

## CHAPTER ONE

# INTRODUCTIONS

### 1. Context

Introductions fulfill different functions for various kinds of writing. For novelists and journalists, openings are designed to hook the reader's interest.<sup>1</sup> Legal writers need not hook a reader's interest because legal writing is typically read out of obligation. Judges must read the briefs to determine who should prevail on a given issue, and attorneys must read others' briefs to respond. So too with judicial opinions: Attorneys must read them to ascertain the governing legal rules.

Given the purpose of legal writing, the introduction furnishes an ideal opportunity to ease the reader's burdens by providing the context for the argument. At this point, readers don't yet know what's important and what's not, so inform and empower your readers with your opening words.

The value of these words depends on clarity. If readers do not quickly understand the context and the issue, they will struggle even more as they plunge into the document. Help your readers with a concise, meaningful introduction.

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1. See, e.g., Robert M. Knight, *Journalistic Writing: Building the Skills, Honing the Craft* 22–23 (3d ed. 2010) (journalism); William E. Blundell, *The Art and Craft of Feature Writing* 127–28 (1988) (journalism); Sol Stein, *Stein on Writing* 15–16 (1995) (fiction).

Celebrated speechwriters have recognized the need for listeners to quickly understand what is being said. Consider how Susan B. Anthony defended herself against a charge of voting in a presidential election before women had obtained the right to vote:

Friends and fellow citizens: I stand before you tonight under indictment for the alleged crime of having voted at the last presidential election, without having a lawful right to vote. It shall be my work this evening to prove to you that in thus voting, I not only committed no crime but, instead, simply exercised my citizen’s rights, guaranteed to me and all United States citizens by the National Constitution, beyond the power of any State to deny.<sup>2</sup>

With clarity comes context, supplying readers with what they need to understand the text. Imagine a recipe listing the ingredients and process that you must read without knowing what you are cooking.<sup>3</sup> Knowing what you are cooking allows you to know what the ingredients are and how to combine them.<sup>4</sup> So it is with the introduction: It provides the reader with the context for the factual and legal information that follows.

Consider how a reader would react to a factual discussion with these dates:

1. A sells land to B on May 1, 2015.
2. B sells the land to C one year later.
3. Two years later, C learns that A had never recorded the deed.
4. Three years later, C sues B for breach of contract.

Now consider the addition of two sentences before these four dates:

*The Court must decide whether C is a bona fide purchaser for value. Four facts are pertinent:*

1. A sells land to B on May 1, 2015.

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2. Susan B. Anthony, *Speech on Women’s Right to Vote (1873)*, in William Safire, *Lend Me Your Ears: Great Speeches in History* 694–95 (2004).

3. See Laura A. Webb, *Why Legal Writers Should Think Like Teachers*, 67 *J. Legal Educ.* 315, 320–21 (2017) (illustrating the importance of context with a recipe to make an apple pie).

4. See *id.*

2. B sells the land to C one year later.
3. Two years later, C learns that A had never recorded the deed.
4. Three years later, C sues B for breach of contract.

With the additional two sentences (in italics), readers will more easily understand and remember the four dates and their significance.

Now consider how a reader would process the four dates with this opening sentence: “The Court must decide whether C sued within the three-year statute of limitations.” With this opening, many readers will naturally focus on how the dates would affect the timing of the suit. In this way, the opening sentence provides the required context for the factual details.

You can provide this context in various ways. Regardless of how you provide the context, make sure that you tell readers what they must learn so that they can understand the rest of the document.

It is no accident that the federal rules of appellate procedure require argument summaries in every brief.<sup>5</sup> These summaries furnish the judges with a capsule of each argument. Through this capsule, the judges learn what is important. For example, if the summary of argument addresses laches or the statute of limitations, the judge knows to focus on the dates.

## 2. *Deciding Where to Begin*

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To direct the reader, the writer must know where to begin. Locating that point requires the writer to think about the audience. For example, attorneys must consider what the judge already knows about the case. If little is known, start slowly, introducing the judge to the subject matter. If the judge enjoys greater familiarity with the subject, you can start more forcefully.<sup>6</sup>

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5. Fed. R. App. P. 28(a)(7).

