

# What's the Meaning of This?

## Making Sense of Statutory Interpretation

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# Roadmap

## Theory

- CCA will observe “time-honored canons” that “esteem TEXTUALISM”
- Fodder to Refute Opponent’s Arguments

## Texas Law: Code Construction Act vs. *Boykin*

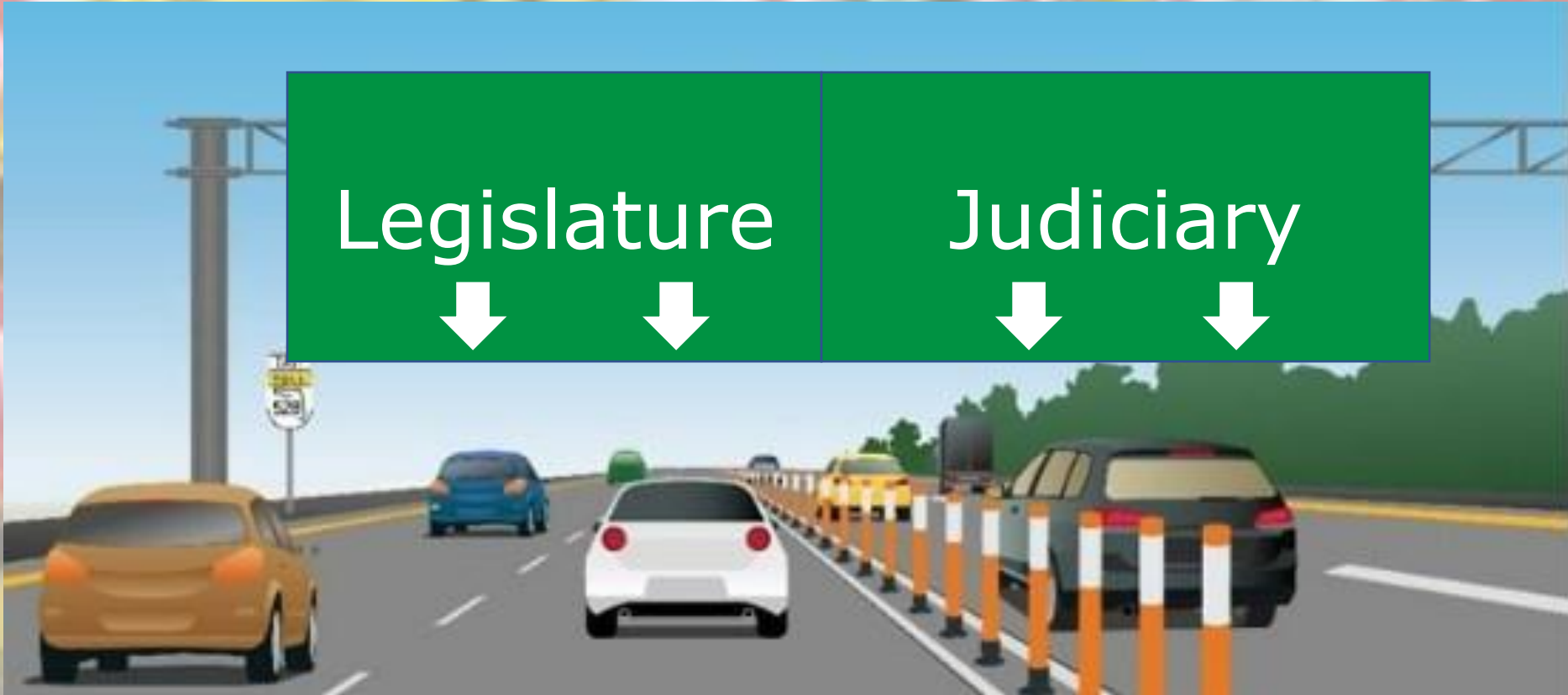
## Doing the Interpretive Work

- What to look at, When
- How Canons Relate to Each Other



# Fundamentals



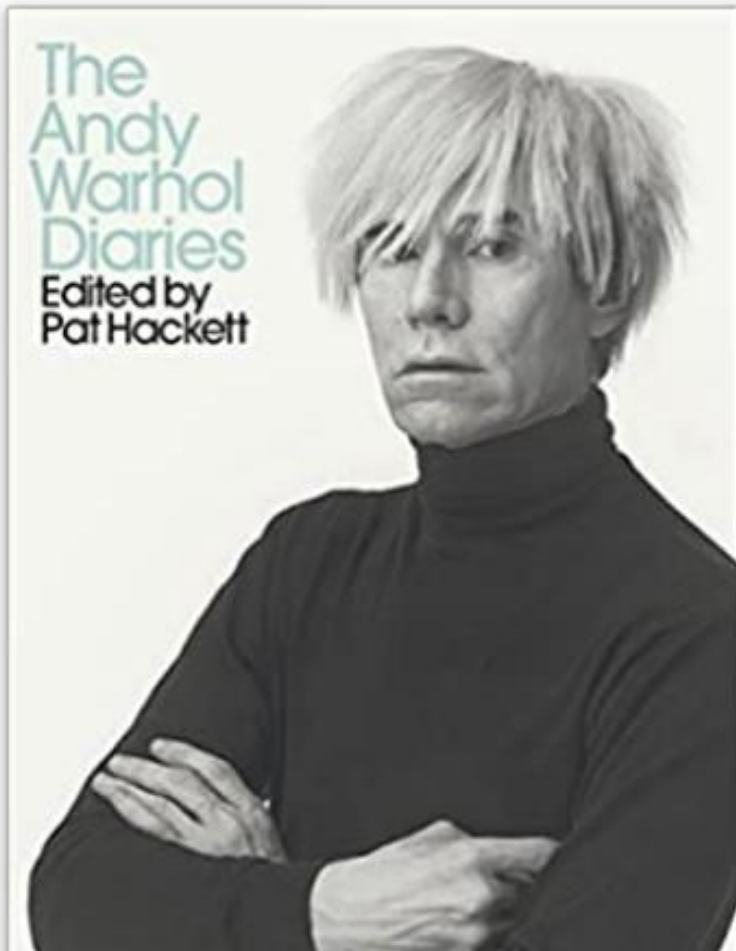


**Legislature Makes the Laws**



Warhol was saying chatGPT is going to destroy us all!

