Writing, with style.

Tip #1 Writing matters

- Because the Court is hot
- Because writing is credibility

Tip #2 Theory of the brief

- Bruckheimer Method
- Bad Boys
- Use Bruckheimer Method to frame your motion
- Siosi Tuaimalo
- Use Bruckheimer summary to frame your headings

Tip #3 The first 100

- "I am an invisible man."
- "It was a bright cold day in April, and the clocks were striking thirteen."
- "All this happened, more or less."
- What not to do

In shorter briefs, get after it

In longer briefs, set the narrative

Tip #4 Show and tell

Tip #5 Use block quotes sparingly - if at all

Tip #13 Read well to write well

Tip #6 Mind your "ofs"

Tip #7 The aesthetics of persuasion

- Sentence length: mix it up
- 34 Words
- Good fonts
- Bad fonts
- Underlining
- Disfluency

Tip #8 Lawyerisms

Tip #9 False starts

- Explicit connections

Tip #10 Your best two cases

Tip #11 Editing

- Read backwards
- Read out loud

Tip #12 ABC

- What not to do
- Substantive Closings

Tip #1
Writing matters

Tip #2
Theory of the brief

Bruckheimer Method

Use

Bruckheimer Method to frame your motion

Siosi Tuaimalo

Two witnesses. One with gun in face; the other motivated to lie. Detective ignored line-up rules during interviews. Result? Unreliable.

Unreliable.

Use Bruckheimer summary to frame your headings

1. Barrington's Photo Line-Up is Impermissibly Suggestive

Several factors inform whether a photo line-up is impermissibly suggestive, including 1) the size of the array, 2) how the array is

A. Cameron Flansberg's ID is Unreliable

Mr. Flansberg viewed the man with a shotgun at 10:00 p.m. at night in the following unlit alley:[8]

16

17

18

19

B. Ms. Gonzales's ID (actually non-ID) is unreliable

Ms. Gonzales viewed the man with a shotgun shortly after Mr. Flansberg in the same unlit alley. And while Ms. Gonzales's

C. Research Shows that Eyewitness IDs are Dangerous

It is important for the Court to have some additional context before deciding this motion:

Use headings to frame introduction

"[M]istaken eyewitness identification is responsible for more wrongful convictions than all other causes combined," and is "among the least reliable forms of evidence . . . ."[1] As a result, law enforcement must be careful not only when creating photo line-ups, but also when administering them to eyewitnesses. Here, Detective Jeff Barrington

8 did not act carefully. He created a suggestive photo line-up that ignored
9 important facts regarding what eyewitnesses reported seeing; he also
10 violated department policy when administering the photo line-up. The
11 result: one corrupt eyewitness ID and one non-ID that must be
12 suppressed.
13

Tip #3
The first 100

What not to do

11 | UNITED STATES OF AMERICA,)

UNITED STATES OF AMERICA, Plaintiff, v. CLIFFORD ARLEN MATHERLY, Defendant.	CR-11-093-EFS MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO EXCLUDE PROPOSED DEFENSE EXPERT TESTIMONY

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and J. Tate London and Jill Otake, Assistant United States Attorneys for the Western District of Washington, and Assistant United States Attorneys for the Eastern District of Washington, by special designation, submits this memorandum in support of its motion to exclude the testimony of Defendant Clifford Arlen Matherly's proposed expert witness, Peter C. Sarna. The defense has asked Sarna to offer opinions

In shorter briefs, get after it

17 Jane Doe is an alcoholic, a drug addict, a prostitute, an on-again-
18 off-again patient at Eastern State Hospital, a manipulator, a liar, and a
19 thief. She is also the United States' key witness. In an effort to protect
20 Ms. Doe's paper-thin credibility, the United States filed a broadly-
21 sweeping Motion *in Limine* regarding permissible cross-examination
22 topics. Some of the United States' *in limine* bases are justified; others
23 are not. The following response addresses the United States' concerns.
24
25

80 Words

United States of America, Plaintiff, v. Sergio Padilla Villa, Defendant.	No. CR-__-___-LRS **Motion to Suppress**

Before dawn on a cool summer morning in the Okanagan Valley, Task Force officers stepped off public Highway 7 and onto privately-owned Grillo Orchard. The officers sneaked past "no trespassing" signs and up the mile-long driveway to Sergio Padilla-Villa's home; or maybe they scaled Grillo Orchard's perimeter fence and made their way

through the apple orchards to access the home. Either way, the officers were trespassing. Officers then placed GPS trackers on Mr. Padilla-Villa's vehicles, which were parked on his lawn (classy-like), just outside his home. They lacked a warrant to do so. Lawns = curtilage, and GPS placement on curtilage without a warrant = illegal. The remedy for this intrusive behavior is simple: suppression.

In longer briefs, set the narrative

11
12 United States of America,
13 Plaintiff,
14 v.
15 Shannon Stiltner,
16 Defendant.
17

No. CR-13-012-RMP-3

Reply Supporting Motion to Admit Polygraph Evidence

18 **I. Introduction**

19 "The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to his wall. His function is to
20 vindicate the right of people as expressed in the laws and give those
21 accused of crime a fair trial."