6. See Reza Abdi & Parisa Ahmadi, *Signposting Propositions: A Study of Active Metadiscourse Marking in the Composition of Research Articles Across Sciences*, *Journal of Research in Applied Linguistics*, at 6 (2015) (stating that “writers must consider the reactions of their

An example appears in a powerful introduction by Paul Clement as he urged the Supreme Court to strike down the Affordable Care Act, arguing that it exceeded congressional power under the Commerce Clause. Like the entire country, the members of the Supreme Court were familiar with the statute and the underlying issue. So Mr. Clement declined to start slowly, introducing the Court to the players or the issue. He instead packed his punch in the two opening paragraphs:

The Patient Protection and Affordable Care Act (the “ACA” or “Act”) imposes new and substantial obligations on every corner of society, from individuals to employers to States. Those obligations are designed to work together to expand both the demand for and the supply of health insurance, so as to achieve Congress’ ultimate goal of “near-universal” health insurance coverage. ACA § 1501(a)(2)(D).

The centerpiece of the ACA and its goal of near-universal health insurance coverage is an unprecedented mandate that nearly every individual, “just for being alive and residing in the United States,” Pet. App. 319a, must maintain health insurance at all times. In a provision entitled “Requirement to maintain minimum essential coverage,” Congress commanded that every “applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.” ACA § 1501(b); 26 U.S.C.A. § 5000A(a). To be clear, “applicable individual” is just the ACA’s legalistic and vaguely Orwellian way of referring to virtually every human being lawfully residing in this country. The mandate to maintain insurance applies to all individuals except foreign nationals or aliens residing here unlawfully, incarcerated individuals, and individuals falling within two very narrow religious exemptions. *Id.* § 5000A(d).<sup>7</sup>

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expected audience, anticipating its background knowledge, processing problems, interests and interpersonal expectations”).

7. Brief for State Respondents on the Minimum Coverage Provision at 2–3, *U.S. Dep’t of Health & Human Servs. v. Florida*, No. 11-398 (U.S. Feb. 6, 2012) (Paul D. Clement et al.), *sub nom.* *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

Judges are ordinarily less familiar with the subject than they were with the Affordable Care Act, so writers must often educate the judge before beginning to persuade.<sup>8</sup> An example appears when John Roberts argued that the Commissioner of Social Security lacked authority to make initial assignments of beneficiaries under the Coal Industry Retiree Health Benefit Act of 1992. Mr. Roberts recognized that the justices would probably know little about the statute, so he used his first paragraph to inform the Court about the statute and the part that would underlie his argument:

Congress enacted the Coal Act in 1992 to ensure the continued provision of health benefits to retired miners who had been promised lifetime benefits by their former employers, many of whom were no longer in business. To do so, the Coal Act established a fund financed in part by premiums assessed against coal operators that formerly employed the miners, as well as against certain “related persons.” Those coal operators and related persons would be responsible for the costs of providing benefits to beneficiaries of the fund “assigned” to them under certain criteria set out in the Coal Act. Benefits for “unassigned” beneficiaries would be financed by alternative means, including transfers of interest from a government fund also financed by assessments against coal operators and, if necessary, a pro rata assessment on operators and related persons responsible for assigned beneficiaries. Thus, no matter whether beneficiaries were assigned or unassigned under the Act, *all* beneficiaries would be entitled to the same benefits, and the fund would not stand to lose a single dollar in revenue.<sup>9</sup>

Judges also frequently need to supply background information to make their opinions understandable. For example, then-Judge Brett Kavanaugh considered the reader’s need for context when discussing FCC regulations on the rates that competitive local exchange carriers

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8. See Laura A. Webb, *Why Legal Writers Should Think Like Teachers*, 67 *J. Legal Educ.* 315, 322 (2017) (“Background knowledge, or context, is essential to learning new information in an existing area.”).

9. Brief for Respondents Peabody Coal Co. & Eastern Associated Coal Corp. at 2, *Barnhart v. Peabody Coal Co.*, 537 U.S. 149 (2003) (Nos. 01-705 & 01-715) (John G. Roberts Jr. et al.), 2002 WL 1290915.

can charge for calls.<sup>10</sup> In deciding where to begin, Judge Kavanaugh realized that most readers would not know what a competitive local exchange carrier was, so he began with a primer:

When you make a long-distance telephone call, the call travels from your local exchange carrier, known as a LEC, to a long-distance carrier. The long-distance carrier routes the call to the call recipient’s LEC. That LEC then completes the call to the recipient.

