20:5,10	29:4 30:6 38:8
16:22	easily 37:16	46:22 49:13	21:2,6,10 22:6	38:9
disclosure 19:18	economic 3:14	elementary	24:6,12,18,20	experts 6:3
24:9,11 32:4	4:1,5 6:18	46:11	29:15,23 30:9	explain 45:3
33:17 38:4,7	10:14,18 11:1	elements 52:8	34:6,8,9 37:24	explained 24:18
44:5	11:4,6 17:15	embedded 26:1	39:15 44:18,21	exposure 28:25
discovery 35:25	17:16,19 19:1	embraced 3:15	44:25 52:12,13	express 3:16
36:3,4,10,13	19:5 25:21	embracing 52:6	events 10:5	expressly 52:9
37:20	31:1,3,11,12	emphasized	20:15 34:6	extend 25:7
discrete 13:7	economics 6:18	13:17	everybody 15:9	extent 10:8,9,10
disproof 45:21	economists	emphasizing	21:19 22:3	20:2 44:24
47:4	10:23	25:19	34:3	extremely 46:1
disproved 45:12	effect 24:7,8	empirical 35:4	everybody's	eye 53:4
dispute 29:5	45:13,21 50:6	enacted 11:5	16:4	eyeball 4:25
31:1 36:14	50:6 51:8	27:23	evidence 16:22	
50:22	effective 24:13	endorse 27:22	24:3 25:4 31:7	F
distinguish 24:7	41:3,5	enormously	35:4 42:4 53:2	facie 14:7
distort 22:10	effects 24:15	37:23	exact 15:22	fact 6:3,6 8:5 9:3
distorted 7:19	efficiency 7:17	entire 20:15	exactly 16:17,20	19:24 20:9,14
8:14 16:16	14:21 15:11	21:8	44:20 48:23	24:14 33:19
18:1,5 19:15	16:6,12,20	entirely 40:25	53:6	37:15 43:19
			example 21:6	45:12 46:12

<p>50:8 53:4 factor 21:9 25:6 25:9 42:25 factors 13:1 20:11,24 29:3 29:20,21,22 30:4,20 facts 8:3 24:8,10 fail 36:5,8 fair 14:2 false 31:22 48:13 falsity 42:13 far 21:17 30:10 faster 33:1 feasibility 44:17 Federal 25:25 26:8 fees 49:3 fellow 33:4 Fifth 52:25 figure 32:22 39:24 filed 49:1 filters 40:13 finding 20:25 fine 14:15 Finish 17:4 fire 6:23 first 5:20 17:12 31:9,10 41:23 43:3 45:10 48:2,3 five 29:19 FKA 1:6 flawed 34:7 focus 5:5 18:3 21:10 focusing 5:3 50:5 following 19:23 42:9 forbid 52:22 foreclose 31:6 Forest 38:25 form 11:21 44:21</p>	<p>fourth 40:16 frame 37:13 framework 18:9 fraud 10:1 11:14 11:24 16:13 25:24 27:15 34:4 42:5 46:3 48:17 49:9 fraud-on-the-... 27:13 28:8 44:7 49:10 53:14 fraudulent 31:15 35:8 free 34:4 frequency 55:2 frequently 54:23 friend 10:3 18:7 38:13 full 8:15 36:3 full-blown 19:12 full-time 32:14 fully 28:11 46:10 fund 1:6,9 3:5 6:21,23,24 11:10 24:2 Fund's 25:3 fundamental 9:7 16:24 43:13 fundamentally 5:11,20 48:6 further 4:11</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 3:1 gain 42:18 50:9 general 1:22 7:14,15 8:4 14:12 47:18 50:5 generally 7:10 7:13 8:5 30:16 37:6 generated 6:11 generically 22:8 genre 33:3</p>	<p>getting 55:4 Ginsburg 3:25 4:8,14,17 9:10 12:24 35:14 50:25 51:17 give 6:8 8:15 given 51:18 gives 32:13 glue 18:19 go 9:16 21:25 22:6 23:9,20 23:21 34:24 36:9 38:9 39:25 40:9 47:12 goes 16:1 37:5,5 going 16:19 18:15,24 19:9 27:17,24 28:19 34:1,21,24 36:10 40:13,16 42:12 45:13 52:11,15 good 22:1 45:18 gotten 32:18 54:15 government 6:20 11:10 24:2 government's 25:3 granted 36:24 40:10 50:19 51:5 great 24:18 group 13:24 guess 46:14 