Need for Objectivity



## Legislators

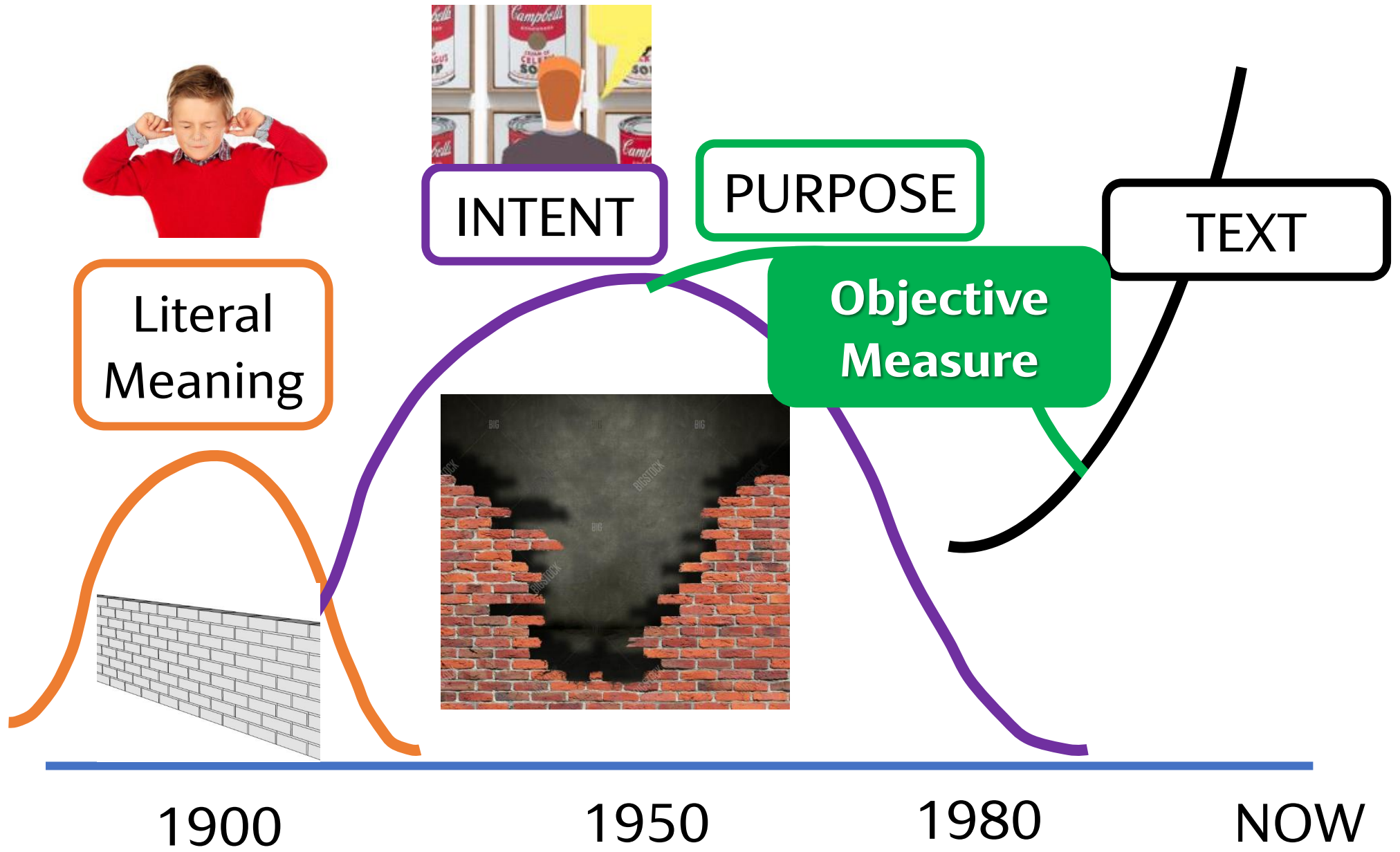
- **Don't speak for everyone**
  - **Can't always anticipate circumstances of how a law could apply**
  - **Can't always agree on how it would apply**
- **Legislative History isn't the law**

**Danger of Looking to Legislative  
Record/History**



# TEXTUALISM







# Textualism

- The text of the statute controls
- Consider legislative history at most to confirm—never to change—text
- Ask: How would a reasonable reader have understood the text
- Consider statutory context & purpose derived from the text

# Minnesota Burglary Enhancement

Facts: D broke into empty house, triggers an alarm. He's caught & police find a realistic-looking plastic gun in his pocket.

Burglary Enhancement if at the time of the burglary:

- The burglar possesses a dangerous weapon or “any article used or fashioned in any manner to lead the victim to reasonably believe it to be a dangerous weapon”

**D argued statute requires that victim be present**

## Reasonable Readers' Understanding: Presence is Required

Burglar possessed “any article used in any manner to lead the victim to reasonably believe it to be a dangerous weapon”;

### Legislative History:

- Public outcry about danger from criminals' use of fake guns
- The phrase was lifted from another statute (assault) describing a fake weapon

