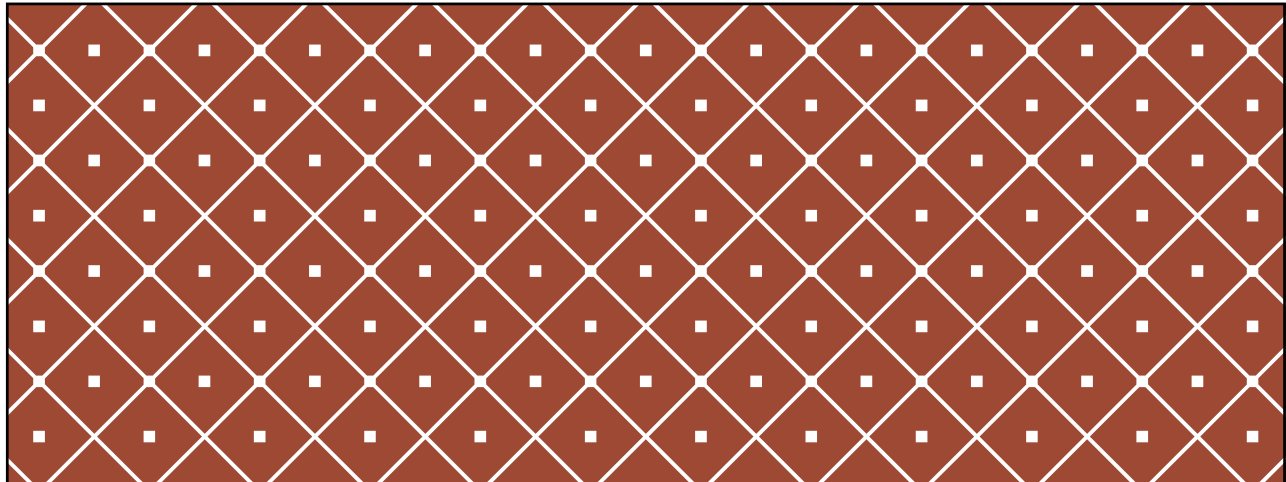


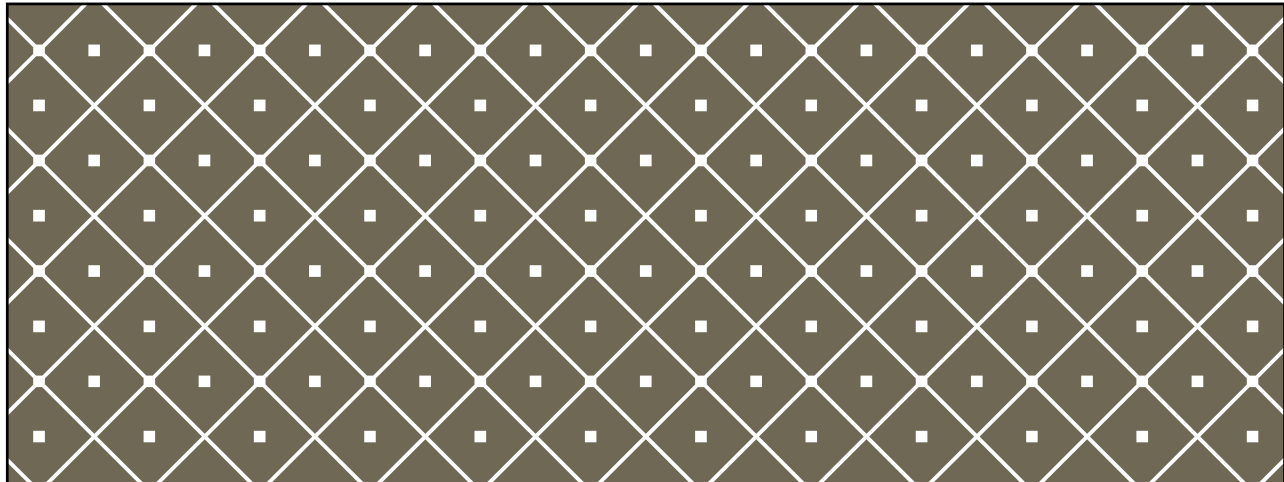


PERSUASIVE WRITING

Influencing through style and substance

THE BASIC PRINCIPLES

1. Consider your reader's perspective
2. Economize with words
3. Learn correctness
4. Make it interesting



CONSIDER YOUR READER'S PERSPECTIVE

Writing for your audience

CONSIDERING YOUR READER'S PERSPECTIVE: IDENTIFY YOUR AUDIENCE

Judge

Well-read

Law Clerk

Busy

Prosecutor

Skeptical

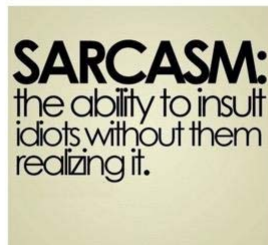
Client

Goal-driven

CONSIDERING YOUR READER'S PERSPECTIVE: BASIC GUIDELINES

1. Don't write when you're angry
2. Don't evade responsibility
3. Don't call your reader a fool
4. Don't insist the reader is wrong, misunderstands, or has been unclear

CONSIDERING YOUR READER'S PERSPECTIVE: ADVANCED GUIDELINE



Avoid sarcasm

CONSIDERING YOUR READER'S PERSPECTIVE: FIRST EXAMPLE

Not this:

It is clear that the prosecutor egregiously and shamelessly lied and withheld evidence in convicting a patently innocent man. Their failures show a nefarious conspiracy and remorseless unprofessionalism. This shocking behavior can only be thwarted by one remedy so that all prosecutors everywhere receive a message that this pervasive misconduct should cease.

But this:

Until now, the defense has refrained from alleging intentional misconduct on the part of the prosecution. We can no longer do so in good conscience. Having reviewed the evidence, it appears the government's misconduct is intentional. This case should be dismissed because no other remedy will adequately deter the same tactics in the future.

CONSIDERING YOUR READER'S PERSPECTIVE: SECOND EXAMPLE

Not this:

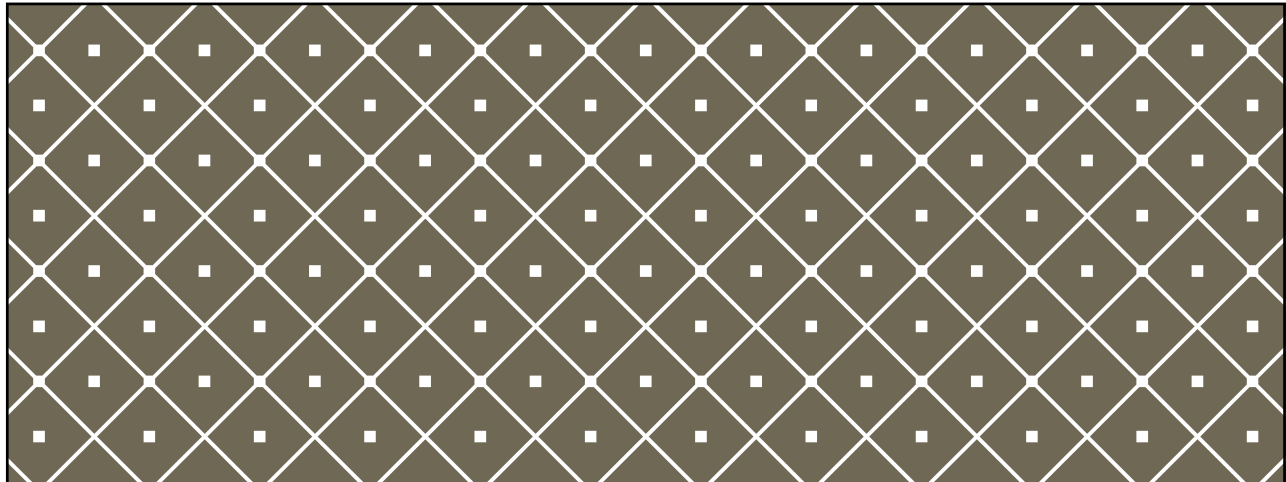
It is highly improper and unjust that the government should file notice with this Court at such an outrageously late date. As amply demonstrated, it is extremely prejudicial and a mockery of procedure when the notice could have been filed months ago. The nonsensical "arguments" asserted by the government are ridiculous and should be rejected.

