

SPOLIATION OF EVIDENCE

Lawyers and courts use the term SPOLIATION to refer to the intentional or negligent withholding, hiding, or destruction of evidence relevant to a legal proceeding and is a criminal act in the United States under Federal and most State law. Case law has established that proceedings which might have been altered by the spoliation may be interpreted under a spoliation inference. Courts also have drawn an inference that destroyed materials are RELEVANT, and if available, would lead to the proof of a claim.

Edwin H. Crosby III, hereby states the following; While in the State of Montana, Mr. Crosby re-opened his lawsuit CROSBY v. U.S.A.F. 76-cv-26, U.S. 2nd - Circuit 79-6047, U.S. Supreme Court 79-6857 for Fraud Upon the Court, Filing False Declarations, and Failure to Obey Two (2) Federal Court Orders. Sometime during this litigation, the U.S. Department of Veterans Affairs “ destroyed or lost “ the 500 plus page LEGAL transcript submitted by V.A. to the U.S. Court of Veterans Appeals. Mr. Crosby was to use this relevant evidence in court in Billings, Montana. It is important to note, the U.S. Department of Veterans Affairs was the custodian of said legal transcript. In fact, the CLERK of the Court for Veterans Appeals stated a copy of the transcript would ALWAYS remain in the veterans Claims File Folder, so he/she could appeal with new and material evidence anytime in the future. Time period, 2001-2003.

In a MEMORANDUM FOR AFBCMR, dated 28 October 1999, from Dept. of the

Air Force, Randolph Air Force Base, one R. PHILIP DEAVEL, Colonel, USAF Staff Judge Advocate, stated, QUOTING; “ However, in our view, in order to meet the burden of proof in this case, he should be required to attach a certified copy of the transcript to his application for consideration by the AFBCMR. Without a copy of the complete transcript, we do not have a sufficient basis to make a determination of whether an erroneous DD FORM 214 may have been provided to the Department of Veterans Affairs. END QUOTE. (underscoring supplied)

As a matter of fact, in his same letter, Col. Deavel states, QUOTING; “ He has attached a copy of the brief which was filed on his behalf to the Court of Veterans Appeals. The brief asserts: When the DD-214 was included in the transcript of these proceedings (Transcript p.63) obviously provided to the Department of Veterans Affairs by the U.S. Air Force, it turned out that it is yet again the unamended version. END QUOTE. It has been suggested, that permitting an adverse inference against a spoliating party, there must be a showing that the party responsible for the destruction or loss of the subject evidence possessed, or should have possessed control of the evidence. (see EXHIBIT B, attached) Col. Deavel in his 28 October 1999 letter referred to the “ legal brief “ submitted to the Court of Veterans Appeals and said transcript. Moreover, the Clerk of the Court, Court of Veterans Appeals.

NOTE: By letter dated December 21, 2004, from Department of Veterans Affairs, Regional Office, 1220 SW Third Avenue, Portland, Oregon, 97204, and signed by one K. ADAMS, Veterans service Center Manager, it states; “ After extensive search of your claims file, there is not a 536 page hearing transcript. I am sorry I could not

provide you with a more favorable response “. The evidence has been spoliated, end of discussion.

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