

to the report's "limited" disclosure to six people. *Hawley*, 1994 WL 505029 at *3-4.

The same is true here. Jones complains that Barnes revealed information to one person, Allison Marshall (Amended Complaint ¶ 10). But that allegation does not satisfy the tort's "widespread publicity" requirement. Indeed, in this case, Barnes' statement is more "limited" than the one dismissed in *Hawley*. Accordingly, the Court should dismiss Count V.

Notice how the first paragraph is only three sentences, but the reader learns the two critical elements in the description of any case: what happened and why. Notice also how the second paragraph applies the law without surplusage. The point is clear: if the disclosure to the six people in *Hawley* was not "widespread publicity," then the disclosure in this case to one person is not "widespread publicity" either.

Moreover, don't forget the larger context in which you are applying the law to the facts of your case. When you make an analogy to a case, or when you distinguish a case, you are engaging in a process of seeking justice through fairness.⁷ When you argue by analogy, you are saying to the court: "My client wants the same treatment that another litigant received because the circumstances are the same." In contrast, when you distinguish a case, you are telling the court that "this case should be treated differently because the circumstances are so different." Ultimately that process – treating similar things similarly, and different things differently – is the essence of justice.⁸

"Universal Motion Template"

Drafting a motion is not as complicated as it may first seem. As explained in Chapter Two, Federal Rule 7 defines a motion as an "application to the court for an order," which shall "state with particularity the grounds" and "shall set forth the relief or order sought." The Rules offer scant guidance on what that means. However, many motions follow a similar pattern, and it makes good strategic

⁷ The concept of "justice as fairness" is the hallmark of John Rawls' seminal treatise, *A Theory of Justice* (Belknap 1971).

⁸ Edward H. Levi, *An Introduction to Legal Reasoning* (University of Chicago Press 1974) ("The determination of similarity or difference is the function of each judge"); see generally C. Sunstein, *On Analogical Reasoning*, 106 Harv.L.Rev. 741 (1993) ("Reasoning by analogy is the most familiar form of legal reasoning. It dominates the first year of law school; it is a characteristic part of brief-writing and opinion-writing as well.").

sense to follow the pattern so the court is not distracted from your substantive arguments. Accordingly, we have developed what we call a “universal motion template.” Here is a description of each element:

1. *Caption.* Federal Rule of Civil Procedure 7(b)(2) requires that you use the same caption that applies to other filings in the case.
2. *Opening Line.* The first line tells the court who is filing the motion. A common (albeit archaic) opening line is “NOW COMES [insert the name of the party], by undersigned counsel, and hereby submits this motion for [insert request for relief].”
3. *Introduction.* Although an introduction is not necessary in a short or simple motion, it can be helpful in a longer or complex motion. If you use an introduction, it should (a) summarize your best points; and (b) introduce a theme.
4. *Background Facts.* A “Background” section should include all the facts upon which your motion relies. Preferably, the facts should be organized in chronological order. Better yet, the facts should be presented in a narrative format that tells a coherent “story” about the case that illustrates the strength of your client’s position. Personally, we prefer to read a background section in which the dates are consistently placed at the beginning of each sentence, which helps the reader follow the sequence of events.
5. *Overall Legal Standard.* Some motions are governed by an overall legal standard. For example, when filing a motion for summary judgment, the legal standard is found in Federal Rule of Civil Procedure 56. In such cases, the court will expect you to state that standard clearly. Here is an example:

The role of summary judgment is to look behind the facade of the pleadings and assay the parties’ proof in order to determine whether a trial is required. *Plumley v. S. Container, Inc.*, 303 F.3d 364, 368 (1st Cir.2002). A party moving for summary judgment is entitled to judgment in its favor only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). A fact is material if its resolution would affect the outcome of the suit under the governing law,” and the dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In reviewing the record for a genuine issue of material fact, the court must view the summary judgment facts in the light most favorable to the nonmoving party and credit all favorable inferences that might reasonably be drawn from the facts without resort to speculation. *Merchants Ins. Co. of N.H., Inc. v. United States Fid. & Guar. Co.*, 143 F.3d 5, 7 (1st Cir.1998). If such facts and inferences could support a favorable verdict for the nonmoving party, then there is a trial-worthy controversy and summary judgment must be denied. *ATC Realty, LLC v. Town of Kingston*, 303 F.3d 91, 94 (1st Cir.2002).

