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## Inside the High Court: A Heist Movie, a Fable and a Rich Dessert

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In several colorful moments during Supreme Court arguments Wednesday, Chief Justice John Roberts Jr. confessed to a sweet tooth, Justice Antonin Scalia cited an Aesop's fable, and Justice Ruth Bader Ginsburg gave arguing counsel a lesson in 1950s cinema.

### THE DOG IN THE MANGER

During argument in *Puckett v. United States*, the justices considered a case in which the government breached a plea agreement at a sentencing hearing and the defendant failed to object until the appeals stage. The appellant, James Benjamin Puckett, argues that the government's breach of the agreement requires automatic reversal, and the government says the breach is subject to a plain-error standard of review.

Justice Antonin Scalia questioned Puckett's attorney, Lars R. Isaacson, about the argument that a plea agreement is automatically invalidated by a breach, even if the defendant doesn't object to the breach at trial. Isaacson told Scalia that the plea agreement would be "voidable" on appeal.

"It's voidable, so that he can play dog in the manger and wait and see what happens, and then if it's ... in his interest to void it, he does. If it's in his interest not to void it, he doesn't," Scalia said.

Scalia's reference was to [one of Aesop's fables](#), in which a dog denies a hungry ox entrance to a manger, even though the dog cannot eat the hay in the manger himself. The moral: People often begrudge others what they cannot enjoy themselves.

### GUILTY OF A SWEET TOOTH?

A portion of the argument in *Puckett* focused on whether the defendant should bear the burden of showing that the government's breach of the plea agreement caused prejudice at sentencing. In exchange for the defendant's guilty plea, the government had agreed to recommend a reduced offense level because Puckett had accepted responsibility for his offenses. Puckett then committed another crime, before sentencing and while incarcerated, and the government declined to make the recommendation.

Roberts suggested that the government could have upheld the agreement and made the recommendation based on Puckett's acceptance of responsibility for the first crime, even in light of the new criminal conduct. And the chief justice entered a little guilty plea of his own.

"[I]t's not fanciful to say he felt remorse and then he went and did it again. That happens all the time. You know, when I have a rich dessert I shouldn't have, I feel bad about it afterwards. It doesn't mean I will not do it again," Roberts said.

### GINSBURG AS MOVIE BUFF

The second case argued Wednesday, *Boyle v. United States*, involved the level of structure necessary for an organization to qualify as an association-in-fact enterprise under the Racketeer Influenced and Corrupt Organizations Act.

Attorney Marc Fernich argued on behalf of Edmund Boyle, who was convicted of bank robbery, that Boyle was entitled to an independent jury determination of a RICO offense's enterprise element, which requires a structure separate from a pattern of racketeering activities.

Justice Ruth Bader Ginsburg asked Fernich what sort of criminal groups would constitute association-in-fact enterprises under RICO.

"Would it include, let's say, a street gang? How about -- this may be before your time, but 'The Lavender Hill Mob'?"

"I'm sorry, Your Honor?" Fernich said.

"The Alec Guinness movie, 'The Lavender Hill Mob,'" the justice said with a smile.

Ginsburg's reference to the movie -- [a 1951 crime caper](#) about a bank employee who steals a shipment of gold bullion and smuggles it out of Britain in the form of Eiffel Tower paperweights -- may not prove key to the justices' resolution of the case, but might have sent some of the courtroom audience in search of the classic film. And, yes, it's available on DVD.

*Laurel Newby is a senior editor with Law.com.*