47:20</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 36:23 40:9 51:4,5 Halliburton 1:3 3:4 7:9 28:23 30:10,13 happen 42:23 45:25</p>	<p>happening 32:22 happens 21:14 hard 20:20 31:24 42:3 harmful 3:21 harming 54:17 hear 3:3 38:16 heard 12:2 45:19 hearing 19:12 hedge 6:23 held 5:25 9:22 13:17 18:18 26:20 31:13,14 38:25 52:25 54:25 help 54:18 hen's 8:25 herring 14:17 high 42:11 high-frequency 33:11 higher 50:20 history 27:20 hold 52:19 55:1 55:5 holding 9:4 holds 18:20 home 32:21 33:5 33:21 Honor 5:19 13:24 18:13 19:7 20:8 21:15 22:14 26:16 27:2,8 29:16 31:9 32:7 33:9 35:23 36:17 39:8 40:7,7,19 41:6 51:3 52:4 52:24 hour 32:4 Houston 1:18 huge 54:21,22 hypothesis 7:6</p>	<p style="text-align: center;">I</p> <hr/> <p>idea 23:3 36:5 40:12 51:15 illustrates 48:3 imagine 42:3 immediately 4:10 23:20 31:24 32:1,9 impact 8:24 9:8 11:19,23 12:15 14:25 15:14 16:3,19,21,22 18:19,25 24:2 25:4,8 28:12 28:18 37:12 38:2,10,24 44:23 50:10 52:14 53:2,3,7 53:13,20 impacted 8:17 16:9 impacts 19:3 implied 26:14 important 21:9 36:6 48:4 imposed 45:4 impossible 8:22 inclined 8:11 includes 51:24 inconsistent 7:20 39:5 incorporate 14:10,11,12,15 14:18 43:6 incorporating 32:6 increase 37:23 index 6:24 indexing 49:2,20 indicate 29:9 individual 9:17 11:19,20 13:13 16:14,16 46:8 47:24 48:12 49:16 individualized</p>
---	--	--	--	--

7:3 11:15 individually 13:3 individuals 12:1 industry 47:20 47:23 inevitably 35:23 inflated 33:16 34:2,19 35:9 42:15 48:16,17 inflation 35:11 information 7:11,13 8:6 11:14 14:11,11 14:13,18 19:3 20:14 21:22 30:23 32:6,23 32:24 34:12 42:7,9,13,19 42:22 43:4,6,8 43:11,14 45:20 47:12,15 48:14 52:14 inoperable 52:3 inquiry 35:20 instance 9:20 11:14 institutional 49:2,17 55:2 instructive 19:23 insurance 28:24 54:21 intact 33:15 integrity 6:20 7:1 11:9 13:4 33:10,19,22 41:25 intended 17:7 51:11 interaction 43:20 interpreting 5:21 51:15 interrupt 44:16 intervening 54:12	investment 6:25 49:18 investor 13:8 42:6,14,17,23 43:2,6 49:16 investors 3:22 6:19,22,24,24 11:8 33:3 34:17 35:1,3,5 41:24 42:1 48:7 49:2,17 54:17,18,24 invoked 9:21 invoking 24:22 involved 46:4 irrational 24:9 25:1 irrebuttable 9:6 irrelevancy 22:2 irrelevant 19:2 42:4,24 issue 7:3 12:20 14:4,6,15,17 15:4,7 22:4,19 22:21 23:12 29:12 32:12 37:12,15,19 41:7 48:6 54:10 issues 6:2,2,7 9:17,18 14:22 14:24 15:16 22:23 35:25 36:1,11 37:21 53:8 54:3	51:3 54:25 judgments 37:2 54:19 judicially 3:17 52:8 jumps 4:22 jurisprudence 5:24 Justice 1:23 3:3 3:9,25 4:1,8,14 4:17 5:1 6:13 6:15 7:4,21 8:18 9:9,10 10:2,21 11:17 12:4,7,17,19 12:24 13:20 15:1,3,15 16:1 16:10 17:4,9 18:6,14,23 19:8,11 20:1 20:20 21:1,14 22:6,12,25 23:6,10 24:5 25:12,13,17 26:10,21,24 27:3,16 28:10 28:17 29:13,25 30:2,25 31:21 33:2,7 34:5,15 35:14 36:14 37:3,8 38:11 38:16,19 39:1 39:19,21 40:17 40:21 41:11,12 41:14,18 42:16 44:14,16 45:3 45:24 46:9,18 47:6,10,17 49:8,22,23 50:11,17,25 51:17 52:1,10 