Redaction ████████████████ Done ██████ Wrong:
Three Common Mistakes When Redacting Legal Documents

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[Editing note: I'd like to use the first title with the redactions in it, but if that's not doable in our production, let's go with the second title.]

On January 8, 2019 lawyers for Paul Manafort, President Trump's former campaign manager, mistakenly filed a court document in which portions of the document which were supposed to be redacted were completely readable. For Manafort's lawyers, a simple misstep using a software tool that features secure document redaction became a legal nightmare. But for practice management advisors who specialize in legal technology, the error by Manafort's lawyers was an all-too-familiar mistake that suddenly became front-page news.

The document titled, "Defendant Paul J. Manafort Jr.'s Response to the Special Counsel Submission in Support of its Breach Determination" was in PDF format and the redacted portions appeared to be completely and sufficiently obscured by bold black lines. To the eye, the redacted portions of the document were unreadable.

As is often common in court filings, the document in question was a searchable PDF, meaning that a text layer is added to the image layer of the document (usually placed underneath) and the text in the searchable PDF document can be selected, copied, and marked up. That is exactly what journalists and reporters were doing when it was soon discovered that by simply "copying and pasting" the redacted portions of the document into a blank word processing file, suddenly all of the text that was supposed to be redacted was readable.

It is important to know that converting a court filing into a searchable PDF as opposed to an image-only PDF was not the fatal error at the heart of this lawyer nightmare. An attorney may often be required to file court documents in searchable PDF format. Whether the PDF is searchable or image-only, a proper redaction software tool can permanently redact the visible

information, and no amount of copying and pasting will uncover the information underneath the black lines. B

So what did the lawyers do wrong?

Although the Manafort legal team used a proper redaction tool they missed a crucial step: they failed to finalize the document. Someone took the time to obscure the critical content, likely at the request of the attorney overseeing the document production process. But at the point in the process that it is determined to be a finished document, a proper redaction tool will ask the user, "Would you like to remove the hidden information in the document?" Choosing "Yes" not only obscures the visible information that is being redacted but it will also permanently remove the hidden information that lies underneath the black lines.

Skipping a crucial, easy-to-do final step in document redaction does not seem unusual when you picture how a team of legal professionals collaborate during document production on a significant legal matter. Production of the document likely involved multiple lawyers in an expansive legal team, and the person whose job it was to redact the document may not have been authorized to finalize the document before it was proof-read by other members of the team.

In short, the Manafort redaction nightmare that instantly became national headline news occurred because one individual did not choose a simple "Yes" onscreen option when finalizing the redaction process.

What is unique about the mistake made in the Manafort court document is that the legal team used a proper redaction software tool. Most redaction mistakes made by lawyers occur because the redaction is done using the wrong software application. Here are three of the most common mistakes made by lawyers during the document redaction process:

Mistake #1: Using the highlighter feature in Microsoft Word to redact a word document.

As mentioned previously, a proper redaction software tool will not only completely obscure the content of the document overlaying the text with bold black lines, *but it will also remove the data underneath the black lines* so the obscured content no longer exists anywhere within the metadata of the document. Ironically, Microsoft Word – the most popular word processing tool in the world – does not contain a feature that will do this.

Users of Microsoft Word looking for a quick redaction option often turn to the highlighter feature in the Home tab tool bar to obscure information in the document that they would like to remain hidden. Clicking on the down arrow next to the highlighter button gives the user 15 highlighter color options including the color black. Using the black highlighter over written text appears to completely obscured text in the document – similar to the obscured words in the title of this article.

A Word document that has been highlighted and uploaded to the court is not secure and anyone obtaining the document file can easily reverse the highlighted text or perform a simple cut and past to see the content that was intended to be hidden from view. Similarly, converting a black-highlighted Word document to a searchable PDF file will not remove the information obscured in the document. It may look like a properly redacted document but it is not.

Mistake #2: Using the insert shapes or text box feature in Microsoft Word to redact a document.

For the same reasons described above, obscuring the content of a Word document with a black box is also an insufficient method for redacting a court document. Anyone in possession of the "redacted" Word file can revert the color of the shape or text box so that the hidden content suddenly becomes visible again. A simple copy and paste would also reveal the content that was intended to be obscured by the insufficient redaction process.

Why a significant office production tool such as Microsoft Word would not have an effective and simplified redaction tool within the program is a mystery, but it is an important reminder that the features in Microsoft Word have been through extensive development over many years with the needs of the general business world in mind. Features that are significant to attorneys such as extensive document formatting, form/data merges, and true document redaction are overlooked and neglected by Microsoft developers.

There are several other online tips regarding redaction in Microsoft Word, but most are unnecessarily complex and equally insufficient. They include redacting text manually with characters, saving Word documents as pictures, and removing metadata using the document inspection features after obscuring the visible content using one of the methods described above.

Mistake #3: Failing to finalize the redaction process after using a proper redaction software application.

A redaction error like the one described in the Manafort example may have occurred because someone assigned to use the redaction tool wasn't properly trained on the software, including the critical step of finalizing the document. It may also have occurred because of simple forgetfulness. However, since these software tools are easy to use and accomplished by experienced word processors, it is more likely that the mistake occurred because of a communication breakdown involving the legal team producing the court document.

The person whose job it is to upload the document to the court filing website should also be authorized to finalize the redaction process to ensure that the document is secure and complete before it has been submitted to the court.

There are many good redaction software tools that will perform the process quickly and easily. Some of the most popular tools used by lawyers include Adobe Acrobat Pro, Foxit Redactor, and Redact Assistant by Payne Group. It is recommended that a tool that is intended to

perform proper redactions is used and every member of the legal team involved in document production understands how the tool works and whose responsibility it is to ensure that the redacted document has been finalized before it has been uploaded to a public web site.

A software tool that was designed to perform proper document redaction is your best bet for doing the job securely, but don't forget that a more traditional way of redacting a document is also a good option. Although it takes a little longer to do, blacking out content with a sharpie pen and scanning the document to a image-only PDF format is still a highly secure method for obscuring the redacted data.