writing, or other matter or thing." *Id.* at 343 (citing Cal. Penal Code § 135 (West 2015)). The defendant flushed marijuana down the prison toilet. The issue for the court was whether marijuana was "documentary evidence," specifically, whether it was covered by the broad catch-all: "other matter or thing." Finding the language clear, the court refused to apply *ejusdem generis* to limit the catch-all to paper-like items. *Id.* at 344.

Which of these two cases was similar to the majority's approach in *Ali*? The dissents'?

6. *Rule against Surplusage*: What role did this canon play, if any, in the majority and dissents' opinions? In a case we will study in our next section (*Begay v. Unites States*, 553 U.S. 137 (2008)), the majority used listed items to limit a similarly broad catch-all. The majority suggested that the listed items must have been included to limit the broad catch-all or they would have been surplusage. Are these cases consistent?
7. *Drafting & Legislative History*: According to the dissents, what did the drafting and legislative history show about the meaning of the language at issue? Why did the majority not consider that history?
8. *Elephants in Mouseholes*: In *Whitman v. American Trucking Ass'ns., Inc.*, 531 U.S. 457, 468 (2001), Justice Scalia wrote, "Congress ... does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." Why did Justice Breyer include this quote? Essentially, if Congress intended to enact such a sweeping change, Congress would have made that intent clearer.

* * *

Ejusdem generis and *noscitur a sociis* are often discussed together. Let's return to *Yates v. United States*, 135 S. Ct. 1074 (2015). In the case excerpted below, the justices dispute the role and application of *noscitur a sociis* and *ejusdem generis*. Notice how both Justice Ginsburg and Kagan begin with the plain meaning, then discuss the canons, among other things. Why did Justice Alito concur rather than sign the majority opinion? How does the dissent respond to the majority and concurrence's discussion of these two canons?

Yates v. United States

Supreme Court of the United States
135 S. Ct. 1074 (2015)

◆ Justice Ginsburg delivered the opinion of the Court [in which Roberts, C.J., and Breyer, and Sotomayor, JJ., concur].

John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect catch into the sea. For this offense, he was charged with, and convicted of, violating 18 U.S.C. § 1519, which provides:

> "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." ...

... At the end of the Government's case in chief, [Yates] moved for a judgment of acquittal on the § 1519 charge. Pointing to§ 1519's title and its origin as a provision of the Sarbanes-Oxley Act, Yates argued that the section sets forth "a documents offense" and that its reference to "tangible object[s]" subsumes "computer hard drives, logbooks, [and] things of that nature," not fish....

The Government countered that a "tangible object" within § 1519's compass is "simply something other than a document or record." The trial judge expressed misgivings about reading "tangible object" as broadly as the Government urged: "Isn't there a Latin phrase [about] construction of a statute.... The gist of it is ... you take a look at [a] line of words, and you interpret the words consistently. So if you're talking about documents, and records, tangible objects are tangible objects in the nature of a document or a record, as opposed to a fish." The first-instance judge nonetheless followed controlling Eleventh Circuit precedent. While recognizing that § 1519 was passed as part of legislation targeting corporate fraud, the Court of Appeals had instructed that "the broad language of § 1519 is not limited to corporate fraud cases, and 'Congress is free to pass laws with language covering areas well beyond the particular crisis *du jour* that initially prompted legislative action.'" Accordingly, the trial court read "tangible object" as a term "independent" of "record" or "document." ...

On appeal, the Eleventh Circuit found the text of § 1519 "plain." Because "tangible object" was "undefined" in the statute, the Court of Appeals gave the term its "ordinary or natural meaning," *i.e.*, its dictionary definition, "[h]aving or possessing physical form." (quoting Black's Law Dictionary 1592 (9th ed. 2009)). We granted certiorari and now reverse the Eleventh Circuit's judgment....

