

# *MISTRETTA V. UNITED STATES*

HARRY BLACKMUN AND ANTONIN SCALIA

JUSTICE BLACKMUN DELIVERED THE OPINION OF THE COURT....

Delegation of Power

Petitioner argues that in delegating the power to promulgate sentencing guidelines for every federal criminal offense to an independent Sentencing Commission, Congress has granted the Commission excessive legislative discretion in violation of the constitutionally based non-delegation doctrine. We do not agree.

The non-delegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government....

In light of our approval of these broad delegations, we harbor no doubt that Congress' delegation of authority to the Sentencing Commission is sufficiently specific and detailed to meet constitutional requirements....

JUSTICE SCALIA, DISSENTING....

Petitioner's most fundamental and far-reaching challenge to the Commission is that Congress' commitment of such broad policy responsibility to any institution is an unconstitutional delegation of legislative power. It is difficult to imagine a principle more essential to democratic government than that upon which the doctrine of unconstitutional delegation is founded....

I think the Court errs... not so much because it mistakes the degree of commingling [of powers], but because it fails to recognize that this case is not about commingling, but about the creation of a new Branch altogether, a sort of junior-varsity Congress. It may well be that in some circumstances such a Branch would be desirable; perhaps the agency before us here will prove to be so. But there are many desirable dispositions that do not accord with the constitutional structure we live under. And in the long run the improvisation of a constitutional structure on the basis of currently perceived utility will be disastrous....

