

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.

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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]dential 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]dential 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]dential 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). 