Yesterday Dan pointed out that Justice Scalia had made a "cringeworthy" error in his dissenting opinion in *EPA v. Homer*. Scalia argued — in support of his claim that EPA's interpretation of the provision of the Clean Air Act that governs cross-state air pollution was inconsistent with the plain language of the statute — that EPA was inappropriately attempting to smuggle consideration of cost-benefit analysis into its regulation. He then claimed that EPA had previously also tried to "smuggle" cost-benefit analysis into its attempt to regulate in *Whitman v. American Trucking* but the Court had made clear that it could not consider costs in setting National Ambient Air Standards because of the plain language of the statute. The problem with Scalia's argument, as Dan pointed out, is that EPA took the exact opposite position in *Whitman* than Scalia said the agency did. Pretty extraordinary to see such an obvious error in a Supreme Court opinion.

Today, the Supreme Court opinion on the Court's website no longer contains the "cringeworthy" passage. Not sure whether it was Dan's post that led to the correction but — although Dan later added a note to his blog post about the correction — I thought it was worthy of a separate post. So did Talking Points Memo, calling Scalia's mistake an "epic blunder" and quoting Dan's Legal Planet entry. Nice work, Dan!

Note: Apparently, a hat tip goes to Richard Lazarus for noticing the blunder and to Dan and Jonathan Adler for getting the news out there: http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/04/29/homer-nods-in-epa-v-eme-homer-city-generation/