

Linguists Engage with Textualism

Legal Interpretation @ NASSLI 2025: Day 3

Goals for today

- More on **canons of construction**
- Case study: conjunctive/disjunctive canon and *Campos-Chaves v. Garland* (& *Pulsifer v. US*)
- Current limits in computational syntax (and how to address them)

Canons of construction

“[R]egular presumptions” regarding ordinary meaning (Eskridge et al. 2023: 1648)

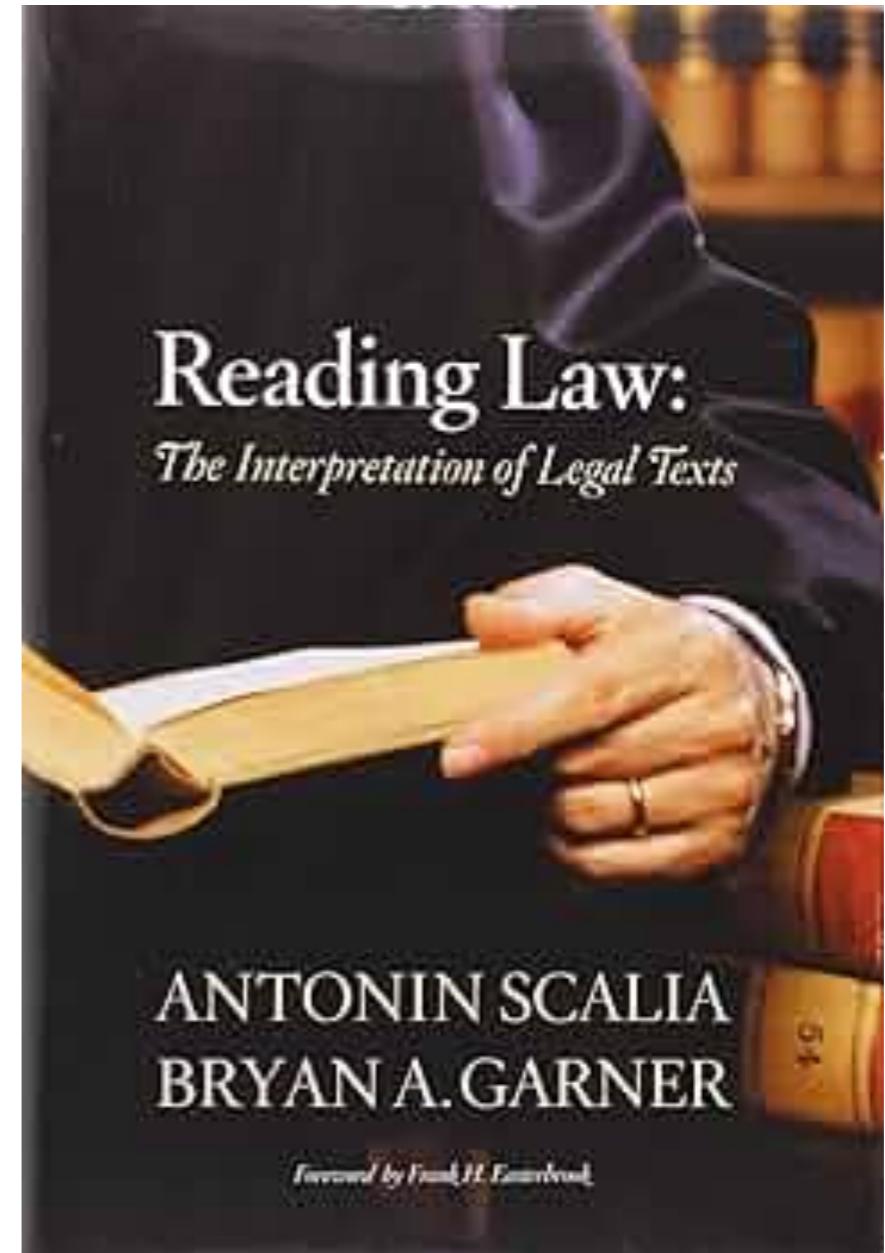


**18 U. S. C. §1519 criminalizes destroying/concealing a
“record, document, or tangible object”**

***Noscitur a sociis:* Associated words bear on one another’s meaning.**

Reading Law

- “Some members of the Court have treated Justice Scalia’s 2012 book, *Reading Law*, almost as a textualist ‘bible.’”
(Krishnakumar 2023: 3)
- Notable for codifying canons



Scalia & Garner on connectives

CONJUNCTIVE	DISJUNCTIVE
You must not do A, B, and C.	You must not do A, B, or C.

With the conjunctive list, the listed things are individually permitted but cumulatively prohibited. With the disjunctive list, none of the listed things is allowed.

After a negative, the conjunctive *and* is still conjunctive: *Don't drink and drive*. You can do either one, but you can't do them both. But with *Don't drink or drive*, you cannot do either one: Each possibility is negated. This singular-negation effect, forbidding doing *anything* listed, occurs when the disjunctive *or* is used after a word such as *not* or *without*. (The disjunctive prohibition includes the conjunctive prohibition: Since you may not do any of the prohibited things, you necessarily must not do them all.) The principle that “not A, B, or C” means “not A, not B, and not C” is part of what is called *DeMorgan's theorem*.