LECs are classified as either competitive (CLECs) or incumbent (ILECs). Subject to FCC approval, CLECs may impose tariffs on long-distance carriers for access to CLECs’ customers.<sup>11</sup>

Even then, Judge Kavanaugh realized that most readers would require more background before they turned to the disputed issue—interpretation of an FCC regulation designed to prevent agreements inflating revenues at the expense of long-distance carriers.<sup>12</sup> So Judge Kavanaugh told readers what they needed to know about the marketing practices that had spurred the FCC to act:

In recent years, the FCC has grown concerned that some CLECs have engaged in what is known as “traffic pumping” or “access stimulation.” What’s happened is that some CLECs with high access rates apparently have entered into agreements with high-volume local customers, such as conference call companies. CLECs greatly increase their access minutes—but do not reduce their access rates to reflect lower average costs—and share a portion of the increased access revenues with the conference call companies. In many cases, the CLECs charge the conference call companies nothing for phone service. It’s a win-win for the CLECs and the conference call companies, while the long-distance carriers, who have to pay the tariffed access rates, pay significant amounts to the CLECs.<sup>13</sup>

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10. See *N. Valley Commc’ns, LLC v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013).

11. *Id.* at 1018.

12. *Id.* at 1019.

13. *Id.* at 1018–19.

Only then did Judge Kavanaugh tell the reader what the case was about: “This case involves a tariff filed by Northern Valley, a CLEC in South Dakota.”<sup>14</sup>

### 3. *Identifying the Issue*

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To inform the reader about what follows, the writer should typically begin with a statement of the underlying issues. Writers can use several methods to frame the issues. For example, Bryan Garner recommends what he calls “deep issues.”<sup>15</sup> In a deep issue, the writer distills the core legal principle and critical facts to set out the issue and then answer it.<sup>16</sup> Chief Justice John Roberts used this technique in his introduction on a narrow ERISA issue:

People make mistakes. Even administrators of ERISA plans. That should come as no surprise, given that the Employee Retirement Income Security Act of 1974 is “an enormously complex and detailed statute,” *Mertens v. Hewitt Associates*, 508 U.S. 248, 262, 113 S. Ct. 2063, 124 L.Ed.2d 161 (1993), and the plans that administrators must construe can be lengthy and complicated. (The one at issue here runs to 81 pages, with 139 sections.) We held in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109 S. Ct. 948, 103 L.Ed.2d 80 (1989), that an ERISA plan administrator with discretionary authority to interpret a plan is entitled to deference in exercising that discretion. The question here is whether a single honest mistake in plan interpretation justifies stripping the administrator of that deference for subsequent related interpretations of the plan. We hold that it does not.<sup>17</sup>

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14. *Id.* at 1019.

15. Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 *Scribes J. Legal Writing* 1, 1 (1994–1995).

16. *See id.* at 1–5.

17. *Conkright v. Frommert*, 559 U.S. 506, 509 (2010) (Roberts, C.J.).

Some writers use a slightly different approach, setting out the applicable legal principle and facts, followed by a question that leaves little suspense about how it will be answered. Paul Clement used this approach in his introduction in *Northwest, Inc. v. Ginsberg*:

The Airline Deregulation Act of 1978 includes a preemption provision providing that States “may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1).