52:20 53:5,6 53:18,23 55:6	15:1,15 16:10 47:17 Kagan's 49:23 keep 8:11 28:19 keeping 43:17 KENNEDY 17:4,9 18:6,14 20:1 29:13,25 30:2,25 33:2,7 34:5 39:1 49:22 kind 7:22 39:18 kinds 21:18 knew 29:8 34:2 knocked 11:11 know 7:16 8:18 10:12 11:19 23:21 27:4,5 28:10 32:3 34:17 35:7,8 39:7,22 40:17 40:23 44:20,24 48:22 known 48:18 knows 35:10	left 15:6,20 legal 23:11 legislated 26:3 28:4 51:22 legislating 27:12 legislation 27:14 51:19 let's 5:7 level 7:15 Levinson 3:11 light 42:22 54:12 limited 36:2 52:1 53:10 lines 39:2 literature 10:15 10:18 11:1 litigation 9:22 39:9,12 little 7:18 longer 11:7 43:9 look 5:10 11:2 20:17,18,23 28:3 30:3 51:10,19 52:4 looking 19:21 25:8,8,9 looks 18:10 lose 16:12 45:14 45:23 loss 11:18,21,22 11:23 12:9,12 12:14,16 16:4 19:13,14,17 42:21 53:9 54:23 lost 48:4,17 lot 10:25 21:2 30:5,6 36:5,8 36:18 38:12 39:9,12 51:20 low 42:11 lower 22:10	
	J		L		
	JA 24:17 jettison 10:22 John 1:6 3:5 Journal 33:5 judge 14:5 38:24 judges 10:19 judgment 30:8 36:18,22,24 37:6,9,15 40:10,15 51:1		L 1:22 2:9 41:15 laborious 21:3 lack 50:6 lag 32:5,8,16,17 large 35:1,2,5 40:11 46:7 55:2 laser 18:3 21:11 law 3:14 17:10 17:22 24:17 25:25 26:1,4,9 27:23 28:5 29:14 34:6 47:25 49:24 50:1,2 54:9 laws 31:15 lawyers 54:21 lead 4:3 20:25 leaves 15:22 54:10	lead 4:3 20:25 leaves 15:22 54:10	M
		K		M 1:18 2:3,13 50:13	
		KAGAN 5:1 6:13,15 7:4,21			

<p>24:13 37:14 44:6 MALCOLM 1:22 2:9 41:15 management 49:3 manner 47:15 March 1:12 21:17 margins 10:12 market 6:20 7:1 7:9,10,12,17 7:19,24 8:5,9 8:14 10:4,6,19 10:23 11:9,25 13:19 14:21 15:8,11 16:6,8 16:11,13,15,20 17:1 18:5,25 19:2,3,20,21 20:4,10,12,19 20:22 21:3,8 21:10,13 22:1 22:9,10,23 23:17,20,25 24:9,25 25:8 25:24 27:15 28:13 30:10,11 30:13,14,15 31:4,17,22,23 31:25 32:2,5,8 32:15,16,23 33:10,19,22 34:4,23 35:10 37:25 38:25 39:5,8,16 41:25 42:3,4,8 42:10,13,15,20 43:2,5,10,15 44:22 47:3,8 47:11 48:16 49:5,7,10 50:5 50:22 52:11 53:6,11 54:6 market's 16:18 marketplace 13:4</p>	<p>markets 7:5 14:10,18 15:25 25:6 30:17,17 32:19 39:10,11 39:12,13 46:20 47:20 52:16 massively 32:20 matched 44:25 material 7:11,13 8:6 materiality 15:21 37:12 matter 1:14 50:16 55:9 matters 20:18 21:11 25:10 mean 10:25 15:7 16:24 22:1 37:10 means 40:23 meant 23:22 member 13:2,6 47:5,8 members 13:13 15:19,22 45:22 mention 25:2 merit 36:19 meritless 51:9 merits 9:16 14:8 15:6,9 18:9 19:12 29:11 35:17,21 36:1 36:4,10,12,13 36:15 37:19,19 40:13 43:21 44:10 met 13:1 methodologies 6:5 midpoint 18:24 19:19 midway 17:11 MILWAUKEE 1:8 minutes 50:12 misrepresenta... 7:19 8:14</p>	<p>13:12 18:1,2,5 21:12 23:24 24:25 30:21 32:10 33:15 38:4 39:2 54:5 misrepresenta... 