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Courtside: An early (and accidental) peek at today's orders and opinions

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Huffington Post
Supreme Court
Correspondent Michael
Sacks

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The *Huffington Post's* Supreme Court correspondent [Mike Sacks](#) was getting ready to report on today's Court orders and opinion this morning when he routinely called up the Court's web site.

It was around 9:30 a.m., well before the ironclad 10 a.m. starting time for the Court's sessions. But there, [on the site](#), Sacks saw the Court's orders list for today – and a couple of opinions, to boot. All this, roughly a half-hour before they would be announced from the bench. "Was I surprised? Absolutely," he said later.

So Sacks did what any modern journalist would do: He tweeted about his discovery: "#SCOTUS website jumped the gun - order list and opinions out 30 min before announced in open court. ARIZONA V. US GRANTED - KAGAN RECUSED."

Over at the [How Appealing blog](#), Howard Bashman was also getting ready for the day's Supreme Court events, when he saw Sacks' tweet. Soon, Bashman was also reporting on the Court's actions, well before the reporters who were actually at the Court had gotten the paper version of the orders list and opinions. By 9:41, [SCOTUSblog](#) was also linking to the orders list, and then citing How Appealing.

Then, around 9:45, came the inevitable: the orders list and the opinions were pulled down from the [Court Web site](#). Court-watchers would have to wait until slightly after 10 a.m. to see them again – a digital eternity.

It was a remarkable lapse at a Court that zealously guards the confidentiality of its actions before they are formally announced. For example, suggestions by journalists that the Court give them an early peek at decisions in a "lock-down" setting, so they would have time to actually read decisions before they report on them, have been routinely shot down. By contrast, the Supreme Court of Canada has allowed reporters to have an early look at decisions for years, without apparent problems.

What is the high court's concern? How Appealing's Bashman hinted at the answer when he mused this morning that "perhaps the SEC can look into whether any unusual trading took

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place during that 30 minutes based on the information contained in the order list." The Court's actions can move markets, and the justices do not want anyone getting an unfair or illicit advantage.

Court spokeswoman Kathy Arberg said Monday afternoon that the premature posting was the result of a "technical malfunction," and the Court's IT staff is taking steps to make sure it does not recur.

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