Respondent was a member of Northwest Airlines’ frequent flyer program, which by its terms permitted Northwest to remove participants for “abuse” of the program as determined in Northwest’s “sole judgment.” After Northwest revoked respondent’s Platinum Elite status membership due to abuse of the program, respondent filed suit alleging, *inter alia*, that Northwest breached both its contractual obligations and an implied covenant of good faith and fair dealing claim under Minnesota law. Although the district court dismissed the contract claim for failure to state a claim and the implied covenant of good faith and fair dealing claim as preempted by the ADA, the Ninth Circuit reversed as to the implied covenant claim, finding such claims categorically unrelated to a price, route or service notwithstanding this Court’s decisions in *Morales v. Trans World Airlines*, 504 U.S. 374, 378 (1992), and *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

The question presented is:

Did the court of appeals err by holding, in conflict with the decisions of other Circuits, that respondent’s implied covenant of good faith and fair dealing claim was not preempted under the ADA because such claims are categorically unrelated to a price, route, or service, notwithstanding that respondent’s claim arises out of a frequent flyer program (the precise context of *Wolens*) and manifestly enlarged the terms of the parties’ voluntary undertakings, which allowed termination in Northwest’s sole discretion.<sup>18</sup>

Other writers begin with the basic facts and follow with a series of issues, the legal test, and the outcome. Three experienced Supreme

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18. Brief for Petitioners at i–ii, *Northwest, Inc. v. Ginsberg*, 572 U.S. 273 (2014) (No. 12-462) (Paul D. Clement et al.).



Court advocates—Thomas Goldstein, Pam Karlan, and Jeffrey Fisher—opposed certiorari with an opening paragraph that told readers what they needed to know:

Respondent Demetres Rudolph, who had been legally parked outside an open business, was stopped by a police officer as he drove away. The Supreme Court of Virginia, after examining the record and “[v]iewing the totality of the circumstances objectively,” held that the officer lacked reasonable suspicion to make the stop and that the subsequent search and arrest violated the Fourth Amendment. Pet. App. 4. The question presented by this case is whether the Supreme Court of Virginia correctly applied this Court’s *Terry* jurisprudence to the facts here.<sup>19</sup>

Other writers introduce their arguments through a narrative, referring to the key facts, the core legal principle, and a concise statement about how to apply that principle. John Roberts used this approach:

This case concerns the reach of Title IX to private entities or organizations that do not receive federal aid, but have members that do. Title IX by its terms applies to programs or activities “receiving Federal financial assistance.” 20 U.S.C. § 1681(a). In *United States Department of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597, 610 (1986), this Court held that “Title IX”—like the other program-specific statutes with the same federal funding trigger—“draws the line of federal regulatory coverage between the recipient and the beneficiary.” It “covers those who receive the aid, but does not extend as far as those who benefit from it.” *Id.* at 607. The “key” in gauging when federal coverage attaches is thus to determine whether the defendant “receive[s] federal financial assistance.” *Id.* (emphasis in original).

This limitation not only follows naturally from the text and purpose of Title IX, but is compelled by its origin. Title IX was enacted pursuant to Congress’ spending power, U.S. Const. art. I, § 8, cl. 1, and thus acts to “condition[] an offer of federal

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19. Brief in Opposition at 1, *Virginia v. Rudolph*, 558 U.S. 1048 (2009) (No. 09-102) (Thomas C. Goldstein, Pamela S. Karlan, Jeffrey L. Fisher et al.).

funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 118 S. Ct. 1989, 1997 (1998). This contractual obligation runs to and stops with the recipient that knowingly and voluntarily assumes it in exchange for federal funds; as this Court recognized last Term in *Gebser*, the obligation may not be expanded on the basis of vicarious liability or agency law principles. *Id.* at 1996, 1999.

Like most private membership organizations, the National Collegiate Athletic Association (“NCAA”)—an association of the Nation’s colleges and universities—does not itself receive federal aid. Many of its members, on the other hand, do. The Third Circuit held below that the NCAA is covered by Title IX because it “receives dues from its members which receive federal funds.” Pet. App. 16a. That ruling flouts the clear intent of Congress to limit Title IX “to those who actually ‘receive’ federal financial assistance,” *Paralyzed Veterans*, 477 U.S. at 605, departs from the framework this Court has established for determining when federal coverage attaches, and, if embraced, would extend Title IX to entities that have never knowingly or voluntarily entered into the Spending Clause contract with the federal government. It should be reversed.<sup>20</sup>

## 4. *Stating the Conclusion and Rationale*

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To understand how the analysis will unfold, the reader needs to know from the outset what the conclusion is. Ideally, the introduction should not only identify the question and the answer but also explain the reasons for the answer. In effect, the ideal introduction serves as a mini-argument, focusing the reader on the critical facts, the issue, the answer, and the reasons for that answer. Providing all of this information may appear difficult, but it can be done. And when the writer provides all of this information, the reader quickly