But this:

Yesterday, the government filed a notice that was filed:

- 5 days before trial;
- 3 months past the due date; and
- based on information the government had in its possession for approximately 2 years.

Having unduly delayed, the government cannot support its request for leave to file at this late date. And justice is not served by allowing such a late filing.



ECONOMIZE WITH WORDS

The intersection of style and substance

ECONOMIZING WITH WORDS: OMIT NEEDLESS WORDS

- Delete needless words
- Become severe with your own verbosity
- Proofread and edit vigorously

ECONOMIZING WITH WORDS: COMBATING VERBOSITY

Four ways to target and omit needless words:

1. Uncover buried verbs
2. Avoid the passive voice
3. Minimize prepositional phrases
4. Eliminate redundancies

ECONOMIZING WITH WORDS: ELIMINATING BURIED VERBS

A buried verb is a noun created from a verb.

acceptance = accept

compulsion = compel

violation = violate

When the actual verb will work, use it instead of the buried verb.

offer testimony = testify

reveal the identify of = identify

made allegations = allege

ECONOMIZING WITH WORDS: ELIMINATING BURIED VERBS - EXAMPLES

Not this:

During the course of the **preparation** of this case for trial, I made the **determination** that it was in the best interest of my client that **investigations** be made to reveal the **identification** of the actual shooter.

But this:

In preparing this case for trial, I determined that it was in my client's best interest to investigate and identify the actual shooter.

ECONOMIZING WITH WORDS: AVOIDING THE PASSIVE VOICE

The subject of the clause should perform the action.

Passive: The deadline was missed by the prosecutor.

The deadline was missed.

Active: The prosecutor missed the deadline.

Passive voice adds unnecessary words, fails to say who has done what, and subverts normal word order reducing reader comprehension.

ECONOMIZING WITH WORDS: AVOIDING THE PASSIVE VOICE — CAVEAT

Sometimes, we want to add unnecessary words, fail to say who did the action, and cause difficulty for the reader's comprehension.

Consider:

Mr. Smith shot and killed Mrs. Jones.

Mrs. Jones was shot and later was found dead. The shooter was determined to be Mr. Smith.

ECONOMIZING WITH WORDS: MINIMIZING PREPOSITIONAL PHRASES

Prepositional phrases cause bloated writing, especially "of" phrases.

1. Delete the phrase altogether
2. Replace with a participle
3. Change to possessive
4. Replace with an adverb
5. Uncover buried verbs
6. Change the passive to active voice

ECONOMIZING WITH WORDS: MINIMIZING PREPOSITIONAL PHRASES - EXAMPLES

Not these:

This letter will notify you of my receipt of your letter outlining the terms of our plea agreement.

A number of cases state that the defendant is not required to have knowledge of the fact that the firearm was transported in interstate commerce.

But these:

I received your letter outlining the plea agreement's terms.

Numerous cases state the defendant is not required to know the firearm was transported in interstate commerce.

The defendant's knowledge that the firearm was transported in interstate commerce is not required according to numerous cases.

ECONOMIZING WITH WORDS: ELIMINATING REDUNDANCY

Choose a single words and let it stand alone.

Consider:

It is clearly apparent that the agents intended to violate Mr. Smith's rights when they stopped, detained, and arrested him illegally and in violation of the law.

