



In the summer of 2007, commercial fisherman John Yates was 100 miles due west of Tampa, fishing the federal waters of the Gulf of Mexico aboard the fishing boat, *Miss Katie*. Captain Yates and his crew had already caught several hundred red grouper, which were on ice in the hold below deck.

Yates's trouble began when Florida Fish and Wildlife Commission officer John Jones boarded his vessel. The inspector measured Yates's catch, then issued him a civil fishing citation for harvesting 72 undersized red grouper (approximately 19 instead of 20 inches long). The officer placed the fish in a box and instructed Yates to turn them in when he returned to shore. When the *Miss Katie* returned to port, another federal officer randomly examined three of the offending fish again. He discovered none were undersized. He soon learned that Yates had instructed the crew to throw the undersized fish overboard and replace them with larger fish. At that time, no one would have dreamed that Captain Yates's case would have ended up before the United States Supreme Court.

Second District Court of Appeal Judge John Badalamenti, who represented Yates before the Supreme Court, related this

fisherman's tale to the Senior Counsel Section in September in his presentation entitled "The Fisherman Charged under the Enron Statute — *Yates v. United States*." Judge Badalamenti explained that after the Enron document-shredding scandal, Congress passed the Sarbanes-Oxley Act of 2002.

The Act included a provision making it a crime punishable by up to 20 years in prison to knowingly alter, destroy, falsify, or make a false entry in any record, document, or "tangible object" in order to obstruct a federal investigation. In 2010, almost three years after instructing his crew to throw the undersized grouper overboard, Yates was indicted under that provision of the statute.

Yates was convicted at trial and lost his appeal to the Eleventh Circuit Court of Appeals. By the time the case reached the Supreme Court, the issue was whether the grouper were "tangible objects" under the Enron statute, which subjected Yates to up to 20 years in prison. The Supreme Court overturned Yates's conviction and held that the phrase "tangible object" for the purpose of the



Hon. John Badalamenti

The issue was whether the grouper were "tangible objects" under the Enron statute, which subjected Yates to up to 20 years in prison.

statute "is better read to cover only objects one can use to record or preserve information, not all objects in the physical world," and certainly not a fish.

Judge Badalamenti explained that at oral argument some of the justices posed pointed questions to the government lawyer, concerning prosecutorial discretion. Justice Antonin Scalia asked, "What kind of

mad prosecutor would try to send this guy up for 20 years?" Chief Justice John Roberts, on Yates being given explicit instructions by a law enforcement officer to preserve the evidence, stated, "You make him sound like a mob boss." And Justice Samuel Alito told him, "You are really asking the Court to swallow something that is pretty hard to swallow."

Throughout his presentation to the Senior Counsel Section, Judge Badalamenti passionately underscored the importance of the attorney-client relationship and the duty of lawyers to fight diligently for their clients, which Judge Badalamenti did in convincing the Court not to swallow this fish tale.

Author: Thomas Newcomb Hyde - Attorney at Law