A bit of irreverence goes a long way. Take a fresh look at several paragraph-writing cornerstones.

**Start Each Paragraph With A Topic Sentence (Or Don’t)**

The advice is legion. It has three subtle premises: (1) every paragraph should have a topic, (2) a paragraph’s topic can and should be expressed in one sentence, and (3) a paragraph’s first sentence should be the topic sentence. None of these is absolute.

But there’s a more foundational problem. “Topic sentence” is ambiguous. It’s a holdover from grammar school where every sentence was either a topic sentence or a supporting sentence. In those days it was easy.

Sometimes legal paragraphs follow this structure:

This Court should grant summary judgment first two reasons. [topic sentence]
First, *Smith v. Jones* held the Act preempts this claim. [supporting sentence]
Second, the Defendant waived this claim. [supporting sentence]

Other times they don’t. Try labeling one of these as the topic sentence:

Under the ACCA, a “violent felony” is defined as “any crime punishable by imprisonment for a term exceeding one year” that “has as an element the use, attempted use, or threatened use of physical force against the person of another” or “is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.” 18 U.S.C. 924(e)(2)(B). In *Taylor v. United States*, 495 U.S. 575 (1990), this Court held that the ACCA’s reference to “burglary” includes “ordinary burglaries” (*id.* at 597)—namely, those that contain the elements of “an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime.” *Id.* at 598. The Court explained that Congress sought to count such burglaries as violent felonies because “[t]he fact that an offender enters a building to commit a crime often creates the possibility of a violent confrontation between the
offender and an occupant, caretaker, or some other person who comes to investigate.” *Id.* at 588.3

Not so easy.

George Gopen rethought this metric. Instead of a “topic,” he breaks the concept into issues and points. The issue explains what the paragraph is about and the point explains why the author wrote the paragraph.4 Sometimes these are the same. Other times not: “I have so many things to do today. [issue] Number 1. Number 2. Number 3. I’m wondering if I should take two bottles of 6-Hour Energy. [point]” 5

Putting labels aside, the takeaway is that the topic sentence/supporting sentence structure is one method; but it is not a one-size-fits-all solution.

For starters, explaining what a paragraph is about can take multiple sentences.6 Here are Gopen’s examples of multi-sentence explanations of what a paragraph is about:

- Here is where we have come from. Now here is where we are going.
- Here is where we have come from. It wasn’t helpful enough to answer our question. So here is where we are going.
- You may have thought X. Actually, it’s Y.
- You may have thought X. You may even have thought Y. Actually, it’s Z.
- Here is a general statement. From that generalization, I’m going to focus on this more specific development.
- Here is X. Here is Y. The important thing to consider here is the relationship between X and Y.
- X is intriguing. Just look at how intriguing X can be. But that is the case only when you ignore Y.
- X looks convincing. Y looks convincing. But neither does the job very well when you consider Z.7

Equally important, what a paragraph is about may differ from what you want the audience to get from it.8 For example, the paragraph may be about the difficulties of interpreting a contract, but main point may be a pitch to fill in missing terms.9

---

5 *Id.*
6 *Id.*
8 Gopen, *supra* n. 3.
9 Gopen, *Part II, supra* n. 6.
Plus, you may not want the main point upfront. Readers expect to learn what the paragraph is about upfront. But the main point may be towards the middle or the end. The classic topic sentence approach starts with a conclusion, jumps back, and then builds back towards that conclusion. But you might take a developmental approach where you start one place and move towards a conclusion in a different place, although the reader doesn’t know where you are going until the end. Both work. And reader expectations sometimes depend on paragraph location. In opening and closing paragraphs, readers tend to look for the main point at the end. For middle paragraphs, readers tend to expect the main point upfront.

Putting these considerations together, take a look at this snapshot from a recently filed United States Supreme Court brief:

2. Under the Act, an area may be “habitat” even if it does not satisfy the standards for “occupied” “critical habitat”

[¶ 1] What the Service’s findings illustrate—and what petitioner’s argument erroneously elides—is the distinction under the Act between “habitat” and “occupied” “critical habitat.”

[¶ 2] Section 4 of the Act directs the Service, “to the maximum extent prudent and determinable,” to promulgate a regulation that “designate[s] any habitat of such species which is then considered to be critical habitat.” 16 U.S.C. 1533(a)(3)(A)(i) (emphasis added). The Act thereby contemplates that a species’ “critical habitat” is part of its “habitat.” But Section 4 provides no further guidance as to what areas of “habitat” are of sufficient value or importance to the species that they are “considered to be critical.”

[¶ 3] That guidance is instead provided in Section 3 of the Act, which defines “critical habitat.” Section 3(5)(A)(i) provides that a species’ “occupied” habitat is “critical” if it contains “physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.” 16 U.S.C. 1532(5)(A)(i). At relevant times, the Service’s regulations described this set of features in terms of the “[p]rimary constituent elements” (PCEs) of critical habitat. 50 C.F.R. 424.12(b) (2012). These are elements that the Service has found essential to achieving a species’ “conservation,” including its ultimate recovery. See ibid.

Here’s the organization.