The ordinary meaning of an "object" that is "tangible," as stated in dictionary definitions, is "a discrete ... thing," Webster's Third New International Dictionary 1555 (2002), that "possess[es] physical form," Black's Law Dictionary 1683 (10th ed. 2014). From this premise, the Government concludes that "tangible object," as that term appears in § 1519, covers the waterfront, including fish from the sea. Whether a statutory term is unambiguous, however, does not turn solely on dictionary definitions of its component words. Rather, "[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole." Ordinarily, a word's usage accords with its dictionary definition. In law as in life, however, the same words, placed in different contexts, sometimes mean different things....

... [A]lthough dictionary definitions of the words "tangible" and "object" bear consideration, they are not dispositive of the meaning of "tangible object" in § 1519....

The words immediately surrounding "tangible object" in § 1519—"falsifies, or makes a false entry in any record [or] document"—also cabin the contextual meaning of that term.... [W]e rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress....

The *noscitur a sociis* canon operates in a similar manner here. "Tangible object" is the last in a list of terms that begins "any record [or] document." The term is therefore appropriately read to refer, not to any tangible object, but specifically to the subset of tangible objects involving records and documents, *i.e.*, objects used to record or preserve information.

This moderate interpretation of "tangible object" accords with the list of actions § 1519 proscribes. The section applies to anyone who "alters, destroys, mutilates, conceals, covers up, *falsifies*, or *makes a false entry in* any record, document, or tangible object" with the requisite obstructive intent. (Emphasis added.) The last two verbs, "falsif[y]" and "mak[e] a false entry in," typically take as grammatical objects records, documents, or things used to record or preserve information, such as logbooks or hard drives. See, *e.g.*, Black's Law Dictionary 720 (10th ed. 2014) (defining "falsify" as "[t]o make deceptive; to counterfeit, forge, or misrepresent; esp., to tamper with (a document, record, etc.)"). It would be unnatural, for example, to describe a killer's act of wiping his fingerprints from a gun as "falsifying" the murder weapon. But it would not be strange to refer to "falsifying" data stored on a hard drive as simply "falsifying" a hard drive. Furthermore, Congress did not include on § 1512(c)(1)'s list of prohibited actions "falsifies" or "makes a false entry in." See § 1512(c)(1) (making it unlawful to "alte[r], destro[y], mutilat[e], or concea[l] a record, document, or other object" with the requisite obstructive intent)....

A canon related to *noscitur a sociis*, *ejusdem generis*, counsels: "Where general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." In *Begay* v. *United States*, 553 U.S. 137, 142–143 (2008), for example, we relied on this principle to determine what crimes were covered by the statutory phrase "any crime ... that ... is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another," [citation omitted]. The enumeration of specific crimes, we explained, indicates that the "otherwise involves" provision covers "only *similar* crimes, rather than *every* crime that 'presents a serious potential risk of physical injury to another.'" Had Congress intended "tangible object" in § 1519 to be interpreted so generically as to capture physical objects as dissimilar as documents and fish, Congress would have had no reason to refer specifically to "record" or "document." The Gov-

ernment's unbounded reading of "tangible object" would render those words misleading surplusage.

Having used traditional tools of statutory interpretation to examine markers of congressional intent within the Sarbanes-Oxley Act and § 1519 itself, we are persuaded that an aggressive interpretation of "tangible object" must be rejected. It is highly improbable that Congress would have buried a general spoliation statute covering objects of any and every kind in a provision targeting fraud in financial record-keeping....

◆ Justice Alito, concurring in the judgment.

This case can and should be resolved on narrow grounds. And though the question is close, traditional tools of statutory construction confirm that John Yates has the better of the argument. Three features of 18 U.S.C. § 1519 stand out to me: the statute's list of nouns, its list of verbs, and its title. Although perhaps none of these features by itself would tip the case in favor of Yates, the three combined do so.

Start with the nouns. Section 1519 refers to "any record, document, or tangible object." The *noscitur a sociis* canon instructs that when a statute contains a list, each word in that list presumptively has a "similar" meaning. A related canon, *ejusdem generis* teaches that general words following a list of specific words should usually be read in light of those specific words to mean something "similar." Applying these canons to § 1519's list of nouns, the term "tangible object" should refer to something similar to records or documents. A fish does not spring to mind—nor does an antelope, a colonial farmhouse, a hydrofoil, or an oil derrick. All are "objects" that are "tangible." But who wouldn't raise an eyebrow if a neighbor, when asked to identify something similar to a "record" or "document," said "crocodile"?

