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PERSPECTIVE

## Common sense demanded letting fisherman off the hook

By Mark Miller

The U.S. Supreme Court ruled Wednesday in favor of Captain John Yates of the *Miss Katie* in his eight-year battle with the federal government about some undersized fish he caught. Common sense won; poor draftsmanship by Congress, and some overzealous government prosecutors, lost. That's a good day for liberty, and a story worthy of further explanation.

Captain Yates, a grandfather and commercial fisherman who made his career fishing the Gulf of Mexico off the coast of Florida, saw his boat boarded eight years ago by a federal authority looking for regulatory fishing infractions. When the government official determined 72 of the 3,000 fish Yates caught that day did not meet federal size requirements, Yates found himself facing the kind of charge that many fishermen face in today's America: a civil penalty for catching and keeping too-small fish.

But unlike those other cases, here the story took a "Twilight Zone" turn. Upon reaching port, the federal official re-inspected Yates' fish and concluded that three of the fish had gone missing, and that at least a few fish were not the same fish the bureaucrat had previously tagged. Three years later, for reasons unexplained, the federal bureaucracy decided to charge Yates as a felon for the three missing fish. The government charged Yates with destruction of evidence (the three fish thrown overboard, along with the replacement of some or all of the other 69) and violation of the Sarbanes-Oxley Act: a law designed after the collapse of Enron to catch Wall Street criminals engaged in destroying documents that would demonstrate white-collar crimes.

The federal government charged

Yates with violating this inapplicable law — with destroying a "tangible object," i.e., a fish — because of the penalty it carried: a possible 20 years in prison. By charging him this way, the government hoped to exact a plea bargain from Yates. Who in their right mind would go to trial and risk at least 20 years in prison for allegedly throwing some fish overboard?

Captain Yates took that risk. He refused to kowtow to the federal government. From the beginning of his case, he argued that he was simply engaged in commercial fishing at sea, and committed no crime, let alone violate a law designed for Wall Street flimflammers, not blue-collar boat captains just trying to make a day's wage. The trial judge, and the appeals court, disagreed. They held that a fish equaled a "tangible object" and thus Yates destroyed a tangible object within the meaning of the obviously inapplicable Sarbanes-Oxley Act.

Thankfully, the Supreme Court had the final word, and ruled in a 5-4 decision that a "fish" did not fit the Sarbanes-Oxley Act and its prohibition on destroying "tangible objects." The justices spent much of their opinions (three of them, all told) fighting about how to properly interpret the phrase "tangible objects." In this case, common sense won out.

In explaining the court's decision, Justice Ruth Bader Ginsburg noted that the law at issue exposed Yates (and anyone else) to "20-year prison sentences for tampering with any physical object that might have evidentiary value in any federal investigation into any offense." In other words, Ginsburg, and the justices who signed on to her opinion, believed that 20 years in prison for the kind of offense before it simply did not fit, and could result in a law the government could misuse in the

future to ratchet up the penalty on an otherwise law-abiding citizen who found himself suddenly within the federal government's sights.

In her dissent, Justice Elena Kagan picked up on this portion of Ginsburg's decision. She explained that the justices' debate over the meaning of "tangible object" and "fish" hid the real issue beneath the surface of the case: "overcriminalization and excessive punishment in the U.S. Code." To Kagan, and her three fellow dissenters, the real explanation for the decision to release Yates could be found in the fact that Captain Yates faced 20 years in prison for throwing fish overboard — a potential penalty that gave "prosecutors too much leverage and sentencers too much discretion."

In reaching this conclusion, Kagan echoed a point made by Chief Justice John Roberts during the oral argument. In challenging the federal government's lawyer, Roberts stated, "But the point is that you could, and the point is that once you can, every time you get somebody who is throwing fish overboard, you can go to him and say: Look, if we prosecute you you're facing 20 years, so why don't you plead to a year, or something like that. It's an extraordinary leverage that the broadest interpretation of this statute would give federal prosecutors."

Roberts, of course, sided with the majority in the case, and reduced the leverage the government sought — and by doing so, hopefully reduced the leverage the government has in future cases, as well. People should not plead guilty because they fear wrongly spending their lives in prison, and the government should not abuse its power and force individuals to give up the right to jury trial because of that fear.

Pacific Legal Foundation oppos-

es the violation of criminal laws, but also opposes the federal government misusing its law enforcement authority to threaten Americans with exorbitant penalties for conduct that does not pose a significant threat to health, safety, or the environment. We filed an amicus brief for Captain Yates on behalf of six commercial fishing organizations from across the country. The Florida Keys Commercial Fishermen's Association, Southeastern Fisheries Association, Garden State Seafood Association, Commercial Fishermen of Santa Barbara, California Abalone Association, and California Sea Urchin Commission all stood up for Captain Yates and told the federal government that commercial fishermen, and other Americans, should not face the risk of big government overzealous prosecution based on laws that do not apply to the conduct, or misconduct, at issue. All of these groups, and the Pacific Legal Foundation, applaud yesterday's decision.

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