

# **Association of American Law Schools**

# **Journal of Legal Education**

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## A Short Note on the Placement of Adverbs

Jonathan R. Siegel

Fine writing has never been a hallmark of law review articles, but one might at least expect that lawyers, whose profession requires them to develop expertise in learning and applying rules, would do a good job of knowing and applying the rules and customs of English grammar and usage. I would like to call attention to the failure of some law review authors to follow a certain rule—or rather, their tendency to follow a putative rule that is not a rule at all.

I refer to the customary placement of adverbs in connection with compound verbs, that is, verbs made up of an auxiliary verb and a main verb. Many law review authors are confused about this point. Many of them are following an imaginary “rule” that is not a rule at all, namely, a rule against “splitting” a compound verb with an adverb. This tendency needs to be curtailed at once, before it causes even more authors to become confused as to what the customary practice really is.

The matter is important, I will suggest, not only to preserve the customs of English usage, but also because of what it says about law professors. Most of our bad writing and grammatical errors might simply be shrugged off—after all, we are law professors, not great writers or even great grammarians. This particular error, however, reflects badly on our character. It makes us look as though we are so feverishly intent on following rules that we will follow even rules that do not really exist. One might choose to follow rules of grammar rigorously, just as one might choose not to wear white shoes before Memorial Day, but slavishly following a grammatical rule that is not a rule at all is like adamantly refusing to wear brown shoes before Memorial Day.

### **The “Rule” at Issue**

The point at issue arises when an author desires to use an adverb to modify a compound verb. Consider, for example, the first sentence of this essay: “Fine writing has never been a hallmark of law review articles....” Where should the word “never” go? Is “has never been” correct, or should the phrase read “never has been”? Similarly, when the sentence continues, “one might at least expect

**Jonathan R. Siegel** is a professor of law at George Washington University Law School.

that lawyers..." is "at least" properly nestled between "might" and "expect," or should it precede them, so that the phrase would read "one at least might expect that lawyers..."?

I hope that your ear, like mine, tells you that the customary word order is auxiliary verb-adverb-main verb, so that "has never been" and "might at least expect" are correct. Not everyone, however, agrees. Some authors seem to believe that a rule of grammar forbids "splitting" a compound verb, and these authors would insist on writing "never has been" in place of "has never been."

This point first came to my attention in connection with a law review article I published some years ago. When the Editor in Chief completed his edit, he informed me that the article was in good shape; his main change, he said, was simply applying the "rule" that adverbs should not separate auxiliary verbs from main verbs. He had, accordingly, gone through the article and diligently plucked my adverbs out from between any auxiliary verbs and main verbs and placed them before the auxiliaries.

Having never previously heard of this alleged rule, I was rather surprised. Since then, however, I have noticed other authors who appear to share that editor's view. More and more, I come across articles in leading law reviews in which the author inverts the normal word order of auxiliary verb-adverb-main verb and instead writes adverb-auxiliary verb-main verb. Some recent examples:

[T]he Court *previously has described* commercial speech . . . (Harvard Law Review 2004)

[T]here *always has been* some uncertainty about the scope of the rule . . . (University of Chicago Law Review 2004)

A court *even might have* to impose a structural injunction[.] (New York University Law Review 2004)

[O]ne sees a Court that has shifted with the political winds, but *generally has stayed* within earlier-established boundaries. (Virginia Law Review 2004)

Although the Court *never has held* that the fruits of a coerced confession, like those of a Fourth Amendment violation, are inadmissible as well, it *likely would do so*. (Yale Law Journal 2002)<sup>1</sup>

I do not mean to be too hard on the authors of these quotations. Principles of word order are not completely rigid, and it is possible that, in each case, these authors felt that these particular sentences read better with the adverb

1. To avoid singling out any authors for criticism, I have suppressed the full citations of the quotations given in this essay, but the interested reader can easily verify them on LEXIS or Westlaw (emphasis added).

coming first. These individual sentences do not prove that the authors believed that a rule of English grammar dictated the placement of their adverbs. Still when one sees that one of them, within a single article, writes:

“[C]ourts generally should treat these agency behaviors similarly.... [W]e nonetheless should recognize that the case involves a vexing problem.... The Presidential control model also can explain the most significant feature... Alexander Bickel already had published his influential book.... The President often is offered as a salve... [The President] also may fail to prevent.... [C]ourts generally should reject special rules.... They also should require agencies to promulgate standards.... [An agency] also should demonstrate to a court.... A court even might have to impose a structural injunction.” (New York University Law Review 2004)<sup>2</sup>

it becomes plain that at least some authors are laboring under the impression that a rule of English grammar demands that auxiliary verbs remain firmly attached to their main verbs without separation by adverbs.