How defeasible is this?

#3: The Negative Proof

CONJUNCTIVE	DISJUNCTIVE
To be eligible, you must prove that you have not A, B, and C.	To be eligible, you must prove that you have not A, B, or C.

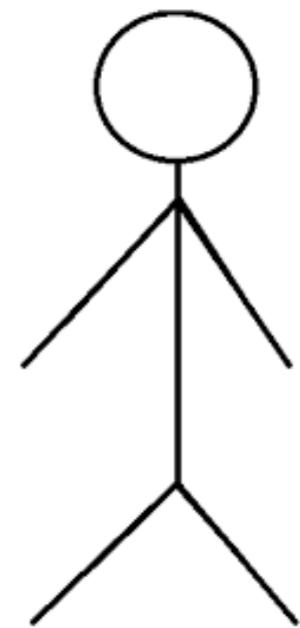
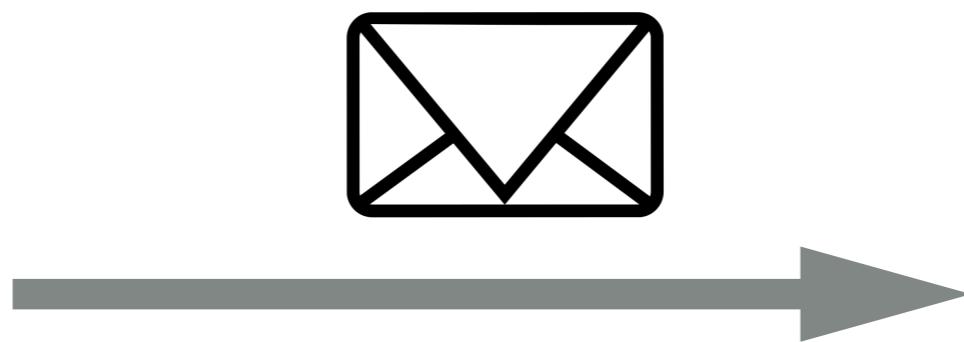
With the conjunctive negative proof, you must prove that you did not do all three. With the disjunctive negative proof, what must you prove? If you prove that you did not do one of the three things, are you eligible? Suppose the statute says:

To be eligible for citizenship, you must prove that you have not (1) been convicted of murder; (2) been convicted of manslaughter; or (3) been convicted of embezzlement.

An applicant proves #3—that he has never been convicted of embezzlement—but fails to prove that he has not been convicted of both murder and manslaughter. Is he eligible? (No.) Is the requirement that he not have done one of these things, or that he have done none? (He must have done none.)

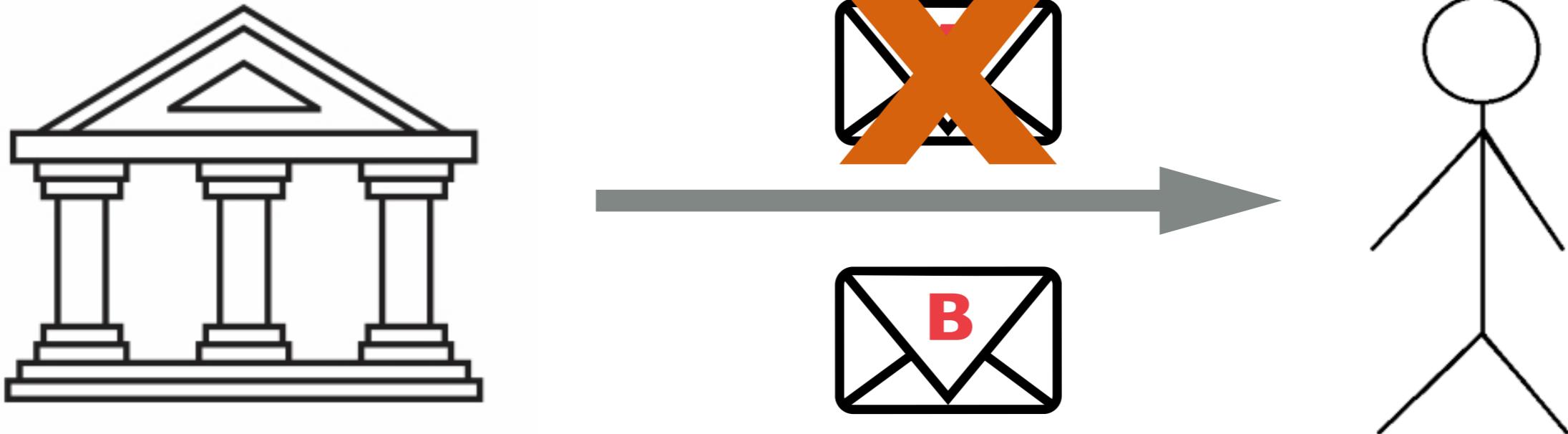


Immigration court



Noncitizen

A noncitizens' deportation order may be rescinded if the noncitizen ***did not receive notice A or notice B.***