This reading, of course, has its shortcomings. For instance, this is an imperfect *ejusdem generis* case because "record" and "document" are themselves quite general. And there is a risk that "tangible object" may be made superfluous—what is similar to a "record" or "document" but yet is not one? An e-mail, however, could be such a thing. An e-mail, after all, might not be a "document" if, as was "traditionally" so, a document was a "piece of paper with information on it," not "information stored on a computer, electronic storage device, or any other medium." Black's Law Dictionary 587–588 (10th ed. 2014). E-mails might also not be "records" if records are limited to "minutes" or other formal writings "designed to memorialize [past] events." *Id.*, at 1465. A hard drive, however, is tangible and can contain files that are precisely akin to even these narrow definitions. Both "record" and "document" can be read more expansively, but adding "tangible object" to § 1519 would ensure beyond question that electronic files are included. To be sure, "tangible object" presumably can capture more than just e-mails; Congress enacts "catchall[s]" for "known unknowns." But where *noscitur a sociis* and *ejusdem generis* apply, "known unknowns" should be similar to known knowns, *i.e.*, here, records and documents. This is especially true because reading "tangible object" too broadly could render "record" and "document" superfluous.

Next, consider § 1519's list of verbs: "alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in." Although many of those verbs could apply to

nouns as far-flung as salamanders, satellites, or sand dunes, the last phrase in the list—"makes a false entry in"—makes no sense outside of filekeeping. How does one make a false entry in a fish? "Alters" and especially "falsifies" are also closely associated with filekeeping. Not one of the verbs, moreover, *cannot* be applied to filekeeping—certainly not in the way that "makes a false entry in" is always inconsistent with the aquatic.

... One can imagine Congress trying to write a law so broadly that not every verb lines up with every noun. But failure to "line up" may suggest that something has gone awry in one's interpretation of a text. Where, as here, each of a statute's verbs applies to a certain category of nouns, there is some reason to think that Congress had that category in mind. Categories, of course, are often underinclusive or overinclusive.... But this does not mean that categories are not useful or that Congress does not enact them. Here, focusing on the verbs, the category of nouns appears to be filekeeping. This observation is not dispositive, but neither is it nothing....

◆ JUSTICE KAGAN with whom SCALIA, KENNEDY, and THOMAS, JJ., join, dissenting.

... I ... begin with § 1519's text. When Congress has not supplied a definition, we generally give a statutory term its ordinary meaning. As the plurality must acknowledge, the ordinary meaning of "tangible object" is "a discrete thing that possesses physical form." A fish is, of course, a discrete thing that possesses physical form. *See generally* Dr. Seuss, One Fish Two Fish Red Fish Blue Fish (1960). So the ordinary meaning of the term "tangible object" in § 1519, as no one here disputes, covers fish (including too-small red grouper)....

That is not necessarily the end of the matter; I agree with the plurality (really, who does not?) that context matters in interpreting statutes. We do not "construe the meaning of statutory terms in a vacuum." Rather, we interpret particular words "in their context and with a view to their place in the overall statutory scheme." And sometimes that means, as the plurality says, that the dictionary definition of a disputed term cannot control. But this is not such an occasion, for here the text and its context point the same way. Stepping back from the words "tangible object" provides only further evidence that Congress said what it meant and meant what it said.

Begin with the way the surrounding words in § 1519 reinforce the breadth of the term at issue. Section 1519 refers to "any" tangible object, thus indicating (in line with *that* word's plain meaning) a tangible object "of whatever kind." Webster's Third New International Dictionary 97 (2002). This Court has time and again recognized that "any" has "an expansive meaning," bringing within a statute's reach *all* types of the item (here, "tangible object") to which the law refers. [*S*]ee, *e.g.*, *Ali* v. *Federal Bureau of Prisons*, 552 U. S. 214, 219–220 (2008). And the adjacent laundry list of verbs in § 1519 ("alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry") further shows that Congress wrote a statute with a wide scope. Those words are supposed to ensure—just as "tangible object" is meant to—that § 1519 covers the whole world of evidence-tampering, in all its prodigious variety....