11:20 20:17 22:9 31:16 32:14 46:4 missing 53:9 misstatement 12:20,22 19:16 44:23 mode 44:21 money 42:10 43:3 48:17 49:19 55:4 month's 26:6 morning 3:4 54:16 motion 37:14 motions 36:19 38:12 50:19 motivation 4:2 move 37:11,12 moved 26:7 movement 34:11 34:13</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 nagging 46:10 narrow 17:13 narrowly 5:23 NASDAQ 39:11 nearly 50:8 necessarily 27:25 necessary 28:19 necessity 16:19 need 13:18 30:20 49:12,18 needs 10:16 neither 27:22 46:14,18 52:7 NERA 50:17 net 50:9 54:23</p>	<p>never 7:9,10 28:7 new 1:20 7:11 7:13 8:5 12:22 16:25 20:21 21:16,20 31:6 32:6 33:3 39:10 41:24 42:19 43:4,11 43:14 46:13 50:20 news 21:7 29:6 29:19 30:18 nine 29:18,19 38:7 nonsensical 51:16 normal 39:18 normally 14:19 noticed 14:6 notion 7:5 notions 4:11 number 40:4,4,8 40:11 50:19 numbers 40:18</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 obstacle 36:21 obviously 28:2 37:21 Oh 30:2 on/off 8:1 once 23:2,4,6 36:9,16 51:6 one-on-one 46:5 ones 24:21,24 46:8 opinion 4:6 13:22 31:2 opportunity 5:14,15 opposed 20:19 oral 1:14 2:2,5,8 3:7 25:15 41:15 order 30:20 45:8</p>	<p>ordinarily 35:25 36:11 ought 43:23 outside 8:22,24 overinclusive... 19:25 override 10:10 overrule 3:23 27:21 overruled 3:11 40:25 47:21 48:19 54:13,14 overruling 52:6</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 1:6 3:1,5 page 2:2 4:18 25:2,3 Pardon 6:14 parenthesis 23:14 part 9:4 12:11 20:10 36:25,25 40:10 48:3,3 49:22 particular 6:19 7:19,24 8:3 24:14 28:22,22 32:5,8 34:10 34:11,19 37:11 38:3,10 39:9 39:13,14 42:6 42:7,18 47:7 50:6 52:13 parties 27:4 pass 23:21 passed 36:9 51:6 pay 55:4 paying 54:19,25 people 21:15,18 32:21,25,25 33:10,18,25 47:15 48:9,12 48:20 percent 23:9 29:3 36:25,25 39:24 50:18</p>
---	---	--	---	--

<p>51:2,5 percentage 23:1 40:3,6 perfect 10:4 period 14:19 20:14,16 21:8 32:13 46:14 54:24 55:3,5 permeate 32:14 person 13:6,9 48:15,18 personal 38:21 personally 47:9 48:12 Petitioners 1:4 1:19 2:4,14 3:8 33:2 48:9 50:14 Petitioners's 41:21 43:17 piece 14:10 34:11 52:13 place 8:12 24:21 54:1 plain 4:7 plaintiff 8:13 12:13,15 17:25 23:19 24:21 44:4 53:19 54:2,4 plaintiff's 6:3 12:25 21:6 54:2,4 plaintiffs 3:19 7:22 13:17,18 13:24 20:9 21:15 22:14 23:24 45:14,18 46:12 48:10 50:9,9 plead 23:20 pleading 36:20 40:12,14 51:20 53:14 please 3:10 25:18 41:19 plenty 46:3</p>	<p>pocket 54:20 point 13:16 15:7 24:1 28:11 46:6,25 52:1 53:5 points 7:7 policy 4:11,12 position 8:11 15:23 17:10,11 17:22 20:16 47:25 positions 15:20 possibility 34:18 possible 32:15 potential 44:23 48:22 49:21 potentially 48:8 48:25 powerful 24:22 practical 35:19 46:6 precisely 16:20 22:22 43:21 52:25 53:8 predicates 14:25 15:13 predominate 9:18 54:3 preference 53:18 preliminary 15:6 premise 6:19 9:7 11:8,11 16:24 17:25 18:3 19:1 25:20,22 25:22 30:16 31:11,12,12,14 premises 6:18 7:20 11:7 17:17,24 presented 17:23 preserves 3:18 presumably 43:8 presume 15:13 presumption</p>	<p>3:17 4:4,4,23 6:8 7:23,25 8:2 8:12,20 9:3,21 9:24 16:13 17:8,21 23:23 24:22 25:24 35:13,15,16 44:8 53:14 54:7 presumptions 6:1 17:14 prevalence 44:18 prevent 40:13 52:10 prevents 37:14 previsions 