Immigration court

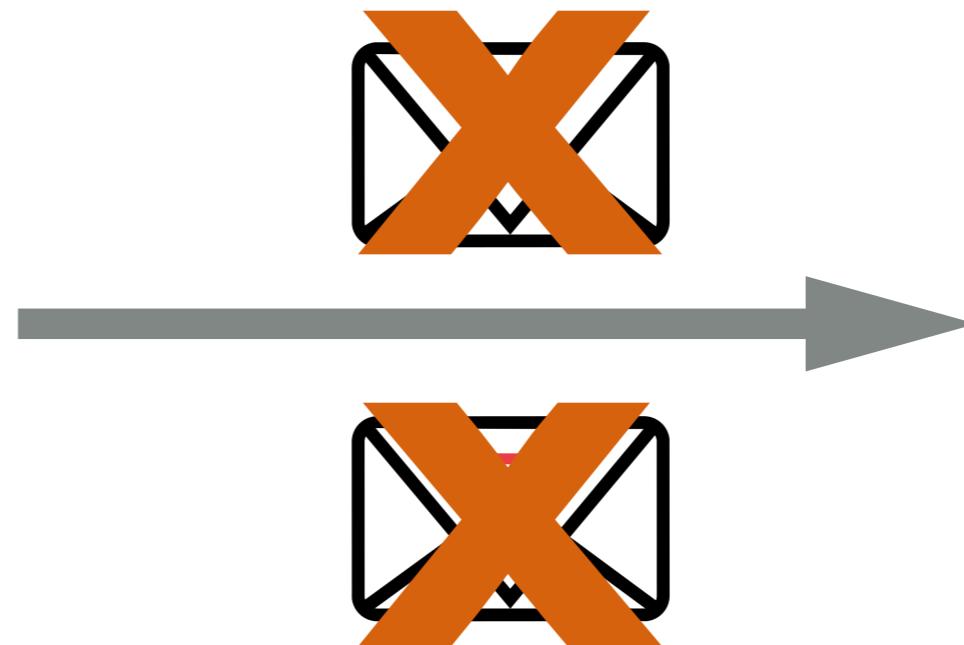
Noncitizen

Campos-Chaves v. Garland



Did not receive notice A or notice B.

Gov't argued: order rescinded only if neither notice received.



Campos-Chaves v. Garland

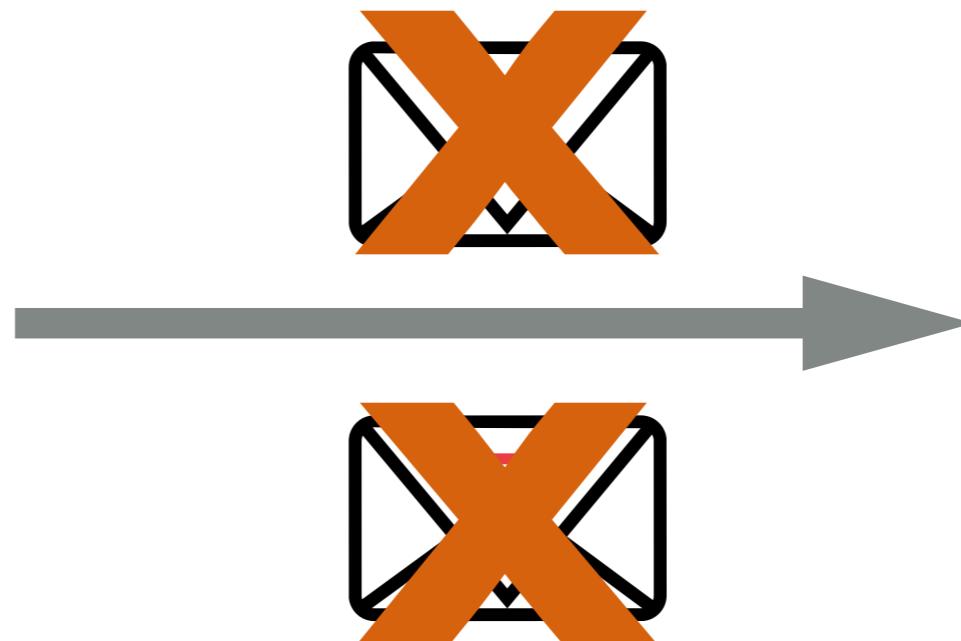


Reading Law: *The Interpretation of Legal Texts*

Textualism's 'disjunctive' canon:

$$\begin{aligned} \text{"Not } A \text{ or } B" &= \neg(A \vee B) \\ &= \neg A \wedge \neg B \end{aligned}$$

ANTONIN SCALIA
BRYAN A. GARNER



Campos-Chaves v. Garland

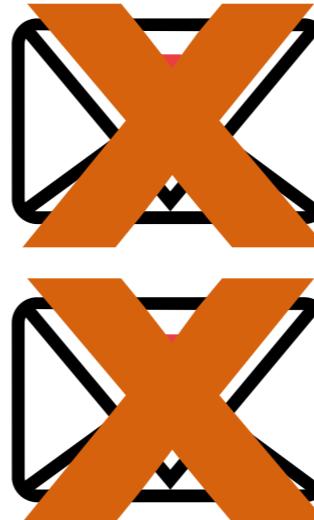
Did not receive notice A or notice B.