6. *Argument*. The court will expect you to organize your motion into different arguments, preferably broken down by issue under argument headings. Within each argument, as described earlier, start with the general and move to the specific. In other words, start with a statement of the general legal standards, and then apply those standards to your facts. Follow with a statement of any particular analogous cases, and then apply those cases to your facts.
7. *Conclusion*. The conclusion is neither substantive nor novel. Instead, as the name suggests, it merely states in conclusory terms the “bottom line” relief that you are requesting. For example, when filing a motion for summary judgment, you don’t need to say anything more elaborate than this: “Wherefore, for the foregoing reasons, the Court should grant this motion for summary judgment.”
8. *Signature Block*. Of course, you need to comply with the Local Rules and sign your name, which constitutes a certification that you have made a good faith inquiry into the matters asserted. Fed.R.Civ.P. 11.
9. *Certificate of Service*. You also need a certification that you have served all interested parties. Fed.R.Civ.P. 5.

Putting together all these elements, here is an illustration of a typical motion:

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF [INSERT STATE]

[INSERT PLAINTIFF’S NAME])
Plaintiff)
)
v.) Case No. Xxxxx-xx
)
[INSERT DEFENDANT’S NAME])
Defendant.)

MOTION FOR WHATEVER
or
RESPONSE TO WHATEVER
or
REPLY TO WHATEVER⁹

NOW COMES Whoever, by undersigned counsel, and hereby submits this Whatever.

INTRODUCTION

[summarize your arguments and introduce your theme]

BACKGROUND

[Tell the “story” of your case in chronological order. Preferably, put any dates at the beginning of each sentence so the reader can easily follow the sequence of events. Include every fact upon which you rely.]

⁹ In most jurisdictions, the Local Rules provide for a motions practice that involves three steps: (1) a “Motion”; (2) a “Response” (sometimes called an “Opposition” or a “Response in Opposition”); and (3) a “Reply.” Although the Reply allows the moving party to have the “last word,” it is a common mistake to “save arguments” for the Reply. Courts frown on sandbagging, and the judge would have an understandable tendency to discount assertions in the Reply because they generally are not subject to further adversarial challenge.

**STANDARD OF REVIEW
OR
STANDARDS FOR MOTION FOR WHATEVER**

[Tell the court what legal standards govern its overall review. Does the court review this under the standards for a motion to dismiss or a motion for summary judgment? Is the court reviewing agency action under the “arbitrary and capricious” standard? Who has the burden of proof?]

ARGUMENT

I. *Pithy Statement of Argument Number 1*

- A. [explain the general legal standards found in statutes or black-letter law]
- B. [apply those standards to the facts of this case]
- C. [explain any particularly analogous specific cases]
- D. [apply those cases to the facts of this case]

II. *Pithy Statement of Argument Number 2*

- A. [explain the general legal standards]
- B. [apply those standards to the facts of this case]
- C. [explain any particularly analogous specific cases]
- D. [apply those cases to the facts of this case]

CONCLUSION

WHEREFORE, for the foregoing reasons, the Court should grant this request for Whatever [or deny the other side’s request for whatever].

Respectfully submitted,

You, Esq.

The Law Firm of You And Me
100 Commercial Street
Portland, Maine 04101

Dated: Whenever

CERTIFICATE OF SERVICE

I hereby certify that, on [insert date], I caused the foregoing to be served by first class mail, postage prepaid, to the following counsel of record:

Her, Esq.
The Law Firm of Her and Them
200 Commercial Street
Portland, Maine 04101

Him, Esq.
The Law Firm of Him and Them
200 Commercial Street
Portland, Maine 04101

You, Esq.
The Law Firm of You and Me
100 Commercial Street
Portland, Maine 04101

CHAPTER FIVE

Mr. Blaustein's Gift

One of your regular clients as the University Legal Counsel is the Vice President for Development. The Vice President for Development has numerous duties in her position, including public relations and community relations. However, the most prominent is fundraising for the university. In recent years, with a decline in support from the Katahdin legislature, private funds have become a crucial part of the overall University of Katahdin budget. Fundraising often involves the negotiation and drafting of precise legal documents. In that context, you receive the following materials from the Vice President.

