No. 13-7451

In the Supreme Court of the United States

JOHN L. YATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
LESLIE R. CALDWELL
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
ROMAN MARTINEZ
Assistant to the Solicitor General
JOHN F. DE PUE
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Section 1519 of Title 18 of the United States Code prohibits the destruction, concealment, or covering up of "any record, document, or tangible object" with the intent to impede or obstruct an investigation or proceeding under the jurisdiction of the federal government. 18 U.S.C. 1519.

The question presented is whether Section 1519's reference to "any * * * tangible object" encompasses ordinary physical evidence—such as undersized red grouper caught in violation of United States fisheries laws—or is limited to "thing[s] used to preserve information, such as a computer, server, or similar storage device." Pet. Br. i, 8.

TABLE OF CONTENTS

Table of contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, regulation, guidelines and rules:

Statutes, regulation, guidelines and rules—Continued:

Statutes, regulation, guidelines and rules—Continued:

Statutes, regulation, guidelines and rules—Continued:

Statutes, regulation, guidelines and rules—Continued:

Miscellaneous—Continued: Page

Miscellaneous—Continued: Page

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 13-7451

JOHN L. YATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (J.A. 124-134) is reported at 733 F.3d 1059. The opinion of the district court (J.A. 115-117) is not published in the Federal Supplement but is available at 2011 WL 3444093.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2013. The petition for a writ of certiorari was filed on November 13, 2013 and granted on April 28, 2014. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the Appendix to this brief. App., *infra*, 1a-43a.

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted on two counts relating to his destruction of undersized fish for the purpose of interfering with a federal proceeding under the jurisdiction of the National Marine Fisheries Service. Count 1 charged him with preventing federal officials from exercising their lawful authority to seize the fish, in violation of 18 U.S.C. 2232(a). Count 2 charged him with destroying or concealing the fish in order to impede the Fisheries Service's investigation and administration of the federal fisheries laws, in violation of 18 U.S.C. 1519. Petitioner was sentenced to 30 days' imprisonment, to be followed by 36 months' supervised release. The court of appeals affirmed.

A. The Legal Background

1. This case concerns the proper interpretation of 18 U.S.C. 1519, one of the "Obstruction of Justice" provisions in Chapter 73 of Title 18 of the United States Code, 18 U.S.C. 1501 *et seq.* Section 1519 was enacted in 2002, as part of the Corporate and Criminal Fraud Accountability Act of 2002, Pub. L. No. 107-204, Tit. VIII, 116 Stat. 800, which is part of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), Pub. L. No. 107-204, 116 Stat. 745. Section 1519 imposes criminal liability on

> [w]hoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in *any record, document, or tangible object* with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency

> of the United States or any [bankruptcy] case filed under title 11, or in relation to or contemplation of any such matter or case.

18 U.S.C. 1519 (emphasis added) (authorizing a fine and up to 20 years' imprisonment).

2. Until Section 1519 became law in 2002, Chapter 73 did not expressly prohibit destroying evidence to obstruct justice. The government traditionally prosecuted such evidence destruction under the "Omnibus Clause" of 18 U.S.C. 1503, a catchall provision generally barring any person from endeavoring to influence, obstruct, or impede the "due administration of justice." See Jamie S. Gorelick et al., *Destruction of Evidence* §§ 1.4, 5.3, at 8-9, 172-185 (1989) (Gorelick). The Omnibus Clause addresses only the obstruction of pending judicial proceedings. *United States* v. *Aguilar*, 515 U.S. 593, 599 (1995) (discussing *Pettibone* v. *United States*, 148 U.S. 197, 206-207 (1893)).

For decades, legal reformers urged the enactment of a general evidence-destruction provision along the lines of what eventually became Section 1519. In 1962, the Model Penal Code issued by the American Law Institute (ALI) contained a provision—labeled "Tampering With or Fabricating Physical Evidence"—that imposed liability on any person who "alters, destroys, conceals or removes *any record, document or thing* with purpose to impair its verity or availability in [any official] proceeding or investigation." Model Penal Code § 241.7(1) (emphasis added). Virtually identical proposals were embraced by state legislatures, the National Commission on Reform of Federal Criminal Laws (Brown Commission), and various members of Congress. See pp. 20-24, *infra*. All of these proposals

were understood to cover the destruction of all types of physical evidence. *Ibid.*

In 1982, Congress enacted similar language as part of a new witness-tampering provision, 18 U.S.C. 1512. That provision prohibited various actions designed to make unavailable any "*record, document, or other object*" in an official proceeding, whether or not that proceeding was yet pending. 18 U.S.C. 1512(a)(1)(B), (b)(2)(A) and (C) (2000) (emphasis added); S. Rep. No. 532, 97th Cong., 2d Sess. 2, 3 (1982) (1982 Senate Report). The new Section 1512 also barred a person from "corruptly persuad[ing]" someone else to "alter, destroy, mutilate, or conceal *an object* with intent to impair the object's integrity or availability for use" in such a proceeding. 18 U.S.C. 1512(b)(2)(B) (2000) (emphasis added). But Section 1512 did not prohibit that person from directly destroying the evidence himself.

3. In the Sarbanes-Oxley Act, Congress enacted the broad prohibition on evidence destruction that reformers had urged for decades. The main impetus for the legislation was the exposure of massive fraud by the Enron Corporation and the widespread destruction of potentially incriminating documents by Enron's outside accounting firm, Arthur Andersen LLP. S. Rep. No. 146, 107th Cong., 2d Sess. 2-7 (2002) (2002 Senate Report). But Congress recognized that Section 1519's prohibition on destroying or tampering with "any record, document, or tangible object" would "apply broadly" and outlaw "*any* acts to destroy or fabricate physical evidence" for the purpose of impeding the investigation of "*any* matter" within the federal government's jurisdiction. *Id.* at 14 (emphasis added).

The Sarbanes-Oxley Act also added a second evidence-destruction prohibition—in addition to Section 1519—to the pre-existing witness-tampering provision. See 18 U.S.C. 1512(c). Section 1512(c)(1) authorizes up to 20 years' imprisonment for any person who corruptly "alters, destroys, mutilates, or conceals a *record, document, or other object* * * * with the intent to impair the object's integrity or availability for use in an official proceeding." 18 U.S.C. 1512(c)(1) (emphasis added).

4. Since 2002, Sections 1519 and 1512(c)(1) have served as important tools for deterring and punishing the obstruction of justice. The government has used these provisions to prosecute the destruction of a wide array of physical evidence—including human bodies, bloodstains, guns, drugs, cash, and automobiles—in order to cover up offenses ranging from terrorism and the unreasonable use of lethal police force to violations of environmental and workplace-safety laws.[1]

---

[1] For examples of cases using Section 1519, see *United States* v. *McRae*, 702 F.3d 806, 834-835 & n.16 (5th Cir. 2012) (human corpse), cert. denied, 133 S. Ct. 2037 (2013); *United States* v. *Perez*, 603 F.3d 44, 45 (D.C. Cir. 2010) (cocaine); *United States* v. *Diana Shipping Servs., S.A.*, 985 F. Supp. 2d 719, 722-724, 732 (E.D. Va. 2013) (pipe used to bypass vessel's anti-pollution equipment and discharge bilge water at sea); *United States* v. *Atlantic States Cast Iron Pipe Co.*, 612 F. Supp. 2d 453, 512, 540 (D. N.J. 2009) (cement mixer with bypassed worker-safety device). For examples of cases using Section 1512(c)(1), see *United States* v. *Johnson*, 655 F.3d 594, 598, 603-605 (7th Cir. 2011) (cocaine); *United States* v. *Matthews*, 505 F.3d 698, 701 (7th Cir. 2007) (firearm); *United States* v. *Thompson*, 237 Fed. Appx. 575, 575-576 (11th Cir. 2007) (per curiam) (suitcase containing firearm, cash, and cocaine), cert. denied, 552 U.S. 1121 (2008); *United States* v. *Ortiz*, 220 Fed. Appx. 13, 16-17 (2d Cir. 2007) (car); *United States* v. *Moyer*, 726 F. Supp. 2d 498, 510-511 (M.D. Pa. 2010) (shoes); *United States* v.

Most recently, a jury convicted a man under Section 1519 for helping the Boston Marathon bombers conceal physical evidence—in the form of a backpack containing fireworks, a jar of Vaseline, and a thumb drive—with intent to obstruct the investigation of the attacks. *United States* v. *Tazhayakov*, 1:13-CR-10238-DPW Docket entry No. 334, at 2 (D. Mass. July 21, 2014).

B. The Present Controversy

1. Petitioner is a commercial fisherman who captained the *Miss Katie*, a vessel that harvested fish in the Gulf of Mexico. J.A. 125. On August 23, 2007, John Jones, a field officer with the Florida Fish and Wildlife Conservation Commission, was on patrol in the Gulf with two fellow officers. J.A. 12-13, 19-21, 125. Officer Jones was deputized as a federal agent by the National Marine Fisheries Service (NMFS), in which capacity he was charged with enforcing the federal fisheries laws. J.A. 13, 125.[2] Their patrol encountered the *Miss Katie* within the "exclusive economic zone" of the United States, approximately 100 miles offshore due west of Tampa. J.A. 21-24.

Noting that the *Miss Katie* was engaged in a commercial fish harvest, the officers boarded the vessel to inspect for compliance with applicable equipment, safety, and fishing rules. J.A. 22-23, 125. While on board, Officer Jones noticed several red grouper that appeared to be less than 20 inches long, in violation of

---

Green, No. 5:06CR-19-R, 2008 WL 4000870, at *11 (W.D. Ky. Aug. 26, 2008) (human corpse).

[2] The NMFS is a division of the United States Department of Commerce's National Oceanic and Atmospheric Administration. It is charged with enforcing the federal fisheries laws. J.A. 61.

federal regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. No. 94-265, 90 Stat. 331. J.A. 14-15, 23-24; see 50 C.F.R. 622.37(d)(2)(ii) (2007).

Officer Jones measured petitioner's catch and determined that petitioner had illegally harvested 72 undersized red grouper. J.A. 26-34, 126. He checked each undersized fish twice to confirm its length, gave petitioner the benefit of the doubt on any fish measuring close to 20 inches, and had a fellow officer record the length of each undersized fish on a catch measurement verification form. J.A. 27, 31-34, 41, 82-84. Officer Jones signed the form and asked petitioner to do the same. J.A. 34, 36, 39. Petitioner refused. J.A. 39.

Officer Jones issued petitioner a citation and placed the undersized fish in wooden crates. J.A. 41-43, 81, 126. He put the crates inside a large cooler that also stored the *Miss Katie*'s legally harvested catch and provisions for its crew. J.A. 25-26, 41-42. He decided not to seal those crates with evidence tape, because doing so would have blocked the crew from accessing their food and drink. J.A. 43, 45. Officer Jones instructed petitioner to leave the fish inside the wooden crates and to bring the fish back to port the following day, at the conclusion of the *Miss Katie*'s trip. J.A. 44, 68, 126.

Petitioner did not follow Officer Jones's instructions. Instead, after the officers departed, petitioner told his crew that "he [petitioner] wasn't stupid, [and] that if the [officers] wanted to make sure that the fish were still [on board], they should have put a mark on their foreheads." J.A. 69. Petitioner then directed novice crewmember Thomas Lemons to throw the 72

undersized fish overboard. *Ibid.* Lemons complied with that order. *Ibid.* He and petitioner then took other, larger, red grouper that they had previously caught and placed them in the crates that had held the undersized fish. J.A. 70. Petitioner instructed Lemons to lie to law enforcement officers and tell them that the fish in the crates were the same fish that Officer Jones had previously determined were undersized. J.A. 71, 77-78.

Several days later, NMFS Special Agent James Kejonen met petitioner and the *Miss Katie* at the port in Cortez, Florida, to investigate Officer Jones's report of undersized fish. J.A. 60-62, 126. Petitioner told Agent Kejonen that all of the undersized fish identified by Officer Jones were still onboard the vessel. J.A. 64. The following day, however, Officer Jones determined that the fish subsequently unloaded from the *Miss Katie* were not the same fish that he had measured and set aside at sea days earlier. J.A. 52-55, 85-88. Under questioning by federal agents, crewmember Lemons eventually told the truth about petitioner's scheme to cover up his offense by throwing the undersized grouper overboard. J.A. 72-73, 127.

2. In May 2010, a grand jury charged petitioner with three crimes: (1) destroying property to prevent a federal seizure, in violation of 18 U.S.C. 2232(a); (2) destroying, concealing, and covering up the undersized fish to impede the NMFS investigation, in violation of 18 U.S.C. 1519; and (3) making a false statement to federal law enforcement officers, in violation of 18 U.S.C. 1001(a)(2). J.A. 6-8. In August 2011, the case proceeded to trial and Officer Jones,

Agent Kejonen, and crewmember Lemons all testified for the prosecution. See J.A. 10-80.

