

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

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**YEAGER v. UNITED STATES****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

No. 08–67. Argued March 23, 2009—Decided June 18, 2009

A federal indictment charged petitioner Yeager with securities and wire fraud for allegedly misleading the public about the virtues of a fiber-optic telecommunications system offered by his employer, a subsidiary of Enron Corp., and with insider trading for selling his Enron stock while in possession of material, nonpublic information about the new system’s performance and value to Enron. The indictment also charged petitioner with money laundering for conducting various transactions with the proceeds of his stock sales. The jury acquitted Yeager on the fraud counts but failed to reach a verdict on the insider-trading and money-laundering counts. After the Government recharged him with some of the insider-trading and money-laundering counts, Yeager moved to dismiss the charges on the ground that the jury, by acquitting him on the fraud counts, had necessarily decided that he did not possess material, nonpublic information about the project’s performance and value, and that the issue-preclusion component of the Double Jeopardy Clause therefore barred a second trial for insider trading and money laundering. The District Court denied the motion, and the Fifth Circuit affirmed, reasoning that the fact that the jury hung on the insider-trading and money-laundering counts—as opposed to acquitting petitioner—cast doubt on whether it had necessarily decided that petitioner did not possess material, nonpublic information. This inconsistency between the acquittals and the hung counts, the Fifth Circuit concluded, meant that the Government could prosecute petitioner anew for insider trading and money laundering.

*Held:* An apparent inconsistency between a jury’s verdict of acquittal on some counts and its failure to return a verdict on other counts does not affect the acquittals’ preclusive force under the Double Jeopardy

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Clause. Pp. 6–15.

(a) This case is controlled by the reasoning in *Ashe v. Swenson*, 397 U. S. 436, where the Court squarely held that the Double Jeopardy Clause precludes the Government from relitigating any issue that was necessarily decided by a jury’s acquittal in a prior trial. For double jeopardy purposes, the jury’s inability to reach a verdict on Yeager’s insider-trading and money-laundering counts was a non-event that should be given no weight in the issue-preclusion analysis. To identify what a jury necessarily determined at trial, courts should scrutinize the jury’s decisions, not its failures to decide. A jury’s verdict of acquittal represents the community’s collective judgment regarding all the evidence and arguments presented to it. Even if the verdict is “based upon an egregiously erroneous foundation,” *Fong Foo v. United States*, 369 U. S. 141, 143, its finality is unassailable, see, e.g., *Arizona v. Washington*, 434 U. S. 497, 503. Thus, if the possession of insider information was a critical issue of ultimate fact in all of the charges against Yeager, a jury verdict that necessarily decided that issue in his favor protects him from prosecution for any charge for which that is an essential element. Pp. 6–12.

(b) Neither *Richardson v. United States*, 468 U. S. 317, nor *United States v. Powell*, 469 U. S. 57, supports the Government’s argument that it can retry Yeager for insider trading or money laundering. *Richardson’s* conclusion that a jury’s “failure . . . to reach a verdict is not an event which terminates jeopardy,” 468 U. S., at 325, did not open the door to using a hung count to ignore the preclusive effect of a jury’s acquittal, but was simply a rejection of the argument—similar to the Government’s today—that a mistrial is an event of significance. Also rejected is the contention that an acquittal can never preclude retrial on a hung count because it would impute irrationality to the jury in violation of *Powell’s* rule that issue preclusion is “predicated on the assumption that the jury acted rationally,” 469 U. S., at 68. The Court’s refusal in *Powell* and in *Dunn v. United States*, 284 U. S. 390, to impugn the legitimacy of jury verdicts that, on their face, were logically inconsistent shows, *a fortiori*, that a potentially inconsistent hung count could not command a different result. Pp. 12–14.

(c) The Government has argued that, even if hung counts cannot enter the issue-preclusion analysis, Yeager has failed to show that the jury’s acquittals necessarily resolved in his favor an issue of ultimate fact that must be proved to convict him of insider trading and money laundering. Having granted certiorari on the assumption that the Fifth Circuit ruled correctly that the acquittals meant the jury found that Yeager did not have insider information that contradicted what was presented to the public, this Court declines to engage in a

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fact-intensive analysis of the voluminous record that is unnecessary to resolve the narrow legal question at issue. If the Court of Appeals chooses, it may revisit its factual analysis in light of the Government's arguments before this Court. Pp. 14–15.

521 F. 3d 367, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SOUTER, GINSBURG, and BREYER, JJ., joined, and in which KENNEDY, J., joined as to Parts I–III and V. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. SCALIA, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.