



## **18 USC 1519: The Changing Face of Obstruction**

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**Title 18 USC § 1519:**  
*Taking Obstruction in New  
and Unsettling Directions*

**John R. Mitchell**

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- 18 USC § 1503
- 18 USC § 1504
- 18 USC § 1505
- 18 USC § 1509
- 18 USC § 1510
- 18 USC § 1512

3

MARTHA





## 18 USC § 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.

## What is the “intent” required under 1519?

1. a defendant **knowingly** alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false an entry with intent to impede an investigation or proper administration of a federal matter;
2. a defendant, in contemplation of a federal matter, **knowingly** alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false an entry with intent to impede an investigation or proper administration of a federal matter;
3. a defendant, in relation to a federal matter, **knowingly** alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false an entry with intent to impede the investigation or proper administration of the matter.

“This statute is specifically meant not to include any technical requirement, which some courts have read into other obstruction of justice statutes, to tie the obstructive conduct to a pending or imminent proceeding or matter by intent or otherwise.”

- Senator Patrick Leahy

Chairman, Senate Judiciary Committee



“It is also meant to do away with the distinctions, which some courts have read into obstruction statutes, between court proceedings, investigations, regulatory or administrative proceedings (whether formal or not), and less formal government inquiries, regardless of their title.”

- Senator Patrick Leahy

Chairman, Senate Judiciary Committee



“It also extends to acts done in contemplation of such federal matters, so that the timing of the act in relation to the beginning of the matter or investigation is also not a bar to prosecution. The intent of the provision is simple; people should not be destroying, altering, or falsifying documents to obstruct any government function.”

- Senator Patrick Leahy

Chairman, Senate Judiciary Committee

## Examples:

- ***United States v. Rhodes***, 642 F.3d 371 (2d Cir. 2011): Falsification of use of force reports after privately contracted prison guards assault inmate constituted 1519 violation.
- ***United States v. Moyer***, 674 F.3d 192 (3d Cir. 2012): Falsifying police reports related to racially-motivated attack constituted 1519 violation.
- ***United States v. Gray***, 692 F.2d 514 (6th Cir. 2012): Omission of “chokehold” from use of force reports constituted 1519 violation.
- ***United States v. Kernell***, 667 F.2d 746 (6th Cir. 2011): Deletion of traces of hacking constituted 1519 violation.
- ***United States v. Reeves et al.***, 2012 U.S. Dist. LEXIS 74109 (D.N.J. 2012): Where *Lacey Act* contained a specific provision addressing falsification of records and penalty was only 5 years, 1519 violations were dismissed because Congress had already addressed the same conduct and penalty was only 5 years for *Lacey Act* violation vs. 20 years for 1519 violation.

“We recognize that section 1519 overlaps with a number of existing obstruction of justice statutes, but we also believe it captures a small category of criminal acts which are not currently covered under existing laws for example, acts of destruction committed by an individual acting alone and with the intent to obstruct a future criminal investigation.

We have voiced our concern that section 1519, and in particular, the phrase ‘or proper administration of any matter within the jurisdiction of any department or agency of the United States’ could be interpreted more broadly than we intend. In our view, section 1519 should be used to prosecute only those individuals who destroy evidence with the specific intent to impede or obstruct a pending or future criminal investigation, a formal administrative proceeding, or bankruptcy case.

It should not cover the destruction of documents in the ordinary course of business, even where the individual may have reason to believe that the documents may tangentially relate to some future matter within the conceivable jurisdiction of an arm of the federal bureaucracy.”

- ADDITIONAL VIEWS OF SENATORS HATCH,  
THURMOND, GRASSLEY, KYL, DeWINE,  
SESSIONS, BROWNBACK, AND McCONNELL



“We have voiced our concern that section 1519, and in particular, the phrase ‘or proper administration of any matter within the jurisdiction of any department or agency of the United States’ could be interpreted more broadly than we intend. In our view, section 1519 should be used to prosecute only those individuals who destroy evidence with the specific intent to impede or obstruct a pending or future criminal investigation, a formal administrative proceeding, or bankruptcy case.”



The fundamental problem with expense reports is that if I'm going to work so hard on fiction, I should at least have gotten a book advance.

- John Dickerson, *Slate*

## **About John Mitchell**

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John is a partner in the firm's Product Liability Litigation, White-Collar Crime and Business Litigation practice groups. As an experienced first-chair trial lawyer, he has tried many significant toxic tort and high-profile criminal matters to verdict in federal and state courts throughout the United States. John has tried approximately 50 jury trials and dozens of bench trials in his career.

John's civil practice consists primarily of product liability, chemical industry-related toxic tort, and commercial litigation. He has served as first-chair trial counsel, representing firm clients in industry-wide chemical and toxic tort litigation involving maritime asbestos, vinyl chloride, welding rod, lead paint, and other chemicals and products. He has routinely handled both traditional product liability matters and commercial litigation matters for firm clients throughout his career. In addition, John has handled many intentional tort cases involving a myriad of workplace safety issues.

John also has extensive first-chair trial experience defending companies and individuals facing significant criminal exposure from alleged violations of federal and state law. His criminal practice consists of traditional white-collar criminal matters, internal corporate investigations, environmental crimes, grand jury investigations and related administrative proceedings. With a comprehensive understanding of federal and state criminal laws, he also counsels public and privately held corporations and individuals facing unwelcome governmental scrutiny. Many of his greatest successes are also the least publicized, especially those that resolved highly sensitive matters without criminal charges or adverse publicity.

Prior to joining Thompson Hine, John served as an assistant prosecuting attorney for Cuyahoga County, Ohio, in the elite Major Trials Unit, first-chairing homicide, rape and public corruption cases. He also directed complex grand jury investigations of large institutions and individuals allegedly involved in criminal activity. Additionally, John's experience and track record led to his appointment as a special prosecutor in multiple high-profile homicide, public corruption and organized-crime cases.

John has extensive appellate experience, having successfully argued more than 30 appeals in the Sixth, Eighth and Ninth District Appellate Courts of Ohio.

### **Awards and Honors**

- Listed as a "Litigation Star" by Benchmark Litigation, 2012

### **Education**

- Capital University Law School, J.D., 1996, Capital University Law Review
- The Ohio State University, B.A., 1992