Agents violated Mr. Smith's rights when they illegally arrested him.

ECONOMIZING WITH WORDS

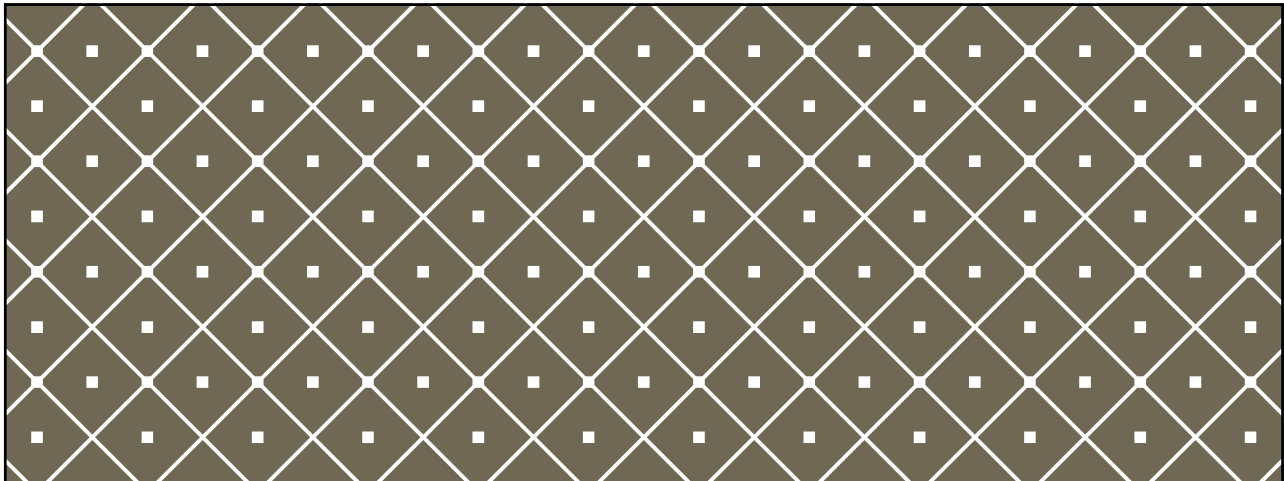
Vigorous editing is key.

In final editing, proofread at least once solely to eliminate excess words.

Carefully consider every adverb

Get another person to review your writings, and ask them to be brutally thorough.
Ask them to make at least 2 corrections or suggestions per page.

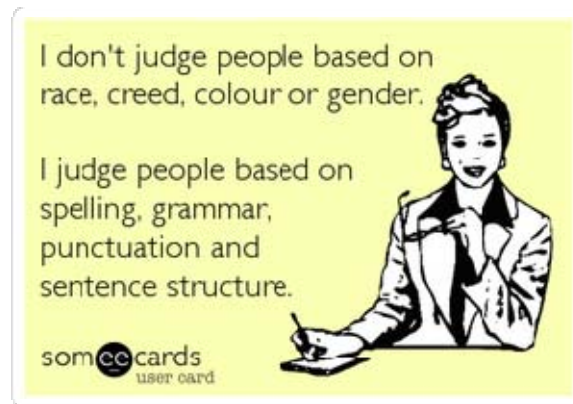
If possible, find an editor who knows nothing about your case.



LEARN CORRECTNESS

Proper style lends credibility

LEARNING CORRECTNESS



LEARNING CORRECTNESS

Ungrammatical writing distracts readers and makes them averse to aligning with you.

Wrong words and bad grammar make readers stop thinking about your message and start thinking about your educational defects.

What you remember about spelling and grammar may be wrong. And your spell-checker won't always save you.