[The plurality turns to] *noscitur a sociis* and *ejusdem generis*. The first of those related canons advises that words grouped in a list be given similar meanings. The second counsels that a general term following specific words embraces only things of a similar kind. According to the plurality, those Latin maxims change the English meaning of "tangible object" to only things, like records and documents, "used to record or preserve information." But understood as this Court always has, the canons have no such transformative effect on the workaday language Congress chose.

As an initial matter, this Court uses *noscitur a sociis* and *ejusdem generis* to resolve ambiguity, not create it. Those principles are "useful rule[s] of construction where words are of obscure or doubtful meaning." But when words have a clear definition, and all other contextual clues support that meaning, the canons cannot properly defeat Congress's decision to draft broad legislation. See, *e.g.*, *Ali*, 552 U. S., at 227 (rejecting the invocation of these canons as an "attempt to create ambiguity where the statute's text and structure suggest none").

Anyway, assigning "tangible object" its ordinary meaning comports with *noscitur a sociis* and *ejusdem generis* when applied, as they should be, with attention to § 1519's subject and purpose. Those canons require identifying a common trait that links all the words in a statutory phrase. In responding to that demand, the plurality characterizes records and documents as things that preserve information—and so they are. But just as much, they are things that provide information, and thus potentially serve as evidence relevant to matters under review. And in a statute pertaining to obstruction of federal investigations, that evidentiary function comes to the fore. The destruction of records and documents prevents law enforcement agents from gathering facts relevant to official inquiries. And so too does the destruction of tangible objects—of whatever kind. Whether the item is a fisherman's ledger or an undersized fish, throwing it overboard has the identical effect on the administration of justice. For purposes of § 1519, records, documents, and (all) tangible objects are therefore alike....

And the plurality's invocation of § 1519's verbs does nothing to buttress its canon-based argument. The plurality observes that § 1519 prohibits "falsif[ying]" or "mak[ing] a false entry in" a tangible object, and no one can do those things to, say, a murder weapon (or a fish). But of course someone can alter, destroy, mutilate, conceal, or cover up such a tangible object, and § 1519 prohibits those actions too. The Court has never before suggested that all the verbs in a statute need to match up with all the nouns. And for good reason. It is exactly when Congress sets out to draft a statute broadly—to include every imaginable variation on a theme—that such mismatches will arise. To respond by narrowing the law, as the plurality does, is thus to flout both what Congress wrote and what Congress wanted....

The concurring opinion is a shorter, vaguer version of the plurality's. It relies primarily on the *noscitur a sociis* and *ejusdem generis* canons, tries to bolster them with 1519 s list of verbs, and concludes with the section s title.... From those familiar materials, the concurrence arrives at the following definition: tangible object should mean something similar to records or documents. In amplifying that purported guidance, the concurrence suggests applying the term tangible object in keeping with

what a neighbor, when asked to identify something similar to record or document, might answer. [W]ho wouldn't raise an eyebrow, the concurrence wonders, if the neighbor said crocodile? Courts sometimes say, when explaining the Latin maxims, that the words of a statute should be interpreted consistent with their neighbors. The concurrence takes that expression literally.

But 1519's meaning should not hinge on the odd game of Mad Libs the concurrence proposes. No one reading 1519 needs to fill in a blank after the words records and documents. That is because Congress, quite helpfully, already did so adding the term tangible object. The issue in this case is what that term means. So if the concurrence wishes to ask its neighbor a question, I'd recommend a more pertinent one: Do you think a fish (or, if the concurrence prefers, a crocodile) is a tangible object? As to that query, who wouldn't raise an eyebrow if the neighbor said no?