40:24 price 6:20 7:1,19 8:14,16,24 9:8 10:6 11:9,13 11:18,23 12:14 12:22 13:15 14:25 15:14 16:3,8,15,19 16:21,22 17:25 18:5,19,24 19:15,17,20 20:13,19 21:13 21:22 22:10 23:25 24:2,8 24:25 25:4,8 25:10 28:12,18 29:2 30:22,22 31:17,22,23 32:1 33:16,19 33:22 34:4,10 34:12,18,24 37:12 38:9,24 41:25 42:4,13 42:15,20 43:12 43:15 44:23 48:16,16 50:10 53:2,3,7,12,20 54:6 prices 7:9,10,13 8:5 prima 14:7</p>	<p>primary 48:21 49:4 principal 8:8 11:3 17:18 47:19 principle 46:14 principles 54:11 private 26:14,18 46:4 48:10 51:11 probability 4:3 problem 7:16 procedure 48:5 produced 33:3 professor's 41:1 professors 17:10 24:17 29:14 34:6 47:25 49:25 50:2,2 professors's 17:22 programs 33:20 33:21,25 prohibit 53:1 proof 18:24 44:13 45:10 propensity 43:14 proper 4:10,15 4:20 13:6 24:20 48:10 proposed 41:9 prove 11:18,22 12:8 16:3,4 21:8 30:15 37:25 46:20 50:10 52:15 proved 6:3,6 28:25 45:9,16 45:17 46:22 proven 3:19,21 18:18 19:13 provides 35:12 proving 11:18 11:23 28:12,13 45:4 provision 52:2</p>	<p>provisions 41:3 41:5,8 proximate 11:22 PSLRA 26:2,11 27:10 36:20 40:22 41:3,5,9 51:24 52:2 public 4:11 13:19 16:7,18 31:16 45:21 publicity 14:22 15:12 16:6,20 22:23 23:18 45:4,15,22 53:7,12 publicly 30:18 45:18 purchased 13:13 13:14 32:3,9 51:13 purchases 19:16 purchasing 12:21 purported 6:4 purpose 9:21,25 purposes 21:25 put 5:7 23:13 28:19 35:23 putting 53:1</p> <hr/> <p style="text-align: center;">Q</p> <p>question 5:11 9:11,12,17 11:15,25 13:7 15:21 16:2 17:14,23 18:4 18:7,14 19:19 23:16 24:5 28:17 35:17 39:1 40:15 44:10,11 46:24 47:18,21,25 49:23 questions 39:22 quickly 42:8 quintessential 7:2 11:15</p>
--	---	--	--	--

<p>quit 31:22 quite 8:3 27:18 31:2 33:4 46:25</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 3:1 raised 8:10 50:16 rapid 6:23 rare 8:25 38:14 46:1 ratification 26:15 27:25 ratified 26:2 27:8 ratify 26:13,18 rational 45:15 reaching 16:7 react 31:4 42:8 reacted 42:20 reaction 20:13 24:9 25:1 read 7:18 44:5 48:12 reader 33:21 reading 32:21 33:5 real 13:16 15:16 36:21 real-time 32:23 realistic 45:25 reality 28:1 really 15:17 20:18 39:22 40:15 48:6 realtime 42:9 reason 15:11,13 21:24 54:15 reasons 9:25 16:17 22:22 rebut 7:25 9:23 14:8 52:23 53:20 rebuttable 4:4 9:3,11,13,15 17:7 35:12,15</p>	<p>rebuttal 2:12 8:15,23 35:18 46:22,23 50:13 rebutted 35:16 rebutting 8:19 38:23 recognized 4:9 44:9 51:7 54:7 recognizes 28:6 recover 32:10 recoveries 46:7 recovery 32:5 48:22 49:21 red 14:17 reduced 53:14 refer 26:21 reference 4:17 referred 24:6 referring 50:3 reflected 10:5 regarding 34:23 43:18 regime 54:16,22 regulators 47:19 relate 38:23 related 34:11,13 relatively 30:19 relevant 18:4 19:23 22:3 44:5 reliance 3:15,24 4:13,21,23,24 4:25 7:2 9:25 11:13 12:21 16:14,17 17:20 18:20 21:18 23:23 24:23 44:1,4,7,12 46:22 49:13 51:14 52:15 54:3 relied 12:2,7 18:1 45:19 49:16 54:5 rely 6:19,25 11:8 13:3,3 19:1 31:1 33:10,23</p>	