



TO THE BAG

HEADING IN ANOTHER DIRECTION

To the *Bag*:

It is difficult to prove a negative. Therefore one relies on a negative inference at one's peril, especially in print, where there may be a great number of individuals who by happenstance read the inference the very same week that they encounter a counterexample. Such is the bad luck of Professor James Duane, who in the Spring 2012 issue observed: "So far as I am aware, no other opinion in Supreme Court history has ever been written in this fashion, and crafted with such obvious regard for the reader." Professor Duane was referring to the salutatory use of section captions in an un-joined 2012 dissenting opinion by Justice Antonin Scalia.

I am able to inform readers of the *Bag* that there is at least one other example of case captions in a Supreme Court opinion: namely, the majority opinion in *Mistretta v. United States*, 488 U.S. 361 (1989). In that opinion, Sections I through IV, including their subsections, have short captions such as "This Litigation", "Delegation of Power", and "Separation of Powers". In writing for the Court in this style, Justice Harry Blackmun was able to obtain the consent of seven of his colleagues. The lone holdout – who did not use captions in his dissent – was Justice Scalia.

Sincerely,
Peter Owen
Arlington, Virginia