Actually, adherence to the “rule” may be a product not so much of the authors’ preferences as those of their student editors. In his sparkling 1990 essay, *Fear of Writing*,<sup>3</sup> James Lindgren traces a number of grammatical misconceptions, including the “rule” against splitting compound verbs, to the *Texas Law Review Manual on Style*,<sup>4</sup> which, he suggests, is primarily a compilation of fetishes and superstitions that have no basis in genuine English usage.<sup>5</sup> Law review editors, Lindgren suggests, adopt the *Manual* because of their insecurity about their writing and editing skills, and they cannot trust themselves to exercise judgment in permitting departures from the *Manual’s* erroneous commands.<sup>6</sup> It is possible, therefore, that the authors quoted above know the customary placement of adverbs and wrote their original manuscripts accordingly, but then allowed student editors to reorder their words on the basis of imaginary grammatical principles.

In any event, whether belief in the “rule” comes primarily from authors or editors, its influence is evident in numerous law review articles. Many articles reflect the view that a rule of English grammar forbids “splitting” a compound verb with an adverb.

#### Refutation of the “Rule”

Is there any such rule in English? Such style questions should be settled by reference to how good writers use the language. Let us pull some good

2. Emphasis added. The use of “even might have to impose” instead of “might even have to impose” is, to my ear, particularly striking.
3. James Lindgren, *Fear of Writing*, 78 Cal. L. Rev. 1677 (1990).
4. *Texas Law Review Manual on Style* (6th ed., Austin, Tex., 1990).
5. Lindgren, *Fear of Writing*, *supra* note 3, at 1680-94; *id.* at 1678 (referring to the *Manual* as “one of the most pernicious collections of superstitions that has ever been taken seriously by educated people”).
6. See *id.* at 1678-79 (“No amount of reasoned argument can shake their belief....”).

books off the shelf to see if real writers actually apply this principle. It takes only a little effort to confirm that the putative "rule" is no rule at all. Counterexamples abound; one can often find them on the first page or two of any randomly selected work.

On the first page of *A Tale of Two Cities*, Charles Dickens writes "Mrs. Southcott had recently attained her five-and-twentieth blessed birthday..." (not "recently had attained").<sup>7</sup> On the same page, he writes "Mere messages in the earthly order of events had lately come to the English Crown and People..." (not "lately had come").<sup>8</sup>

Similarly, on the first page of *Emma*, Jane Austen writes, "the mildness of her temper had hardly allowed her to impose any restraint" (not "hardly had allowed").<sup>9</sup> Later on the same page she notes that Emma "had always wished and promoted the [marriage of her governess]" (not "always had wished").<sup>10</sup>

Of course, these examples are from fiction, but legal writing by good stylists turns out to be no different. Learned Hand was one of the good judges who was also a good writer, and opening my old torts casebook to his essay, *Have the Bench and Bar Anything to Contribute to the Teaching of Law?*, I see that Hand writes, "You can hardly escape all reference to it if you propose an adequate treatment of modern torts" (not "hardly can escape") and also "On this question you would, speaking largely, get no assistance at all." (not "you, speaking largely, would get").<sup>11</sup>

So far, these examples are all somewhat antiquated, but modern writing shows that no new rule about adverb placement has sprung up in recent times. Justice Scalia is probably the best stylist on the Supreme Court today, so let us take one of his opinions as a gauge of modern legal writing standards. In *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*,<sup>12</sup> Justice Scalia writes, "We have long recognized that a State's sovereign immunity is 'a personal privilege....'" (not "We long have recognized"); "We have even held that a State may...alter the conditions of its waiver..." (not "We even have held"); and "We had always thought that the *distinctive* feature of *Lochner*..." (not "We always had thought").<sup>13</sup> He does not even hesitate to insert many words between the auxiliary and the main verb. He writes, "Recognizing a congressional power to exact constructive waivers . . . would also, as a practical

7. Charles Dickens, *A Tale of Two Cities* 1 (Oxford, 1949) (1859).

8. *Id.*

9. Jane Austen, *Emma*, in *The Complete Novels of Jane Austen* 763 (New York 1933) (1816).

10. *Id.*

11. Learned Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law?*, in Harry Shulman, Fleming James, Jr., Oscar S. Gray, *Cases and Materials on the Law of Torts* 138-39 (3d ed., Mineola, N.Y., 1976).

12. 527 U.S. 666 (1999).

