Ex Ante

Harry Parker Revealed

The *Green Bag*'s 1998 holiday greeting to subscribers and friends was a card featuring an eggnog recipe we found in the papers of Chief Justice Harlan Fiske Stone. Stone attributed the recipe to someone named Harry Parker but, as we noted on the card, "Harry Parker we have been unable to identify. One unconfirmed suggestion is that Parker may have been a messenger for Justice Felix Frankfurter."

That suggestion was wrong, but not far off the mark. Had we been better researchers we could have found the answer at any of several prominent institutions, including the Supreme Court of the United States, the University of Chicago, Harvard University, and the University of Virginia. All of them house portions of an extraordinary memoir by John Knox, who clerked for Justice James McReynolds during the 1936-37 term and worked closely with Parker during that year. We are in good company, however. The Knox memoir has been accessible for many years, but it has been almost completely ignored by Supreme Court scholars until now.

In their foreword to the first published edition of the Knox memoir, Dennis Hutchinson of the University of Chicago and David Garrow of Emory University identify Parker: "Harry Parker, who was born in 1879, became messenger to Justice McReynolds in 1919 and served him until the Justice retired in 1941; he then worked for Justice Robert H. Jackson until shortly before his death in 1953 at age seventy-four."

Parker played a prominent part in Knox's experience at the Supreme Court. In the first of numerous Parker anecdotes in his memoir, Knox recalls the advice he received when he arrived at the Court in the summer of 1936:

> "Now first of all Mr. Knox," he [Clerk of the Court Charles Elmore Cropley] said, "you will need to know certain things, or you can never succeed one month with the Justice. The most important point to realize is that your future success or failure lies in the hands of Harry Parker."
>
> "Harry Parker?" I asked incredulously. "Who is he?"
>
> "Well," said Mr. Cropley, "around the Supreme Court building, Harry is known as the one who really keeps the McReynolds household going. Harry is a colored messenger who has been working for the Justice since about 1913. But he is far more than just a messenger. He is also the Justice's cook, his confidant – in fact, his alter ego. Without Harry's complete confidence and trust in you, it will be impossible for you to think of being the Justice's law clerk."

Knox's memoir reveals that Parker's competence and discretion were, sadly, not enough to earn him the dignity and respect he deserved

from McReynolds. The justice's racism was repellently strong even by pre-World War II standards, and he acted on it. As Hutchinson and Garrow report, however, the relative standing of McReynolds and Parker within the Supreme Court community at large was revealed at their deaths. No member of the Court attended McReynolds's funeral, but Chief Justice Earl Warren and Justices Robert Jackson, Felix Frankfurter, Tom Clark, Sherman Minton, and Harold Burton were in St. Augustine's Catholic Church when the requiem mass was sung for Harry Parker.

Dennis J. Hutchinson & David J. Garrow, eds., The Forgotten Memoir of John Knox (Chicago 2002).

Hold Some of My Calls

Elsewhere in this issue Robert Anthony of George Mason University expresses serious concerns about the opinion of the Supreme Court in *Barnhart v. Walton*. Here we merely express wonder, as in we wonder about this strange citation from that opinion:

> See *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U.S. 332, 342 (1994) ("'[I]dentical words used in different parts of the same act are intended to have the same meaning'") (quoting *Sorenson* v. *Secretary of Treasury*, 475 U.S. 851, 860 (1986) (some internal quotation marks omitted)).

Consider the meaning of these words: "some internal quotation marks omitted." Why would the Court eliminate some of but not all quotation marks? Perhaps inconveniently placed internal quotation marks in *ACF Industries* somehow altered the emphasis or confused the meaning of the quoted passage:

> """identical words used in different parts of the same act are intended to have the same meaning,""" *Sorenson* v. *Secretary of Treasury*, 475 U.S. 851, 860 (1986) (quoting *Helvering* v. *Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934) (in turn quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U.S. 427, 433 (1932))) ...

No, it appears that the only internal quotation marks in the *ACF Industries* passage are in the same positions as the marks selectively retained in the *Barnhart* opinion. There are more of them, and they look a bit silly, but they offer no clue as to why the *Barnhart* Court decided to retain some but not all of them.

Could it be that the Court elected to retain only enough quotation marks to signal that the quoted passage did not originate in *ACF Industries*, but rather that the *ACF Industries* Court was quoting the *Sorenson* Court? No, because the *Barnhart* Court explicitly states that the *ACF Industries* Court was "quoting *Sorenson* v. *Secretary of Treasury*."

Our best guess is that this is a product of the spirit of compromise that is essential to the maintenance of collegiality on the Court. Imagine Justice Thomas insisting on retaining the original meaning and form of the words from *ACF Industries*, which would have resulted in this punctuation circus in *Barnhart* – """"[I]dentical words used in different parts of the same act are intended to have the same meaning"""" – while Justice Stevens insists that the Court focus on modern conditions, which would have resulted in this incomplete picture of the punctuation of the law – "[I]dentical words used in different parts of the same act are intended to have the same meaning." Then, Justice Breyer steps in, puts his arms around his colleagues' shoulders, and suggests a Solomonic solution: split the difference between one set of quotation marks and four sets, with a coin toss to determine whether to round up to three or down to two. For our purposes it would not matter who won the toss, because in either case the words would be the same, "some internal quotation marks omitted."

Barnhart v. Walton, 122 S. Ct. 1265 (2002). GB