**8.131A OBSTRUCTION OF JUSTICE—DESTRUCTION, ALTERATION OR FALSIFICATION OF RECORDS IN FEDERAL INVESTIGATIONS AND BANKRUPTCY**

**(18 U.S.C. § 1519)**

 The defendant is charged in [Count \_\_\_\_\_ of] the indictment with obstruction of justice in violation of Section 1519 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant knowingly altered, destroyed, concealed or falsified a record, document or tangible object; and

 Second, the defendant acted with the intent to impede, obstruct or influence an actual or contemplated investigation of a matter within the jurisdiction of any department or agency of the United States.

 [The government need not prove that the defendant’s sole or even primary intention was to obstruct justice so long as the government proves beyond a reasonable doubt that one of the defendant’s intentions was to obstruct justice. The defendant’s intention to obstruct justice must be substantial.]

**Comment**

 For a definition of “knowingly,” *see* Instructions 5.7 (Knowingly—Defined) and 5.8 (Deliberate Ignorance).

 Include the last paragraph if the evidence shows the defendant may have had more than one intention when engaging in the challenged conduct. *See United States v. Smith*, 831 F.3d 1207, 1218 (9th Cir.2016).

 Reports prepared by law enforcement officers qualify as “records” or “documents”

under § 1519. *United States v. Gonzalez*, 906 F.3d 784, 794 (9th Cir. 2018).

 To qualify as a “tangible object” under the meaning of § 1519, an item must be “one used to record or preserve information.” *Yates v. United States*, 574 U.S. 528, 547-49 (2015) (holding that fisherman’s undersized fish were not “tangible objects” under § 1519).

 Even when a defendant intends to obstruct justice, the government still must prove that the defendant *actually* altered, destroyed, concealed or falsified a record, document, or other tangible object used to record or preserve information, to secure a conviction under § 1519. *United States v. Katakis*, 800 F.3d 1017, 1030 (9th Cir. 2015) (affirming judgment of acquittal when government failed to prove that defendant who meant to delete emails successfully did so, and holding that moving emails into “deleted items” folder does not qualify as concealment under § 1519).

 To sustain a conviction under § 1519, it is enough for the government to prove that the

defendant intended to obstruct the investigation of any matter as long as that matter falls

within the jurisdiction of a federal department or agency. The defendant need not know that

the matter in question falls within the jurisdiction of a federal department or agency.

*Gonzalez*, 906 F.3d at 794 (9th Cir. 2018).

*Approved 6/2021*