

Legal Writing Institute – 14th Biennial Conference

presentation by Raymond P. Ward

The two passages quotes below are from *Atkins v. Virginia*, 536 U.S. 304 (2002), a death-penalty case. One was written by a justice who voted to affirm the death penalty; the other by a justice who voted to reverse the death penalty:

A

At approximately midnight on August 16, 1996, Atkins and William Jones, armed with a semiautomatic handgun, abducted Eric Nesbitt, robbed him of the money on his person, drove him to an automated teller machine in his pickup truck where cameras recorded their withdrawal of additional cash, then took him to an isolated location where he was shot eight times and killed.

B

After spending the day drinking alcohol and smoking marijuana, petitioner Daryl Renard Atkins and a partner in crime drove to a convenience store, intending to rob a customer. Their victim was Eric Nesbitt, an airman from Langley Air Force Base, whom they abducted, drove to a nearby automated teller machine, and forced to withdraw \$200. They then drove him to a deserted area, ignoring his pleas to leave him unharmed. According to the co-conspirator, whose testimony the jury evidently credited, Atkins ordered Nesbitt out of the vehicle and, after he had taken only a few steps, shot him one, two, three, four, five, six, seven, eight times in the thorax, chest, abdomen, arms, and legs.

1. Can you tell which passage was written by the justice who voted to affirm the death penalty, and which was written by the justice who voted to reverse the death penalty?
2. How can you tell?

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