THE UNIVERSITY OF KATAHDIN

Dear Counsel:

Over the last three months, members of my staff and I have had meetings with Mr. Albert Blaustein. Mr. Blaustein is a graduate of the UK class of 1949. He has not been a regular donor to UK. Mr. Blaustein initially called me and set an appointment for a visit. In a very pleasant first meeting, Mr. Blaustein caught me up on his career since graduating from the College of Engineering at UK in 1949. Mr. Blaustein specialized in nuclear engineering. He recalled that in 1950 it “looked like the wave of the future and I wanted to catch that wave.” For a time he worked with the nuclear Navy under the leadership of the legendary Admiral Hyman Rickover. On one project, he shared office space with a young Georgian named Jimmy Carter. After that Mr. Blaustein worked for two major electric generating utility companies as they entered the nuclear electric field. By the mid-1960s, Mr. Blaustein was ready to begin his own consulting business. He was very successful in that business and for the next twenty-five years worked around the world helping to develop nuclear electric generating facilities. As Mr. Blaustein put it: “I didn’t do badly financially, either.”

That explained the visit. Mr. Blaustein is now widowed and has taken care of his children financially. He would now like to make some gifts to institutions that have meant something to him during his career. Happily, the University of Katahdin is on that list.

Mr. Blaustein has proposed the creation of the Blaustein Prize with a one-time endowment of \$500,000. The income from that corpus will endow an annual prize to be given to the outstanding UK student in the Nuclear Engineering Department. Mr. Blaustein’s strong interest is in helping to encourage the “uncool” career field of nuclear engineering. As Mr. Blaustein put it: “The United States has given up its lead in this essential technology. Foreign countries have moved into the vacuum, and some of them are not our friends. If we are serious about controlling global warming and unstable foreign sources of petroleum and natural gas, nuclear power HAS TO BE part of our future.” With that in mind, Mr. Blaustein wants to limit the prize to only natural-born U.S. citizens who plan to spend their career working in the United States or working for an American company overseas.

Needless to say, we are very excited about the possibility of this gift. Our nuclear engineering department has barely kept its head above water during the last two decades. It has survived, barely, several attempts to close it. The revival of interest in the nuclear option and the energetic new leadership of Chairman Chen Liang have helped to turn this around. Chairman Liang was thrilled with the possible Blaustein Prize. He said this would be a very valuable recruiting tool to attract students to the nuclear program and to the University of Katahdin.

Normally, I would just be asking your usual help to draft the precise language of the gift for acceptance by our Board of Trustees. Here, things are more complicated. I enclose the portion of the Trustees' Regulation that deals with discrimination, more accurately, nondiscrimination in university gifts. We may have a problem. I also attach Development Department memos that reflect some earlier gift efforts that have helped to define the somewhat open-ended Regulation.

As you may know, the Regulation was adopted in the early 1970s after the university received substantial negative publicity about several student scholarships that were limited to "white Christians only." The new policy was designed to change that. I also know that several influential members of the Board are passionate advocates for the nondiscrimination policy and would be quite ready to reject a proposed gift that returned "to the bad old days." We certainly don't want that to happen!

I need two separate writings from you. The first is a letter from me to the Board of Trustees urging the acceptance of the Blaustein Prize. You should advocate for the value of the gift to the university. You should also address any issues that arise under the university nondiscrimination regulation in a way that evidences clear compliance with the regulation, but that gives as much respect to Mr. Blaustein's wishes as the regulation allows. The second is a document that reflects the exact terms of the agreement for which you advocate in the letter. In essence, this states the terms of the gift or the terms of a contract between Mr. Blaustein and the university for Mr. Blaustein's provision of \$500,000 in consideration for the advancement of objectives of Mr. Blaustein.

Thanks so much for your help. Call me with any questions.

Karen Havel
Vice President for Development
University of Katahdin

Dear Karen:

Thank you so much for your visits over the last few months. I have felt very welcomed back to the university that was such a formative part of my life. I was a rural Katahdin kid when I showed up on the university's doorstep so many years ago. The university launched me into a career that I could not have imagined. During those years, I drifted away from my alma mater. I regret that and am delighted to reconnect.

I'm glad that you share my passion for a revival of nuclear power in this country. It is amazing how folks who wouldn't talk to me a decade ago are suddenly thinking nuclear isn't so bad. Times change.