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20. Brief for Petitioner at 2–3, *NCAA v. Smith*, 525 U.S. 459 (1999) (No. 98-84) (John G. Roberts Jr. et al.), 1998 WL 784591.

learns what to look for and how it will fit within the overarching argument.<sup>21</sup>

The process is akin to providing readers with the “forest” so that they can see how the trees intersect to create the forest. Chief Justice Roberts showed the value of this technique in introducing an opinion involving the constitutionality of state efforts to restrict solicitation of funds by judicial candidates:

Our Founders vested authority to appoint federal judges in the President, with the advice and consent of the Senate, and entrusted those judges to hold their offices during good behavior. The Constitution permits States to make a different choice, and most of them have done so. In 39 States, voters elect trial or appellate judges at the polls. In an effort to preserve public confidence in the integrity of their judiciaries, many of those States prohibit judges and judicial candidates from personally soliciting funds for their campaigns. We must decide whether the First Amendment permits such restrictions on speech.

We hold that it does. Judges are not politicians, even when they come to the bench by way of the ballot. And a State’s decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money. We affirm the judgment of the Florida Supreme Court.<sup>22</sup>

## 5. Concision

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Writers must sometimes present the mini-argument with only a sentence or two. For example, when trying to persuade a court with discretionary review, the writer may need to capture the reader with

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21. See Paul T. Wangerin, *A Multidisciplinary Analysis of the Structure of Persuasive Arguments*, 16 *Harv. J.L. & Pub. Pol’y* 195, 201 (1993) (stating that “researchers have discovered a ‘primacy’ effect,” meaning that “[a]rguments that appear at the beginning of a message are more persuasive than those that appear elsewhere”).

22. *Williams-Yulee v. Fla. Bar*, 136 S. Ct. 1656, 1662 (2015).

a few lines. Theodore Boutrous Jr. confronted this situation when trying to persuade the U.S. Supreme Court to grant certiorari on a challenge involving the size of a punitive-damage award:

This case involves the largest personal injury award affirmed on appeal in United States history: a \$290 million punitive damage verdict in a product liability lawsuit that arose from a single traffic accident, and that was based on an alleged defect in a vehicle designed more than a quarter-century ago. The award is 63 times the compensatory award, 362 times the maximum available civil fine, and 29,000 times the maximum available criminal fine.<sup>23</sup>

To convey the precise issue, the writer must supply enough detail to narrow the issue but not so much that readers get lost. Some accomplished writers avoid these risks by limiting the introduction to a few sentences. Chief Justice John Roberts often employs this approach to great advantage:

Nearly all Americans who work for wages pay taxes on those wages under the Federal Insurance Contributions Act (FICA), which Congress enacted to collect funds for Social Security. The question presented in this case is whether doctors who serve as medical residents are properly viewed as “student[s]” whose service Congress has exempted from FICA taxes under 26 U.S.C. § 3121(b)(10).<sup>24</sup>

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To prevail on the merits in a private securities fraud action, investors must demonstrate that the defendant’s deceptive conduct caused their claimed economic loss. This requirement is commonly referred to as “loss causation.” The question presented in this case is whether securities fraud plaintiffs must also prove loss causation in order to obtain class certification. We hold that they need not.<sup>25</sup>

Another skilled legal writer, Judge Jeff Sutton, provided a powerful mini-argument in his introduction involving the Fair Debt

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23. Petition for a Writ of Certiorari at 1, *Ford Motor Co. v. Romo*, 538 U.S. 1028 (2003) (No. 02-1097) (Theodore J. Boutrous Jr. et al.), 2003 WL 21996438.

24. *Mayo Found. for Med. Educ. & Res. v. United States*, 562 U.S. 44, 47 (2011).

25. *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 807 (2011).

