



TO THE BAG

THE INFERENCES OF WEBSTER'S THIRD

To the *Bag*:

At the outset of the mystery novel *Gambit* (1962), the great detective Nero Wolfe burns in his fireplace a copy of *Webster's Third New International Dictionary*. Wolfe considers this recently published dictionary to be “subversive because it threatens the integrity of the English language.” In this, Wolfe was channeling the feelings of his creator, Rex Stout, who himself “encased [a copy of *Webster's Third*] in wire netting, wired it to the end of an aluminum pole, soaked it in kerosene, set fire to it, and burned hornets’ nests” – thus “rid[ding] himself of the sting of both.” John J. McAleer, *Rex Stout: A Majesty's Life* 430 (2002); see also Ira Brad Matetsky, *Nero Wolfe, Rex Stout, the Language, and the Law*, 2012 *Green Bag* Alm. 91, 94-95. Although it is now more than 50 years since *Webster's Third* appeared, disagreements regarding its soundness continue today and may be eternal. Compare, e.g., Mary Norris, *Between You & Me: Confessions of a Comma Queen* 18-19 (2015) (reporting the continued preference of copyeditors at *The New Yorker* for *Webster's Second* over *Webster's Third*), with Steven Pinker, *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century*, 189-90, 193-95 (2015) (describing criticisms of *Webster's Third* as exaggerated).

Justice Antonin Scalia of the U.S. Supreme Court agrees with Mr. Wolfe and Mr. Stout. On October 5, 2015, the Court heard oral argument in *Hawkins v. Community Bank of Raymore*, a case involving construction of the word “applicant” as used in the Equal Credit Opportunity Act. The argument transcript (p. 38) includes this colloquy:

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JUSTICE SOTOMAYOR: . . . [T]he only dictionary that uses [“applicant”] in the way you want is Webster’s Third. Every other dictionary – and Webster’s Third has been criticized by at least one of my colleagues, if not more. All right?

[RESPONDENT’S COUNSEL]: I’m aware of that.

JUSTICE SCALIA: It’s a terrible dictionary.

(Laughter.)

See also *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 225-28 (1994) (per Scalia, J.) (finding a “peculiar” and “out-of-step” definition of “modify” in *Webster’s Third* unreliable where it disagreed with the word’s definition in all other cited dictionaries); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 417-18, 422 (2012) (describing *Webster’s Third* as “a dictionary to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequate usage notes”).

Rex Stout – and by extension, Nero Wolfe – would almost certainly have disagreed with Scalia on a wide variety of social and legal issues. But on such fundamentals as whether the word “infer” may be used interchangeably with “imply,” their feelings are in full accord. Wolfe:

“Do you use ‘infer’ and ‘imply’ interchangeably, Miss Blount?”

She did fine. She said simply, “no.”

“This book says you may. Pfui.”

Gambit, at 2. Scalia:

Upon its long-awaited appearance in 1961, *Webster’s Third* was widely criticized for its portrayal of common error as proper usage. . . . An example is its approval (without qualification) of the use of “infer” to mean “imply.”

MCI Telecomms., 512 U.S. at 227 n.3.

Scalia is not the first Supreme Court justice to have expressed agreement with Stout’s and Wolfe’s linguistic standards. See Matetsky, 2012 Green Bag Alm. at 93-94 (relating how Justice Felix Frankfurter caused Justice Sherman Minton to change an opinion whose first draft used the word “contact” as a verb). In addition, Justice Harry Blackmun – also well-

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known as a stickler on points of usage and diction in the Court's opinions (see, e.g., Greg Goelzhauser, *Justice Blackmun's Blood Oath*, 18 Green Bag 2d 163 (2015)) – is known to have read much of the Nero Wolfe corpus. See *Harry Blackmun, Meet Nero Wolfe*, 2012 Green Bag Alm. 408. A document found in Blackmun's papers at the Library of Congress infers – I mean implies! – that Blackmun's reading included *Gambit*. That book's opening scene must have made Blackmun smile, and would surely make Scalia smile as well.

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MORE SISTREN

To the *Bag*:

In her article “The Sistren: Ranking the Top Ten Supreme Court Justices,” Meg Penrose identifies Florence Allen as “the only other woman [besides George W. Bush's failed Supreme Court nominee, Harriet Miers] to have been seriously considered, but ultimately passed over for the Court.” This is not so: Cornelia G. Kennedy, who served as a federal district judge in the Eastern District of Michigan from 1970 until 1979 and on the Sixth Circuit Court of Appeals from 1979 until 2012, was seriously considered for the Supreme Court by three different presidents: Richard Nixon, Gerald Ford, and Ronald Reagan. See Douglas Martin, *Cornelia G. Kennedy, 90, a Pioneering Judge, Dies*, N.Y. Times, May 25, 2014, at A21. Like the women on Penrose's list, Kennedy accomplished many firsts in her day: she was the first woman to serve as the chief judge of a federal district court, the first woman to serve on the Judicial Conference of the United States, and the first woman to be director of the Detroit Bar Association.

Kennedy was probably also the first female judicial nominee to face serious opposition to her nomination in the Senate Judiciary Committee. After progressive groups raised concerns about her record as a federal district judge, Kennedy's nomination to the Sixth Circuit by President Carter was approved by only a 9-4 vote, with the then-chairman, Senator Edward M. Kennedy, Democrat of Massachusetts, in opposition.

In this regard, Judge Kennedy's experience parallels that of two other women to have been seriously considered for the Supreme Court by