<p>41:25 49:2,9 relying 4:5 7:4 12:10 13:11 23:24 33:22 43:4 49:20 52:15 53:1 remain 54:9 remaining 11:11 50:12 remedy 19:24 48:19 Remember 36:19 render 42:3 rendered 52:3 repeatedly 28:23 30:13 reply 7:8 reports 6:9,11 38:8 representation 13:5,9 31:22 representative 49:6 represented 49:17 representing 18:8 47:18 require 3:24 4:13 18:24 20:16 required 14:23 14:24 15:1 51:14 requirement 3:14 4:21 24:23 44:1 45:4 53:15 requirements 43:19 51:21 requires 4:24 51:8 53:17 requiring 10:18 20:12 research 48:21 49:4 reserve 25:11</p>	<p>reserves 28:24 respect 8:23 9:7 15:16 16:21 27:10,11 29:17 29:18,22 38:6 39:10,11 41:6 41:8 43:20 47:24 50:20 respects 41:21 respond 7:11,13 8:5 43:16 Respondent 1:21,24 2:7,11 18:8 25:16 41:17 result 16:21 48:18 revealed 29:6,19 reverse 5:10 review 10:14,25 reviewed 48:13 reviewing 10:18 ride 35:9 right 5:5 8:15 9:22 14:1,5 15:9 20:10 22:15,15,16 23:7,21 26:14 26:19 29:10,10 32:8 37:8 41:11 52:17 rigor 6:6,8 rise 43:12 road 45:12,17 ROBERTS 3:3 9:9 10:2,21 20:20 21:1 25:13 36:14 37:3,8 41:12 41:14 44:14,16 50:11 55:6 rule 3:18 8:4 14:12 15:3,4 15:18,21 43:19 43:21 53:22 54:1 ruling 43:24</p>	<p>running 20:15</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 salesperson 46:5 save 49:3 saving 49:19 saying 5:8,8,17 14:9 31:23 34:5,16 45:15 52:12 says 4:15,19 13:3 14:2 17:11 26:12 29:4 35:7 42:18 52:22 SCALIA 15:3 22:25 23:6 26:21,24 27:3 27:16 38:11,16 38:19 40:21 41:11 49:8 Scalia's 52:1 SEC 47:19 48:23 49:8,11 49:14 SEC's 49:13 second 5:25 8:10 8:23 11:8 17:23 18:17 31:18 32:25 36:22 37:21 38:14,21 43:16 45:10 Section 4:9,13 4:20,24 5:3,5,5 5:21 11:5 26:11,11,21 44:1 48:8,10 48:11 51:12 securities 3:19 10:1 25:25 26:7 31:14 36:23 46:3 47:19,20,23,24 50:19 51:24 see 16:2 18:23</p>
---	--	--	---	---

23:10 27:24 31:24 seemingly 27:4 sell 42:11 selling 33:18 sells 33:17 sense 4:3 8:8,10 8:12 12:5 17:2 18:3 22:9 27:14 41:9 sentence 7:18 17:4 separate 12:10 21:19 29:21 30:5,19,20 separation 24:15 serve 17:19 settle 51:9 settlement 55:1 shareholder 54:23 shareholders 54:19,20 shares 19:22 shift 50:4 shorter 32:18,18 shortly 32:3 show 12:2 13:25 14:10,14 20:21 21:10,12 24:24 31:3 38:2 44:4 47:9 50:18 54:2 showing 3:24 7:24 20:3,11 20:12 29:14 47:8 51:14 54:4 shown 52:12 shows 11:6 52:5 52:13 side 9:14 10:3 14:1,8,8,14 27:21,21 48:14 side's 19:6 sides 54:21	significance 43:10 46:6 significant 40:13 silent 54:9 similarly 14:9 simpler 30:10 simply 27:23 30:19 36:7 40:14 single 9:20 52:2 sitting 32:21 33:4 54:8 situated 16:21 situations 10:5 SLUSA 26:2,5 27:11,13,13,14 28:7 41:6,10 small 41:2 54:18 54:24 sold 55:3 Solicitor 1:22 somebody 13:9 32:9 33:15 35:7,11 51:13 somewhat 41:6 sophisticated 6:24 45:2 sophistication 44:24,25 sore 5:23 sorry 15:6 44:15 44:16 46:17 sort 4:12,23 7:2 10:11 24:13,15 40:25 42:24 48:20 sorts 32:24 Sotomayor 11:17 12:4,7 12:17,19 18:23 19:8,11 28:10 28:17 39:19,21 