LEARNING CORRECTNESS: WORD CHOICE

Choose the right word:

affect, effect

they're, their, there

your, you're

to, too, two

good, well

LEARNING CORRECTNESS: CONSULT REFERENCES

Familiarize yourself with the nuances of word choice

When in doubt, look it up: [Word Choice Errors](#)

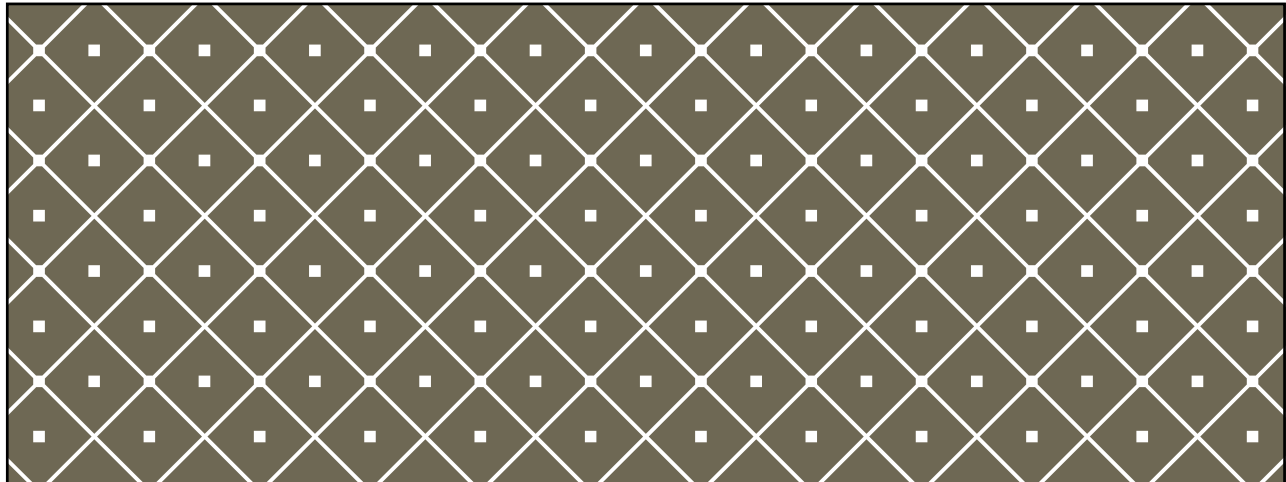
Know your weaknesses

Proper comma usage is almost surely one weakness

[Dictionary/Thesaurus](#)

Bluebook and citation manuals

[Grammarly](#)



MAKE IT INTERESTING AND MAKE IT LOOK GOOD

Use style and design to your
advantage

MAKING IT INTERESTING

Brighten your style with choice phrasing, vivid depictions, and characters who do things.

Expand your vocabulary.

Make your characters memorable by using real names and not labels.

MAKING IT LOOK GOOD: CHOOSE YOUR FORMAT WITH CARE

Make wise choices of

1. Font – Garamond
2. Type size – 13-point
3. Line length – 1.2 inch margins
4. Justification – Ragged-right

But always consult court rules.

