

Parts (A) and (B) of the rule seem to conflict because it is unclear whether the "measures no greater than necessary to cure the prejudice" in (A) could potentially include those measures provided in (B).

Also, if (A) is not meant to permit those sanctions described in (B), then it may be overly restrictive to limit (B) only to applying where intent can be shown. That is, a litigant should not be able to benefit from losing evidence negligently or even recklessly by avoiding an "unfavorability" presumption or instruction, especially if that evidence would otherwise be material to another party's case, though it would be fair for a court to consider the diminished degree of mens rea when determining what sanction or solution to apply.

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