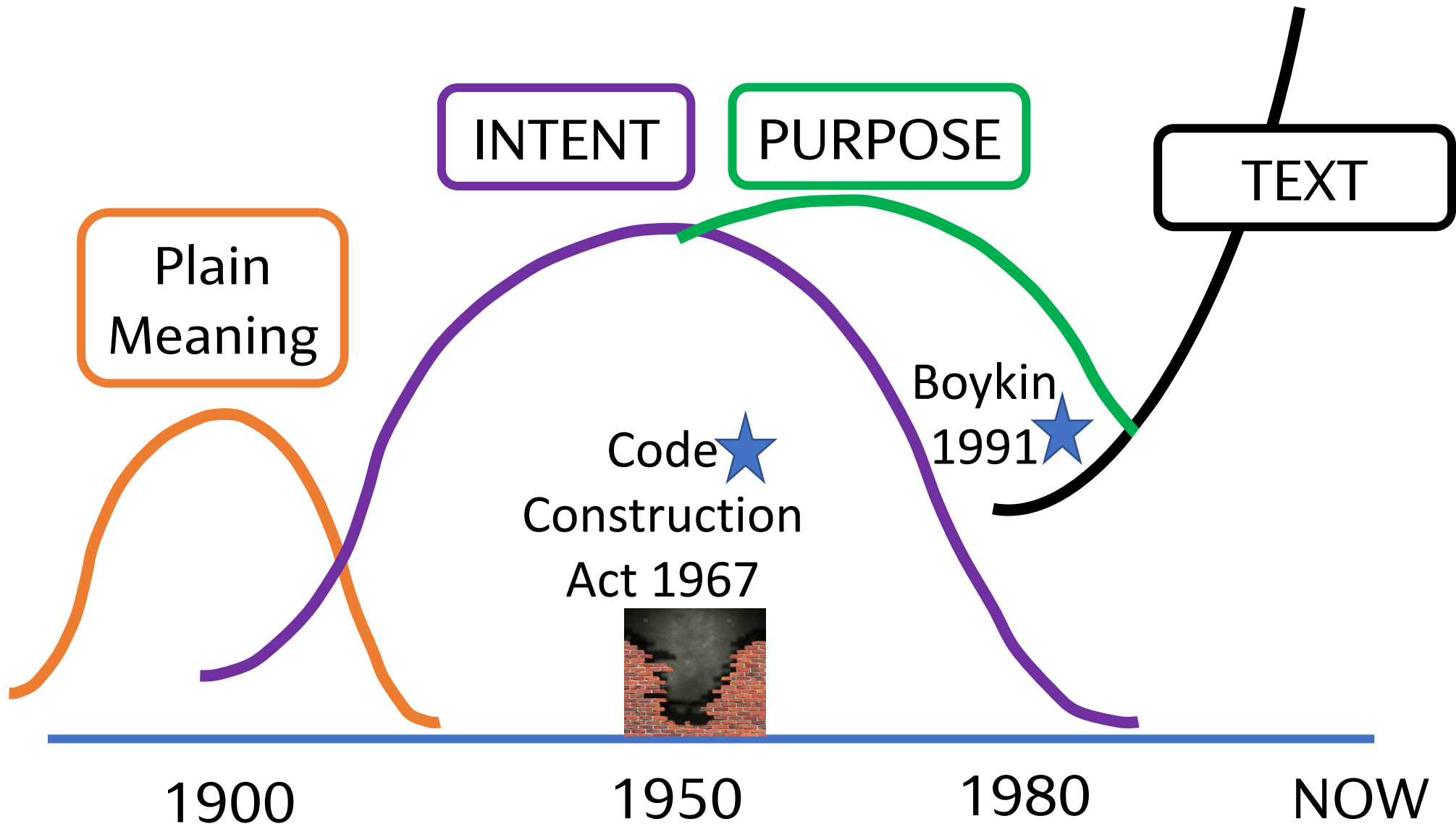
Actual  
victim

Subjective belief, objectively  
reasonable

*(based on State v. Rogers, 925 NW2d 1 (Minn. 2019))*

**TEXAS**





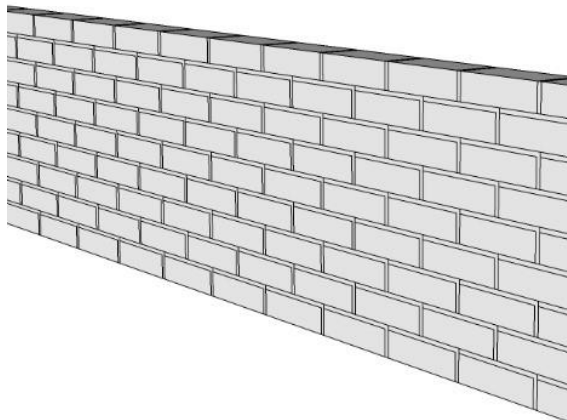
**Code  
Construction  
Act  
§ 311.023  
(1967)**

Whether or not statute is ambiguous,  
a court may consider:

- **Legislative history**
- Object, Prior law
- Circumstances of enactment
- Consequences of an interpretation

# Boykin (1991)

Only when the statute is ambiguous (or absurd) is it constitutionally permissible to consider “Extratextual Factors” such as legislative history.





