

## TANGLED FISHERMAN RELEASED FROM NET



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In the February, 2015, issue of the *SideBar*, I reported on the case involving John Yates, a commercial fisherman prosecuted and convicted by federal prosecutors of violation of the Sarbanes-Oxley corporate governance law for destroying evidence of ...undersized fish... in violation of 18 U. S. C. §1519. That section provides that a person may be fined or imprisoned for up to 20 years if he “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” a federal investigation.

At trial, Yates moved for a judgment of acquittal on the §1519 charge. Pointing to §1519’s origin as a provision of the Sarbanes-Oxley Act of 2002, a law designed to protect investors and restore trust in financial markets following the collapse of Enron Corporation, Yates argued that §1519’s reference to “tangible object” meant objects used to store information, such as computer hard drives, not fish. The District Court denied Yates’s motion, and a jury found him guilty of violating §1519. The Eleventh Circuit affirmed the conviction, concluding that §1519 applies to the destruction or concealment of fish because, as objects having physical form, fish fall within the dictionary definition of “tangible object.”

The U.S. Supreme Court, in a 5:4 decision on February 25, 2015, reversed, holding “that a ‘tangible object’ within §1519’s compass is one used to record or preserve information.” *Yates v. United States*, No. 13-7451, at 20. The Court reasoned that identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute. “Although dictionary definitions of the words “tangible” and “object” bear consideration in determining the meaning of “tangible object” in §1519, they are not dispositive. Whether a statutory term is unambiguous “is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used, and the broader context of the statute as a whole. *Robinson v. Shell Oil Co.*, 519 U. S. 337, 341.” *Id.* at 2. “Applying the canons *noscitur a sociis* and *eiusdem generis*, “tangible object,” as the last in a list of terms that begins “any record [or] document,” is appropriately read to refer, not to any tangible object, but specifically to the subset of tangible objects used to record or preserve information.” *Id.* at 3. The legal maxim embodies the saying, “one is judged by the company one keeps,” and the canons counsel that “[w]here 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.” *Id.* at 15-16.

The full text is available on my website,  
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