... it's scopally ambiguous!



$$\neg(A \vee B) \\ = \neg A \wedge \neg B$$

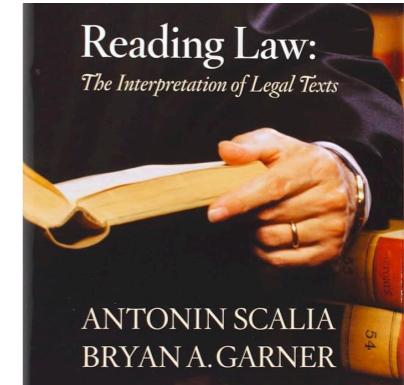
“neither A nor B”



$$\neg A \vee \neg B$$

“either not-A or not-B”

‘Surface scope’
Not > Or



‘Inverse scope’
Not < Or

“Raise your hand if
you didn’t receive
an exam booklet or pencil”

A typology of linguistic contributions

- **Type 1** contributions:

‘Disputed phrase X has multiple possible interpretations (or has none)’

Formal characterization of interpretative possibilities.

Empirical evidence of possible interpretations.

- **Type 2** contributions:

‘(In context), the most plausible ordinary interpretation of X is...’

Formal procedures for resolving linguistic indeterminacies in context.

Empirical data on how ordinary speakers resolve indeterminacies.

Corpus linguistics & law

*The strength and validity of an interpretive canon is an empirical question perhaps someday it will be possible to evaluate these canons by conducting what is called a **corpus linguistics analysis**... of how particular combinations of words are used in a vast database of English prose.*

(Alito, concurring opinion in *Facebook v. Duguid*)

Corpora for Type-2 analysis?

See Tobia (2020, 2021) on the “nonappearance fallacy” and “comparative use fallacy”

Corpora for Type-1 analysis?

Positive evidence of interpretative possibilities. (No negative or frequency-based claims).



Nonappearance fallacy (the “blue pitta problem”, Gales & Solan, 2020):

[A] blue pitta is a bird of Asia, but is not mentioned as a “bird” in the COCA.... [but this does not] indicate[] that the ordinary meaning of a legal text referring to “birds” excludes blue pittas. (Tobia 2021: 11)



Uncommon use fallacy:

Suppose only 2% of *vehicle* mentions refer to airplanes...

... Not evidence that *vehicle* ‘ordinarily’ excludes airplanes. (Ibid).

In the Supreme Court of the United States

BRIEF FOR *AMICI CURIAE* LUCAS
CHAMPOLLION, BRANDON WALDON, MASOUD
JASBI, WILLOW PARKS, AND CLEO CONDORAVDI



Corpus of Contemporary American English

SEARCH

FREQUENCY

If you enjoy creating or being in the middle of drama; if you can not pick up after yourself and keep the communal spaces clean; if you can not help with the chores;

if you are not flexible or reasonable or honest,

then please do not apply. Outside cigarette smoking only.

[From a Craigslist housing ad]

$$\neg A \vee \neg B$$

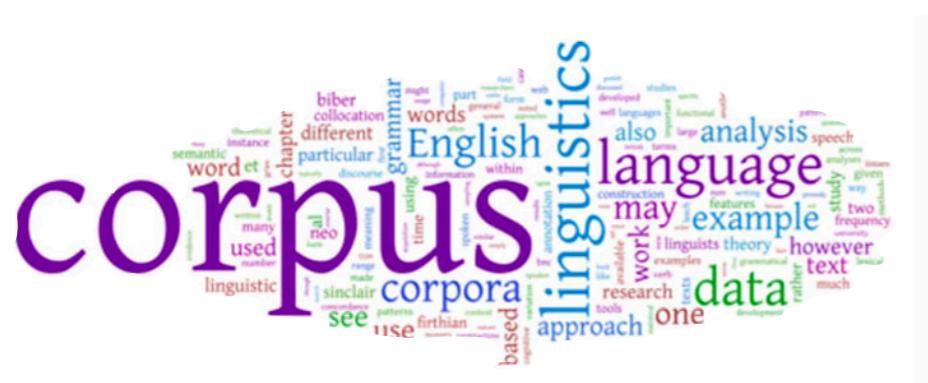
“either not-A or not-B”



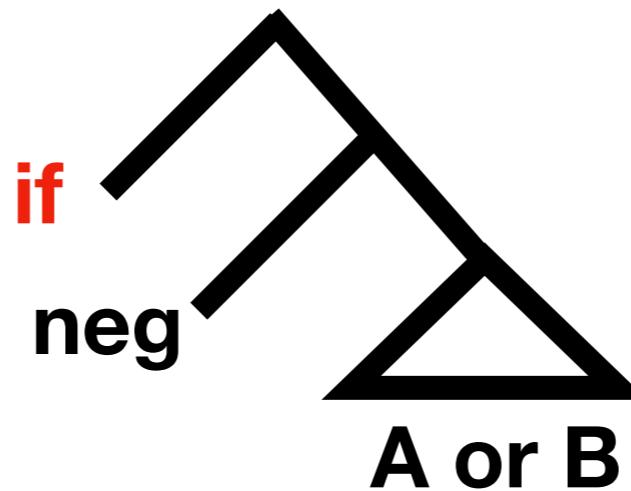
In the Supreme Court of the United States

**BRIEF FOR AMICI CURIAE LUCAS
CHAMPOLLION, BRANDON WALDON, MASOUD
JASBI, WILLOW PARKS, AND CLEO CONDORAVDI**

- The “deportation rescission condition” is scopally ambiguous.
 - Both scope readings are attested in US Federal Law.

