

**SUPPLEMENT INSTRUCTION NO. 1 - FAILURE  
TO PRESERVE EVIDENCE**

You may hear testimony that the government failed to preserve evidence relating to the charges in **Counts 1, 5 and 7** in this case. If you find that the evidence was within the government's control (which includes control by a law enforcement officer or law enforcement agency), that the government could have produced the evidence, and that the evidence would have been material in deciding any of the facts in dispute in this case, then you are permitted, but not required, to infer that the evidence would have been unfavorable to the government. In deciding whether to draw this inference, however, you should consider whether the evidence not preserved would merely have duplicated other evidence already before you. You may also consider whether the government had a reason for not producing this evidence, which was explained to your satisfaction. Again, any inference you decide to draw should be based on all of the facts and circumstances in this case.