UNIVERSITY of HOUSTON

Linguistic Canons of Construction: An Overview

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Statutory Interpretation and Regulatory Practice
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Time to put on the “thick grammarian’s spectacles”…

Linguistic Canons of Construction

- Broad categories: *Textual, Substantive* and *Extrinsic.*
- Linguistic canons are a subset of Textual Canons
  - Linguistic
  - Whole Act
  - Whole Code
- General strategies
  - Courts almost always start with the text itself, and then expand outward to other statutory provisions, statute structure and other statutes
  - Move from narrow to broad

Ejusdem Generis

- “of the same kind”
- When general words follow a list of specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to the objects enumerated by the preceding specific words
- A list alone isn’t sufficient; must share a common attribute. *Ejusdem generis* doesn’t apply to “disjunctive” pairings.
- “Bucket list” canon

Noscitur a Sociis

- “Known by the company it keeps”
- A word is given more precise content by the neighboring words with which it is associated.
- Usually narrows word included among others, but not necessarily
- Like *ejusdem generis, noscitur* doesn’t apply if the list has no common feature.

Expressio Unis

- “the mention of one thing excludes another”

- Requires listing of specific terms that support the inference that the failure to include others reflected an intentional decision by the legislature

- Again, requires group that share a characteristic or association

Variations of *Expressio Unis*

- More specific variations of *expressio unis* include:
  - A list of specific exceptions to a general prohibition means that Congress intentionally excluded any further exceptions.
  - If the statute requires an action to be performed in a particular way, that requirement reflects a decision by Congress to prohibit other ways to perform that action
  - Specific legislative provisions on pre-emption mean that Congress intended to foreclose other general types of preemption

The Case of the Fishy Evidence

Sarbanes-Oxley Act:

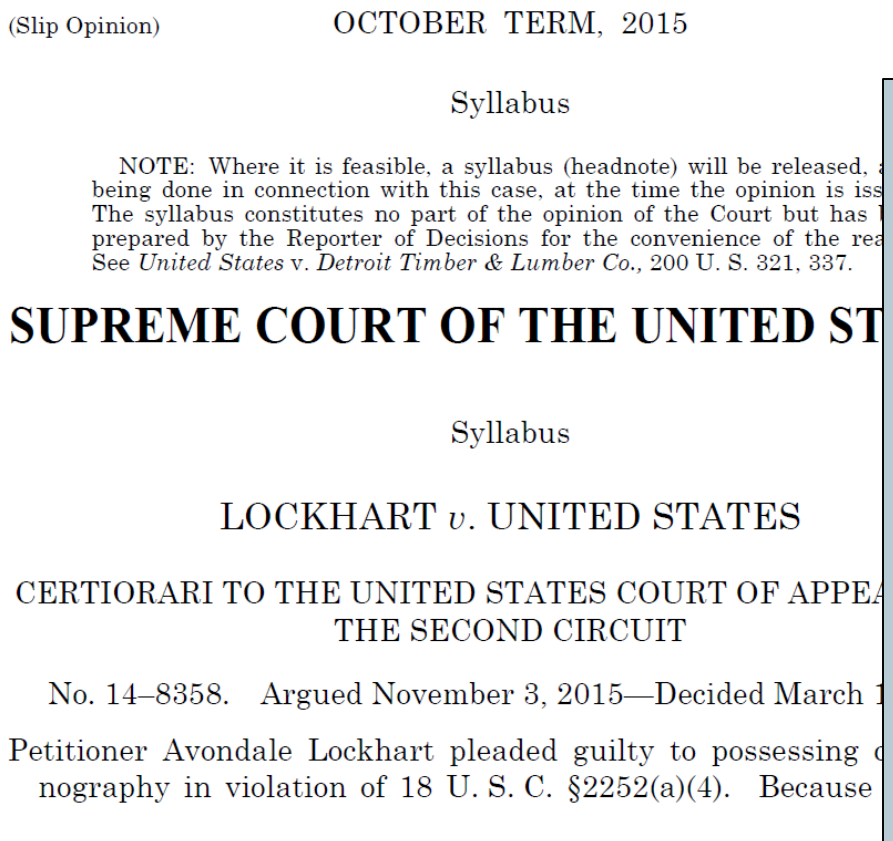
> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in **any record, document, or tangible object** with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. 1519 (2002)

Other linguistic rules

- **“May” vs. “Shall”**
  - But note ambiguity of “shall”
  - Federal Rules of Civil Procedure
- **The Last Antecedent Rule** – a limiting phrase only applies to the clause immediately before it, and doesn’t migrate upward through the statute.
- **Conjunctive vs. Disjunctive** (in other words, “and” vs. “or”)
- **Punctuation** – the deadly comma (“knowingly”), limited weight of parentheticals

Example – Last Antecedent Rule



(Slip Opinion) OCTOBER TERM, 2015 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, a
being done in connection with this case, at the time the opinion is iss
The syllabus constitutes no part of the opinion of the Court but has
prepared by the Reporter of Decisions for the convenience of the rea
See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED ST

Syllabus

LOCKHART *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEA
THE SECOND CIRCUIT

No. 14–8358. Argued November 3, 2015—Decided March 1

Petitioner Avondale Lockhart pleaded guilty to possessing c
nography in violation of 18 U. S. C. §2252(a)(4). Because

18 USC 2552(a)(4)

“under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.”

Whole Act Rule(s)

- View a statute as an entire work, with consistent meanings and coherent structure
- So…
  - Titles?
  - Preambles?
  - Provisos?
- Rule to Avoid Surplusage
- Presumption of Consistent Usage and Meaningful Variation

So let’s put them to work…