At the end of the government's case-in-chief, petitioner moved for a judgment of acquittal on the Section 1519 count. J.A. 128. Petitioner's counsel argued that Section 1519 is "a documents offense," that it "applies to destruction of records and records only," and that its reference to any "tangible object[]" concerns only "notations in tangible objects, such as computer hard drives, logbooks[, and] things of that nature" and does not include other items "that can be destroyed as part of an investigation." J.A. 91-92. Counsel conceded, however, that "[i]f the government wished to charge [petitioner] with * * * some other type of destruction of evidence, or some other type of impairment of evidence, our position is that there are sections that would have been appropriate for the government to pursue; but [Section 1519] is not one." J.A. 91.

The district court denied the motion. J.A. 115-117. The court emphasized Section 1519's "broad language" and held that "a reasonable jury could determine that a person who throws or causes to be thrown fish overboard in the circumstances of this case is in violation of [Section] 1519." J.A. 116-117.

The jury later found petitioner guilty on the Section 2232(a) and 1519 counts, and it acquitted him of the Section 1001(a)(2) count. J.A. 118-119. The Probation Office calculated a Sentencing Guidelines range of 21 to 27 months' imprisonment. 12/8/11 Sent. Tr. (Tr.) 47. The district court instead granted petitioner a downward variance and sentenced him to 30 days' imprisonment, followed by 36 months' supervised release. Tr. 70-71; J.A. 119-120.

3. The court of appeals affirmed. J.A. 124-134. As relevant here, the court rejected petitioner's argument that the phrase "any * * * tangible object," as used in Section 1519, only applies to items "relat[ing] to recordkeeping" and does not apply to fish. J.A. 131-132; Pet. C.A. Br. 28, 36, 39, 40.

The court of appeals reasoned that "[i]n statutory construction, the plain meaning of the statute controls unless the language is ambiguous or leads to absurd results." J.A. 132 (citation omitted). It explained that undefined words in a statute must be given their "ordinary or natural meaning." *Ibid.* (citing *Smith* v. *United States*, 508 U.S. 223, 228 (1993)). Applying these principles, the court looked to *Black's Law Dictionary*'s definition of "tangible" as "[h]aving or possessing physical form." *Ibid.* (citing *Black's Law Dictionary* 1592 (9th ed. 2009)). The court concluded that a fish is unambiguously a "tangible object" under Section 1519, and it therefore affirmed petitioner's conviction. J.A. 132, 134.

SUMMARY OF ARGUMENT

Section 1519 prohibits the destruction of "any record, document, or tangible object" with the intent to obstruct an investigation or proceeding under the jurisdiction of the federal government. 18 U.S.C. 1519. Petitioner violated that statute when he deliberately destroyed physical evidence—in the form of 72 undersized red grouper—in order to conceal his violations of federal law from the National Marine Fisheries Service.

I. The plain meaning of Section 1519's phrase "any * * * tangible object" unambiguously covers all types of physical evidence. That conclusion follows from standard dictionary definitions of the relevant

terms, and it is confirmed by the broader context in which the provision appears. Section 1519 is a straightforward ban on destroying evidence, which is located in the chapter of Title 18 addressing "Obstruction of Justice." See 18 U.S.C. 1501 *et seq*. The provision logically bans the destruction of all—and not merely some—types of evidence.

Section 1519's origins confirm that the phrase "any record, document, or tangible object" encompasses all physical evidence. That formulation is virtually identical to language that the Model Penal Code, the Brown Commission, state legislatures, and congressional reform proposals had all used—for decades, in the same context—to refer to all varieties of physical evidence. See, *e.g.*, Model Penal Code § 241.7 cmt. 3, at 179 (1980) (explaining that phrase "any record, document or thing" broadly covers "any physical object"). By modeling Section 1519 on those antecedents, Congress necessarily understood the provision to have the same scope.

Section 1519 also tracks language that Congress used in the federal witness-tampering statute, 18 U.S.C. 1512. Since 1982, that statute has prohibited various means of interfering with others in order to prevent the introduction or discovery of any "record, document, or other object" in an official proceeding. See 18 U.S.C. 1512(a) and (b) (2000). It has always been understood to cover all physical evidence. Congress used the same phrase—"record, document, or other object"—when it amended Section 1512 as part of the Sarbanes-Oxley Act. See 18 U.S.C. 1512(c)(1); Corporate Fraud Accountability Act of 2002, Pub. L. No. 107-204, Tit. XI, § 1102, 116 Stat. 807. Congress

did not intend Section 1519's nearly identical language to mean something far narrower.

Finally, the legislative history of the Sarbanes-Oxley Act reinforces the plain meaning of Section 1519. Congress enacted that provision to clarify ambiguities and close loopholes in the existing destruction-of-evidence regime. The Senate Judiciary Committee explained that Section 1519 would "apply broadly to any acts to destroy or fabricate physical evidence" with obstructive intent, and the primary loophole it identified affected all types of physical evidence. 2002 Senate Report 6, 7, 12, 14. The legislative history confirms that when Congress used the broad phrase "any * * * tangible object," it meant what it said.

II. Petitioner's narrow construction of Section 1519 lacks merit. Petitioner argues (Br. 8) that the phrase "any * * * tangible object" covers only a subset of those objects—specifically, "thing[s] used to preserve information, such as a computer, server, or similar storage device." That interpretation has no basis in Section 1519's text or in the broader statutory context. Petitioner relies most heavily on the *noscitur a sociis* and *ejusdem generis* canons of statutory construction. But those canons cannot overcome Section 1519's plain meaning. And even if the canons did apply here, they would confirm that the phrase "any * * * tangible object" covers all physical items relevant to a federal investigation or proceeding. Petitioner's other textual and contextual arguments are equally unavailing.

Petitioner and his amici argue that because Congress enacted Section 1519 as part of the Sarbanes-Oxley Act, the provision should be limited to the kinds of document shredding at issue in the Enron investi-

gation. But Section 1519's text establishes that the provision prohibits the destruction of *any* evidence with improper obstructive intent. Petitioner cannot point to any legislative history directly supporting his novel assertion that the phrase "any * * * tangible object" covers only information-storage devices. Moreover, petitioner's construction creates an arbitrary distinction between documentary evidence and other types of physical evidence that has no basis in the text or purpose of the Sarbanes-Oxley Act. In his view, Section 1519 prohibits a murderer from destroying his victim's diary, but not the murder weapon. Congress surely did not intend such an illogical result.

In any event, as petitioner's own amicus concedes, the Sarbanes-Oxley Act unambiguously banned the destruction of "any kind of object" in 18 U.S.C. 1512(c)(1), which covers any "record, document, or other object." Oxley Amicus Br. 4, 17-18. Congress used a virtually identical phrase in Section 1519 to enact a similar prohibition. Both should be interpreted to reach the same broad universe of physical evidence.

Petitioner's invocation of other principles of statutory construction also fails. It was not absurd for Congress to enact a broad ban on the destruction of evidence. Section 1519 is not vague, and there is accordingly no reason to adopt a narrow construction to avoid a constitutional question. The provision does not manifest a problem with "overcriminalization" of otherwise-innocent conduct. And Section 1519 is not grievously ambiguous, so the rule of lenity does not apply. The Court should decline petitioner's invitation to depart from Section 1519's ordinary meaning.

ARGUMENT

I. SECTION 1519 PROHIBITS THE DESTRUCTION OF ALL TANGIBLE OBJECTS

Petitioner no longer disputes that he deliberately instructed his crew to throw 72 undersized fish overboard—in violation of a direct order by a federal officer of the NMFS—in order to obstruct enforcement of federal law. The only question for this Court is whether a physical item with evidentiary significance counts as "any * * * tangible object" for purposes of 18 U.S.C. 1519. It plainly does. The text, structure, purpose, and history of that provision all confirm that Section 1519 prohibits the destruction of any kind of physical evidence—including fish—so long as the destruction occurs with the requisite obstructive intent.

A. Section 1519 Unambiguously Covers All Physical Evidence

Section 1519's prohibition on destroying, concealing, or covering up evidence applies broadly to "any record, document, or tangible object." That phrase means what it says.

*1. The plain meaning of "any * * * tangible object" covers all physical items*

a. This Court has recently—and repeatedly—emphasized that "in all statutory construction, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Octane Fitness, LLC* v. *ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014) (citation, brackets, and internal quotation marks omitted); see *Sandifer* v. *United States Steel Corp.*, 134 S. Ct. 870, 876 (2014) (describing this rule as a "fundamental canon of statu-

tory construction"); see also, *e.g.*, *Lawson* v. *FMR LLC*, 134 S. Ct. 1158, 1165 (2014) (applying rule); *Burrage* v. *United States*, 134 S. Ct. 881, 887 (2014) (same); *Sebelius* v. *Cloer*, 133 S. Ct. 1886, 1893 (2013) (same). The ordinary meaning of a statutory term can typically be determined by reference to its dictionary definition. See, *e.g.*, *Octane Fitness*, 134 S. Ct. at 1756; *Burrage*, 134 S. Ct. at 887.

Here, the ordinary meaning of Section 1519's key phrase—"any * * * tangible object"—is plain and unambiguous. The adjective *tangible* means "[h]aving or possessing physical form," *Black's Law Dictionary* 1468 (7th ed. 1999), or being "able to be perceived as materially existent[,] esp[ecially] by the sense of touch," *Webster's Third New International Dictionary* 2337 (2002) (*Webster's Third*); see Pet. Br. 13 n.7 (citing similar definitions). An *object* is, in the relevant sense, "a discrete visible or tangible thing" or "something that is put or may be regarded as put in the way of some of the senses." *Webster's Third* 1555; see Pet. Br. 12 n.6. The phrase *tangible object* therefore plainly encompasses discrete physical items perceptible by the senses.

Section 1519's reference to "*any* * * * tangible object" confirms that the provision covers all such items, and not merely a subset of them. 18 U.S.C. 1519 (emphasis added). The plain meaning of *any* is "one or some indiscriminately of whatever kind," or "one, no matter what one, * * * without restriction or limitation of choice." *Webster's Third* 97. This Court has often acknowledged—and applied—the "expansive meaning" of the word *any* in prior cases. See, *e.g.*, *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 218-220 (2008); *United States* v. *Gonzales*, 520

U.S. 1, 5 (1997); *Harrison* v. *PPG Indus., Inc.*, 446 U.S. 578, 588-589 (1980).

Taken as a whole, Section 1519's reference to "any * * * tangible object" is straightforward and plain. It unambiguously covers the destruction of any discrete physical item, of any type, that might be relevant to a federal investigation or proceeding.

b. That interpretation of Section 1519 is consistent with the other uses of the phrases "tangible object" or "tangible thing" throughout the United States Code and the Federal Rules of Civil and Criminal Procedure.[3] For example, Federal Rule of Criminal Procedure 16(a)(1)(E) requires the government to allow a defendant to inspect and copy or photograph any "tangible object[]" that is under its control and has potential evidentiary value. It is beyond question that the provision plainly encompasses all types of physical items.[4] Likewise, Federal Rule of Civil Procedure

---

[3] See, *e.g.*, 2 U.S.C. 386, 388; 7 U.S.C. 7702, 7733, 8302, 8314; 15 U.S.C. 57b-1, 57b-2, 77v, 77z-1, 78u-4, 78aa, 80a-43, 80b-14; 17 U.S.C. 803; 18 U.S.C. 668, 3110; 20 U.S.C. 9172; 21 U.S.C. 876, 967; 28 U.S.C. 2507, 2521; 39 U.S.C. 3016; 49 U.S.C. 20112; 50 U.S.C. 403-3h, 403q, 1861, 1862; Fed. R. Civ. P. 5, 26, 30, 34, 45; Fed. R. Crim. P. 16, 41.

[4] See, *e.g.*, 2 Charles Alan Wright and Peter J. Henning, *Federal Practice and Procedure* § 254, at 108 n.7 (2009) (citing cases establishing that phrase "tangible object" encompasses wide array of physical items, including handwriting specimens, drugs, recording devices, telephone-number listing devices, and water samples); 5 Wayne R. LaFave et al., *Criminal Procedure* § 20.3(g), at 405-406 & n.120 (3d ed. 2007) (noting that Rule 16 and comparable state provisions "ha[ve] been used to obtain disclosure of such items as physical evidence taken from the defendant, photographs of the scene of the crime, and financial records to be used in establishing a white collar crime"); see also Fed. R. Crim. P. 16 advisory

26(b) authorizes a party in litigation to require discovery of "documents" or "tangible things" possessed by an adversary. The purpose of that rule is to allow "either party [to] compel the other to disgorge whatever facts he has in his possession." *Hickman* v. *Taylor*, 329 U.S. 495, 507 (1947). It too unambiguously covers all types of physical items.[5]

2. The structure and purpose of Chapter 73 and Section 1519 reinforce the plain meaning

This Court has emphasized that "the words of a statute must be read * * * with a view to their place in the overall statutory scheme." *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666 (2007). Interpreting Section 1519's reference to "any * * * tangible object" to encompass all physical evidence makes sense in light of the structure and overarching purpose of both Chapter 73 and Section 1519 itself.