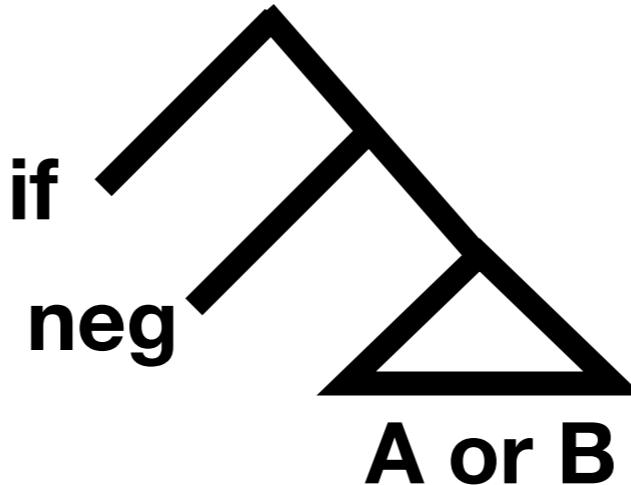


US Federal Code Corpus (Tobia et al., 2023)



Constituency Parser (Qi et al. 2020)

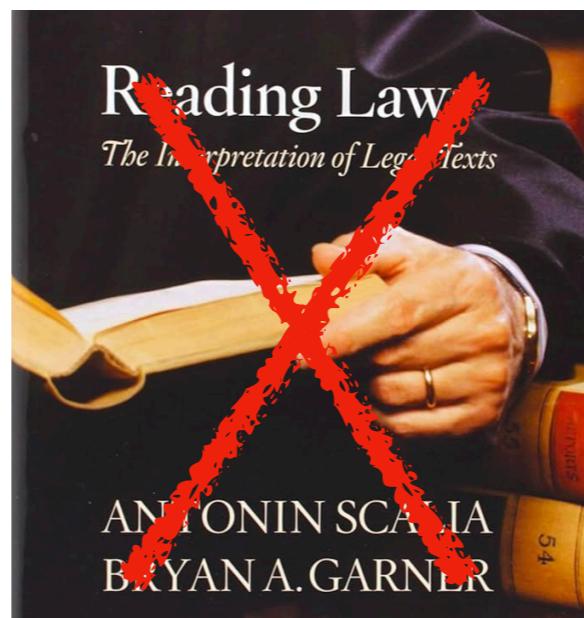
...if the noncitizen *did not receive notice A or notice B*



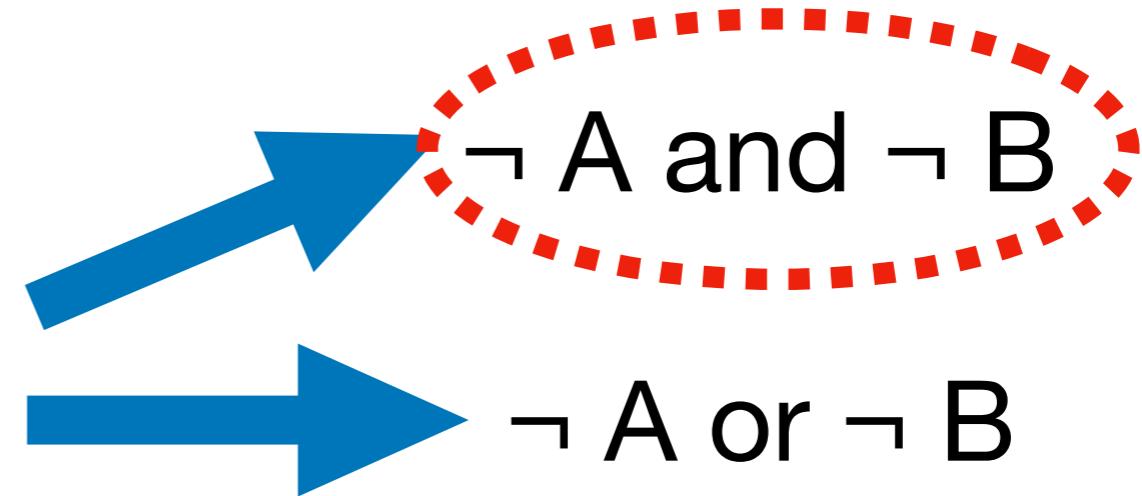
50 U.S.C. § 1806(g) paraphrase:

If law enforcement surveillance was **not lawfully authorized or conducted**, the court shall suppress evidence gathered through that surveillance.

