Unit 7: Spoliation

Slide 1

How evidence is handled, maintained, tested, and treated can be pivotal to your case and future litigation. If done incorrectly it can even lead to the exclusion of the evidence, expert testimony, and sanctions against you, the electric utility, or whoever mishandled the material. It is important to understand the concept and the way courts have responded to the issue when it arises.

Slide 2

 Objective

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

Slide 3

 Objective

Describe the steps necessary to avoid motions based on Spoliation.

What steps you take to ensure that the evidence that is relevant to the case is maintained and for how long.
Unit 7: Spoliation

Slide 4

“Definition”

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

Make the following key points:

- An old concept that has only recently taken on significance in this country.
- It has significant applicability to fire investigation cases.
- Fire scene investigations are especially vulnerable to spoliation problems.

Slide 5

“Case Definition”

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


Make the following key points:

- The courts have even extended the concept of spoliation to include “the failure to preserve evidence” as well as the intentional or negligent destruction of evidence.
Unit 7: Spoliation

Slide 6

“Case Definition”

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


Make the following key points:

- Spoliation of evidence is an issue which can affect any investigation involving evidence collection and forensic analysis.

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.

Make the following key points:

- Potential remedies:
  - 1) Discovery sanctions, arising under the court’s “inherent powers” or under the rules of discovery;
  - 2) Application of evidentiary inferences or limitations under rules of evidence;
  - 3) Independent tort actions for the intentional or negligent destruction of evidence; and,
  - 4) Prosecution under criminal statutes relating to the obstruction of justice.
Unit 7: Spoliation

Slide 8

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.”

Make the following key points:

- Why did the electric utility remove and dispose of that fuse, lightning arrestor, or insulator???
- Why did the Fire Investigator ‘forget’ to take photographs of the campfire ring that was down the hill from the power pole, show the campsite on the sketch, or record the items found at the campsite on the evidence log???

Slide 9

Spoliation
Should be a matter of concern to every fire investigator
First victim of Spoliation is the “Truth”

Make the following key points:

- Only by permitting an objective analysis of the fire scene evidence by both sides of a case can the fire investigation and prosecuting attorney, and the electric utility and their attorney fulfill their mission as truth-seekers, rather than case-makers.
Unit 7: Spoliation

Make the following key points:

- DO NOT destroy or throw out any evidence - Keep it for the entire time periods for ANY appeals or challenges.
- And then keep everything for the agencies required additional retention period.

“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

The correct answer is: D.

Spoliation applies to any loss, alternation, or destruction of evidence
Unit 7: Spoliation

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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A. Evidence that has been properly collected
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D. All evidence relevant to the case, even evidence that was not collected and preserved.

The correct answer is: D.

Any evidence that is relevant to the case can be subjected to a “spoliation” claim by either party to an action. If it was available for identification and collection, and was not preserved for another’s use as evidence, “spoliation” can be found and sanctions imposed.

TRANSITION to Unit 8: Negligence.