Chapter 73 sets forth criminal offenses encompassing "Obstruction of Justice." 18 U.S.C. 1501 *et seq.* It addresses a wide array of activities calculated to thwart the administration of justice or to improperly

---

committee's note (1966) (emphasizing the "necessarily broad and general terms in which the items to be discovered are described").

[5] See, *e.g.*, Jay E. Grenig, *Handbook of Federal Civil Discovery and Disclosure* § 9:12, at 525 (3d ed. 2010) (noting that reference to "tangible things" "enable[s] parties to obtain access to a variety of physical objects[,]" "includ[ing] motor vehicles, machinery or equipment, animals, accident relics, personal possessions, testing equipment, dead bodies, fingerprints, and chemicals or other substances"); 10A John Kimpflen et al., *Federal Procedure* § 26:615, at 369-370 nn.4-6 (2007) (citing cases establishing that wide array of physical objects are discoverable as "[t]angible things," including cars, trucks, ladders, dishwashers, and dead bodies).

influence official proceedings. *Ibid.* Within Chapter 73, Section 1519 targets one particular method of obstructing justice—destroying evidence. It criminalizes such destruction if undertaken for the purpose of impeding the "investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States." 18 U.S.C. 1519.

The objective of both Chapter 73 and Section 1519 is to protect the integrity of government operations, promote fairness to all parties in official proceedings, and ensure that government determinations of factual matters are accurate and true. Those goals are threatened by the destruction of *any* relevant evidence, regardless of its particular form. Although federal investigations and proceedings often involve records and documents, they also frequently entail consideration of physical items—for example, a murder weapon, counterfeit cash, environmental waste, industrial machinery, airplane equipment, medical devices, and so on.

In such cases, destroying, altering, or concealing these physical items—no less than documentary evidence—can both obstruct justice and impair the government's legitimate operations. It is sensible for Congress to prohibit those acts when undertaken with improper intent. That is what Congress did in Section 1519, by outlawing the destruction or concealment of "any record, document, or tangible object" in such circumstances.

In short, the unambiguous meaning of the statutory language fully comports with the structure and purpose of Section 1519 and Chapter 73. That is enough to resolve this case. See *Cloer*, 133 S. Ct. at 1895 ("Our inquiry ceases in a statutory construction

case if the statutory language is unambiguous and the statutory scheme is coherent and consistent.") (brackets and internal quotation marks omitted).

B. Congress Modeled Section 1519 On Similar Provisions Long Understood To Cover All Physical Evidence

This Court has recognized that when statutory language "is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." *Sekhar* v. *United States*, 133 S. Ct. 2720, 2724 (2013) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). Here, Congress borrowed Section 1519's "any record, document, or tangible object" formulation from the Model Penal Code, subsequent reform proposals modeled on that Code, 18 U.S.C. 1512, and other provisions using virtually identical language to prohibit the destruction of all physical evidence. It makes sense to harmonize Section 1519 with the settled understanding of that language.

1. Section 1519 borrowed language from the Model Penal Code and subsequent reform proposals

Congress did not draft Section 1519's text in a historical vacuum. Rather, it drew on a decades-long effort to expressly prohibit the destruction of physical evidence with obstructive intent. That history informs the interpretation of Section 1519 and confirms that the provision covers all physical evidence.

a. The ALI completed the Model Penal Code in 1962. The Code sought to clarify—and in some respects to broaden—the prohibitions on destruction of evidence generally covered by Section 1503's Omnibus Clause and comparable state prohibitions. See Model

Penal Code § 208.26 cmt. at 121-122 & n.31 (Tentative Draft No. 8, 1958); see also Model Penal Code § 241.7 cmts. 1-3, at 175-181 (1980). The Omnibus Clause is a broad catchall provision generally barring interference with the "due administration of justice," 18 U.S.C. 1503; it makes no distinction between types of evidence protected from destruction.

The Model Penal Code prohibited destroying evidence in Section 241.7, which specifically addressed "Tampering With or Fabricating Physical Evidence." That provision imposed misdemeanor liability on any person who "alters, destroys, conceals or removes *any record, document or thing* with purpose to impair its verity or availability in [any official] proceeding or investigation." Model Penal Code § 241.7(1) (emphasis added); see App., *infra*, 36a. The relevant language of Section 241.7 is virtually identical to the corresponding language in Section 1519.

The ALI's official commentary on Section 241.7(1) explained that conduct relating to "any record, document or thing" is "not limited to conduct that prejudices the integrity or availability of a written instrument." Model Penal Code § 241.7 cmt. 3, at 179 (1980). Rather, the commentary explained, that phrase "applies to *any physical object*." *Ibid.* (emphasis added).

The commentary further noted that the Model Penal Code employs the phrase "record, document or thing"—instead of the simpler term "evidence"—so as to "indicate[] that liability for tampering does not depend on the admissibility at trial of the document or object involved." Model Penal Code § 241.7 cmt. 3, at 179 (1980). It also observed that Section 241.7(1) applies broadly to all official investigations or pro-

ceedings and therefore covers "the full range of contexts in which tampering with or fabricating physical evidence may work an obstruction of justice." *Id.* § 241.7 cmt. 2, at 179 (1980).

b. Many States responded to the Model Penal Code by reforming their criminal laws to reflect Section 241.7's proposed ban on destroying evidence. Gorelick § 5.8, at 190-193; *id.* § 5.8, at 299-305 (2007-2 Supp.). Fifteen States and the District of Columbia now have laws that largely track the Model Penal Code's specific reference to "any record, document or thing." Model Penal Code § 241.7(1).[6] It is well-settled that those state statutes—in accordance with

---

[6] Conn. Gen. Stat. Ann. § 53a-155(a)(1) (West 2012) ("any record, document or thing"); D.C. Code § 22-723(a) (LexisNexis 2001) ("record, document, or other object"); Fla. Stat. Ann. § 918.13(1)(a) (West 2006) ("any record, document, or thing"); Ind. Code Ann. § 35-44.1-2-2(2)(a)(3) (LexisNexis 2013) ("any record, document, or thing"); Kan. Stat. § 21-5905(a)(5)(C) (2013) ("any record, document or thing"); Mass. Ann. Laws ch. 268, § 13E(b) (LexisNexis 2010) ("record, document, or other object"); Mo. Ann. Stat. § 575.100(1)(1) (West 2011) ("any record, document or thing"); Mont. Code Ann. § 45-7-207(1)(a) (2013) ("any record, document, or thing"); Nev. Rev. Stat. Ann. § 199.220 (LexisNexis 2012) ("any book, paper, record, writing, instrument or thing"); N.D. Cent. Code § 12.1-09-03(1) (2012) ("record, document, or thing"); Ohio Rev. Code Ann. § 2921.12(A)(1) (LexisNexis 2010) ("any record, document, or thing"); Okla. Stat. Ann. tit. 21, § 454 (West 2002) ("any book, paper, record, instrument in writing, or other matter or thing"); 18 Pa. Cons. Stat. Ann. § 4910(1) (West 1983) ("any record, document or thing"); Tenn. Code Ann. § 39-16-503(a)(1) (2010) ("any record, document or thing"); Tex. Penal Code Ann. § 37.09(a)(1) (West 2013) ("any record, document, or thing"); Utah Code Ann. § 76-8-510.5 (LexisNexis 2012) ("any thing or item," defined to include "any document, record, book, paper, file, electronic compilation, or other evidence"); see App., *infra*, 23a-36a.

their plain meaning and the Model Penal Code commentary—broadly encompass all types of physical evidence. Indeed, when Congress enacted Section 1519, States had regularly used those laws to prosecute the intentional destruction of physical evidence, including drugs, guns, and live animals.[7]

c. At the federal level, Congress responded to the Model Penal Code in part by creating the Brown Commission and charging it with proposing reforms to federal criminal law. Ronald L. Gainer, *Federal Criminal Code Reform: Past and Future*, 2 Buff. Crim. L. Rev. 45, 93-96 (1998) (Gainer). In 1971, the Commission released its proposal to completely overhaul Title 18 of the United States Code. *Id.* at 96-104; see generally *Final Report of the National Commission on Reform of Federal Criminal Laws* (1971) (*Brown Commission Report*).

Section 1323 of the Brown Commission's draft code proposed a new federal offense of "Tampering With Physical Evidence." *Brown Commission Report*,

---

[7] See, *e.g.*, *State* v. *Haase*, 702 A.2d 1187, 1190 (Conn. 1997) (gun), cert. denied, 523 U.S. 1111 (1998); *Timberlake* v. *United States*, 758 A.2d 978, 980 (D.C. 2000) (heroin and cocaine); *State* v. *Jennings*, 666 So. 2d 131, 132 (Fla. 1995) (cocaine); *Mullins* v. *State*, 717 N.E.2d 902, 903 (Ind. Ct. App. 1999) (cocaine); *State* v. *Ford*, 906 S.W.2d 761, 763 (Mo. Ct. App. 1995) (handgun); *State* v. *Nalder*, 37 P.3d 661, 662-663 (Mont. 2001) (chemicals); *State* v. *Lytle*, 551 N.E.2d 950, 951 (Ohio 1990) (gun); *Smith* v. *State*, 288 P. 367, 367 (Okla. Crim. App. 1930) (whiskey bottle); *Commonwealth* v. *Delgado*, 679 A.2d 223, 224 (Pa. 1996) (cocaine); *State* v. *Hawkins*, 406 S.W.3d 121, 125 (Tenn. 2013) (shotgun); *State* v. *Adkisson*, No. M2000-01079-CCA-R3-CD, 2001 WL 1218570, at *1 (Tenn. Crim. App. Oct. 12, 2001) (live dogs); *Raney* v. *State*, 982 S.W.2d 429, 429 (Tex. Crim. App. 1998) (cocaine); *State* v. *Gonzales*, 2 P.3d 954, 956-957 (Utah Ct. App. 2000) (marijuana and gun).

§ 1323(1), at 116-117. Section 1323(1) tracked the relevant language of Model Penal Code Section 241.7(1)'s prohibition on evidence destruction nearly verbatim, imposing liability on anyone who "alters, destroys, mutilates, conceals or removes a *record, document or thing* with intent to impair its verity or availability in [an] official proceeding" that the person believes is "pending or about to be instituted." *Id.* § 1323(1), at 116 (emphasis added); see App., *infra*, 37a. The Brown Commission's use of virtually the same formulation as the Model Penal Code makes clear its intent to encompass the destruction of "any physical object." Model Penal Code § 241.7 cmt. 3, at 179 (1980).

The official commentary to the Brown Commission's draft confirms that intent. That commentary explained that Section 1323 "covers the physical evidence aspects of the current obstruction of justice provisions," including 18 U.S.C. 1503. *Brown Commission Report* § 1323 cmt. at 117. The Brown Commission's official *Working Papers* also noted Section 1323's broad application to "physical evidence" and emphasized that the provision's purpose was "to deny" the existence of any "right to destroy evidence before it has been seized or subpoenaed." *Working Papers of the National Commission on Reform of Federal Criminal Laws* 575-576 (1970) (citation and internal quotation marks omitted).

d. For over a decade following the Brown Commission's proposal, Congress repeatedly considered whether to overhaul Title 18 along the lines suggested by the Commission. See Gainer 111-129 (discussing reform efforts in this period). During this time, numerous bills would have criminalized "Tampering

With Physical Evidence" in language virtually identical to that used by both the Commission and Model Penal Code. Like Section 1519, those provisions each prohibited "alter[ing,], destroy[ing], mutiliat[ing], conceal[ing], or remov[ing]" a "*record, document, or other object*" (emphasis added) with the intent to "impair its integrity or availability in an official proceeding."[8] The committee reports and executive branch commentary on these proposals consistently indicated (1) that the proposed offense would overlap with the evidence destruction offenses covered by Section 1503 and the Brown Commission's draft legislation, and (2) that its language would apply broadly to encompass all forms of evidence.[9]

---

[8] See, *e.g.*, H.R. 5703, 97th Cong., 2d Sess. § 1725(a) (1982); H.R. 5679, 97th Cong., 2d Sess. § 1725(a) (1982); H.R. 4711, 97th Cong., 1st Sess. § 1725(a) (1981); S. 1630, 97th Cong., 1st Sess. § 1325(a) (1981); H.R. 6915, 96th Cong., 2d Sess. § 1725(a) (1980); S. 1723, 96th Cong., 1st Sess. § 1725(a) (1979); S. 1722, 96th Cong., 1st Sess. § 1325(a) (1979); S. 1437, 95th Cong., 1st Sess. § 1325(a) (1977); H.R. 2311, 95th Cong., 1st Sess. § 1325(a) (1977); S. 1, 94th Cong., 1st Sess. § 1325(a) (1975); S. 1400, 93d Cong., 1st Sess. § 1325(a) (1973); H.R. 6046, 93d Cong., 1st Sess. § 1325(a) (1973); see also S. 1, 93d Cong., 1st Sess. § 2-6C1 (1973) (covering destruction or concealment of "information or an object" to impede official proceeding); *id.* § 2-6A1(8) (defining "object" as "includ[ing] any animate or inanimate thing"); App., *infra*, 37a-43a.

