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## Unit 7: Spoliation

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Slide 1



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Slide 2

### Objective

Describe Spoliation and how it applies to both the Fire Investigator and the Electric Utility Companies.

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Slide 3

### Objective

Describe the steps necessary to avoid motions based on Spoliation.

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***“Definition”***

The loss, destruction or alteration of an object which is evidence (or potential evidence) in a legal proceeding.

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***“Case Definition”***

The destruction, mutilation or alteration of evidence by a party to an action.

Miller v. Montgomery County, 494 A.2<sup>nd</sup> 761 (Md. Ct. Spec. App 1985)

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***“Case Definition”***

“Spoliation’ means failure to preserve property for another’s use as evidence in pending or future litigation.”

County of Solano v. Delancy, 264 Cal. Rptr. 721, 724 (Cal. Ct. App. 1989)

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Slide 7

**Litigation**

When a critical issue turns on the existence or condition of a piece of evidence that is unavailable or properly preserved, the courts must provide an appropriate remedy for the disadvantaged party by imposing an appropriate punishment on the wrongdoing party.

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### Litigation

Potential Actions when Spoliation has occurred:

Worse Case – Case Dismissed for deliberate or malicious conduct by a party

Specific case – Exclusion of Expert Testimony

Evidentiary Inferences – Instructions to juries that “the missing or altered evidence should be presumed to have been unfavorable to the ‘spoliator’ that caused its loss, alteration, or destruction.”

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### Spoliation

Should be a matter of concern to every fire investigator

First victim of Spoliation is the “Truth”

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**Slide 10**

### Avoiding Spoliation

Again

Document – Document – Document

Carefully document the fire scene, identify items that are or could be relevant evidence, properly collect and preserve those items, include opposing parties and experts in any testing, especially any destructive testing and MAINTAIN Chain of Custody processes.

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### Knowledge Check

“Spoliation” only applies to:

- A. Loss of evidence
- B. Intentional alteration of evidence
- C. Negligent destruction of evidence
- D. Any loss, alteration, or destruction of evidence



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The correct answer is:

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### Knowledge Check

Spoliation is applicable to:

- A. Evidence that has been properly collected
- B. Evidence that has been provided to expert witnesses for testing
- C. Evidence that is used in litigation
- D. All evidence relevant to the case, even evidence that was not collected and preserved.



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The correct answer is:



TRANSITION to Unit 8: Negligence.