Collection Practices Act.<sup>26</sup> Judge Sutton compared the debt collector’s language to the statutory text and concluded that the difference involved only the meaning of the prepositions “of” and “after”:

This case is a case about prepositions—about the difference, if any, between “of” and “after” as used here. Under the Fair Debt Collection Practices Act, a collector dunning another for payment must notify the individual that it will assume the validity of the debt unless he disputes it “within thirty days after receipt of the notice.” 15 U.S.C. § 1692g(a)(3). Diversified Consultants wrote to Carl Wallace that it would assume the validity of a debt unless he disputed it “within 30 days of receiving this notice.” Seizing on the use of “of” in the letter in contrast to the use of “after” in the Act, Wallace sued Diversified. The district court granted the debt collector judgment on the pleadings. We agree and affirm.<sup>27</sup>

Though Judge Sutton did not share how he would analyze the issue, his analysis is implicit. From this 124-word paragraph, every reader will know what the applicable law is, the critical fact generating the issue, the outcome, and the analysis to follow. This knowledge enhances not only understanding but also recall.<sup>28</sup>

## 6. *Identifying the Structure*

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After identifying the issue, tell readers how the document is structured.<sup>29</sup> To do so, don’t just recite your headings or resort to this kind of explicit signaling:<sup>30</sup>

26. *Wallace v. Diversified Consultants, Inc.*, 745 F.3d 1235, 1235 (6th Cir. 2014).

27. *Id.* (internal citation omitted).

28. See John A. Glover, Ronald G. Bullock & Margaret L. Dietzer, *Advance Organizers: Delay Hypotheses*, 82 *J. Educ. Psychol.* 291, 295 (1990).

29. See Alice S. Horning, *The Psycholinguistics of Readable Writing: A Multidisciplinary Exploration* 74 (1993) (“Kintsch and Yarbrough found, in their study on the ‘Role of Rhetorical Structure in Text Comprehension,’ that the presence or absence of elements in the text which signaled its rhetorical form . . . made a significant difference to readers’ comprehension.”).

30. See Avon Crismore, *The Rhetoric of Social Studies Textbooks: Metadiscourse*, 16 *J. Curriculum Stud.* 279, 282 (1984).

In Part I, we demonstrate that the district court had sound reasons for excluding the evidence. In Part II, we demonstrate that any possible error would have been harmless. And in Part III, we show that the plaintiff waived the alleged error.

This technique unnecessarily injects the writer into the prose and adds unnecessary words. In this example, deleting the explicit signals can remove the writer and tighten the prose:

The district court had sound reasons for excluding the evidence, any possible error would have been harmless, and the plaintiff waived the alleged error.

By deleting the explicit signals, you can more directly inform readers of your core points, allowing readers to assimilate these points into your broader argument.<sup>31</sup>

To present the broader argument, many skilled writers begin with an “umbrella paragraph,” presenting a capsule of the text that follows. For the umbrella paragraph, you can use various methods to identify the critical parts of your argument. One method is to use a bulleted list.<sup>32</sup> The bullets serve as visual cues, focusing the reader on the components and enhancing recall.<sup>33</sup>

Numerical lists can often serve as equally effective visual cues and are often helpful when the lead-in refers to a particular number of components.<sup>34</sup> For example, Peter Stris used numbers to identify points in an introductory paragraph:

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31. See Xiaoguang Cheng & Margaret S. Steffensen, *Metadiscourse: A Technique for Improving Student Writing*, 30 *Res. Teaching Eng.* 149, 150 (1996) (“When we write on the level of metadiscourse, we supply cues that help readers organize, interpret, and evaluate the propositional content of the text.”).

32. See Kim Long, *Writing in Bullets: The New Rules for Maximum Business Communication* 12 (2003) (“Used on Web pages, slide presentations, or printed documents, bulleted material helps focus reader attention, reduce tedium, and improve comprehension.”).

33. Frank Jansen, *How Bulleted Lists and Enumerations in Formatted Paragraphs Affect Recall and Evaluation of Functional Text*, 21 *Info. Design J.* 146, 159 (2014).

34. One authority on bulleted lists states: “Use numbers when the introduction or heading suggests, as ‘Top Five Divisions’ or ‘Six Functions of Good Management.’ Don’t use numbered lists if the contents are not meant to represent a sequence or specific group.” Kim Long, *Writing in Bullets: The New Rules for Maximum Business Communication* 43 (2003).