[9] See, *e.g.*, S. Rep. No. 307, 97th Cong., 1st Sess. 318, 339, 358-359, 1464-1465, 1481 (1981) (1981 Senate Report) (noting that proposed Section 1325 generally tracks Brown Commission proposal, covers destruction-of-evidence offenses encompassed by 18 U.S.C. 1503 (1976), and overlaps with the ban on destroying property to avoid its seizure set forth in 18 U.S.C. 2232 (1976); and also proposing repeal of redundant provisions criminalizing destruction of physical property in specialized circumstances, 33 U.S.C. 938(b) (1976) and 49 U.S.C. 1472(p) (1976)); S. Rep. No. 553, 96th Cong.,

e. When Congress enacted Section 1519 in 2002, it used a phrase—"any record, document, or tangible object"—that was materially indistinguishable from the corresponding language in the Model Penal Code ("record, document or thing"), the *Brown Commission Report* ("record, document or thing"), and the legislation considered in the 1970s and 1980s ("record, document, or other object"). Those broad formulations had a settled legal meaning and were universally understood to encompass—in accordance with their plain language and the Model Penal Code commentary—"any physical object." Model Penal Code § 241.7 cmt. 3, at 179 (1980). This Court should give the same meaning to the corresponding phrase in Section 1519.

2. Section 1519 is modeled on Section 1512

Congress also modeled the relevant language of Section 1519 on 18 U.S.C. 1512, the witness-tampering provision enacted in 1982 after broader efforts to reform the criminal code failed. See Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 4, 96 Stat. 1249; 1982 Senate Report 10. Section 1512

2d Sess. 297, 317, 336-337, 1367, 1382-1383 (1980) (same); *Criminal Justice Reform Act of 1975: Report of the Senate Comm. on the Judiciary to Accompany S.1*, 94th Cong., 1st Sess. 360-361 (1975) (Comm. Print) (similar); *Reform of the Federal Criminal Laws: Hearings Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 93d Cong., 2d Sess. 7473 (1974) (testimony of Asst. Att'y Gen. Henry E. Petersen) (explaining that Section 1325 of S. 1400 "punishes any tampering with physical evidence"); *id.* at 7486, 7490, 7493, 7497-7498 (reprinting Memorandum on the Offenses Set Forth In Chapter 13 of the Criminal Code Reform Act, Dep't of Justice) (noting that proposed Section 1325 "covers the offense of tampering with physical evidence" currently addressed by 18 U.S.C. 1503 (1970)).

repeatedly uses the phrases "record, document, or other object" and "object" to refer to all physical evidence. Section 1519 uses essentially the same language and should be interpreted the same way. See *Wachovia Bank, NA* v. *Schmidt*, 546 U.S. 303, 315-316 (2006) ("[U]nder the *in pari materia* canon of statutory construction, statutes addressing the same subject matter generally should be read as if they were one law.") (citations and internal quotation marks omitted).

a. When Congress enacted Section 1519, Section 1512 already used the phrase "record, document, or other object" as part of three different witness-tampering provisions. Specifically:

- Section 1512(a)(1)(B) prohibited "kill[ing] another person, with intent to * * * prevent the production of a *record, document or other object*, in an official proceeding";
- Section 1512(b)(2)(A) prohibited using intimidation, force, threats, corrupt persuasion, or misleading conduct to induce another person to "withhold a *record, document, or other object*, from an official proceeding"; and
- Section 1512(b)(2)(C) prohibited using the same means to induce another person to "evade legal process summoning that person * * * to produce a *record, document, or other object*, in an official proceeding."

18 U.S.C. 1512(a)(1)(B), (b)(2)(A) and (C) (2000) (emphases added); see App., *infra*, 3a-4a. In addition, Section 1512(b)(2)(B) (2000) prohibited inducing another person to alter, destroy, mutilate, or conceal any

"object" in order to impair its integrity or availability in such a proceeding. See App., *infra*, 4a.[10]

The unambiguous purpose of those provisions was—and is—to prohibit tampering that impedes the introduction or consideration of *any* type of evidence in an official proceeding.[11] No one would say that they cover only a subset of such materials—such that, for example, Section 1512(a)(1)(B) makes it illegal to murder a witness to prevent him from giving police an incriminating letter, but not to prevent him from turning over a bloody knife. Indeed, Section

---

[10] At the time, other provisions barring retaliation against witnesses, victims, and informants—18 U.S.C. 1513(a)(1)(A) and (b)(1) (2000)—similarly employed the same "record, document, or other object" formulation. Several months after passing the Sarbanes-Oxley Act, Congress modified Section 1512 by moving Section 1512(b)'s prohibition on using force to tamper with witnesses to a new Section 1512(a)(2). See 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 3001, 116 Stat. 1803; see also 18 U.S.C. 1512(a)(2) (2000 & Supp. II 2002).

[11] See, *e.g.*, *Omnibus Victims Protection Act: Hearing Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 55 (1982) (analysis of Hon. Hamilton Fish, Jr.) (explaining that Section 1512 would criminalize force or intimidation used to "cause another to withhold testimony or evidence, destroy or conceal evidence, or evade a summons to * * * produce evidence in an official proceeding"); *id.* at 91 (statement of Asst. Att'y Gen. D. Lowell Jensen) (explaining that Section 1512 incorporates the reforms proposed in Sections 1323 and 1324 of the Criminal Code Reform Act, S. 1630, as explicated in 1981 Senate Report); 1981 Senate Report 318 & n.24 (describing Section 1323 in S. 1630 as a provision combatting "[e]fforts to alter, hide, or destroy evidence"); see also, *e.g.*, *United States* v. *Johnson*, 655 F.3d 594, 603-604 (7th Cir. 2011) (discussing broad scope of Section 1512's phrase "record, document, or other object"); 1982 Senate Report 16 (explaining that Section 1512 was based on *Brown Commission Report*).

1512(b)(2)(C)'s prohibition on inducing a person to evade legal process requiring him to produce any "record, document, or other object" plainly covers the full range of items subject to pre-trial discovery, including any of the "documents" or "tangible things" subject to Federal Rules of Civil Procedure 26(b) and 34(a). See pp. 16-17, *supra*. Courts applying Section 1512(b)(2)(B)—both before and after 2002—have uniformly recognized that its prohibition encompasses all types of physical evidence.[12]

b. When Congress used the phrase "any record, document, or tangible object" in Section 1519, it modeled that language on Section 1512's virtually identical references to "record, document, or other object." In light of the strong textual similarity between the two provisions—and the universal understanding that Section 1512 encompasses all types of physical evidence—Section 1519 likewise applies to all physical items. Cf. *Rowe* v. *New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (applying settled interpretation of one statutory provision to "similar language" in subsequently-enacted statute); *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978).

---

[12] See, *e.g.*, *United States* v. *England*, 555 F.3d 616, 617-618 (7th Cir. 2009) (car); *United States* v. *Kellington*, 217 F.3d 1084, 1087-1089, (9th Cir. 2000) (stereo equipment, cash, briefcase, and boat); *United States* v. *Applewhaite*, 195 F.3d 679, 688 (3d Cir. 1999) (blood spatter); *United States* v. *MacFarlane*, No. 96-30296, 1998 WL 75694, at *1 (9th Cir. Feb. 23, 1998) (cash-filled briefcase); *United States* v. *Frankhauser*, 80 F.3d 641, 646-647, 651-652 (1st Cir. 1996) (racist flags and Adolf Hitler photographs); note 1, *supra* (citing cases applying Section 1512(c)(1)); see also *Johnson*, 655 F.3d at 603-605 (discussing meaning of "record, document, or other object" more generally).

c. That conclusion is confirmed by Congress's simultaneous enactment of Section 1512(c)(1) as part of the Sarbanes-Oxley Act. See p. 5, *supra*. Like Section 1519, that provision criminalizes the destruction or concealment of any "record, document, or other object" with the intent to obstruct an official proceeding, and it too imposes a maximum penalty of a fine and up to 20 years' imprisonment. 18 U.S.C. 1512(c)(1).

As petitioner's amicus correctly acknowledges, Section 1512(c)(1)'s reference to any "record, document, or other object" is "exceedingly broad," covers "any kind of object," and prohibits "any alteration of anything." Oxley Amicus Br. 4, 17-18. Nothing indicates that Congress's intent was any narrower with respect to Section 1519's corresponding formulation—"any record, document, or tangible object." Indeed, both provisions use the same word ("object") in near-identical phrases, and "[t]he normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (citations and internal quotation marks omitted); see *Erlenbaugh* v. *United States*, 409 U.S. 239, 243-244 (1972) (noting that *in pari materia* canon of construction applies with special force to statutes "enacted by the same legislative body at the same time"); p. 49 & note 23, *infra* (noting contemporaneous view that Section 1519 and Section 1512(c)(1) largely overlap).

C. The Legislative History Further Confirms That Section 1519 Covers All Physical Evidence

The legislative history of the Sarbanes-Oxley Act reinforces the conclusion that Section 1519 prohibits

the destruction of all physical evidence, just as its text indicates.

1. Section 1519 originated in the Senate as part of S. 2010, a standalone bill developed by the Judiciary Committee under Chairman Patrick Leahy in the spring of 2002. 2002 Senate Report 1-2.[13] It was prompted by revelations that Enron and its outside accounting firm—Arthur Andersen LLP—had deliberately destroyed large quantities of documents in an effort to conceal fraudulent accounting practices. *Id.* at 2-11. Enron's conduct led the Judiciary Committee to conclude that "current federal obstruction of justice statutes relating to document destruction" were "riddled with loopholes and burdensome proof requirements." *Id.* at 6; see *id.* at 14; 148 Cong. Rec. 2945-2946 (2002) (statement of Sen. Leahy).

The Judiciary Committee identified two major loopholes: (1) Section 1512(b) "ma[d]e it a crime to persuade another person to destroy documents, but not a crime for a person to destroy the same documents personally"; and (2) Section 1503 had been "narrowly interpreted by courts * * * to apply only to situations when the obstruction of justice may

---

[13] In July 2002, the Senate incorporated S. 2010 as an amendment to the broader package of financial-sector reforms then being prepared by the Senate Committee on Banking, Housing, and Urban Affairs, under the chairmanship of Senator Paul Sarbanes. 148 Cong. Rec. 12,507-12,508. The Senate approved the Sarbanes bill on July 15, and the conference committee reconciling that bill with a competing reform proposal from the House of Representatives retained Section 1519 in the conference report issued on July 24. *Id.* at 12,960-12,961; H.R. Rep. No. 610, 107th Cong., 2d Sess. 57, 64 (2002). The compromise bill passed both Houses of Congress on July 25, and President George W. Bush signed the bill into law on July 30. Legis. History n., 116 Stat. 810.

be closely tied to a judicial proceeding." 2002 Senate Report 6-7 (citing *United States* v. *Aguilar*, 515 U.S. 593 (1995) and *United States* v. *Frankhauser*, 80 F.3d 641 (1st Cir. 1996)); see *id.* at 14 (same); 148 Cong. Rec. at 2945-2946 (statement of Sen. Leahy) (same).

The Senate Report criticized Chapter 73's "patchwork of various [obstruction-of-justice] prohibitions" and stated that "the current laws regarding destruction of evidence are full of ambiguities and limitations that must be corrected." 2002 Senate Report 6-7. It declared that, "[w]hen a person destroys evidence with the intent of obstructing any type of investigation and the matter is within the jurisdiction of a federal agency, overly technical legal distinctions should neither hinder nor prevent prosecution and punishment." *Id.* at 7.

