

The Longest Footnote?

To the Bag:

Your readers may be interested in the question of the longest footnote in the reports of Supreme Court decisions. I don't have an answer to this question, but I have a candidate. The Court's recent *Sosa* decision prominently cites *United States v. Smith*, 5 Wheat. (18 U.S.) 153 (1820), the Supreme Court decision that ruled that Congress's decision to criminalize "the crime of piracy, as defined by the law of nations," was a constitutional exercise of Congress's power "to define and punish Piracies and Felonies committed on the high seas, and Offences against the Law of Nations." Art. I, § 8, cl. 10. Justice Story, for the Court, found piracy to be defined in the law of nations "with reasonable certainty," at least in the circumstances of the case before him. As evidence supporting this conclusion, he appended a footnote (footnote "a") at the very end of his opinion. That footnote begins with citation to and quotations from Grotius and continues through a large number of additional international law authorities. The footnote begins half-way down the page on page 163 of the report and continues through page 180, occupying all of pages 164 through 180 except for two lines of the dissenting opinion on each of pages 164 through 179 and five lines of the dissenting opinion on page 180. That is most of 17-1/2 pages.

I suspect I am not the first lawyer to wonder if this is the longest footnote, so your readers may know of a longer one.

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