In my earlier days of legal writing, I never gave much thought to the introductory section of an appellate brief. I focused all my energy poring over the record, scouring Westlaw for analogous precedent, and attempting to write a compelling legal argument. Only as an afterthought, back in those days, would I summarize the main points of my brief in a half-hearted introduction—if I even wrote one at all.

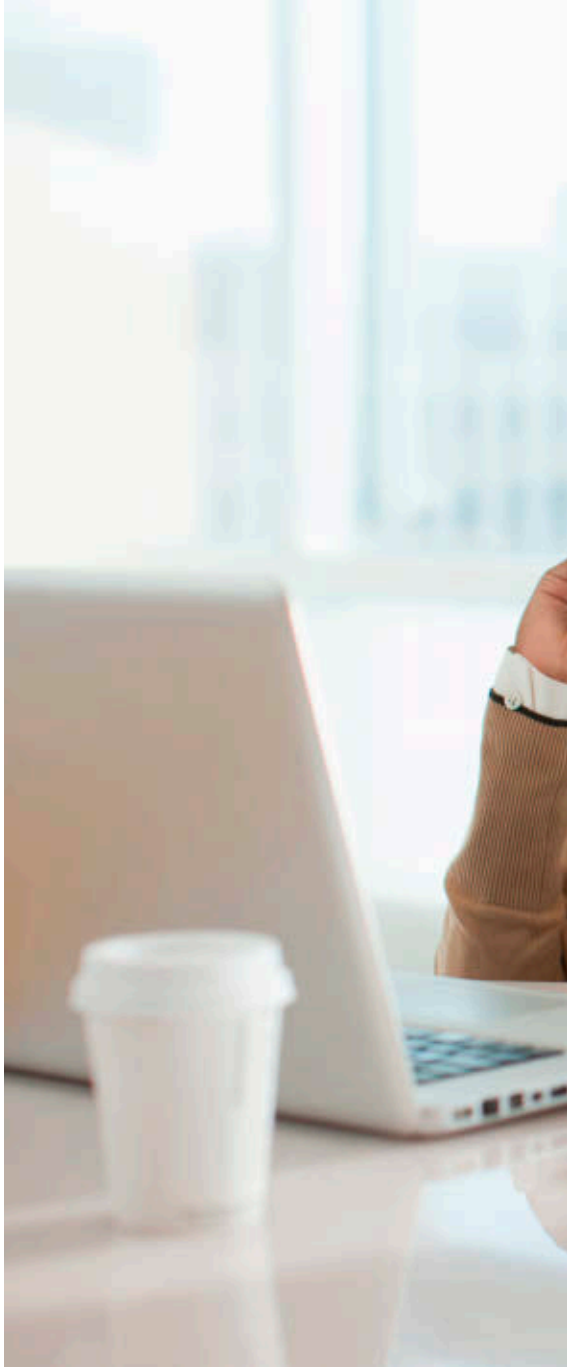
I soon came to realize that I was missing out on a golden opportunity to frame my arguments and create a lasting first impression.

In fact, I've heard at least one appellate judge say that the "preliminary statement" (i.e., fancy language for "introduction") is the "most persuasive" part of a brief. The thought is, if you take the first page of your brief, and use it to efficiently recite your "elevator pitch" for how the court should decide the case, the judge will assume that everything you're saying is true for that one page. If the judge gets to the end of that page and thinks, "That logic really holds together, this person ought to win," you have advanced your case right off the bat. Of course, the judge is still going to review the rest of your brief and verify whether what you've said in the introduction is true. But done right, the introduction gives you an opportunity to point the judge in the right direction on page 1 without having to delve into the minute details of your case.