2. Section 1519 was the Judiciary Committee's principal means of eliminating the ambiguities, loopholes, and overly technical distinctions identified above. Although the Committee was spurred to action by Enron's document destruction, the provision it drafted ranged well beyond the corporate wrongdoing at issue there. Section 1519 did not narrowly target white-collar fraud, but instead broadly prohibited *any* destruction of evidence for the purpose of impeding the "proper administration of *any* matter within the jurisdiction of *any* department or agency of the United States, or *any* [bankruptcy] case filed under title 11." 18 U.S.C. 1519 (emphasis added). The breadth of that language makes clear that Congress sought to overhaul Chapter 73's treatment of evidence destruction across the board.

The Senate Report declared that S. 2010's overarching "Purpose" included "provid[ing] for criminal

prosecution and enhanced penalties of persons who * * * alter or destroy evidence in certain Federal investigations." 2002 Senate Report 2; see *id.* at 1 (same); 148 Cong. Rec. at 2945 (statement of Sen. Leahy) (same). The Report did not distinguish between different *types* of evidence—and it certainly did not suggest that Section 1519's reference to "any record, document, or tangible object" encompassed only a subset of physical items.[14]

On the contrary, the Senate Report made clear that Section 1519 was intended to prohibit the destruction of *all* physical evidence:

> Section 1519 is meant to apply broadly to *any acts to destroy or fabricate physical evidence* so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States.

2002 Senate Report 14 (emphasis added).

The Senate Report's section-by-section analysis reinforced that statement of Section 1519's purpose,

---

[14] See also, *e.g.*, 2002 Senate Report 26-27 (providing "Additional Views" of Sens. Brownback, DeWine, Grassley, Hatch, Kyl, McConnell, Sessions, and Thurmond) (noting that Section 1519 "should be used to prosecute * * * those individuals who destroy evidence with the specific intent to impede or obstruct" criminal investigations, administrative proceedings, and bankruptcy cases); 148 Cong. Rec. at 12,316 (statement of Sen. Daschle) (noting that one of S. 2010's "three aims" was "preserving evidence"); *id.* at 12,494 (statement of Sen. McCain) (explaining that S. 2010 would give prosecutors "the tools to incarcerate persons who * * * alter or destroy evidence in certain Federal Investigations"); *id.* at 12,517 (statement of Sen. Hatch) (explaining that Section 1519 "would permit the government to prosecute an individual who acts alone in destroying evidence").

explaining that the provision "could be effectively used in *a wide array of cases where a person destroys or creates evidence* with the intent to obstruct an investigation or matter that is within the jurisdiction of any federal agency or any bankruptcy." 2002 Senate Report 12 (emphasis added). Senator Leahy echoed those explanations on the Senate floor, emphasizing that Section 1519 could be used "in a *wide array of cases in which a person destroys evidence* with the specific intent to obstruct" an investigation or proceeding within federal jurisdiction. 148 Cong. Rec. at 2946 (emphasis added). Those statements provide strong support for interpreting Section 1519's broad reference to "any * * * tangible object" to encompass all physical evidence.

3. The Senate Report's discussion of the "loopholes" that Section 1519 was designed to close provides additional support for interpreting the provision to cover the destruction of any physical evidence. One such loophole was the anomaly that while Section 1512(b)(2) prohibits any person from persuading another person to destroy any "object" with obstructive intent, it does not prohibit that same person from destroying that same evidence himself. 2002 Senate Report 6-7, 12, 14 & n.13.[15]

---

[15] That loophole arose because Congress based Section 1512 on Sections 1323 and 1324 of the proposed Criminal Code Reform Act of 1981, S. 1630, 97th Cong., 1st Sess. (1981), a more comprehensive proposal to reform Title 18 that had also included a separate provision (Section 1325) prohibiting a person from destroying evidence himself. See 1982 Senate Report 10, 15. Shortly after S. 1630 failed to pass, Congress enacted a narrower bill—focused on witness tampering—that contained Section 1512 but did not include Section 1325's prohibition on personally destroying evi-

As noted above, courts had already applied Section 1512(b)(2)'s prohibition on destroying "object[s]" to a wide array of physical evidence, including cash, a briefcase, and a boat. See note 12, *supra* (citing cases). The Judiciary Committee was undoubtedly aware of this construction. Indeed, both the Senate Report and Senator Leahy himself repeatedly referenced the First Circuit's decision in *Frankhauser*, which affirmed a Section 1512(b)(2)(B) conviction for inducing a witness to destroy physical evidence in the form of Nazi and Confederate flags and photographs of Adolf Hitler. 2002 Senate Report 6-7, 14 n.14; 148 Cong. Rec. at 2946 (statement of Sen. Leahy); see *Frankhauser*, 80 F.3d at 646-647, 651-652.

All agree that the Judiciary Committee intended Section 1519 to address Section 1512(b)'s loophole and remedy the absence of a direct prohibition on destroying evidence. See, *e.g.*, Oxley Amicus Br. 11-14; Crim. Law Professors Amicus Br. 32; Cause of Action Amicus Br. 4, 7-8. But the only way Section 1519 actually accomplishes that objective is if its reference to "any record, document, or tangible object" covers all of the "object[s]" also encompassed by Section 1512(b)(2). Otherwise the loophole survives with respect to physical evidence that would not qualify as a "record, document, or tangible object" under a narrower construction of that term.

It is hard to imagine that the Judiciary Committee—having announced its goal of "plug[ging]" the Section 1512(b)(2) loophole and eliminating "overly technical legal distinctions" in the destruction-of-evidence regime, 2002 Senate Report 6-7, 12—would

---

dence. See Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, § 4, 96 Stat. 1249; 1982 Senate Report 10, 15.

have intended *sub silentio* to preserve that very same loophole with respect to important types of physical evidence.

II. PETITIONER'S NARROW CONSTRUCTION OF SECTION 1519 LACKS MERIT

Petitioner argues (Br. 8) that he can escape liability for deliberately destroying evidence because Section 1519 covers only the destruction of records, documents, and "thing[s] used to preserve information, such as a computer, server, or similar storage device." His construction of Section 1519 is flawed.

A. Neither Text Nor Context Supports Limiting "Any * * * Tangible Object" To Information-Storage Devices

Petitioner concedes (Br. 10) that Section 1519's phrase "any * * * tangible object" is "elastic enough to encompass a fish." He nonetheless raises a series of textual and contextual arguments against applying the plain meaning of that phrase and in support of his narrower construction. None is persuasive.

1. Dictionary definitions convey the ordinary, commonsense meaning of "tangible object"

Petitioner does not seriously question the court of appeals' conclusion that the standard meaning of the phrase "tangible object" encompasses any object "[h]aving or possessing physical form." J.A. 132 (brackets in original) (quoting *Black's Law Dictionary* 1592 (9th ed. 2009)). Instead, he dismisses (Br. 12) the dictionary as an "unhelpful" guide "because it defines the words 'tangible' and 'object' so generally that the phrase 'tangible object' is chameleon-like" and "adapts to whatever context it is used in." He supports that assertion by citing the standard diction-

ary definitions of "tangible" as "capable of being touched or "capable of being realized by the mind" and of "object" as "a discrete visible or tangible thing." Br. 12-13 (quoting *Webster's Third* 1555, 2337).

Petitioner is wrong to suggest (Br. 12) that the ordinary meaning of "tangible object" is "chameleon-like." In fact, as petitioner's own dictionary definitions establish, it ordinarily means the same thing, referring to any discrete item or thing that is capable of being touched or otherwise perceived by the senses. See Pet. Br. 12-13 & nn.6-7. Petitioner cannot point to any ordinary understanding of the term "tangible object" that refers exclusively to some—but not all—such items.[16] That makes "tangible object" unlike the quite different terms at issue in the various cases he relies upon (Br. 11-12, 14, 16-17) for support.[17]

---

[16] Petitioner may be right (Br. 14) that a person who says "Apple sells tangible objects" is probably referring to electronic devices, but that is only because those are the tangible objects for which Apple is best known—not because there is some specialized understanding of that term that applies *only* to such devices. If a person is asked, "Does Apple sell tangible objects?," he is perfectly correct to answer "Yes, it sells gift cards, headphones, and backpacks," even though these items are not "MacBooks, iMacs, iPhones, iPads, [or] other similar electronic 'i' products," Pet. Br. 14; see *All Accessories*, http://store.apple.com/us/accessories/all-accessories (last visited Aug. 6, 2014).

[17] See, *e.g.*, *Caraco Pharm. Labs., Ltd.* v. *Nordisk A/S*, 132 S. Ct. 1670, 1681-1683 (2012) (applying one of two common usages of phrase "not an"); *Federal Aviation Admin.* v. *Cooper*, 132 S. Ct. 1441, 1448-1453 (2012) (deciding between ordinary meaning and various legal meanings of term "actual damages"); *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 308 (1961) (applying technical meaning of "discovery" instead of ordinary meaning); *McBoyle* v. *United*

To the extent petitioner's real point is that the phrase "any * * * tangible object" is broad—and can therefore encompass a wide array of different objects, from cars to iPhones (Br. 13-14)—he is correct. That is precisely why Congress used that phrase—to ensure that Section 1519 would "apply broadly to *any acts to destroy or fabricate physical evidence*" with improper obstructive intent. 2002 Senate Report 14.

2. Noscitur a sociis and ejusdem generis do not support petitioner

Petitioner leans heavily (Br. 16-19) on two related canons of statutory construction, *noscitur a sociis* and *ejusdem generis*, to support his narrow reading of Section 1519. Under *noscitur a sociis*, "an ambiguous term may be given more precise content by the neighboring words with which it is associated." *United States* v. *Stevens*, 559 U.S. 460, 474 (2010) (citation and internal quotation marks omitted). The *ejusdem generis* canon counsels that, where general words follow an enumeration of specific terms, the general words may be read to embrace only other items similar to those expressly enumerated. *Garcia* v. *United States*, 469 U.S. 70, 74-75 (1984).

Neither canon supports petitioner here. First, this Court uses those canons only to resolve ambiguity or uncertainty in the meaning of a statute. See, *e.g.*, *Stevens*, 559 U.S. at 474-475; *United States* v. *Turkette*, 452 U.S. 576, 581 (1981); 2A Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 47:16, at 361 (7th ed. 2014) (Singer); *id.* § 47:18, at

---

States, 283 U.S. 25, 26-27 (1931) (applying everyday meaning of "vehicle" instead of literal meaning).

387-388. The canons are "no more than an aid to construction," *Turkette*, 452 U.S. at 581, and they may not be used "to create ambiguity where the statute's text and structure suggest none," *Ali*, 552 U.S. at 227. This Court has emphasized that it will "not woodenly apply limiting principles every time Congress includes a specific example along with a general phrase." *Ibid.*

Here, as discussed, the meaning of the phrase "any record, document, or tangible object" is not uncertain. That phrase "contains little ambiguity * * * [given] the ordinary meaning of the[] words," *Stevens*, 559 U.S. at 474—especially when those words are read in light of the broader statutory and historical context. See pp. 14-35, *supra*. Although petitioner's canons can help "to avoid * * * giving * * * unintended breadth to the Acts of Congress," *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 307 (1961), they may not be used to "defeat Congress'[s] intent" when Congress legislates broadly, as it did here, *Christopher* v. *SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2171 (2012). Petitioner cites no historical evidence that Congress intended the phrase "any * * * tangible object" to refer *only* to "thing[s] used to preserve information, such as a computer, server, or similar storage device." Br. 8.

Even if *noscitur a sociis* or *ejusdem generis* were relevant here, they would not support petitioner's contention that "any * * * tangible object" refers only to storage devices containing records or documents. That unnatural construction almost certainly renders the term "tangible object" superfluous. The destruction of an information-storage device presumably entails the destruction of the records or documents it contains—in which case that destruction can

be prosecuted under Section 1519 without relying on its term "tangible object." But the canons may not be used to "render the general statutory language [in a provision] meaningless." *Christopher*, 132 S. Ct. at 2171 (citing *United States* v. *Alpers*, 338 U.S. 680, 682 (1950)); see Singer § 47:21, at 397-399 (same).

More fundamentally, *noscitur a sociis* and *ejusdem generis* require careful identification of the common "core of meaning" that the specific terms share and that can then inform the interpretation of the more general term. *Graham Cnty. Soil & Water Conservation Dist.* v. *United States*, 559 U.S. 280, 293, 306 (2010); see *Ali*, 552 U.S. at 225-226. A court must identify the common principle unifying the specific terms reasonably—and at the proper level of generality—in light of the statute's overarching subject and purpose. See Singer § 47:18, at 389-393.

Here, although petitioner is correct (Br. 18) that records and documents are both means of "preserving information," they also share the common attribute of providing information that—if destroyed or concealed—would impair official investigations or proceedings. That same attribute is also shared by non-documentary physical evidence, which likewise provides relevant information about the matter under consideration. In a federal investigation of a deadly plane crash, a defective engine part can be just as valuable and informative as a document describing that part. And an undersized fish can be just as valuable as a fisherman's ledger noting the length of each day's catch.