In insisting on its different question, the concurrence neglects the proper function of catchall phrases like "or tangible object." The reason Congress uses such terms is precisely to reach things that, in the concurrence's words, do[ ] not spring to mind to my mind, to my neighbor's, or (most important) to Congress's. As this Court recently explained: [T]he whole value of a generally phrased residual [term] is that it serves as a catchall for matters not specifically contemplated known unknowns. Congress realizes that in a game of free association with record and document, it will never think of all the other things including crocodiles and fish whose destruction or alteration can (less frequently but just as effectively) thwart law enforcement. And so Congress adds the general term or tangible object again, exactly because such things do[ ] not spring to mind.[7]

The concurrence suggests that the term tangible object serves not as a catchall for physical evidence but to ensure beyond question that e-mails and other electronic files fall within 1519's compass. But that claim is eyebrow-raising in its own right. Would a Congress wishing to make certain that 1519 applies to e-mails add the phrase tangible object (as opposed, say, to electronic communications)? Would a judge or jury member predictably find that tangible object encompasses something as virtual as e-mail (as compared, say, with something as real as a fish)? If not (and the answer is not), then that term cannot function as a failsafe for e-mails....

* * *

Points for Discussion

1. *Statutory Language*: What was the language at issue? What did each party want that language to mean? What meaning did the plurality, concurrence, and dissent adopt?

---

7. The concurrence contends that when the *noscitur* and *ejusdem* canons are in play, known unknowns should be similar to known knowns, *i.e.*, here, records and documents. But as noted above, records and documents *are* similar to crocodiles and fish as far as 1519 is concerned: All are potentially useful as evidence in an investigation. The concurrence never explains why *that* similarity isn't the relevant one in a statute aimed at evidence-tampering.

2. *Theories*: Which theory did the plurality use? The concurrence and dissent? Judges typically turn to dictionaries to find the ordinary meaning of words. What did Justice Kagan cite to prove that a fish is a tangible object?

3. *Ambiguity*: Which, if any, of the justices required a threshold finding of ambiguity or absurdity before applying *noscitur a sociis* and *ejusdem generis*? Is "tangible object" actually ambiguous or is it broad and general?

4. *Noscitur a Sociis*: According to the plurality, what was the role of the canon *noscitur a sociis*? When judges apply the canon, they seek a unifier. What was the unifier the plurality and concurrence found that narrowed the words "tangible object"? The concurrence divided his *noscitur a sociis* arguments in two: one based on the nouns used, and one based on the verbs used. How did each subset of words narrow the word "tangible object"? Although the dissent disagreed that this canon was appropriate, what unifier did she suggest if one were to be used?

5. *Ejusdem Generis*: Is the term "other tangible object" a general word or a catch-all? If so, is not the appropriate canon *ejusdem generis*? Are both canons relevant in this case or should only one apply?

6. *Rule against Surplusage*: The plurality referred to the rule, or doctrine, against surplusage, a canon that you will learn about in the next section of this text (indeed, Justice Ginsburg cited *Begay*, the case excerpted below). That canon directs that every word and phrase in a statute must have meaning. Congress does not add superfluous words. You might consider whether lawyers are trained to eliminate or add superfluous words. Did the plurality and concurrence eliminate the distinction between document, record, and tangible object? How did Justice Alito identify a difference?

* * *

5. The Rule against Surplusage (or Redundancy)

According to the *rule against surplusage*, the proper interpretation of a statute is one in which every word has meaning; nothing is redundant or meaningless. There are two separate aspects to this canon: (1) every word must have independent meaning; and (2) two different words cannot have the same meaning. If different words had the same meaning, then the second word would be surplusage, or unnecessary. Note that this canon compliments the identical words presumption in that both canons direct that the same words in a statute should mean the same thing and that different words in a statute should mean different things, absent contrary legislative intent. *See, e.g.*, *Feld v. Robert & Charles Beauty Salon*, 459 N.W.2d 279, 284 (Mich. 1990) (applying the canon to conclude that a workers' compensation claimant could not bring an attorney to a medical exam where the statute explicitly allowed claimants to bring "a physician," because the word "physician" would be redundant if anyone was allowed to attend).

Like many of the other linguistic canons, this canon is a tie-breaking presumption and yields to contrary legislative intent. Thus, courts can reject words "as surplusage"