I've greatly enjoyed getting to know Chairman Liang of the Nuclear Engineering Department. He has just the enthusiasm and background that can grow the department. I'm delighted he sees the value of the Blaustein Prize.

I do want the conditions on who gets the award. I suppose we always think back on our own experiences as we create a scholarship for the next generation of college students. However, I would like to encourage young men from around the state to consider a nuclear career. What I don't want to see is an award to foreign students whose stay in the United States runs no longer than the time it takes to get their degree. They will then spend their careers helping to see that American nuclear engineering does not return to its place of preeminence. My information is that currently about 60 percent of nuclear engineering enrollment at UK is of noncitizens headed back to their homelands. More power to them. But I don't want to subsidize them with this award.

Please know that I'm happy to work with you on the fine details. I do understand the concerns about discrimination that the university has. I'm confident your lawyer can work something out.

All best wishes,

Albert Blaustein

University of Katahdin Regulations 23 – 18 Acceptance of Private Gifts

1. All private gifts to the University must be accepted by the Board of Trustees. No gift can be announced until it has been formally accepted by the Board at a regular meeting. The resolution of acceptance shall state the precise terms of the gift.
2. No gift may be accepted that contains a condition that limits beneficiaries by reason of race, religion, sex, national origin, or sexual orientation. Where educationally justified and where consistent with the spirit of the previous sentence, a gift may indicate a nonbinding preference for a category of recipients.

THE UNIVERSITY OF KATAHDIN

Memorandum for File: Development Office

Re: UK Nondiscrimination Regulation

August 1993

We were approached by a UK alum who proposed to endow a scholarship to honor annually the outstanding student in creative writing. However, the donor was insistent that the award be limited to students of Scandinavian-American heritage. That is the donor's ancestry and he is very active in Scandinavian activities in the community. We sense no hostility to other students, simply a strong preference for Norwegians, Danes, and Swedes. The Geography Department estimated that 35 percent of the population of Katahdin can claim Scandinavian heritage. That group is one of the dominant groups in the state and has been for a century and a half.

Development Office personnel expressed contradictory views about the gift. We quietly inquired about it with several members of the Board of Trustees. Their reaction was uniformly negative. We politely informed the potential donor and he withdrew his offer.

THE UNIVERSITY OF KATAHDIN

Memorandum for File: Development Office

Re: Nondiscrimination Policy

March 2002

We were approached by a retired couple who had recently moved to Katahdin City. Neither was a UK alum and they appeared to have no ties to UK prior to arrival in the state. Both were born in the Middle East and migrated to the United States in their late teens. They met at another American university, married, and have made a life and career in the United States.

They wished to endow a scholarship to be given annually to the outstanding student paper written on Islamic culture. They would like a preference to be given to a student of the Islamic faith. They explained that in the wake of 9/11, they felt it was enormously important both to encourage students of the Islamic faith and to call to public attention that "terrorism does not represent Islam." They hoped the award and the publicity given to it would help achieve those objectives.

We tested the proposal with two members of the Board who serve on the Gifts Committee. They had some reservations, but after discussion were persuaded that "the good outweighs the bad." They saw the positives in encouraging students of the Islamic faith and in stimulating study of Islamic culture. Although other students would be excluded, this was only one scholarship of several hundreds awarded annually. Furthermore, even without the religious limitation, the Board members anticipated that an award for the best paper on Islamic culture would be quite likely to go to a student of the Islamic faith in any case.

We proposed and the Board accepted the scholarship.

It is strategic thinking time again. Before you write, identify the goals of your letter to the Trustees and the document that accompanies it. What would you regard as the most desirable result? What are acceptable compromises? How can your letter help to achieve the most desirable result? You should review the Guidelines discussed in Chapter One. Which ones may have special pertinence to our situation?

The second part of the assignment provides your one experience in this course in document drafting. This is not a document-drafting book. Document drafting has its own rules and customs and deserves a course of its own. Document drafting also requires a strong grounding in the substantive law in which the document is grounded.

Nevertheless, we do want to provide an introduction to the differences between a letter or memorandum of the kind we have been preparing and a document. Documents range from contracts, to instruments for the transfer of land, to incorporation papers, to wills and trusts. In general, the purpose of a document is to structure a legal relationship. This may involve a one-time transaction. Party A leases a piece of real estate from Party B. The document may also create a longer-lasting relationship that may set the stage for many transactions over a considerable period of time. A labor agreement between employer H and Union I sets the terms of employment relationships between the two parties for a fixed period.

