

Headings, please. The more, the better

IF THERE'S A GOOD REASON why many judicial opinions don't use informative headings, I haven't heard it. For readers, headings are a boon to navigating through the opinion. And that's true not only as readers move forward through the opinion but also as they search back to find and review the parts that they're especially interested in. It's even possible that as writers prepare headings, they will think a little more carefully about how the opinion is organized. All opinion-writers should make it a point to write useful, informative headings for their readers.

As it happens, I've written an article about a Supreme Court case, *Nielsen v. Preap*, 139 S. Ct. 954 (2019), that will serve as a perfect example. The justices rarely use headings other than Roman numerals (archaic to begin with), capital letters, and numbers.

In the three versions below, the lack of text obviously makes the headings look cramped.

ORIGINAL

Below are the actual headings – or, more accurately, “part indicators” – for the majority opinion in *Nielsen*. How helpful are they?

I
A
B
II
III
A
B
1
2
IV
A
B

BETTER

Below are topic headings, which I've simply added to the Court's breakdown. They are fairly easy to write and would be well worth the time needed to compose them. Ideally, you would use some design scheme to distinguish the different levels. In my two revisions, I have used **bold**, **bold italics**, and *regular italics*. An alternative would be to use boldface that's graduated in size. But any sensible, consistent scheme will do. Except perhaps for first-level headings, place them flush left and avoid ALL CAPITALS, which detract from readability. Also add an extra line space before each one (something I can't do here for reasons of space).

1. Background
 - A. *Statutes at Issue.*
 - B. *Facts and Procedure.*
2. Jurisdiction
3. Respondents' Arguments
 - A. *Analysis of the Text.*
 - B. *Ninth Circuit's Conclusion.*
 - (1) *Structure of § 1226.*
 - (2) *Interpreting Time Limits.*
4. Respondents' Further Arguments
 - A. *Surplusage.*
 - B. *Incongruous Results.*
 - C. *Constitutional Avoidance.*

BEST

This version tweaks the original organizational scheme by giving a heading to the Court's opening summary, which is typically undesignated. It also adds some subheadings. Finally, it combines first-level topic headings with some point (propositional) subheadings, which are far more helpful than topic headings. (Compare, for instance, heading 3 in the middle version with heading 5 in this version.) I realize, though, that point headings are harder to write concisely and that they may be a step too far for some judges, who might see them as rather too assertive. If so, then settle for topic headings alone, and more of them, and your readers will thank you even for that.

1. Summary
2. Statutes at Issue
 - A. § 1226(a).
 - B. § 1226(c).
3. Facts and Procedure
4. Jurisdiction
 - A. *Jurisdiction is not barred by statute.*
 - B. *The cases are not moot.*
5. Answers to Respondents' Arguments
 - A. *Respondents are among those “described” in § 1226(c)(1), requiring their detention.*
 - B. *Ninth Circuit's conclusion was erroneous.*
 - (1) *§ 1226(c) limits the Secretary's authority to release under § 1226(a).*
 - (2) *An official's failure to meet time limits does not by itself preclude later action.*
6. Answers to Respondents' Further Arguments
 - A. *No surplusage here.*
 - B. *§ 1226(c)'s detention mandate does not apply only to those who have been in custody.*
 - C. *Because the text is unambiguous, constitutional avoidance does not come into play.*



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