MAKING IT LOOK GOOD: ENHANCE READABILITY

Avoid all caps and initial caps in headings

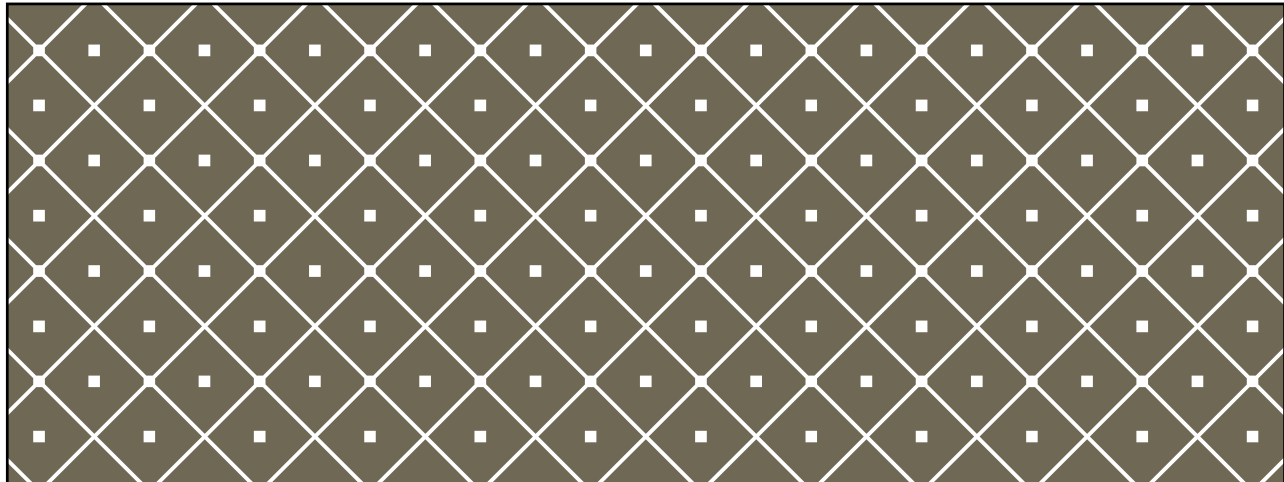
AGENTS VIOLATED MR. SMITH'S RIGHTS WHEN THEY SEARCHED HIS HOME WITHOUT PROBABLE CAUSE.

Agents Violated Mr. Smith's Rights When They Searched His Home Without Probable Cause.

Agents violated Mr. Smith's rights when they searched his home without probable cause.

Consider putting citations in the footnotes, if court rules allow it. The Eighth Circuit does not. Still, if the court making the ruling is helpful, name the court in the text.

Consider eliminating unnecessary formalities.



SUBSTANCE

Style can't make up for a bad argument

SUBSTANCE

1. Use headings effectively
2. Make the writing flow
3. Emphasize what's important
4. Pace ideas with varying sentence and paragraph lengths and structures
5. Be explicit about the requested disposition
6. Avoid perfunctory conclusions

EFFECTIVE HEADINGS

Use assertive headings that make your argument in a reduced form.

Tips:

Write headings before the paragraphs in support of the heading.

The point heading encapsulates the argument beginning with law and moving to facts.

Good headings are usually three to four lines long.

All headings should advance the argument or analysis.

EFFECTIVE HEADINGS

Start with the principle

Encapsulate the law

Work to the specific facts

Always advance the argument and analysis

The main heading for each argument should be approximately 3 sentences. It should start broad, mentioned important case-specific facts, and end with a conclusion.

When detaining a citizen, police officers must have reasonable suspicion that criminal activity is afoot. When Mr. Smith was detained, officers did not believe he was committing a crime. So his detention was illegal, and evidence obtained as a result of that illegal detention should be suppressed.

- A. Considering the totality of the circumstances, officers lacked reasonable suspicion that Mr. Smith was engaged in criminal activity.
- B. When Mr. Smith was detained, officers had watched him clandestinely for approximately fifteen minutes and never believed him to be committing a crime.
- C. Because Mr. Smith's detention was illegal, the evidence found as a result of that detention should be suppressed.

WRITING THAT FLOWS

Use sequencing words: *first, second, third*

Use adding words: *and, also, too*

Use contrasting words: *but, instead, still*

Begin a fair number of sentences with *And, But, and So*

Don't put a comma after them

Lawyers love "however," but *But* is usually better.

Consider

Mr. Thomas was determined to complete substance abuse treatment. And he did.

Agents read Mr. Jones his *Miranda* rights. But he refused to answer their questions.

Mr. Green provided significant assistance to the government's investigation. So he should be rewarded.

EMPHASIZING WHAT'S IMPORTANT

Consider your audience and don't use legal holdings for the sake of using legal holdings

For example, in your sentencing memos, the judge is aware that the guidelines are advisory.

In editing, make sure the document is cohesive as a whole.

