

Counting Each Shot

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“The difference between direct and indirect writing is the difference between witnessing the murder and finding the body.” Patricia T. O’Conner, *Words Fail Me* 150 (1999). As writers, we sometimes want to write indirectly, to soften or deflect the harsh facts. Other times, we want to write directly, to confront readers with those harsh facts. For lessons in doing both, let’s compare two passages from *Atkins v. Virginia*, 536 U.S. 304 (2002), describing the same crime. One is from Justice John Paul Stevens’s majority opinion; the other is from Justice Antonin Scalia’s dissenting opinion in the same case.

In *Atkins*, a majority of the Court reversed a death sentence, holding that the Eighth Amendment no longer permits execution of a mentally retarded offender. Writing for the majority, Justice Stevens wanted to downplay the crime the defendant was convicted of, to justify the Court’s reversal of the death sentence. This is how he described the crime:

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.

Id. at 307.

Writing in dissent, Justice Scalia had a different goal: he wanted to emphasize the defendant’s culpability, to demonstrate why the death sentence should stand. This is how he described the same crime:

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.

Id. at 338 (Scalia, J., dissenting).

By comparing these two passages, we see many techniques for emphasizing or de-emphasizing facts.

Let’s start with the number of sentences in each passage. That’s important because the end of each sentence is a stress position, the moment of syntactic closure, where

the reader mentally exhales before taking on the next sentence. See George D. Gopen, *The Sense of Structure* 35–37 (2004). Thus, the more sentences, the more stress positions.

Justice Stevens describes a day’s worth of crime in one 61-word sentence. By limiting his description to just one sentence with one independent clause, Justice Stevens creates but one stress position. (Although he puts the murder in the stress position, he does other things to de-emphasize that information. More on that below.) In contrast, Justice Scalia breaks up his description into four sentences. By doing this, he creates four stress positions. And observe what he puts in those 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.”

Justice Stevens makes the robbery at the ATM sound like an ordinary banking transaction: “where cameras recorded their withdrawal of additional cash” And notice the subject and verb in that clause: “cameras recorded.” In contrast, Justice Scalia makes sure we know who did what, telling us that the defendant and his accomplice “forced [Nesbitt] to withdraw \$200.”

Although Justice Stevens’s description of the murder is in a stress posi-

tion, this particular stress position comes at the end of a long sentence, 61 words; by the time readers reach it, they are mentally weary. But Justice Stevens does three more things to de-emphasize the murder:

First, he puts the murder in a dependent clause, “where he was shot eight times and killed.” Readers subconsciously assign less importance to a dependent clause than to an independent clause. Gopen at 49.

Second, he gets things over with quickly by describing the action in just seven words — the last seven words in a 61-word sentence. The fewer words there are to read, the less mental energy expended on them by the reader.

Third, he puts the murder in passive voice (“he was shot eight times and killed”), without identifying the shooter. One good reason to use the passive voice is to avoid saying who did what, thus weakening the focus on the actor. Gopen at 153. This is precisely what Justice Stevens is trying to accomplish. This is a good use of the passive voice.

In contrast, Justice Scalia’s account contains not a single passive-voice verb. Thus, when he comes to the actual murder, he tells us plainly who did what: “Atkins ordered Nesbitt out of the vehicle and ... shot him” While Justice Stevens makes us speed past the murder by describing it in just seven words, Justice Scalia depicts it in slow motion, counting each shot. Each comma in the series of shots (“one, two, three, ...”) is a speed bump, forcing the reader to slow down. And for added measure, he tells us where the shots landed.

Notice too that Justice Stevens and Justice Scalia select different details to mention:

- Justice Stevens tells us the name of Atkins’s accomplice, William Jones, thus transferring some of the focus from Atkins to Jones. Justice Scalia, meanwhile, never mentions Jones’s name. He wants to keep the focus squarely on Atkins.
- Justice Stevens tells us what kind of weapon was used to kill Nesbitt: “a semiautomatic handgun.” Interestingly, though Justice Scalia’s account is generally more concrete than Justice Stevens’s, he omits this detail. Perhaps he wants to make us wonder whether, in shooting Nesbitt eight times, Atkins had to reload.
- Justice Scalia personalizes the victim, Eric Nesbitt, telling us that he was “an airman from Langley Air Force Base,” that he pleaded for his life, and that he walked a few steps before being murdered, and that he suffered gunshot wounds to his thorax, chest, abdomen, arms, and legs. Justice Stevens tells us nothing about Nesbitt except his name.
- Justice Scalia tells us that Atkins and his partner “spen[t] the day drinking alcohol and smoking marijuana,” thus suggesting that Atkins himself is to blame for any mental impairment he had that day. Justice Scalia also tells us that they abducted Nesbitt from a convenience store — a kind of place familiar to Americans. Justice Stevens omits these details.

Finally, notice what Justice Scalia does not do. He uses no adjectives to describe Atkins (such as “cold-blooded”) and no adverbs to describe his actions (such as “cruelly,” “mercilessly,” or “heinously”). Instead, he relies on nouns, verbs, and selective detail to paint a vivid picture. For emphasis, he

does not need underlining, **bold print**, or ALL CAPITAL LETTERS. Instead, he uses nouns and verbs to focus attention on Atkins; he structures his sentences and his paragraph to create natural stress positions; and he uses those natural stress positions to emphasize what he wants to impress on the reader. To emphasize the deliberateness of the murder, he counts each shot.

This is not to say that Justice Scalia’s description is better than Justice Stevens’s. Remember that the two justices had different goals: while Justice Stevens merely wanted readers to find the body, Justice Scalia wanted them to witness the murder. Each does a good job of describing the crime in a way that accomplishes his goal.