Fn.4 “([statutory construction laws] that ‘seek to control the attitude or the subjective thoughts of the judiciary’ violate the separation of powers doctrine)”

What about...

- Statute Repealing Rule of Lenity?
- Definitions (likely fine)

**Penal Code § 1.05(a)**

**CCP art. 1.26**



# Boykin

- Found Language  
Unambiguous AND applied  
Surplusage canon





# The Interpretive Work: Easy Cases

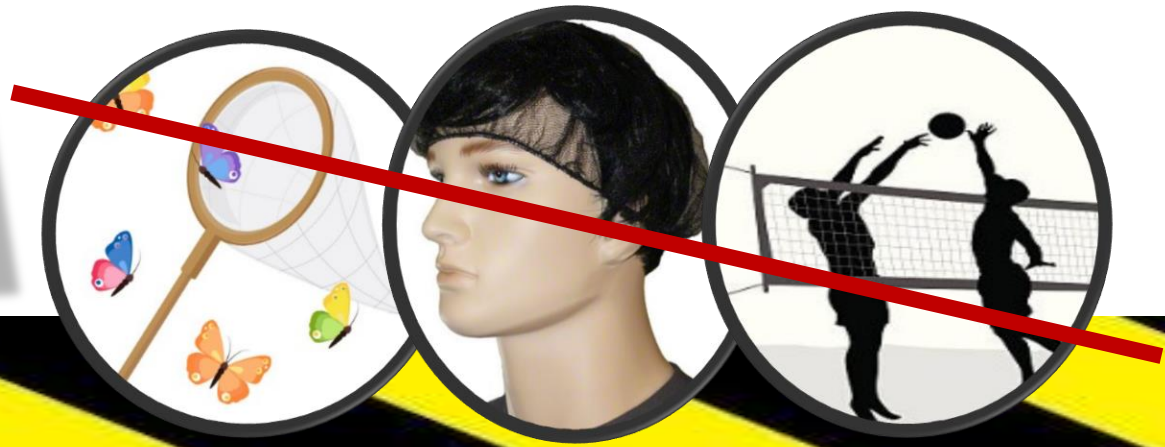




## **Willacy County Fishing Law provided:**

“It shall be unlawful to use a...net or trawl...in any of the tidal waters of Willacy County west of Padre Island [other than] use of a cast net for taking bait.”

- D argued undefined word “net” made law void for vagueness





# Going Deeper..



## **This Side of the Wall**

- **Grammar Rules**
- **Dictionary Definitions**
- **Greater statutory context (statutory history\*)**
- **Some Canons of Construction (to resolve—not create—ambiguity)**
- **Consequences of Interpretation?**





**The “Extra-Textual” Side of the Wall**  
**(Requires Ambiguity)**

- **Legislative History\***
- **Some Canons of Construction**  
**(Rule of Lenity, Headings)**

Ambiguity: Reasonably well-informed persons understand it to have 2 or more different meanings  
→ More than parties’ disagreement  
→ More than COA disagreement

# Recent CCA Canon Cases

## *Expressio Unius / Negative Implication:*

Kahookele (express exclusion of ordinary SJFs from 12.42(d) implied the inclusion of agg SJFs)

## *Surplusage (Rule Against) / Entire statute presumed effective:*

Hardin (Fail to maintain single lane's safe-movement requirement would be rendered meaningless if not staying as nearly as practical within the lane alone sufficed for offense)

## *Ejusdem generis:*

Stephens (Attorney General's "such other duties as may be required by law" in Tex. Const. was limited by prior listed duties)