To appreciate the magnitude of the stakes involved, it is necessary to understand the three major settings in which the question presented is often, as in this case, outcome determinative: (1) health-care cases; (2) disability cases; and (3) pension cases.<sup>35</sup>

He followed this paragraph with three paragraphs subtitled:

1. Healthcare cases
2. Disability cases
3. Pension cases<sup>36</sup>

Another example of this method appears in Jeffrey Fisher's certiorari petition in *Al-Turki v. Colorado*.<sup>37</sup> There an Islamic individual was convicted of false imprisonment, conspiracy to commit false imprisonment, and extortion. After unsuccessfully appealing in state court, he sought certiorari in the U.S. Supreme Court, contending that state courts had improperly restricted questioning of venirepersons on potential bias against Muslims.

In the opening paragraph of his section on reasons for granting certiorari, Mr. Fisher summarized his argument. But each sentence signals a chunk of his argument:

**[1]** This Court repeatedly has made clear that a trial court must allow a defendant in a criminal case to probe prospective jurors for bias whenever there is a “significant likelihood” that racial or similarly invidious prejudice might infect the juror’s deliberations.

**[2]** Here, at the outset of an ethnically and religiously infused prosecution, petitioner sought to question a potential juror who interrupted the taking of his oath to say he was biased against Muslims. **[3]** The trial court, however, rejected this request for questioning, and the Colorado Court of Appeals affirmed, holding that the juror’s comments “did not unequivocally express actual bias.”

**[4]** This decision, which follows others in Colorado, so clearly and

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35. Petition for a Writ of Certiorari at 6, *Elem v. AirTran Airways, Inc.*, 136 S. Ct. 979 (2016) (No. 14-1061) (Peter K. Stris et al.).

36. *Id.* at 7–8.

37. Petition for a Writ of Certiorari, 559 U.S. 1057 (2010) (No. 09-700) (Jeffrey L. Fisher et al.).

consequentially departs from the Constitution’s “significant likelihood” standard as to require this Court’s intervention.<sup>38</sup>

Another advocate might have used explicit signaling instead, telling the reader how the petition would be organized. But that approach would unnecessarily inject the writer into the prose and forgo the opportunity to simultaneously reveal the structure and show how the contentions fit together.

Similar techniques are evident in oratory, where notable speakers tell the audience what will follow. Nelson Mandela provides an example from his statement defending himself against charges of inciting a riot:

My Lord, I am the First Accused.

I hold a Bachelor’s Degree in Arts and practiced as an attorney in Johannesburg for a number of years in partnership with Mr. Oliver Tambo, a co-conspirator in this case. I am a convicted prisoner serving five years for leaving the country without a permit and for inciting people to go on strike at the end of May 1961.

I admit immediately that I was one of the persons who helped to form Umkhonto we Sizwe, and that I played a prominent role in its affairs until I was arrested in August 1962. In the statement which I am about to make, I shall correct certain false impressions which have been created by State witnesses; amongst other things I will demonstrate that certain of the acts referred to in the evidence were not, and could not have been committed by Umkhonto. I will also deal with the relationship between the African National Congress and with the part which I personally have played in the affairs of both organizations. I shall also deal with the part played by the Communist Party. In order to explain these matters properly, I will have to explain what Umkhonto set out to achieve; what methods it prescribed for the achievement of these objects, and

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38. *Id.* at 10.



why these methods were chosen. I will also have to explain how I came, I became involved in the activities of these organizations.<sup>39</sup>

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The introduction should clearly and concisely tell readers what they must know to follow the logical progression of the argument. If a fact or legal point is interesting but extraneous, cut it. At this point, readers must know only what is essential to understand the logical progression of the argument. Excessive or extraneous details serve to confuse rather than illuminate.

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39. Nelson Mandela, *I Am Prepared to Die*, Speech from the Dock at the Opening of the Defense Case in the Rivonia Trial (April 20, 1964), at Nelson Mandela Foundation, [http://db.nelsonmandela.org/speeches/pub\\_view.asp?pg=item&ItemID=NMS010&txtstr=prepared%20to%20die](http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS010&txtstr=prepared%20to%20die) (last visited Feb. 16, 2020).