Petitioner's error is to assume that because records and documents both contain information, "any * * * tangible object" must refer only to physical

items that *store* information. In the obstruction-of-justice context at issue here, it is far more logical to construe that phrase to include any physical item *providing* information that is relevant to the matter under investigation or review. That naturally includes any physical evidence of the underlying offense—whether in the form of guns, drugs, bodies, incriminating backpacks, or fish.[18]

3. The title and section headings do not limit Section 1519's ordinary meaning

Petitioner also relies (Br. 20) on (1) Section 1519's appearance in Section 802 of the Sarbanes-Oxley Act, which is entitled "Criminal Penalties for Altering Documents"; and (2) Section 1519's heading, which refers to "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." But "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Brotherhood of R.R. Trainmen* v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528-529 (1947). As this Court

---

[18] Petitioner's amicus suggests that reading "any * * * tangible object" to refer to all physical evidence violates the rule against surplusage, because it would render the statutory terms "record" and "document" superfluous. Crim. Law Professors Amicus Br. 22-24. Amicus is correct that records or documents are tangible objects. But the broader statutory and historical context makes clear that Congress intended Section 1519's phrase to encompass all types of evidence, and in any event the use of a general term at the end of a list of more specific references will often produce some redundancy. See generally *Ali*, 552 U.S. at 227-228 (rejecting application of rule against surplusage despite redundancy); *United States* v. *Thompson/Center Arms Co.*, 504 U.S. 505, 521 (1992) (Scalia, J., concurring in judgment) (noting that "an inflexible rule of avoiding redundancy will produce disaster").

recently observed—also in a case addressing the Sarbanes-Oxley Act—headings are often "short-hand reference[s]" that do not substitute for or limit the text's detailed provisions. *Lawson*, 134 S. Ct. at 1169. Here, although Section 802's heading refers only to "[d]ocuments"—and although Section 1519's heading refers only to "records"—the statutory text addresses "any record, document, or tangible object." As in *Lawson*, "the under-inclusiveness of the * * * headings * * * is apparent." *Ibid.*

The titles and headings are especially poor guides to meaning here, in the context of the Sarbanes-Oxley Act's amendments to Chapter 73. In *Lawson*, the Court declined to rely on the title and section headings for 18 U.S.C. 1514A in light of their mismatch with the statutory text. 134 S. Ct. at 1169. Moreover, Congress placed its other new prohibition on destruction of evidence—Section 1512(c)(1)—in the section of Chapter 73 addressing "Tampering with a witness, victim or informant," even though that provision has nothing to do with such tampering. See 18 U.S.C. 1512. In these circumstances, there is no reason to presume that Section 1519's heading precisely mirrors the scope of its text.

4. The prohibition on "mak[ing] a false entry in" evidence does not restrict the scope of "any * * * tangible object"

Petitioner also emphasizes (Br. 19) the statutory bar on "mak[ing] a false entry" in a "record, document, or tangible object." 18 U.S.C. 1519. Petitioner argues (Br. 19) that "[a] false entry can be made in a document, record, or other thing that is used to preserve information, such as a computer, server, or similar storage device," but that it "cannot be made in

every thing" and "cannot be made in a fish." Petitioner's point appears to be that Section 1519 only applies to the types of items in which false entries *can* be made.

That argument rests on the false premise that every one of Section 1519's list of obstructive verbs must necessarily be a perfect fit with each of its three evidentiary nouns. But no reason exists for that to be true. Section 1519 covers "any record, document, or tangible object" that can potentially be the subject of *any* of the provision's verbs (which the statute lists in the disjunctive), even if it cannot necessarily be the subject of *all* of them. Cf. *Robers* v. *United States*, 134 S. Ct. 1854, 1858 (2014) ("[T]he law does not require legislators to write extra language specifically exempting, phrase by phrase, applications in respect to which a portion of a phrase is not needed.").

That interpretation of Section 1519's syntax is consistent with 18 U.S.C. 1505, which contains a similar structure. Among other things, Section 1505 imposes liability on any person who—in order to obstruct compliance with a civil investigative demand issued under the Antitrust Civil Process Act, 15 U.S.C. 1311 *et seq.*—"willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand." 18 U.S.C. 1505. Congress plainly sought to prohibit efforts to "withhol[d] [or] "misrepresent[] * * * oral testimony," even though the other obstructive verbs ("removes * * * , conceals, covers up, destroys, mutilates, alters") do not apply to oral testimony. See Hart-Scott-Rodino Antitrust Improve-

ments Act of 1976, Pub. L. No. 94-435 §§ 102, 105, 90 Stat. 1384, 1389 (amending Antitrust Civil Process Act and Section 1505 to cover oral testimony).

Petitioner's argument leads to the untenable conclusion that most *documents* are also outside of Section 1519's scope. By definition, an "entry" is "an item written in a record," *Black's Law Dictionary* 554 (7th ed. 1999), or "a record or notation (as in a journal, diary, or account book) of a particular day's occurrences or of some transaction or proceeding," *Webster's Third* 759. One does not make "entr[ies]" in many types of documents that are relevant even in white-collar fraud cases—for example, letters, emails, and contracts. It makes no sense to exclude such documents from Section 1519's coverage, as petitioner himself elsewhere appears to acknowledge. See Pet. Br. 18 & n.11 (embracing dictionary definitions of "document"); *id.* at 20, 21 (implying that Section 1519 would cover the destruction of emails). But if Section 1519 covers *all* documents—regardless of whether they can be subject to "false entr[ies]"—then it likewise covers *all* "tangible object[s]."[19]

5. The Sentencing Commission's definition of "tangible object" does not support petitioner

Petitioner also erroneously relies (Br. 21-22) on the amendments to the Sentencing Guidelines that the Sentencing Commission adopted in response to the Sarbanes-Oxley Act. See Sentencing Guidelines,

---

[19] Petitioner's logic would also exclude from Section 1519's scope any "tangible object" that cannot be "falsifie[d]." 18 U.S.C. 1519. But if so, then his rule excludes even his own paradigmatic examples of what counts as a "tangible object." It is not natural to speak of "falsif[ying]" a "computer, server, or * * * storage device." Pet. Br. 8.

§ 2J1.2 & comment. (n.1) (2003) (2003 Guidelines); *Id.* App. C, Amends. 647, 653. Petitioner notes (Br. 21-22) that the Commission enhanced the Guidelines penalties for offenses involving the "destruction, alteration, or fabrication of a substantial number of *records, documents, or tangible objects*." He then relies on the Commission's commentary stating that "'[r]ecords, documents, or tangible objects' *includes* * * * records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices" as support for his narrow construction of Section 1519's phrase "any * * * tangible object" to refer only to information-storage devices. *Id.* at 22 (emphasis added). And he asserts (*ibid.*) that Congress "tacit[ly] approv[ed]" that definition by failing to reject it under 28 U.S.C. 994(p).

Petitioner's argument is flawed in at least three respects. First, Congress has not vested the Sentencing Commission with authority to interpret or define Section 1519, and the meaning of that provision must therefore be determined by the courts, using traditional tools of statutory construction. This Court has "never held that, when interpreting a term in a criminal statute, deference is warranted to the Sentencing Commission's definition of the same term in the Guidelines." *DePierre* v. *United States*, 131 S. Ct. 2225, 2236 (2011). Such deference is especially inappropriate where, as here, the Commission's definition does not even purport to interpret the statute. *Ibid.* Nor is Congress's failure to reject the definition tacit approval of the Commission's analysis. *Id.* at 2236 n.13.

Second, and in any event, the Sentencing Commission's definition of "records, documents, or tangible objects" is not intended to be exhaustive. It states that the phrase "*includes*" such items that are "stored on, or that are" electronic or other non-traditional "storage mediums or devices," but it does not say that the phrase is *limited* to such items. 2003 Guidelines § 2J1.2 comment. (n.1) (emphasis added). In fact, the Guidelines say the opposite. *Id.* § 1B1.1 comment. (n.2) ("The term 'includes' is not exhaustive."). The Commission's definition is entirely consistent with the plain meaning of Section 1519, and it provides no support to petitioner's more restrictive interpretation.[20]

Finally, petitioner ignores that the Sentencing Commission added the Guidelines' reference to "records, documents, or tangible objects" not to implement any specific command set forth in 18 U.S.C. 1519, but rather to carry into effect Sections 805(a) and 1104(b) of the Sarbanes-Oxley Act. See 2003 Guidelines App. C, Amends. 647, 653. Those provisions instructed the Commission to ensure that the base offense level and enhancements are adequate in cases (1) where the "destruction, alteration, or fabrication of *evidence* involves * * * a large amount of *evidence*," and (2) where "*documents or other physical evidence* are actually destroyed or fabricated." Sarbanes-Oxley Act §§ 805(a)(2)(A)(i), 1104(b)(4), 116 Stat. 802, 809. (emphases added). In other words, the Commission interpreted the Sarbanes-Oxley Act's

---

[20] The Probation Office erroneously treated the Sentencing Commission's definition of "tangible object" as exhaustive when it calculated petitioner's sentencing range. Presentence Investigation Report para. 38. The government did not object to that error below.

references to "evidence" and "documents or other physical evidence" as synonymous with the phrase "records, documents, or tangible objects." The Commission's analysis is correct, but it is inconsistent with petitioner's view that the latter phrase excludes all physical evidence apart from information-storage devices.

B. Section 1519's Origins In The Sarbanes-Oxley Act Do Not Trump Its Plain Meaning

Petitioner and his amici emphasize Section 1519's origins in the Sarbanes-Oxley Act and its response to the mass destruction of corporate records by Enron and Arthur Andersen. See, *e.g.*, Pet. Br. 3, 9, 20-21; Chamber of Commerce Amicus Br. 3-6, 12-15; Oxley Amicus Br. 14-16; Crim. Law Professors Amicus Br. 31-32. In light of that history, some of the amici conclude that Section 1519 must be a "supplemental tool for curtailing financial and accounting fraud" concerned only with "the spoliation of corporate record-keeping," Chamber of Commerce Amicus Br. 4, 6, and that its "anti-shredding" prohibition applies only "to the destruction of business records, not any and all kinds of evidence," Oxley Amicus Br. 16-17. That analysis is flawed.

1. No one disputes that Enron's collapse sparked the Sarbanes-Oxley Act, or that Section 1519 was intended to prohibit corporate document shredding to hide evidence of financial wrongdoing. But that does not mean that this was the *only* type of misconduct addressed by that provision. As this Court has repeatedly observed, "statutory prohibitions often go beyond the principal evil [identified by Congress] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal

concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); see *DePierre*, 131 S. Ct. at 2235. Here, the law in question unambiguously extends beyond Enron-style misconduct; it prohibits a person's destruction of evidence in order to impede the proper administration "of *any* matter within the jurisdiction of *any* department or agency of the United States or *any* [bankruptcy] case filed under title 11." 18 U.S.C. 1519 (emphasis added).[21]

Notably, petitioner does not deny that Section 1519 extends beyond Enron-style misconduct to prohibit the destruction of any records or documents. But he does create an arbitrary distinction between documentary evidence and most kinds of physical evidence (destruction of which he says is not covered). On his view, Section 1519 prohibits a murderer from destroying a threatening letter to his victim (a "document")—but not the murder weapon, his victim's body, or the getaway car. Such a distinction makes little sense as a policy matter, and neither petitioner nor his amici offers any persuasive reason why Congress would have intended such an odd result.

2. In any event, as discussed more fully above, the relevant legislative history confirms that Section 1519

---

[21] Further evidence that the Sarbanes-Oxley Act sought to reform the obstruction-of-justice regime generally, and did not focus exclusively on the kind of white-collar fraud at issue in the Enron case, is its enactment of 18 U.S.C. 1513(e). That new anti-retaliation provision imposes liability on whoever "takes any action harmful to any person * * * for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense" with retaliatory intent. 18 U.S.C. 1513(e). Like Section 1519, that provision applies broadly and is not limited to white-collar offenses.

was intended "to apply broadly to any acts to destroy or fabricate physical evidence" with obstructive intent. 2002 Senate Report 14; see pp. 29-35, *supra*. Although petitioners' amici point to several places in which legislators referred to Section 1519 as an "anti-shredding" provision or explained that it would prohibit the destruction of documents, they do not—and cannot—identify a single instance in which anyone ever stated that Section 1519 covered *only* such offenses. Nor can they cite anything in the legislative history specifically supporting petitioner's novel view (Br. 8) that the phrase "any * * * tangible object" refers exclusively to "thing[s] used to preserve information, such as a computer, server, or similar storage device."