# Recent CCA Canon Cases

## *Constitutional Doubt:*

Martin (gang “member” incorporates part of the definition of “criminal street gang” to avoid freedom of association and other 1<sup>st</sup> Amendment concerns)

## *In pari materia* / Related-Statutes:

Ex parte Nuncio (importing definition of “patently offensive” from obscenity into obscene harassment)





# Prioritizing the Canons





- No fixed hierarchy
  - “Time-honored canons...that esteem textual interpretation”
  - Some apply only after ambiguity
  - Not all violations of a canon are equal
- Surplusage (overlapping/repetitive meanings vs nullifying meaning)**
- Advice: Don't Just Identify Your Canon; Argue Why It is Stronger in this Context

# Dueling Canons

10-yr minimum if D has a prior “relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward” (D’s prior: adult sexual abuse)

Last Referent: Applies only to “abusive sexual conduct”

v.

Series Qualifier: Applies to all three

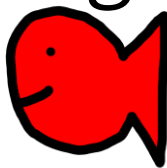
*Lockhart, 577 U.S. 347 (2016)*



**Guess That Canon!**





- Yates (a boat captain) & his crew caught & kept 72 undersized red grouper 
- Inspector put them in a separate crate for holding until they got to port
- On inspection at the port, the fish in the crate were no longer undersized
- For destroying or concealing the fish, Yates was charged with Destruction or Falsification of Records in a Federal Investigation

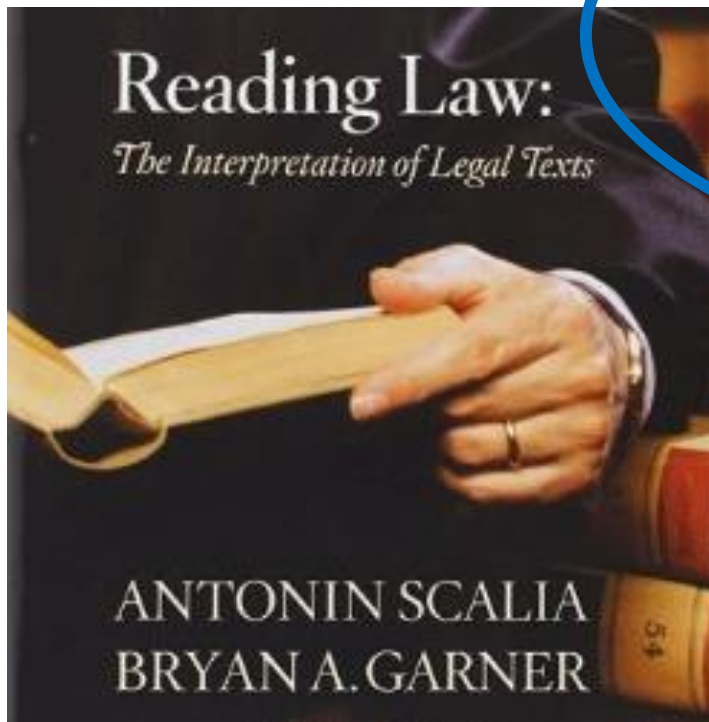


“altering, destroying, concealing, falsifying, or making a false entry in any record, document, or tangible object”  
with intent to obstruct an investigation

**Ordinary  
Meaning**

What canon(s) should you consult to decide whether a fish is a tangible object, at least in this context?

*Yates v. U.S.*, 574 U.S. 528



31. **Associated-Words Canon.** Associated words bear on one another's meaning (*noscitur a sociis*). . . . . 195
32. **Ejusdem Generis Canon.** Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned (*ejusdem generis*). . . . .
33. **Distributive-Phrasing Canon.** Distributive applies each expression to its appropriate referent (*reddendo singula singulis*). . . . .
34. **Prefatory-Materials Canon.** A preamble, preface, or recital is a permissible indicator of meaning.
35. **Title-and-Headings Canon.** The title and headings are permissible indicators of meaning. . . . .
36. **Interpretive-Direction Canon.** Definition sections and interpretation clauses are to be carefully followed. . . . . 225

**“tangible objects”—  
used to  
record or  
preserve  
information**

