

A Colorful Supreme Court Case Revives the Rule of Lenity

March 26, 2015

Last month, the Supreme Court's decision in *Yates v. United States* provided much fodder for [pun-filled headlines](#) about fishing. The case involved the government's attempt to stretch the Sarbanes-Oxley Act, which originally contemplated the destruction of documentary evidence in the wake of Enron, to fit a case involving John Yates, a commercial fisherman who destroyed evidence in the form of undersized fish that he caught in violation of conservation laws. At trial, Yates was convicted under the Act, which makes it a crime to destroy "a tangible object with intent to impede, obstruct, or influence" a government investigation. Siding with Yates, the Supreme Court overturned his conviction, finding that fish were not the sort of "tangible object[s]" Sarbanes-Oxley was meant to address. While the case offered the Justices and numerous commentators an opportunity to joke about fish, it may offer white collar defendants more, said Carlton Fields shareholder [Ed Page](#), who practices in the area of white collar criminal defense. I talked to Mr. Page about the case and its implications.

Q. Why was the Sarbanes-Oxley Act even applied to a fact pattern like this? A. As I former federal prosecutor, I know prosecutors see a situation that makes them mad—like Yates' destruction of undersized fish—and ask, 'What tool do I have to prosecute this fact pattern?' In this case, prosecutors brought multiple criminal charges against Yates, and included the Sarbanes-Oxley charge because it carried a greater potential punishment. It's all part of the overcriminalization trend that began in the 1980s.

Q. What is overcriminalization? A. It can mean federalizing crimes over which states typically have jurisdiction, and covers other extensions of criminal law, including expanding it to cover economic activity and regulatory and civil enforcement areas. It happened with the RICO statute, which was meant to target mobsters, but is now more commonly used in the civil context against businesspeople.

Q. Does Yates have implications for white collar defendants? A. Yes, it gives them another argument against overcriminalization. The Supreme Court doesn't like it. Specifically, white collar defendants can look to Justice Ginsburg's opinion in which she wrote that, while a fish is indeed a tangible object, applying Sarbanes-Oxley to the facts in Yates would cut that statute 'loose from its financial-fraud moorings.' By analogy, you can say the same thing whenever prosecutors try to expand a statute to cover a situation it wasn't meant to cover.

Q. What other takeaways does Yates offer? A. It breathed new life into the Rule of Lenity, which says any doubt regarding statutory interpretation should be resolved in favor of the defendant. While the Rule of Lenity has been around for years, this case was a nice reminder that it's alive and well.

Authored By



Edward J. Page

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