(Not authorized) or (Not conducted) - narrow scope!



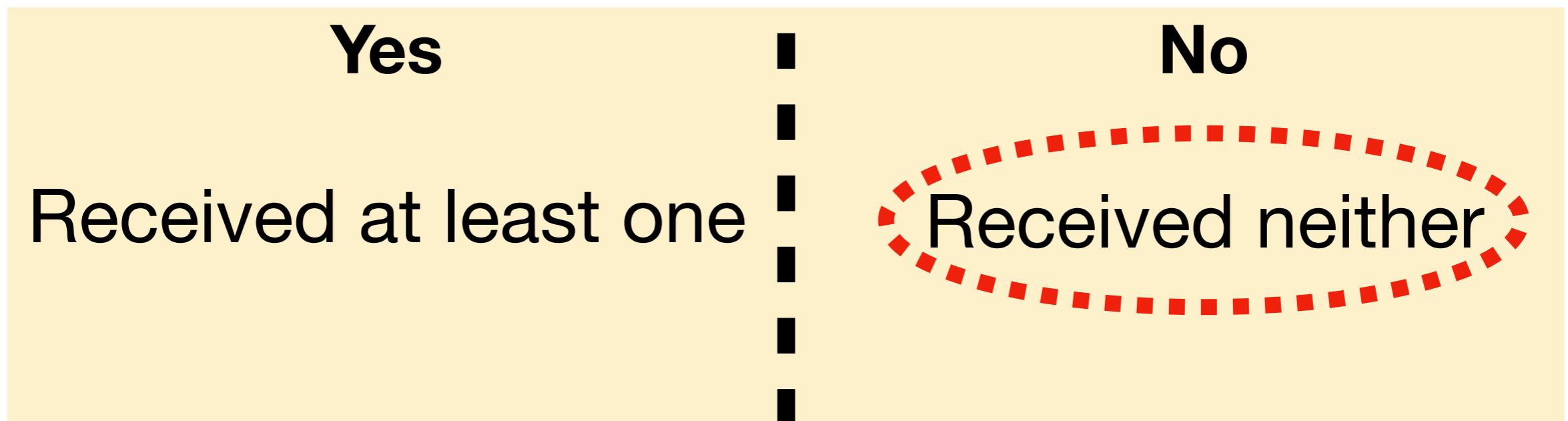
Context
“Not A or B”

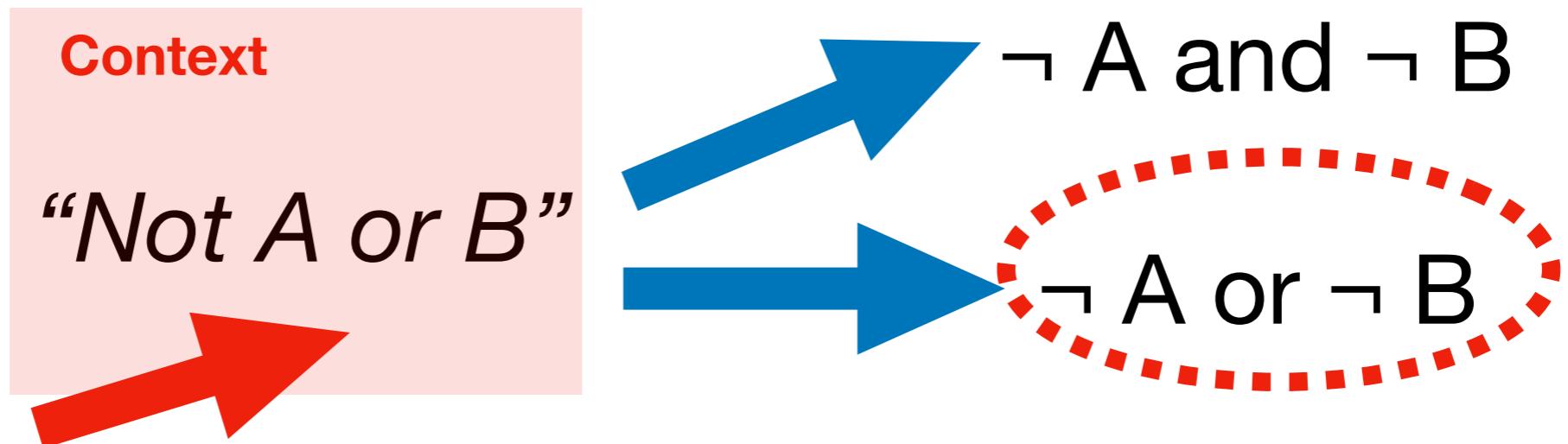


Question Under Discussion (QUD)

Roberts (1996); Gualmini et al. (2008)

QUD: Did the noncitizen receive any notice?