10 Id.
11 Gopen, supra n. 3; Gopen, THE SENSE OF STRUCTURE, supra n. 6 at 117-21; 152.
12 See also Gopen, THE SENSE OF STRUCTURE, supra n. 6 at 96-113.
13 Id. at 123-27.
14 Id.
• ¶1 Paragraph one is a single-sentence paragraph that establishes the purpose of the entire section: there is a difference between habitat and occupied critical habitat.
• ¶2 Paragraph two opens with statutory language, then explains what that language tells us (critical habitat is a subset of habitat), and ends by explaining what the language does not tell us (what separates critical habitats from other habitats).
• ¶3 Paragraph three picks up on this question. It begins by explaining its answer is in a different section of the statute, then recites that section’s language, and then moves to what that language means.

There is no need to start labeling sentences as issues or points (although that exercise certainly wouldn’t hurt). Just remember paragraphs play many roles. A paragraph can state and defend an argument, continue a narrative, transition to a new but related topic, dive deeper into a subject, shift perspectives, and more. The topic sentence/supporting sentence structure is one of many options. Choose the structure that supports the paragraph’s purpose.

**Paragraphs Should Be Three to Five Sentences (Except When They Shouldn’t)**

Think about this advice for a moment. Why should the number of periods, question marks, or exclamation points determine the length of a paragraph?

Is the above paragraph wrong, bad, or unclear because it only has two sentences? What would you include as the third? And when you get to five sentences and have just one more sentence of information, what should you do?

What’s wrong with this one sentence paragraph?¹⁶

This advice is everywhere. For example, Bryan Garner encourages writers to vary the length of paragraphs, with the goal of averaging under one-hundred fifty words and ranging from three to eight sentences.¹⁷ These numbers seem wholly arbitrary. Indeed, at least one author pegs the advice of “most paragraphs should contain five sentences” as being both untrue and not resembling professional writing.¹⁸

It’s hard to peg the origins of this advice. It probably comes from the common view that longer forms are more confusing or more burdensome. When a reader flips the page to see unbroken text, the visual effect is daunting. Run-on sentences are often cumbersome too. So shorter paragraphs and shorter sentences are easier to read than longer paragraphs and longer sentences. Except that isn’t true.

---

¹⁶ Gopen, THE SENSE OF STRUCTURE, supra n. 6 at 128-29; 152 (one sentence paragraph is fine if it states the issue and points and neither needs further discussion; works as a punchline to summarize prior development or as a challenging claim statement that will require substantial future development).
¹⁷ GARNER, supra n. 1 at 88.
¹⁸ Gopen, THE SENSE OF STRUCTURE, supra n. 6 at 152.
Short sentences can be clear or confusing and long sentences can be clear or confusing. What makes sentences confusing usually has more to do with the placement of information between the subject and the verb than the number of words in the sentence. What makes paragraphs confusing usually has more to do with confusing sentences or excessive repetition, rather than the number of sentences.

Here’s the crux of the issue. We write to persuade an audience. The number of sentences in a paragraph doesn’t make that paragraph more or less persuasive. Frankly, most people don’t recognize how many sentences are in the paragraphs they read. And few writers count punctuation or words per paragraph before filing.

So return to first principles. Forget about numbers. Paragraphs are a way to visually group information. On the one hand, they don’t need to be limited to one static point. Readers do not assume after the first sentence nothing new will happen until the next paragraph. On the other hand, clumping information into smaller groups is often more digestible than delivering it in one large group. Use your judgment.

Paragraphs are also a way to visually signal a transition to new but related information. Each paragraph may have a slightly different purpose, but those purposes are connected. So every paragraph ties to neighboring paragraphs. That connection should be clear to the reader.

Always End With A Summary Paragraph Restating Your Main Points (Except When It Makes No Sense to Do So and It Usually Makes No Sense to Do So)

Summary paragraphs often come across as repetitive and annoying because they are often repetitive and annoying. The introduction, summary of argument, and headers all preview points multiple times. And then you make the points. If you made your points well, you shouldn’t have to summarize them immediately after making them. If you made them poorly, the summary won’t save you.

Most importantly, summaries are weak endings. “Lead us to rest; don’t give us a review session for the exam.” There is no formula, technique, or easy way of explaining how to end an argument effectively. But a summary usually doesn’t help.

Never Use Incomplete Sentences (Unless They Work For You)

If you want the full monty of sacrilege embrace selectively and carefully using incomplete sentences: “Perhaps. Never again. And so it does. Fair enough.” and others can make

19 George Gopen, How to Overburden Your Reader: Separate Your Subject From Your Verb, 35 LITIGATION 3
20 Gopen, THE SENSE OF STRUCTURE, supra n. 6 at 96.
21 Id. at 134-36.
22 See id. at 152.
23 See id. at 152.
for powerful paragraph endings. They are short, direct, conversational, and punchy. The abrupt shift draws the reader’s attention.

**Conclusion**

Arbitrary rules have no jurisdiction over your writing. And the grammar gods do not require blood sacrifices to diverge from these largely unfounded rules. It’s your brief. Own it.