3. The assumption that the Sarbanes-Oxley Act could not possibly have been intended to cover the destruction of ordinary physical evidence is also incompatible with Congress's simultaneous enactment of Section 1512(c)(1) as part of that same Act. That provision undeniably covers "any kind of object" and prohibits "any alteration of anything." Oxley Amicus Br. 4, 17-18. It therefore reveals that Congress was not exclusively concerned with the acts of corporate document destruction directly at issue in the Enron affair. And nothing indicates that Congress had only that narrower concern when it enacted Section 1519. Indeed, at the time, many Senators recognized the substantial redundancy between the respective prohibitions in Section 1519 and Section 1512(c)(1).[22]

---

[22] See, *e.g.*, 148 Cong. Rec. at 12,513, 12,517 (statements of Sens. Biden, Gramm, Hatch, and Sarbanes) (noting overlap between proposal to add Section 1512(c)(1) and S. 2010); *Senators Leahy and Kennedy Deliver the Democratic Response to the President's*

Congressman Oxley agrees that Section 1519 "was modeled on" Section 1512, but he nonetheless argues that the phrase "other object" in Section 1512(c)(1) encompasses a broader range of items than the phrase "any * * * tangible object" in Section 1519. Oxley Amicus Br. 11, 13-14, 20-21. But the relevant texts of the respective provisions are virtually identical, and Congressman Oxley points to no legislative history supporting his counterintuitive proposition that Congress deliberately used the same basic language to address the same basic problem in two fundamentally different ways. Although Sections 1512(c)(1) and 1519 do significantly overlap, that overlap (1) was openly acknowledged at the time, and (2) reflected the fact that Section 1512(c)(1) was introduced by Senator Lott as a last-minute amendment to the Senate bill in order to reflect proposals made by President George W. Bush.[23] Because Section 1519 was drafted well before Section 1512(c)—and by different people—the legislative record refutes any assumption that the

---

Remarks on Corporate Responsibility, Federal Document Clearing House (FDCH), July 9, 2002, www.lexis.com (statement of Sen. Leahy) (same).

[23] See 148 Cong. Rec. at 12,518, 13,088-13,089; Richard A. Oppel, Jr., *Senate Backs Tough Measures to Punish Corporate Misdeeds*, N.Y. Times, July 11, 2002, at A1, C6; see also *Penalties for White Collar Crime: Hearing Before the Subcomm. on Crime and Drugs of the Senate Comm. on the Judiciary*, 107th Cong., 2d Sess. 167-169, 218-224, 263 (2002) (statements of Asst. Att'y Gen. Michael Chertoff and Sen. Leahy). Notably, Section 1512(c) was intended to address the same loophole addressed by Section 1519. See, *e.g.*, *id.* at 169, 223-224 (statement of Asst. Att'y Gen. Chertoff); 148 Cong. Rec. at 12,510, 12,511-12,512, 12,513-12,514, 12,517-12,518; *White House Officials Hold Background White House Briefing*, FDCH, July 9, 2002, www.lexis.com; see also Oxley Amicus Br. 7-8, 14-15.

overlap reflects an intentional scheme in which each provision serves a unique and distinct function.[24]

C. Petitioner's Construction Of Section 1519 Is Not Compelled By Other Principles Of Interpretation

Petitioner and his amici also rely on a series of extra-textual canons and principles in support of a narrow construction of Section 1519. None trumps the straightforward conclusion that the phrase "any * * * tangible object" covers all physical evidence.

1. Prohibiting the destruction of physical evidence is not absurd

Petitioner contends (Br. 23-24) that his novel construction of Section 1519 is necessary to avoid "absurd results." But it is not absurd to prohibit the destruction of evidence to impede the investigation or administration of matters under federal authority. The government has a strong interest in preventing persons from destroying evidence with the purpose of obstructing investigations or proceedings addressing their misconduct. That interest fully extends to all physical evidence that bears on the government's inquiry. That is why destroying such evidence is pro-

---

[24] Petitioner's brief does not mention Section 1512(c)(1), and it is not clear whether he believes that provision to prohibit the destruction of ordinary physical evidence (such as fish). Presumably he does not, as his main arguments—about context, canons, purpose, absurdity, and so on—appear to apply with equal force to Section 1512(c)(1). If that is correct, however, petitioner's approach both (1) contradicts Congressman Oxley's analysis, and (2) produces the untenable result that the phrase "record, document, or other object" has a quite different (and much narrower) scope in Section 1512(c)(1) than it does in Sections 1512(a)(1)(B), 1512(a)(2)(B)(i), 1512(a)(2)(B)(iii), 1512(b)(2)(A), and 1512(b)(2)(C). See pp. 25-29, *supra*.

hibited by the Model Penal Code, more than a dozen States, the Brown Commission proposal, and Section 1512(c)(1). See pp. 19-29, *supra*. Those standard prohibitions are not absurd.

Petitioner's primary example of an "absurd result[]" that follows from applying Section 1519's plain meaning is revealing. Petitioner apparently believes (Br. 23) that if a major car manufacturer learns that the brake system on its vehicles is defective—and if it is specifically instructed by the National Highway Traffic and Safety Administration to retain the faulty parts for subsequent examination by federal investigators—it is perfectly acceptable for the manufacturer to destroy the parts, even if its specific purpose in doing so is to obstruct the investigation. Still more, he believes that it would be absurd for Congress to prohibit such conduct. Neither of those beliefs finds support in the text or history of Section 1519—or in basic common sense.[25]

Petitioner also cites (Br. 23) his own case as an example of the alleged absurdity flowing from the plain

---

[25] Petitioner's amicus poses a different set of hypotheticals, arguing that construing Section 1519 to cover physical evidence "could expose companies to significant liability for otherwise run-of-the-mill inventory management" in various circumstances "where the company faces an investigation that is expressly or even tangentially related to its inventory." Chamber of Commerce Amicus Br. 16-17; see Nat'l Fed'n of Indep. Bus. Amicus Br. 5-6 (similar). But Section 1519 neither imposes affirmative inventory-retention requirements nor interferes—in any way—with "run-of-the-mill" inventory management. Rather, it criminalizes only the *knowing* destruction or concealment of records, documents, or physical items with the *intent* "to impede, obstruct, or influence the investigation or proper administration of any matter" within federal jurisdiction. 18 U.S.C. 1519.

meaning of Section 1519. He supports (Br. 23-24) that assertion only by pointing to (1) Section 1519's provision for punishment up to 20 years' imprisonment, and (2) the availability of a different statute, 18 U.S.C. 2232, to prosecute his conduct.

Petitioner is correct that Section 1519's statutory maximum punishment is substantial. But sentencing courts have broad discretion to consider the gravity of the particular obstructive conduct at issue in each case. Cf. 2003 Guidelines §§ 2J1.2(c), 2X3.1(a) (linking the advisory Sentencing Guidelines range for certain obstructive conduct to the offense level that would apply to the matter whose investigation was obstructed). Petitioner's modest 30-day sentence—reflecting a downward variance from the applicable Guidelines range—aptly illustrates that district courts are sensitive to the context in which a Section 1519 defendant's obstruction occurs.

Nor is the overlap between Sections 1519 and 2232 a valid reason to conclude that the former does not apply to physical evidence. Section 2232(a) prohibits destroying physical property in order to prevent the government from seizing that property. It does not fully replicate the range of actions covered by Section 1519, which also prohibits "alter[ing]," "falsif[ying]," or "mak[ing] a false entry" in physical evidence. 18 U.S.C. 1519. Nor does Section 2232(a) address concealing evidence to avoid having to produce that evidence without a search or seizure, as Section 1519 does. The partial overlap between the two provisions does not affect the proper interpretation of Section 1519. Different laws often apply to the same underlying conduct, and when an act violates more than one criminal statute, "each [is] fully enforceable on its own

terms." *United States* v. *Batchelder*, 442 U.S. 114, 119, 123-124 (1979).

2. The constitutional avoidance canon does not support petitioner

Petitioner briefly argues (Br. 25-27) that if Section 1519 covers all physical evidence, it might be void for vagueness insofar as it would deprive individuals of "fair notice" of the prohibited conduct and grant excessive discretion to law enforcement officers. He urges (Br. 26-27) this Court to avoid these "serious constitutional questions" by adopting his narrower construction of the statute.

This Court has explained that "[t]he canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction"; in that event, "the canon functions as *a means of choosing between them*." *Clark* v. *Martinez*, 543 U.S. 371, 385 (2005) (collecting cases). Here, however, petitioner's construction of "any * * * tangible object" to refer only to information-storage devices is at odds with Section 1519's text, structure, purpose, and history. "[T]he meaning of the statute is sufficiently clear that [the Court] need not indulge [petitioner's] cursory nod to constitutional avoidance concerns." *United States* v. *Castleman*, 134 S. Ct. 1405, 1416 (2014).

In any event, petitioner's constitutional objections are unfounded. The Due Process Clause requires that a criminal statute be sufficiently clear to give "the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Village of Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982).

The "touchstone" of that inquiry "is whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." *United States* v. *Lanier*, 520 U.S. 259, 267 (1997). Here, the ordinary and natural meaning of the phrase "any * * * tangible object" unambiguously encompasses undersized red grouper. That phrase may be broad, but it is not vague.

Moreover, this Court explained in *Village of Hoffman Estates* that a scienter requirement in a criminal statute "may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." 455 U.S. at 499 & n.14 (collecting cases); see *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 21 (2010). Section 1519 requires not only that the destruction or concealment of evidence be "knowing[]," but also that it be undertaken with the "intent to impede, obstruct, or influence the investigation or proper administration" of a matter within the jurisdiction of the federal government. 18 U.S.C. 1519. The statute does not criminalize innocent or inadvertent conduct. See generally *United States* v. *Moyer*, 674 F.3d 192, 211-212 (3d Cir.), cert. denied, 133 S. Ct. 165 (2012), and 133 S. Ct. 979 (2013); *United States* v. *Yielding*, 657 F.3d 688, 710-715 (8th Cir. 2011), cert. denied, 132 S. Ct. 1777 (2012).

3. Amici's policy objections to Section 1519 are unfounded

Petitioner's amici contend that petitioner's conviction reflects an unwarranted "overcriminalization" of federal law. See, *e.g.*, Crim. Law Professors Amicus Br. 9-18; Cause of Action Amicus Br. 14-20; Nat'l

Ass'n of Crim. Def. Lawyers Amicus Br. 4-12. That objection is both irrelevant and unfounded. Apart from ensuring that Congress "act[s] within any applicable constitutional constraints in defining criminal offenses," this Court does not pass judgment on the wisdom of the scope of criminal law. *Liparota* v. *United States*, 471 U.S. 419, 424 n.6 (1985). Rather, "[t]he definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." *Id.* at 424. In any event, it is entirely appropriate for Congress to penalize the intentional destruction of physical evidence for the purpose of thwarting investigations or proceedings under federal authority.

4. The rule of lenity has no application here

Finally, petitioner (Br. 27-28) invokes the rule of lenity to support his narrow construction of Section 1519. But as this Court has repeatedly emphasized, "the rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statutes such that the Court must simply guess as to what Congress intended." *Maracich* v. *Spears*, 133 S. Ct. 2191, 2209 (2013). In this case, "there is no work for the rule of lenity to do." *Ibid.* The text of Section 1519 is unambiguous and leaves no doubt that petitioner's deliberate destruction of evidence to impede a federal investigation came within its reach.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
LESLIE R. CALDWELL
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
ROMAN MARTINEZ
Assistant to the Solicitor General
JOHN F. DE PUE
Attorney

AUGUST 2014

APPENDIX

1. Title 18 of the United States Code provides in pertinent part:

§ 1503. Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

* * * * *

§ 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either

House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

* * * * *

§ 1512 [2000]. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112; and

(B) in the case of an attempt, imprisonment for not more than twenty years.

(b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(e) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(f) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(i) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

* * * * *

§ 1512 [2000 & Supp. II 2002]. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 20 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 10 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding.

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

---

[1] So in original.

shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

* * * * *

§ 1512 [2012]. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of con-

ditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 30 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record,

document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

---

[1] So in original.

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation[1] supervised release,,[1] parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

---

[1] So in original.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate judge, grand jury, or government agency is before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(h) There is extraterritorial Federal jurisdiction over an offense under this section.

(i) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(j) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as

those prescribed for the offense the commission of which was the object of the conspiracy.

§ 1513. Retaliating against a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings,

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

(B) in the case of an attempt, imprisonment for not more than 30 years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record,

document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(d) There is extraterritorial Federal jurisdiction over an offense under this section.

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.

