To the Bag

A Bit More on Reading Statutes

To the *Bag*:

A few quick points in reference to Tobias A. Dorsey's interesting piece, *On Not Reading Statutes*, 10 Green Bag 2d 283 (2007):

It is a bit much to brush off the enacted titles of the U.S. Code with a footnote notation that "a few of the shorter titles of the Code have been enacted into positive law." 10 Green Bag 2d at 286 n.9. Fully 24 of the 49 titles of the U.S. Code (there is no title 34) have been enacted into positive law, and you could even add in title 26 because the sections of title 26 are identical to the sections of the Internal Revenue Code. The enacted titles include such workhorses as titles 5 (Government Organization and Employees), 11 (Bankruptcy), 18 (Crimes and Criminal Procedure), 17 (Copyrights), 28 (Judiciary and Judicial Procedure), 46 (Shipping), and 49 (Transportation).

It is also a bit much to warn that "the Statutes at Large is still the source from which these titles are prepared, so the Stat. text must still prevail over the U.S.C. text," *id.*, when, so far as I know, no variance between the language of enacted titles of the U.S. Code (in the Statutes at Large) and the reproduction of that language in the U.S. Code has come to my attention in over 30 years of practice. For the enacted titles, unlike the unenacted titles, the Code language "is" the enacted language.

Along the lines of his other warnings, Mr. Dorsey might have warned readers that having an enacted title does not make predeces-

sor statutes in the Statutes at Large irrelevant. When enacting a title of the Code, Congress often provides that it intended no substantive change in pre-existing law. For example, Pub. L. No. 107-217, 116 Stat. 1062 (2002), which revised and enacted Title 40 into positive law, includes a section 5(b), 116 Stat. at 1302, which provides: "This Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law." So much for the authoritative status of current enacted text.

Finally, while the Statutes at Large may have constituted Justice Frankfurter's "staple reading," it is doubtful that he neglected the Revised Statutes of the United States. Nor should others. Enacted in 1874, the Revised Statutes repealed all public laws in effect on December 1, 1873, and replaced them with the country's first complete statutory consolidation, and the only one ever enacted in its entirety into positive law. It rendered volumes 1 through 17 of the Statutes at Large obsolete except for treaties and private laws. While most provisions of the Revised Statutes have been replaced over the years, several hundred provisions remain in effect. At least some of these are regularly cited with reference to the Revised Statutes. *E.g.*, *Scott v. Harris* (the recent high-speed chase case), 127 S. Ct. 1760, 1773 (2007) ("Respondent filed suit against Deputy Scott and others under Rev. Stat. § 1979, 42 U.S.C. § 1983, alleging, *inter alia*, a violation of his federal constitutional rights . . . ."). As Mr. Dorsey would no doubt point out, adding "as amended" before "42 U.S.C. § 1983" would have been more accurate.

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MINUTIAE

To the *Bag*:

As author of "The Shortest Article in Law Review History" ("This is it" was the full text), I'm an expert on the minutiae of legal publication. Please don't think me small-minded, but the result of shrinking the magazine to the size of a business card is a mixed *Bag*.