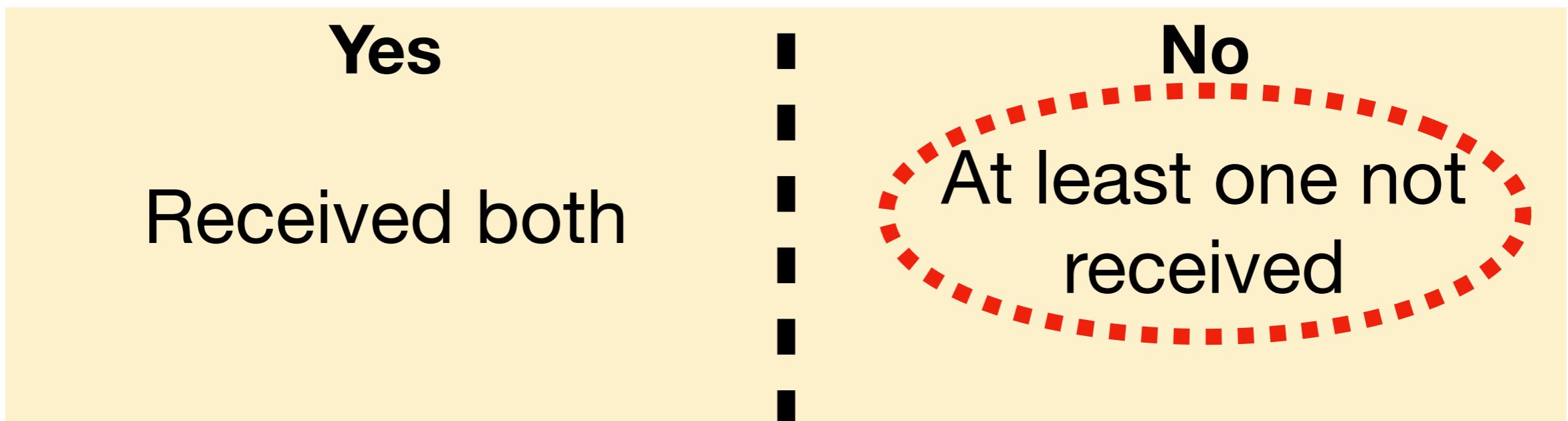




Question Under Discussion (QUD)

Roberts (1996); Gualmini et al. (2008)

QUD: Did the noncitizen receive complete notice?

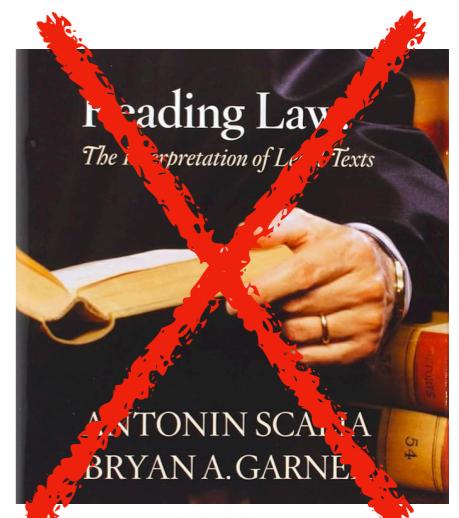


Discussion

In the Supreme Court of the United States

BRIEF FOR *AMICI CURIAE* LUCAS
CHAMPOLLION, BRANDON WALDON, MASOUD
JASBI, WILLOW PARKS, AND CLEO CONDORAVDI

- Linguistic analysis establishes that immigration law is ambiguous as a matter of its literal semantic meaning.
- Disambiguation depends on identifying the QUD.
- “Congress intended for the [law] to make some distinction between... possible scenarios”
- Government concedes in response brief: ‘disjunctive canon’ does not determine the interpretation!



A typology of linguistic contributions

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~“Type 1”

Out of context, the rescission condition is ambiguous between a neither-nor and an either-or interpretation.4

~“Type 2”

Linguistic theory explains how ordinary speakers of English resolve scopally ambiguous sentences based on contextually relevant distinctions.26

1. In the present case, lawmaker intent disambiguates the rescission condition.....29
2. The Government’s interpretation is not faithful to either literal semantic interpretation.....31

“On the Government’s understanding of the statute, the rescission condition applies if the noncitizen demonstrates that

- (a) he either did not receive paragraph 1 notice or did not receive paragraph 2 notice; and
- (b) the missing notice would have have notified the noncitizen of a hearing he failed to attend.”

- Incompatible with surface scope
- ‘Adds’ (b) to inverse-scope (a)

Negated conjunction: *Pulsifer v. US*

A defendant convicted of certain drug offenses may obtain “safety valve” relief—sentencing below the mandatory minimum — if the defendant does not have:

- A. more than 4 criminal history points
- B. a prior 3-point offense; **and**
- C. a prior 2-point violent offense

What is the ‘ordinary meaning’ of negative conjunction?

“[T]he most probably useful way of settling all these questions would be to **take a poll of 100... ordinary speakers of English** and ask them what it means, right? That... would be the most useful rule of construction?”

(Gorsuch, oral argument in Facebook v. Duguid, emph. added)

False consensus bias

Tendency “to see [one’s] own behavioral choices and judgments as relatively common... while viewing alternative responses as uncommon” (Ross et al. 1977: 280)

Personality traits

Hypothetical decision-making

Subjective preferences

Political orientation

What about linguistic interpretation?