22 - Justice William O. Douglas

23

24 The United States is the largest polygrapher employer in the

25 world. In 2006, the Federal government employed 500 polygraph

world. In 2006, the Federal government employed 500 polygraph

1 examiners and spent approximately $25 million per year on examiner
2 salaries alone. In 2006, the Department of Defense conducted 12,548
3 polygraph examinations. And this figure fails to account for the fact
4 that the FBI, Secret Service, ATF, DEA, and other federal agencies also
5 employ polygraph examiners who conduct examinations on a daily
6 basis. The United States relies on polygraphs for hiring decisions,
7 charging decisions, validating security clearances and, yes, as evidence
8 in various court proceedings, including trial. It is therefore quite
9 impressive for the United States to espouse the virtues of polygraphs
10
11
12

13 through their daily use, but decry polygraphs as unreliable in cases
14 when the results do not go its way. Shannon Stiltner passed a
15 polygraph administered by one of the foremost polygraph experts in the
16 world. And if the United States is interested in giving Ms. Stiltner a fair
17 trial, as opposed to doing anything and everything to tack another skin
18 on its wall, then it should hire its own polygraph expert to review and
19 comment on the exam, vigorously cross-examine Ms. Stiltner's experts,
20 and let the jury decide what to believe.
21
22

Tip #4
Show and tell

17 Tuaimalo in a dark alley and beat him within an inch of his life. Here
18 was the result:

2. Reference #2

The United States also agrees that the photos identified by Mr. Tuaimalo of Ms. Piapot flashing gang signs are prejudicial, but insists a deft hand with Adobe Photoshop's redaction tool could cure any prejudice. (ECF No. 101 at 2.) Here is how that would look:

The power of witness statements

17. My thoughts on this photo are as follows: "that could be him." "Maybe the guy didn't have braids. It's hard to say for sure because he had a gun in my face."

18. "When I picture this guy [photo above] with a bandana on his head, I believe that's him. I could have imagined the braids because 90% of Natives and Blacks wear braids in their hair."

So now Mr. Flansberg believes Mr. Lazalde is the guy that pointed a shotgun at his face. And as for those braids? Well, Mr. Flansberg could have imagined the braids. This is anything but a "confident ID" that the United States talks about in its response.[3]

Tip #5
Use block quotes sparingly - if at all

Tip #6
Mind your "ofs"

Mr. Stevenson asks the Court to suppress all of the evidence seized during the unlawful search of his vehicle.

19 words

Mr. Stevenson asks the Court to suppress all evidence from the illegal vehicle search.

14 words

Tip #7
The aesthetics of persuasion

Sentence length: mix it up

Drafting paragraphs that mix sentence length is sexy. How sexy? Very sexy. By mixing up sentence lengths, you provide your reader with variety, which is the spice of life. And just when that reader starts to settle into a rhythm, the unexpected occurs: boom! A short sentence. Attention seized. Again.

34 Words

AVOID ALL-CAPS TEXT. ALWAYS. CAPTIONS, TITLES, HEADERS, EVERYWHERE. WHY? BECAUSE ALL-CAPS IS MISSING "ASCENDERS" AND "DESCENDERS," IT IS DIFFICULT TO READ. NO ARGUABLY.

The Same is True with Initial-Caps Text. Science Says This Stuff is Harder to Read.

So Why-Oh-Why Would You Do That To Your Poor Reader?

Good fonts

Baskerville
Century Schoolbook
Garamond

Bad fonts

Arial
Courier (monospaced)
Monaco (monospaced)

The rule for boldface type

Always the caption

Sometimes the headings

Never the body

Tip #8
Lawyerisms

adequate number of -↠ enough

due to the fact that -↠ because

prior to -↠ before

during the course of -↠ during

instant case -↠ here

Tip #9
False starts

Explicit connectives:

accordingly

therefore

moreover

thus

however

nevertheless

nonetheless

in addition

However, the testing showed something else entirely.

The testing, however, showed something else entirely.

Tip #10

Your best two cases

Tip #11
Editing

Read backwards

Read out loud

Tip #12
ABC

What not to do

Accordingly, for the reasons set forth above, this motion should be granted.

Substantive Closings

1 4. Conclusion

4. Conclusion

The Supreme Court's test in *Manson* is antiquated and pre-dates all research in the past forty (40) years discussing how unreliable eyewitness IDs really are. But as flawed and dated as *Manson* is, it is the law of the land and demands that district courts ask the following: are the eyewitness IDs reliable under the totality of the circumstances? *Manson*, 432 U.S. at 114. Did these witnesses provide "the same result on successive trials?" Absolutely not, which is why Mr. Tuaimalo respectfully asks the Court to save him from the United States' attempt to extract overly persuasive in-court IDs from two (2) overly unreliable eyewitnesses.

Tip #13
Read well to write well

The Green Bag's

2014

ALMANAC & READER

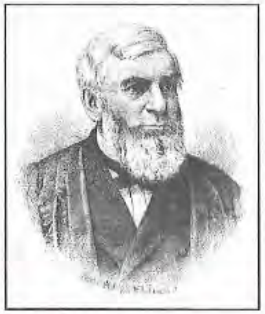
of useful & entertaining tidbits for lawyers for the year to come
&
exemplary legal writing from the year just passed
(see honorees on back cover),

featuring our perennially popular

ANNUAL REVIEWS

The Year in Language & Writing • by Bryan A. Garner
A Term in the Life of the Supreme Court • by Tony Mauro
A Year of Lowering the Bar • by Kevin Underhill
The Year in Law • by Gregory F. Jacob & Rakesh Kilaru

plus a special



BREAKFAST TO THE JUSTICES

of the Supreme Court of the United States, originally served to Chief Justice Morrison R. Waite, several of his colleagues, and many other pillars of the bench and bar on September 15, 1887, in Philadelphia, by the bar of that city, and recently reconstructed from the modern market, reformulated for the modern palate, revised for the modern diet, and served (though not to the Justices) on December 7, 2013, in Washington,

by Leiv Blad, Chef, Le Sac Vert