

# Daily Journal

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## Top Antitrust Lawyers 2021

Yates is a Latham partner and, from 2010-20, the co-chair of the firm's antitrust and competition practice group. During that decade, he helped devise the strategy that propelled the growth of the firm's antitrust practice in the U.S. and globally.

His clients include Oracle Corp., StarKist Co. and Apple Inc. along with his growing practice in representing sports groups like the U.S. Soccer Federation and FINA, the international amateur swimming federation.

"It has been very fulfilling to help Latham become a premier antitrust powerhouse," he said. Yates has been at the firm since 2003, following his introduction to antitrust law by two veteran practitioners: Moses Lasky and John E. Munter, who recruited him fresh from law school to their litigation boutique, Lasky, Haas, Cohler & Munter.

Lasky got his bar card in 1930, was a member of the Bay Area's early defense-side antitrust bar and argued many cases before the U.S. Supreme Court. He died in 2002. "It was formidable as a first year lawyer to go in to see him and have him tell you the page in the Supreme Court Register that the cite you needed was on," Yates said.

Yates was prepping to first-chair a late November trial over Oracle's unfair competition claim that Hewlett

Packard Enterprise Co. interfered with Oracle's server-support business and that a subcontractor offered Oracle's copyrighted software to Oracle customers at a sharply discounted rate. *Oracle America Inc. et al., v. Hewlett Packard Enterprise Co.*, 3:16-cv-01393 (N.D. Cal., filed March 22, 2016).

"It should be a fascinating trial, my first in the COVID era," Yates said. It's planned to run for three weeks. The litigation took a twist in 2019 when U.S. District Judge Jon S. Tigar of Oakland first granted summary judgment to HPE. Yates' team successfully argued for reversal at the 9th U.S. Circuit Court of Appeals. Then Tigar, on remand, sided with Oracle in rejecting HPE's renewed summary judgment motion. Tigar called it the most consequential appellate reversal he's seen in his judicial career.

"Judge Tigar at first accepted HPE's argument that we needed forensic-level proof that the software in question had been installed by the defendant's customers," Yates said. "As a trial judge, he's paid to make decisions like that, but the circuit held that proof of downloading is sufficient." The circuit opinion reaffirmed broad protections for copyrighted software and held that all unlicensed copies, including downloads, are prohibited.

"Trials are always great—the culmination of a case," Yates said. Trying the case with law partner Sarah M.



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Ray and several junior associates is a pleasure, he added. "It's a lot of fun to see the team come together."

— John Roemer