

On December 21, 2007, I submitted notes of a client meeting, which were cleared the same day, stamped "unclassified," and faxed to my office. On January 7, 2008, I used those cleared notes as the centerpiece (and Exhibit A) of a Motion to Preserve Remaining Exculpatory Evidence that we filed through the CSO. A week went by, and I heard nothing about filing the motion in the public record, through ECF—which was strange, because everything in the motion was based on unclassified information which I was careful to attach as exhibits to the brief in support of the motion. We called the CSO, who referred us to our litigation opponent at the DOJ. On January 15, 2008, the DOJ said that the combinations of unclassified information and the way the motion was structured needed to be reviewed by various agencies.

On January 25, 2008, DOJ called and informed me that the notes that were stamped "unclassified" on December 21, 2007, really should have been designated classified (secret). Whereupon we had to track down and delete every electronic copy of the notes or the information contained therein, and we had to track down and send to the CSO by overnight delivery every hard copy of the same. Also on January 25, the DOJ sent us a redacted version of the brief -- but not the motion or the proposed order -- which we were permitted to file publicly through ECF. We did not receive the redacted version of the motion and proposed order until January 31 -- by which time the motion was already fully briefed. We filed our reply brief with the CSO on January 29; it was not approved for public filing until February 21.

Mind if I throw in two other "funny" stories?

1. We filed a DTA petition in April 2007. The government told us not to share four pages of it with the client, until the government could complete its classification review—even though I told them the client himself gave me the information to begin with, and I wrote it up in notes that were cleared long ago. The government still hasn't completed its classification review. In fact, the government won't even tell me when it might complete the review. So I am barred from sharing with the client his own DTA petition containing information that he supplied in the first place.

2. In June 2007, I received a call from the PRT about a letter sent to me by a client. The PRT explained that there was nothing classified in the letter itself, but the client had drawn a beautiful border of vines and flowers around the letter. The PRT said they couldn't review the colorful art work for classified information because they didn't understand art. So the PRT redacted the art work and sent me the letter. The fax cover sheet had a note saying:

This is the letter without the drawing as we discussed from ISN 200. The original has been marked classified as it has the drawing and will be maintained in your safe.

The PRT also wrote this note at the top of the letter:

This letter is unclassified without the colorful drawing along the edge. The contents have no classification concern.