One of the most important words in the previous paragraph is "efficiently." The last thing you want to do is start out by reciting the names of all the parties you represent with parentheticals tagging each litigant using labels or abbreviations. That does nothing to advance your case. If anything, all it does is show that you represent lots of parties with complicated names. Big whoop. Like the phrase "COMES NOW," listing all the parties you represent is about as useful as a screen door on a submarine. We are not paid by the word anymore, so all the initial "throat clearing" can be jettisoned. Where introductions are concerned, you should make sure that every single word counts. And make no mistake, this takes time. But assuming you (and your client) can afford it, this will be time well spent.

The first thing you want to do is put the judge in the right starting place on the map. Begin by telling the judge what kind of case this is. That way, she can activate the appropriate memory center of her brain, and immediately start drawing upon her own experience in the relevant area of law to help her understand the issues. For example, "This is an appeal from summary judgment in a medical malpractice case." Or, "This appeal arises from a defense verdict in a trip-and-fall case." With just a few simple words, you can signal to the court which area of law you will be discussing, and tell the judge in general terms what kind of analysis will follow. Right away, you've narrowed the issues and provided context for everything that comes next.

After putting the judge on the map, you must give her directions and a compass for the journey ahead (snacks are optional but encouraged). Specifically, you want to give the judge a preview of your main arguments—including only the most essential points of interest—so that she knows where she is eventually going to wind up and how you plan to get her there. As one appellate judge has already put it, "When used, an introduction should be short and to the point and *provide a roadmap* of the arguments that follow."[1] This roadmap should say, in basic terms: what happened; what law applies; and what the result should be. If you can string that logic together clearly and coherently in no more than a few paragraphs, you will already be miles ahead of the competition.



Next, and finally, you want to articulate a theme that should engage the reader. And nothing gets a lawyer's blood pumping like a fundamental sense of fairness (judges are still lawyers, no?). One strategy I often find myself drawn to is, instead of focusing on why my client was right, I will emphasize why my opponent is wrong. As humans, we are naturally drawn to seek justice as a result of bad acts. Punishing the wrongdoer is often seen as a more compelling interest than rewarding the do-gooder. That's why Marvel movies don't typically end with our heroes receiving accolades—they end when the villain is defeated.

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BY JON BARNES

Intro to Intros

How to Write the Winning Preliminary Statement

Guiding the court through a story arc alone is not enough; you also must convey a sense of meaning that underlies the result you seek. But "Good vs. Evil" is only the low-hanging fruit. The best briefs that I've ever read use creativity and an intimate familiarity with the key facts to craft an engaging theme. Again, however, this takes time—time that is more often than not worth the investment.

In short, an effective introduction should achieve three basic goals: "to convey what the case is about, to create a meaningful context for the facts and argument that follow, and to engage the reader."[2] But of course, the overarching objective is to chart a path to victory. After all, "The purpose of an introduction is nothing less than to proclaim immediately why you must win."[3] Doing this on the first page, in accordance with the principles outlined above, will more than likely leave a pleasant taste in the judge's mouth that she won't forget while reading the meatier portions of your brief as the main course (use a meat substitute here if you are vegetarian).

With the foregoing in mind, it is difficult to articulate a persuasive excuse for omitting the preliminary statement from your brief. Admittedly, the introduction section is technically not required in state court. Indeed, according to Rule 13 of the Arizona Rules of Civil Appellate Procedure, the introduction is, by definition, optional. But why would you waste the perfect opportunity to communicate the most significant aspects of your case to the court without all the rigmarole that so often comes with legal writing? This should be the fun part! As appellate lawyers, we are in the business of communication, and the bulk of that discourse typically occurs on paper (or a computer screen if you are not a Luddite). The preliminary statement is a chance to make a lasting first impression you won't want to miss.

endnotes

1. Samuel A. Thumma, *Writing Appellate Briefs: Thoughts of a Rookie Appellate Judge*, Ariz. Att'y (Dec. 2013), at 34-35 (emphasis added).
2. David J. Perlman, *How To Write an Introduction*, Appellate Issues, Spring 2012, at 1.
3. *Id.*