Counting Each Shot
Techniques for Emphasis and De-emphasis

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Frequent Techniques for Emphasis

Blah blah blah and yada yada yada. Blah blah and yada yada and blah blah. **BLAH BLAH BLAH**
and yada yada yada. Blah blah and yada yada and blah blah. Blah blah blah and yada yada yada.
Blah blah and **YADA YADA YADA** and blah blah. Blah blah blah and yada yada yada. Blah blah
and yada yada and blah blah. Blah blah blah and yada yada yada. Blah blah and yada yada and
blah blah. Blah blah blah and yada yada yada. Blah blah and yada yada and blah blah. Blah blah
blah and yada yada yada. Blah blah **AND YADA YADA YADA!!!!** So blah blah blah and yada yada
yada.
Another Frequent Tactic

- “Clearly, blah blah blah blah.”

- “Obviously, yada yada yada.”

- “So and so **blatantly** did such and such, a **blatant** act of yada yada yada.”
Frequent Technique for De-emphasis

Blah blah blah and yada yada yada. Blah blah and yada yada and blah blah.\(^1\) Yada yada yada.


\(^{1}\) Embarrassing fact here.

\(^{2}\) Law I'd rather not cite here.
Federal jurisprudence interpreting the analogous federal provision is not binding, although it is persuasive.
Which is Stronger? Why?

• Although federal jurisprudence interpreting the analogous federal provision is persuasive, it is not binding.

• Federal jurisprudence interpreting the analogous federal provision is not binding, although it is persuasive.
Our Instructors for Today

Stevens

Scalia
Fact Statement #1

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.
Fact Statement #2

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 coconspirator, 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.
Reader’s Four Questions

1. Whose story is this?
2. What is going on?
3. What’s the point?
4. What’s important?
1. Whose Story is This?
Whose Story is This?

Principle:

• Reader expects that a sentence will tell the story of whoever or whatever shows up first in the sentence.

• If the sentence is complex, readers expect it to tell the story of whoever or whatever shows up first in its main clause.
“Once upon a time, there was a little girl named Goldilocks. She went for a walk in the forest....”
Whose Story is This?
Whose Story is This?

Stevens:

... Atkins and William Jones, armed with a semiautomatic handgun ....
Whose Story is This?

Scalia:

• … petitioner Daryl Renard Atkins and a partner in crime ….

• Their victim … Eric Nesbitt, and airman from Langley Air Force Base …

• They [Atkins and partner] …

• … Atkins ….
Whose Stories are These?

• Appellant’s brief:
  On the evening of May 12, 2002, Dr. James Paulson received a phone call from Dr. Robert Dalton.*

• Appellee’s brief:
  At the age of two, Dominic Smith suffered a State 3 Volkmann’s ischemic contracture as a direct result of the dangerous and poorly-formed cast placed on his arm by Dr. Paulson in the early morning hours of May 13, 2002.*

*Fictional names used in these examples.
Whose Story is This?

Lessons:

• To focus attention on something or someone, make it the first thing (or only thing) that shows up in the sentence’s main clause.

• To deflect attention from someone or something, put something or someone else in that first position.
2. What’s Going on Here?
What’s Going on Here?

Principle:

• Readers expect that the action of the sentence will be expressed by its verb.
Once upon a time, there was a little girl named Goldilocks. She went for a walk in the forest. Pretty soon, she came upon a house. She knocked and, when no one answered, she walked right in.
What’s Going on Here?

ATM robbery – Stevens

… cameras recorded their withdrawal of additional cash

ATM robbery – Scalia

… forced to withdraw $200.
What’s Going on Here?

Lessons:

• To direct attention to the action, express it in the verb.
  o “… forced to withdraw $200.”

• To downplay an action express a different action in the verb.
  o “… cameras recorded their withdrawal ….”
Voice

Active Voice

Passive Voice
Voice

Principles:

• Use active voice to focus attention on the actor.

• Use passive voice to deflect attention from the actor — or to omit the actor completely.
“Mistakes Were Made”

“‘Mistakes were made’ is an expression that is commonly used as a rhetorical device, whereby a speaker acknowledges that a situation was handled poorly or inappropriately but seeks to evade any direct admission or accusation of responsibility by using the passive voice.”

— Wikipedia
“Mistakes Were Made”

• “And from my own preliminary observations, there were some very major mistakes that were made by the companies that were involved. But today is not really the day to deal with those issues.” —Interior Sec’y Ken Salazar

• “Very serious mistakes were made in a number of different areas, probably by a number of different companies that caused this Deepwater Horizon to have the catastrophe it did.” —Former Sen. (now lobbyist) John Breaux
"Mistakes Were Made"

April 26, 2022

Controversy in Cincinnati: ECHL informs Toledo Walleye that mistakes were made in officiating of playoff loss

WTOL 11 Sports Director Jordan Strack breaks down two major penalty calls made in the Kelly Cup playoffs game that ECHL officials later said were ruled incorrectly.