If you are assigned to prepare a writing that has the attributes of a document, return again to the instructions we offered in Chapter One. Begin with item three and discover whether there is already a document to do the job you need. Your office may have a standard form lease, an employment contract for professional staff members, or a model joint venture agreement. Almost certainly you will want to use that document rather than to draft the entire writing anew. You save time and the client's money. You may also receive the assurance that the document you have taken from the firm's files has been road tested in prior cases and found satisfactory. Possibly, court decisions have approved its use for the intended purposes. Obviously, you will want to be careful that the names and circumstances of the new parties have been inserted. Failure to do so can result in embarrassing, or even costly, mistakes. But you need not reinvent the wheel.

If the case of the Blaustein Prize were set in the real world, you would probably examine some prior gifts to the university that addressed similar situations to that of Mr. Blaustein. There may be standard paragraphs ("boilerplate") that

are routinely inserted in all gift agreements. Other language can be adopted with only modest changes. However, a good deal of care must be given to the precise language of the document.

Return to the other suggestions in Chapter One for guidance. Pay particular attention to the strategic aspects of the document. What are your objectives? Who are the parties to the agreement? What are they required or encouraged to do? What are the consequences of satisfactory or unsatisfactory performance? How is that performance measured? Remember that your objective is a single writing that captures all of the essential elements of the agreement between the university and Mr. Blaustein. We suggest a few features to consider.

- 1.** Are the parties to and purposes of the document clearly and consistently identified? Pick a term that identifies each party and use it for every reference to the party. Don't refer to "Mr. Blaustein" in one sentence and "the donor" in the next.
- 2.** Be clear about matters that are required and ones that are left to the discretion of one or more parties. Must the university award a Blaustein Prize every year? Or, may they choose not to do so if no candidate appears worthy or the income from the endowment has declined?
- 3.** Be clear why you are using every word. In a letter or memorandum you may offer more verbiage than is needed to strengthen your position or to repeat your advice or to offer a vivid turn of phrase. In a document, that kind of writing runs the risk of muddling your meaning.
- 4.** What matters do not need to be in the document? For example, in the Blaustein matter, is it essential to specify how the university shall select the prize winner? Mr. Blaustein may feel strongly that only the department chair should make the choice, or alternatively, that it must be done by a vote of all members of the tenured faculty. The university may be reluctant to tie itself down to one method of selection for the life of the agreement; here, potentially, forever.
- 5.** Particularly for a document that describes a long-term relationship, have you provided for changes in circumstances in the document? Suppose the United States abandons nuclear power two decades from now. Should your document address such a possibility?

CHAPTER SIX

How to Respond to a Motion

For your third litigation assignment, you are an Assistant U.S. Attorney in the Criminal Division. You are prosecuting a perjury case in which the defendant, Nick Sutton, fabricated an e-mail message and then lied about it – twice – under oath. Sutton pleaded guilty to the offense and decided, in effect, to “throw himself on the mercy of the court” and request the most lenient sentence possible. To that end, Sutton has filed what is known as a “motion for downward departure,” which is a motion that asks the court, based on special circumstances, to enter a sentence below the recommended range of the United States Sentencing Guidelines (“Guidelines” or “U.S.S.G.”). Your assignment is to prepare the government’s response in opposition to Sutton’s motion for downward departure. The assignment arrives in the form of the following memo.

MEMORANDUM

To: Acting Assistant U.S. Attorney
Fr: Jon Chapman, Criminal Chief
Re: *United States v. Nick Sutton*

Nick Sutton recently pled guilty to perjury. Attached is our Prosecution Version,¹ which explains the facts the government was prepared to prove at trial (had that been necessary), and which form the underlying factual basis for Sutton's guilty plea. Also attached is a copy of the motion filed by Sutton's attorney, which argues for a downward departure based on so-called "aberrant behavior" under the United States Sentencing Guidelines. We have no quarrel with the vast majority of Sutton's motion. However, we believe it fails to establish two necessary elements.

First, the Guidelines define "aberrant behavior" as a "single criminal occurrence or single criminal transaction." In this case, however, Sutton lied twice. As a result, in our view, Sutton does not qualify for a downward departure. In support of that argument, you should rely on *United States v. Orrega*, 363 F.3d 1093 (11th Cir. 2004).