40:17 50:17 53:18,23 Sotomayor's 16:1	sources 48:21 49:4 splinter 45:23 47:16 splinters 45:13 split 15:24 splits 15:19 16:2 stage 8:16 9:14 9:22,23 14:24 15:9 16:23 18:9,16,19 22:21,24 23:13 23:19 24:4 28:15 29:15 30:8 35:18,20 35:21,24 36:12 36:15,20 37:10 37:22 40:12,14 40:15 44:10 45:5,9,16 46:15,16,19 47:13 51:1,3,6 53:13,16 stages 36:20 stand-in 17:20 stands 5:23 Stanford 50:18 stare 54:11 start 50:15 State 26:7,9 statement 12:3,8 12:10 13:19 16:7,18 34:20 45:11,17 states 1:1,15,24 2:10 17:2 41:16 statistical 50:16 statistics 34:23 statute 51:16 step 36:7 Stewart 1:22 2:9 41:14,15,18 44:15,20 45:7 46:2,17 47:2,7 47:14,17 48:2 49:11 50:1	stock 12:23 16:25 19:23 20:21 21:16,16 21:20,21 29:2 32:3,22 34:1,2 34:18 39:11 43:7,9,12 46:13 48:16 50:7,20 stocks 49:6 strategies 6:25 41:24 42:2 49:3,18,20 strategy 42:11 43:13 Street 33:5 Streett 1:18 2:3 2:13 3:6,7,9 4:8,16,18 5:1 5:17 6:14,17 7:14 8:7,21 9:19 10:16 11:3,24 12:6 12:13,18,21 13:11 14:21 15:10,15 16:5 16:15 17:6,18 18:12,17 19:7 19:10,14 20:8 20:23 21:5 22:5,8,22 23:4 23:8,17 24:12 50:12,13,15 51:2,24 52:18 52:24 53:21,25 strictly 4:5 strikes 23:11 strive 32:25 strong 31:7 studies 20:10,15 24:6,12,18 34:8 37:24 44:18,21,25 50:17 study 17:12 18:11 20:6 21:2,7,11 22:7	29:15,24 30:9 34:6,9 39:15 52:12,13 subject 46:22 subjectively 48:13 submission 10:21 11:4 submitted 55:7 55:9 subsequently 48:17 substantial 17:15 substantive 25:25 substituted 3:13 successful 8:19 successfully 18:21 suffer 42:21 sufficient 10:13 10:24 sufficiently 10:24 suggesting 19:9 suit 48:11 suits 46:8 summary 30:8 36:18,22,24 37:1,6,9,14 40:10,15 51:1 51:3 supplant 11:4 support 10:25 supporting 1:8 1:24 2:11 41:17 supposed 10:14 54:18 Supreme 1:1,15 Sure 28:16 susceptible 44:12 45:10 sustained 31:25 switch 8:1
---	--	---	---	--

T				V
T 2:1,1	34:7 39:5	29:9 30:6 32:6	turned 4:10	v 1:5 3:4,11
take 13:20 17:12	42:17 45:6,7	32:8,16,17	turns 9:4 49:21	valid 48:8
21:5 30:17,17	45:14 49:10,10	37:13,18,23	two 4:6 17:12	validity 17:21
33:8 43:3 46:5	thing 21:11 25:9	43:8 47:12	32:4 35:22	value 6:24
48:2 52:4	31:18 39:18	51:7 54:6 55:1	39:22,23 41:20	verdict 23:9
taken 17:10	43:1,16	time-consuming	43:25 49:22	viable 15:23
takes 30:5	things 5:18,19	20:7	two-part 47:21	view 5:16 41:24
talk 33:11,20	15:18 23:12	timeline 37:4	types 42:7	44:3 47:22
talking 11:21	27:20 30:7	times 4:6 55:3	typical 12:25	48:9,14,14,23
13:23 21:2	31:10 34:9	today 3:13 32:20	13:8,8,12 21:4	49:23,25
39:23 40:8	think 4:5 7:8	32:23 36:11	typicality 13:2	violation 49:15
talks 40:18	8:24 10:16,17	44:25	U	virtually 8:21
teeth 9:1	13:16 14:2,2	told 48:20	ultimate 43:5	20:24
tell 20:1 34:12	14:11 15:17	totally 13:21	ultimately 44:8	vision 44:7
34:23,25 43:22	16:10 19:5,20	trade 17:1 32:25	45:12	visions 43:25
tells 7:18	21:1 22:15	33:11,12 34:1	unaware 29:8	volatility 6:23
temporal 37:18	25:23 26:14	34:1 42:9	underinclusiv...	