Author: wtol.com
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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*.
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.
Voice

Principles:

• Use active voice to focus attention on the actor.

• Use passive voice to deflect attention from the actor — or to omit the actor completely.
Pace

Borrowed from Roy Peter Clark, *Writing Tools.*

A period is a stop sign.  
A comma is a speed bump.
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.
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.
Pace

Stevens
• 1 stop sign
• 6 speed bumps

Scalia
• 4 stop signs
• 22 speed bumps
Pace

Lessons:

• To de-emphasize facts, be like Justice Stevens: get them over with quick.
  o Minimize the number of stop signs (periods) and speed bumps (commas).

• To emphasize facts, be like Justice Scalia: present them in slow motion.
  o Increase the number of stop signs (periods) by breaking up the account into smaller sentences.

Which brings us to …
3. What’s the Point?
What’s Your Point?

Principles:

• Readers expect to find important information at the end of each sentence.

• This makes the end of each sentence a stress position.
What’s Your Point?

• Melinda Jackson died three weeks later in *Columbus, Ohio*. (Place of death important.)

• Melinda Jackson died in Columbus Ohio, *three weeks later*. (Timing of death important.)

• Three weeks later, while visiting Columbus, Melinda Jackson *died*. (Death itself important.)

Example stolen from Bryan A. Garner, *Legal Writing in Plain English* 31 (2001)
Master of the Stress Position

“Four score and seven years ago, our fathers brought forth upon this continent a new nation: conceived in liberty, and dedicated to the proposition that all men are created equal.”
Master of the Stress Position

- It is rather for us to be here dedicated to the great task remaining before us. . .
- that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion. . .
- that we here highly resolve that these dead shall not have died in vain. . .
- that this nation, under God, shall have a new birth of freedom. . .
- and that government of the people. . .by the people. . .
  for the people. . . shall not perish from the earth.
Master of the Stress Position – Not.

Federal jurisprudence interpreting the analogous federal provision is not binding, although it is persuasive.
Before

• Federal jurisprudence interpreting the analogous federal provision is not binding, although it is persuasive.

After

• Although federal jurisprudence interpreting the analogous federal provision is persuasive, it is not binding.
What’s Your Point?

Principles:

• Readers expect to find important information at the end of each sentence.

• This makes the end of each sentence a stress position.

Corollary

• The more sentences, the more stress positions.
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.
Stress Position - Scalia

• 4 sentences, 4 stress positions

• … intending to rob a customer.

• … forced to withdraw $200.

• … ignoring his pleas to leave him unharmed.

• … shot him one, two, three, four, five, six, seven, eight times in the thorax, chest, abdomen, arms, and legs.”
Stevens’s Description of the Robbery

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.

*Stevens avoids putting the robbery in a stress position by burying it in the middle of a long sentence.*
Scalia’s Description of the Robbery

- After spending the day drinking alcohol and smoking marijuana, 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.

*Scalia emphasizes the robbery by giving it 2 stress positions.*
Stress Position

Lessons:

- Manipulate the number of stress positions by manipulating the number of sentences (stop signs).
  - This is one reason why a brief is often improved by breaking up long sentences into smaller sentences.

- To call attention to something, put it in the stress position – the end of the sentence.

- To avoid calling attention to something, keep it away from a stress position.
4. What’s Important?
What’s More Important? Less Important?

Principles:

• Readers expect the main clause to express the most important information in a sentence.

• Readers expect a subordinate clause to express subordinate information.
What’s More Important? Less Important?

Stevens – Subordinate Clause
• … where he was shot eight times and killed.

Scalia – Main Clause
• … Atkins ordered Nesbitt out of the vehicle and … shot him ….
What’s more important here?

Federal jurisprudence interpreting the analogous federal provision is not binding, although it is persuasive.

- *Mixed messages created by putting a subordinate clause in the stress position. Stress position says “this is important,” while subordinate clause says “this isn’t important.”*
- *The mixed messages are why this sentence comes across as wishy-washy, leaving the reader to wonder what the writer’s point is.*
What’s the Difference?

• Although federal jurisprudence interpreting the analogous federal provision is persuasive, it is not binding.

• Although federal jurisprudence interpreting the analogous federal provision is not binding, it is persuasive.
The principles explained in this presentation come from the following sources, all of which should be on your bookshelf:

- Benjamin Opipari, *To Boldly Go Without Bold*, 16 Perspectives 131 (Winter 2008).
Thank You

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