* * * * *

§ 1515. Definitions for certain provisions; general provision

(a) As used in sections 1512 and 1513 of this title and in this section—

(1) the term "official proceeding" means—

(A) a proceeding before a judge or court of the United States, a United States magistrate judge, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims, or a Federal grand jury;

(B) a proceeding before the Congress;

(C) a proceeding before a Federal Government agency which is authorized by law; or

(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;

(2) the term "physical force" means physical action against another, and includes confinement;

(3) the term "misleading conduct" means—

(A) knowingly making a false statement;

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

(E) knowingly using a trick, scheme, or device with intent to mislead;

(4) the term "law enforcement officer" means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant—

(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

(B) serving as a probation or pretrial services officer under this title;

(5) the term "bodily injury" means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary; and

(6) the term "corruptly persuades" does not include conduct which would be misleading conduct but for a lack of a state of mind.

(b) As used in section 1505, the term "corruptly" means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.

(c) This chapter does not prohibit or punish the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

* * * * *

§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of

any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

* * * * *

§ 2232. Destruction or removal of property to prevent seizure

(a) DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.—Whoever, before, during, or after any search for or seizure of property by any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.

* * * * *

2. Conn. Gen. Stat. Ann. (West 2012) provides in pertinent part:

§ 53a-155. Tampering with or fabricating physical evidence: Class D felony

(a) A person is guilty of tampering with or fabricating physical evidence if, believing that an official proceeding is pending, or about to be instituted, he: (1) Alters, destroys, conceals or removes any record,

document or thing with purpose to impair its verity or availability in such proceeding; or (2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such official proceeding.

(b) Tampering with or fabricating physical evidence is a class D felony.

* * * * *

3. D.C. Code (LexisNexis 2001) provides in pertinent part:

§ 22-723. Tampering with physical evidence; penalty.

(a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

(b) Any person convicted of tampering with physical evidence shall be fined not more than $5,000, imprisoned for not more than 3 years, or both.

* * * * *

4. Fla. Stat. Ann. (West 2006) provides in pertinent part:

§ 918.13. Tampering with or fabricating physical evidence

(1) No person, knowing that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted, shall:

(a) Alter, destroy, conceal, or remove any record, document, or thing with the purpose to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or thing, knowing it to be false.

(2) Any person who violates any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

* * * * *

5. Ind. Code Ann. (LexisNexis 2013) provides in pertinent part:

§ 35-44.1-2-2(3). Offenses involving official proceeding or investigation—Interference with evidence—Juror contact—Penalty [effective July 2, 2014].

(a) A person who:

* * * * *

(3) alters, damages, or removes any record document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation.

* * * * *

6. Kan. Stat (2013) provides in pertinent part:

§ 21-5905. Interference with the judicial process.

(a) Interference with the judicial process is:

* * * * *

(5) knowingly or intentionally in any criminal proceeding or investigation:

(A) Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;

(B) withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the produc-

tion of such testimony, information, document or thing;

(C) altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or

(D) making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer; or

* * * * *

(b) Interference with the judicial process as defined in:

* * * * *

(4) subsection (a)(5) is a:

(A) Severity level 8, nonperson felony if the matter or case involves a felony; or

(B) class A nonperson misdemeanor if the matter or case involves a misdemeanor;

* * * * *

7. Mass. Ann. Laws (LexisNexis 2010) provides in pertinent part:

Ch. 268, § 13E. Court Proceedings—Alteration or Destruction of Documents and Objects.

* * * * *

(b) Whoever alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding is pending at that time, shall be punished, by (i) a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2½ years, or both, or (ii) if the official proceeding involves a violation of a criminal statute, by a fine of not more than $25,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2½ years, or both.

* * * * *

8. Mo. Ann. Stat. (West 2011) provides in pertinent part:

§ 575.100. Tampering with physical evidence

1. A person commits the crime of tampering with physical evidence if he:

(1) Alters, destroys, suppresses or conceals any record, document or thing with purpose to impair

its verity, legibility or availability in any official proceeding or investigation; or

(2) Makes, presents or uses any record, document or thing knowing it to be false with purpose to mislead a public servant who is or may be engaged in any official proceeding or investigation.

2. Tampering with physical evidence is a class D felony if the actor impairs or obstructs the prosecution or defense of a felony; otherwise, tampering with physical evidence is a class A misdemeanor.

* * * * *

9. Mont. Code Ann. (2013) provides in pertinent part:

§ 45-7-207(1). Tampering with or fabricating physical evidence.

(1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, the person:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in the proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in the proceeding or investigation.

* * * * *

10. Nev. Rev. Stat. Ann. (LexisNexis 2012) provides in pertinent part:

§ 199.220. Destroying evidence.

Every person who, with intent to conceal the commission of any felony, or to protect or conceal the identity of any person committing the same, or with intent to delay or hinder the administration of the law or to prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall willfully destroy, alter, erase, obliterate or conceal any book, paper, record, writing, instrument or thing shall be guilty of a gross misdemeanor.

* * * * *

11. N.D. Cent. Code (2012) provides in pertinent part:

§ 12.1-09-03(1). Tampering with physical evidence.

1. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted, or believing process, demand, or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand, or order.

* * * * *

12. Ohio Rev. Code Ann. (LexisNexis 2010) provides in pertinent part:

§ 2921.12. Tampering with evidence.

(A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:

(1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation;

(2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

(B) Whoever violates this section is guilty of tampering with evidence, a felony of the third degree.

* * * * *

13. Okla. Stat. Ann. (West 2002) provides in pertinent part:

Tit. 21, § 454. Destroying evidence

Every person who knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent

thereby to prevent the same from being produced, is guilty of a misdemeanor.

* * * * *

14. 18 Pa. Cons. Stat. Ann. (West 1983) provides in pertinent part:

§ 4910. Tampering with or fabricating physical evidence

A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation.

* * * * *

15. Tenn. Code Ann. (2010) provides in pertinent part:

§ 39-16-503. Tampering with or fabricating evidence.—

(a) It is unlawful for any person, knowing that an investigation or official proceeding is pending or in progress, to:

(1) Alter, destroy, or conceal any record, document or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) Make, present, or use any record, document or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) A violation of this section is a Class C felony.

* * * * *

16. Tex. Penal Code Ann. (West 2013) provides in pertinent part:

§ 37.09. Tampering With or Fabricating Physical Evidence

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work

product of the parties to the investigation or official proceeding.

(c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

* * * * *

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency.

(e) In this section, "human corpse" has the meaning assigned by Section 42.08.

17. Utah Code Ann. (LexisNexis 2012) provides in pertinent part:

§ 76-8-510.5. Tampering with evidence—Definitions—Elements—Penalties.

(1) As used in this section:

* * * * *

(b) "Thing or item" includes any document, record book, paper, file, electronic compilation, or other evidence.

(2) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation or to prevent the production of any thing or item which reasonably would be anticipated to be evidence in the official proceeding or investigation, the person knowingly or intentionally:

(a) alters, destroys, conceals, or removes any thing or item with the purpose of impairing the veracity or availability of the thing or item in the proceeding or investigation; or

(b) makes, presents, or uses any thing or item which the person knows to be false with the purpose of deceiving a public servant or any other party who is or may be engaged in the proceeding or investigation.

(3) Subsection (2) does not apply to any offense that amounts to a violation of Section 76-8-306.

(4)(a) Tampering with evidence is a third degree felony if the offense is committed in conjunction with an official proceeding.

(b) Any violation of this section except under Subsection (4)(a) is a class A misdemeanor.

* * * * *

18. Model Penal Code (1962) provides in pertinent part:

§ 241.7. Section 241.7. Tampering With or Fabricating Physical Evidence

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

* * * * *

19. *Final Report of the National Commission on Reform of Federal Criminal Laws* (1971) provides in pertinent part:

§ 1323. Tampering With Physical Evidence.

(1) Offense. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted or believing process, demand or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals or removes a record, document or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand or order.

* * * * *

20. Criminal Justice Codification, Revision and Reform Act of 1973, S. 1, 93d Cong., 1st Sess. (1973) provides in pertinent part:

§ 2-6A1. Definition of Terms

* * * * *

(8) 'object' includes any animate or inanimate thing;

* * * * *

§ 2-6C1. Obstruction of Justice

(a) OFFENSE.—A person is guilty of obstruction of justice if:

(1) he uses force, threat of force, deception, or bribery:

(i) with intent to influence another person's testimony or the production of information or object in an official proceeding; or

(ii) with intent to induce or otherwise cause another person:

(A) to withhold any testimony, information, or object from an official proceeding, whether or not the other person would be legally privileged to do so;

(B) to engage in conduct which, in fact, constitutes a violation of subsection (a)(2);

(C) to elude legal process summoning him to testify or produce information or an object in an official proceeding; or

(D) to absent himself from an official proceeding to which he has been summoned;

(2) with intent to impair the accuracy or availability of information or an object in an official proceeding or for the purposes of process, he alters, destroys, mutilates, conceals, or removes such information or an object;

(3) with intent to hinder, delay, or prevent the communication of information to a law enforcement officer by another person, he deceives such other person or employs force, threat of force, or engages in conduct constituting, in fact, bribery with such other person, or

* * * * *

21. Criminal Code Reform Act of 1973, H.R. 6046, 93d Cong., 1st Sess. (1973) provides in pertinent part:

§ 1325(a). Tampering with Physical Evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, regardless of its admissibility in evidence, with intent to impair its integrity or availability in an official proceeding.

* * * * *

22. Criminal Code Reform Act of 1973, S. 1400, 93d Cong., 1st Sess. (1973) provides in pertinent part:

§ 1325. Tampering with Physical Evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, regardless of its admissibility in evidence, with intent to impair its integrity or availability in an official proceeding.

* * * * *

23. Criminal Justice Reform Act of 1975, S. 1, 94th Cong., 1st Sess. (1975) provides in pertinent part:

§ 1325. Tampering with Physical Evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

* * * * *

24. Federal Criminal Law Revision and Constitutional Rights Preservation Act of 1976, H.R. 2311, 95th Cong., 1st Sess. (1977) provides in pertinent part:

§ 1325. Tampering with physical evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

* * * * *

25. Criminal Code Reform Act of 1977, S. 1437, 95th Cong., 1st Sess. (1977) provides in pertinent part:

§1325. Tampering with Physical Evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

* * * * *

26. Criminal Code Reform Act of 1979, S. 1722, 96th Cong., 1st Sess. (1979) provides in pertinent part:

§1325. Tampering With Physical Evidence

(a) OFFENSE.—A person is guilty of an offense if he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

* * * * *

27. Criminal Code Revision Act of 1979, S. 1723, 96th Cong., 1st Sess. (1979) provides in pertinent part:

§ 1725. Tampering with physical evidence

(a) Whoever, with intent to impair the object's integrity or availability for use in an official proceeding that is pending or about to be initiated, knowingly alters, destroys, mutilates, or conceals, a record, document, or other object, or attempts to do so, commits a class E felony.

* * * * *

28. Criminal Code Revision Act of 1980, H.R. 6915, 96th Cong., 2d Sess. (1980) provides in pertinent part:

§1725. Tampering with physical evidence

(a) Whoever, with intent to impair the object's integrity or availability for use in an official proceeding that is pending, knowingly alters, destroys, or mutilates a record, document, or other object, or engages in any act and thereby conceals such an object, or attempts to do so, commits a class E felony.

* * * * *

29. Criminal Code Reform Act of 1981, S. 1630, 97th Cong., 1st Sess. (1981) provides in pertinent part:

§ 1325. Tampering With Physical Evidence

(a) OFFENSE.—A person commits an offense if, knowing an official proceeding is pending or likely to be instituted, he alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in an official proceeding.

* * * * *

30. Criminal Code Revision Act of 1981, H.R. 4711, 97th Cong., 1st Sess. (1981) provides in pertinent part:

§ 1725. Tampering with physical evidence

(a) Whoever, with intent to impair the object's integrity or availability for use in an official proceeding that is pending, knowingly alters, destroys, or mutilates a record, document, or other object, or engages in any act and thereby conceals such an object, or attempts to do so, commits a class E felony.

* * * * *

31. Criminal Code Revision Act of 1981, H.R. 5679, 97th Cong., 2d Sess. (1982) provides in pertinent part:

§ 1725. Tampering with physical evidence

(a) Whoever, with intent to impair the object's integrity or availability for use in an official proceeding that is pending, knowingly alters, destroys, or mutilates a record, document, or other object, or engages in any act and thereby conceals such an object, or attempts to do so, commits a class E felony.

* * * * *

32. Criminal Code Revision Act of 1982, H.R. 5703, 97th Cong., 2d Sess. (1982) provides in pertinent part:

§ 1725. Tampering with physical evidence

(a) Whoever, with intent to impair the object's integrity or availability for use in an official proceeding that is pending, knowingly alters, destroys, or mutilates a record, document, or other object, or engages in any act and thereby conceals such an object, or attempts to do so, commits a class E felony.

* * * * *