Second, in order to qualify for an "aberrant behavior" downward departure, the offense must be committed "without significant planning." Based on Sutton's own rendition of the facts, however, it appears that Sutton engaged in at least *some* planning before he committed perjury. On that issue, our best case is *United States v. Bailey*, 377 F.Supp.2d 268 (D. Me. 2005), which also includes a very helpful summary of the applicable law in the First Circuit.

Everything you need is either in the government's "Prosecution Version," Sutton's "Motion for Downward Departure," or the attached excerpts from *Orrega* and *Bailey*.

Your response should be respectful and approximately five pages. We simply oppose the downward departure because, on these facts and the applicable law, we don't think this case justifies that kind of a special break.

I suggest you organize your Response as follows:

¹ A "Prosecution Version" is the government's written statement used at sentencing for the purpose of setting forth the facts that would have been proven if trial had been necessary. Some courts allow the government to present those facts orally, but our court requires them in writing.

1. Use the same caption as the Prosecution Version.
2. Center the following heading: **RESPONSE TO DEFENDANT'S MOTION FOR DOWNWARD DEPARTURE.**
3. Under that heading, the first sentence should say something like this: **NOW COMES** the United States of America ("the government"), by undersigned counsel, and hereby responds in opposition to the Defendant's Motion for Downward Departure ("Motion").
4. Center the next heading: **BACKGROUND.**
5. Under that heading, tell the "story" of the case from the government's perspective. Preferably, state the facts in chronological order and make it clear "what happened when." Make sure you include all the facts necessary to support the two legal arguments in your Response. Feel free to use any facts stated in the Prosecution Version or the Motion, but you need to cite each fact, which should look something like this: (Pros. Version at 3) (Motion at 2).
6. Center the next heading: **STANDARDS FOR DOWNWARD DEPARTURE.**
7. Under that heading, explain the applicable standards, which are well stated in *Bailey*. Feel free to quote the standards verbatim because the exact language is often critical. Make sure that you provide the definition of "aberrant behavior" and explain how downward departures are only appropriate in "extraordinary" circumstances.
8. Center the next heading: **ARGUMENT.**
9. Under that heading, include a one-paragraph summary of your argument. I strongly suggest that you do not write this summary paragraph until after you have written the background section (above) and the two argument sections (below). In my experience, it's very difficult to write a summary paragraph until after you have written the materials to be summarized. I recommend that you summarize your argument in a way that makes it clear you are asserting two distinct arguments.
10. Next you need a pithy heading for your first argument about how Sutton lied twice. The argument heading should be labeled as Roman Numeral I, flush left. The text of the heading should be underlined and bold. If you are unsure of the formatting, take a look at Sutton's Motion. Unlike an appellate brief, which often calls for somewhat long-winded argument headings, I suggest you use something that fits on one line (two lines at most).

11. Under that heading, describe *Orrega*, preferably in one paragraph, but no more than two paragraphs. Make sure you explain what the court did in *Orrega* and why. Note the difference between the outcome before the District Court and the Eleventh Circuit. Use selected quotes to focus attention on the most important aspects of the case. For extra credit, instead of starting the paragraph with a boring sentence (such as “In the case of *United States v. Orrega*. . .”), consider using a topic sentence that provides a general sense of the importance of the case.
12. Next, you need a paragraph that *applies* the “lesson” of *Orrega* to Sutton’s case. Preferably, start the paragraph with something to let the reader know, unequivocally, that you are about to apply *Orrega* to the facts of this case. The most common approach is to begin the paragraph with the phrase “In this case. . .” Then you should explain why Sutton’s case is similar to *Orrega*, so a downward departure should be denied here, as it was in *Orrega*.
13. Now you need a pithy heading for your second argument (Roman Numeral II) about how Sutton’s conduct was not “without significant planning.”
14. Under that heading, you need to describe *Bailey* in one, or no more than two, paragraphs.
15. Next, you need one paragraph that *applies Bailey* to Sutton’s case.
16. Center the final heading: **CONCLUSION**.
17. Under that heading, say something like this: **WHEREFORE**, for the foregoing reasons, the Court should deny the Defendant’s Motion for Downward Departure.
18. Finally, include the date and a signature block. Use a format similar to the one used in our Prosecution Version, but include your name as the Assistant U.S. Attorney.