Solan et al. (2008)



Experiment

Targets interpretation of 25 commonly-occurring terms in consumer insurance contracts (cf. 2 terms tested in Solan et al. 2008), across 138 hypothetical scenarios.

Rebecca has insurance that covers damage from "Flooding" to her home, defined as "an invasion of the property by a large volume of water caused by a rapid build-up from outside the buildings."



Question 1: Do you think the damage is covered under "Flooding" as it appears in the policy? [Yes / No / Can't Decide]

Question 2: You are one of 100 people who will answer these questions. How many will agree with your answer to Question 1?

“Locus of indeterminacy”

Rebecca has insurance that covers damage from "Flooding" to her home, defined as "an invasion of the property by a large volume of water caused by a **rapid** build-up from outside the buildings."

Between-subjects conditions:



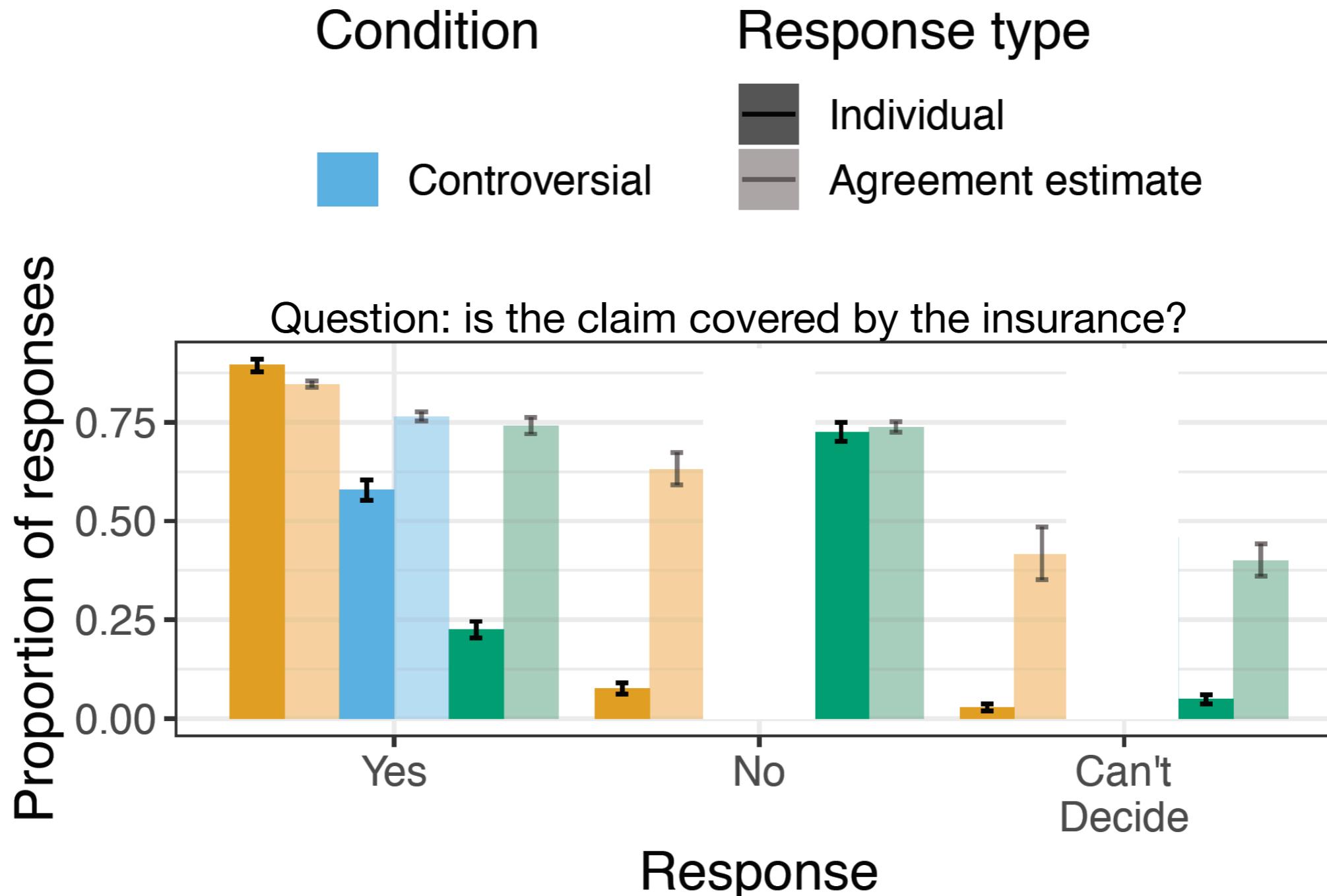
Covered:

Buildup over a few hours

Controversial:
... about a week

Not covered:
... several years

Evidence of False Consensus Bias



N = 1380

(1346 after exclusions)

This card does not have a cat, dog, and elephant.



The Cambridge Handbook of
**EXPERIMENTAL
JURISPRUDENCE**

EDITED BY
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Experimental Jurisprudence

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... we return to this tomorrow