For the particular parts, make sure you're able to answer this question: "Why are you saying this right here in the document?"

PACING IDEAS

Keep the writing simple. Even if the subject is complex, the writing should be simple.

Vary sentence length and paragraph structure to make the writing interesting.

Use introductory clauses to join related ideas.

Consider

Mr. Owens decided to return fire after a group of ruffians produced assault-style rifles and threatened his family.

After a group of ruffians produced assault-style rifles and threatened his family, Mr. Owens decided to return fire.

A group of ruffians produced assault-style rifles and threatened Mr. Owens's family. And he decided to return fire.

Mr. Owens decided to return fire. But that was after a group of ruffians produced assault-style rifles and threatened his family.

When he decided to return fire, Mr. Owens had seen a group of ruffians produce assault-style rifles and threaten his family.

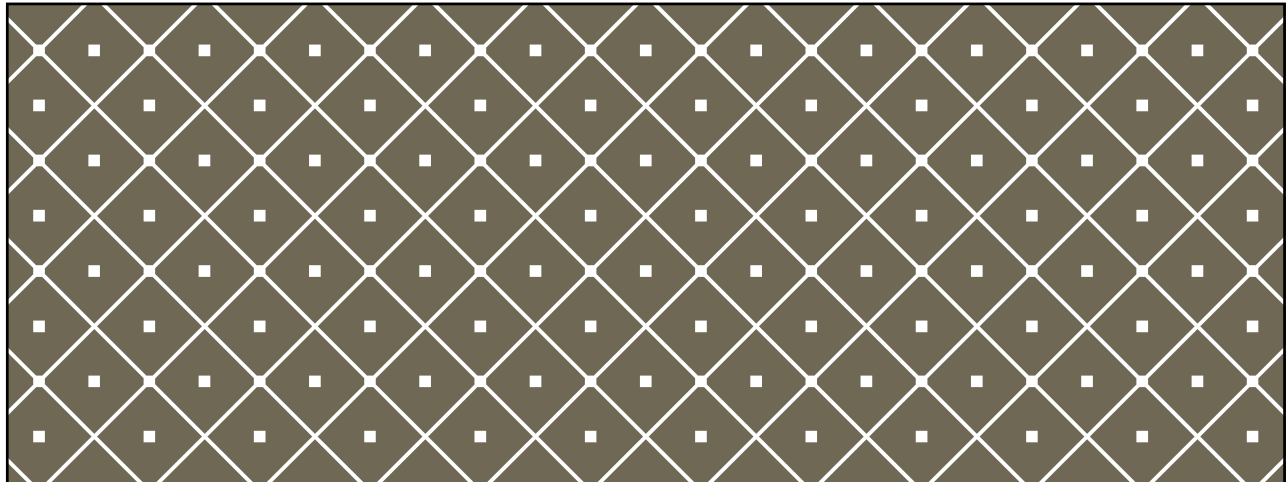
MAKE AN EXPLICIT REQUEST FOR DISPOSITION AND AVOID PERFUNCTORY CONCLUSIONS

Make your conclusion matter.

Consider

Wherefore, for all the foregoing reasons, Mr. Phillips respectfully requests that the Court grant his motion to suppress.

Law enforcement illegally detained Mr. Phillips and subjected him to an illegal search. As a result of those unconstitutional actions, the Fourth Amendment requires that the evidence be suppressed.



EXAMPLES

FIRST EXAMPLE

Eliminating unnecessary formalities

Enhancing readability

[First Example](#)

SECOND EXAMPLE

Eliminate unnecessary formalities

Use limited, but significant citations

Make it flow

Explicit request for disposition in an argumentative conclusion

[Second Example](#)

THIRD EXAMPLE

Eliminate unnecessary formalities

Create vivid descriptions and relatable characters

This memo uses the client's first name throughout

That choice was made based on the client's age and characteristics

Font and style choices

[Third Example](#)

Thank you



QUESTIONS?

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