temporarily	27:3,5,8 28:2,3	traders 6:23	19:25	W
24:10	28:6 29:17	33:11 55:2	underlined 6:12	Wal-Mart 6:1
tend 45:1	30:14 31:2,13	trading 19:22	undermined	6:10 43:22
tendency 43:5	32:7,7 33:24	33:20,20,25	3:20 7:6 42:12	53:17
tends 48:4	34:22 35:1,2,3	44:6	understand 10:2	Wall 33:5
terms 46:6	35:3,5,8,9,22	traditional	10:7 22:18,20	want 25:5,19
terrorem 51:8	38:20 41:4,4,6	54:11	23:10 27:20	50:23
test 10:22	41:7,7,10 42:1	train 44:17	34:15 46:10	wanted 11:2
tested 6:5	42:7,18 43:19	transaction	50:1,3	25:2 27:21,22
testified 24:14	45:7,24 48:3	11:12	understood 4:25	37:11,12 43:16
testimony 30:7	50:7 51:4 53:5	transmitter	28:11 47:1	52:7
38:9	53:11,12	11:13	undertaking	wants 14:14
Texas 1:18	thinking 13:21	treated 9:6	20:5	Washington
Thank 25:13	thinks 43:7,8	13:25	undervalued	1:11,23
41:12,13 50:11	third 6:13,16,17	treaty 13:23	34:22 43:7,9	wasn't 4:5 45:20
50:15 55:6	23:8 36:22	14:1,3	unexpected	way 4:11 12:9
theoretically	thought 9:2,11	trial 14:16 36:23	20:13 21:7	12:15 13:12,25
32:15	10:25 38:13	40:1,9,14	29:7,7	15:24 16:8
theories 17:19	39:19,21,23	tries 4:6	unfair 14:1	17:22 31:3,4
31:3	44:17 51:23	true 10:24 22:12	United 1:1,15,23	35:1,3,6 36:1
theory 3:14 4:2	52:5,6	32:2 34:21	2:10 41:16	37:18 43:13
4:5 10:4,23	thread 11:11	36:17 42:1	unjustified 3:18	50:21 54:3,25
11:4,6,25	three 4:6 5:19	truth 32:19	unrelated 42:22	ways 32:24 37:5
15:25 19:1	6:15 7:7 31:10	42:22 48:18	unusual 8:22	we'll 3:3 13:23
21:21 25:21	36:19	try 7:23 30:4	unworkable	14:16 21:18
27:13 28:9	throw 14:18	32:22 49:3	3:20	we're 5:17 6:7
29:14 31:1,11	thumb 5:23	trying 14:16	useless 40:25	13:23 14:16
31:12,25 33:7	time 10:12,13	30:15,19	usually 5:9	19:9 28:19
	19:15,16 20:3	turn 19:11,11	36:15	we've 14:6 15:1
	20:25 25:7,12	50:23 53:4		

29:9	<hr/> 1 <hr/>	7 29:2 51:2,5		
wealth 54:23	10(b) 4:21 5:21	75 50:18		
Wednesday 1:12	44:1 48:11	7th 29:4,6,17		
well-developed	51:12	<hr/> 8 <hr/>		
30:17	10(b)(5) 17:13	<hr/> 9 <hr/>		
went 21:22,23	48:8 51:19	9 5:5		
33:24 39:14	52:1,9			
whatsoever 7:1	10:17 1:16 3:2			
wholly 36:25	11:18 55:8			
wide 42:2	13-317 1:4 3:4			
win 22:17	15 21:17,17			
wins 22:16	18 5:3,5			
46:23	18(a) 4:9,13,15			
wiped 40:11	4:20,24 11:5			
wish 31:6	1934 51:25			
words 10:10	1988 32:20,21			
23:15	1993 51:25			
work 24:19 49:5	<hr/> 2 <hr/>			
works 36:2	2001 29:2			
wouldn't 34:3	2014 1:12			
42:24 46:19	203 26:11,21			
47:3,16 49:12	23 3:18 43:19,21			
49:13,15	54:1			
writ 41:2	23(a) 13:1			
wrong 3:12 5:2	245 4:18			
5:8,18 14:19	25 2:7 36:25			
26:19 36:7	26 25:2			
38:16,19,20	<hr/> 3 <hr/>			
40:14	3 2:4			
<hr/> X <hr/>	37 36:25			
x 1:2,10	<hr/> 4 <hr/>			
<hr/> Y <hr/>	41 2:11			
yeah 9:15	410 24:17			
year 26:20	411 24:17			
years 46:4	42 29:2			
yes-or-no 7:17	<hr/> 5 <hr/>			
8:9 10:19	5 1:12 50:12			
York 1:20 12:23	5,000 21:15			
16:25 20:21	50 2:14			
21:16,20 39:10	53 25:3			
46:13 50:20	<hr/> 6 <hr/>			
<hr/> Z <hr/>	<hr/> 7 <hr/>			
<hr/> 0 <hr/>				