

ADMIRALTY COMMITTEE

FISHERMAN GETS SNARED IN THE SARBANES-OXLEY NET



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Chair

The U.S. Supreme Court on November 5, 2014, heard oral arguments in the *Yates v. U.S.* case. John Yates is a commercial fisherman accused by federal prosecutors of violation of the Sarbanes-Oxley corporate governance law for destroying evidence of undersized fish. That law was passed in 2002 in response to the accounting irregularities at publicly traded companies. As a result of Enron Corporation's document destruction, Congress made it a crime punishable for up to 20 years' imprisonment for knowingly destroying or covering up any evidence with the intent to obstruct an investigation.

The question presented to the U.S. Supreme Court was: "18 U.S.C. § 1519 makes it a crime for anyone who '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 or obstruct an investigation. John L. Yates, a commercial fisherman, was charged and convicted under this anti-shredding criminal statute for destroying purportedly undersized, harvested fish from the Gulf of Mexico after a federally-deputized officer had issued him a civil citation and instructed him to bring them back to port. This petition presents the important question of whether the reach of section 1519 extends to the construction of anything meeting the dictionary definition of 'tangible objects,' or instead is limited to the destruction of tangible objects related to record-keeping and whether Yates was deprived of fair notice that destruction of fish would fall within the purview of 18 U.S.C. § 1519, where the term 'tangible object' is ambiguous and undefined in the statute, and unlike the nouns accompanying 'tangible object' in section 1519, possesses no record-keeping, documentary, or informational content or purpose?"

Fisherman Yates was caught with some grouper that appeared to be undersized in federal waters in the Gulf of Mexico by Florida Fish and Wildlife officers deputized to enforce federal fisheries laws. He was issued a civil citation and ordered to return to home port. On the way home, the undersized fish jumped ship (allegedly with some help from the crew on orders from the master). As a result, when the ship docked, it had only fish that met the size requirement. Federal prosecutors sued him under the criminal Sarbanes-Oxley Act for destroying property to prevent seizure by the federal government. He was convicted and sentenced to 30 days in jail and three years supervision after release.

Some justices were troubled that prosecutors relied on a statute with such severe criminal penalties for what would have been a relatively minor civil case. A justice argued if the law is as broad as prosecutors alleged, then it could be used to target a camper on federal lands who hides an illegal campfire. Yates' lawyer argued the law was meant to target destruction of records, documents, and tangible objects designed to hold information evidencing corporate fraud. Of course, it is probable Yates knew that without tangible evidence of undersized fish, there could be no conviction of that minor civil violation. However, what he did not count on was being caught in the Sarbanes-Oxley criminal net. A decision is expected in July. Decision below: 733 F.3d 1059 (11th Cir. 2013).

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