13. *Id.* at 675, 676, and 691.

matter, permit Congress to circumvent the anitabrogation holding of *Seminole Tribe*" (not "also, as a practical matter, would permit").<sup>14</sup>

Finally, examples of the customary word ordering abound in everyday writing. Turning to the *New York Times* on the day I am writing this essay (April 20, 2005, when the main news is the selection of Cardinal Joseph Ratzinger as Pope Benedict XVI), I see that the paper's lead story tells us that the new Pope "has also strongly opposed homosexuality" (not "also strongly has opposed"), that "[h]is conservatism on moral issues may also play well in developing countries" (not "also may play well"), and that "Cardinal Ratzinger has often criticized religious relativism" (not "often has criticized").<sup>15</sup>

It seems clear from these examples that there is no rule in English that demands, or even suggests, that auxiliary verbs not be separated from the verbs they modify.<sup>16</sup> Let us turn to a leading authority to dispel any remaining doubt. Fowler's classic *Modern English Usage* contains this trenchant passage:

Splitting of the compound verb.

By *compound verb* is meant a verb made up of an auxiliary (or more than one) and an infinitive (without *to*) or participle. When an adverb is to be used with such a verb, its normal place is between the auxiliary (or sometimes the first auxiliary if there are two or more) and the rest. Not only is there no objection to thus splitting a compound verb, but any other position for the adverb requires special justification: *I have never seen her*, not *I never have seen her*, is the ordinary idiom . . . [T]here is no objection whatever to dividing a compound verb by adverbs.<sup>17</sup>

Thus, according to Fowler, not only is there no rule forbidding separation of auxiliary verbs from main verbs, but the true rule is the very opposite: the adverb goes between the auxiliary and the main verb unless special reasons suggest placing it elsewhere. Fowler's judgment is somewhat stronger than

14. *Id.* at 683; see also *id.* at 686 ("Congress may, in the exercise of its spending power, condition its grant of funds....").
15. Ian Fisher, Pope Benedict XVI: The Decision—German Cardinal Is Chosen as Pope, *N.Y. Times*, Apr. 20, 2005, at A1.
16. A few more examples, from the opening pages of well-written books chosen more or less at random: "Moses was always talking...about dedicating his life to public service." Robert A. Caro, *The Power Broker: Robert Moses and the Fall of New York* 1 (New York, 1974). "I had often been piqued by his indifference to my admiration..." Sir Arthur Conan Doyle, *The Hound of the Baskervilles* 6 (New York, 2001) (1902). "[M]y low-slung old [sled] would almost have slid on grass without snow." Robertson Davies, *Fifth Business* 1 (New York, 2001) (1970). "Some of the city legislators...saw to it that 'Doctor Street' was never used in any official capacity." Toni Morrison, *Song of Solomon* 4 (New York, 1987) (1977). "He can barely make out the heckler's face." Tom Wolfe, *Bonfire of the Vanities* 4 (New York, 1988). On the other hand, the first sentence of Kazuo Ishiguro's prize-winning novel begins, "It seems increasingly likely that I really will undertake the expedition..." Kazuo Ishiguro, *The Remains of the Day* 3 (New York, 1989), so the "split" ordering is not invariably selected.
17. H. W. Fowler, *A Dictionary of Modern English Usage* 464-65 (2d ed., Oxford, 1965).

that of some other authorities, who do not necessarily demand special justification for placing an adverb outside a compound verb, but all agree that placing it between the auxiliary and main verbs is not only permitted but normal.<sup>18</sup>

The experts' clear judgment, combined with the evidence of actual usage by good writers, should put this matter to rest. When using an adverb to modify a compound verb, authors should normally place the adverb between the auxiliary and the main verb. This placement principle does not have the rigidity of, say, the rule requiring agreement between subjects and verbs; it is not unequivocally wrong to put the adverb before the compound verb, as it would be to say "I walks to work," but in most cases doing so imparts a stilted and unnatural quality to the resulting sentence.<sup>19</sup> Certainly the one thing authors should not do is place adverbs in an abnormal position out of a belief that a grammatical rule requires it.

18. Theodore M. Bernstein, *The Careful Writer: A Modern Guide to English Usage* 26 (New York, 1986) ("more often than not the proper and natural place for an adverb is between the parts of a compound verb"); Roy H. Copperud, *American Usage and Style: The Consensus* 10 (New York, 1980) ("In many sentences, the adverb falls naturally between the parts of the verb, and in negative sentences it is impossible to place the adverb (*not*) anywhere else."); Wilson Follett, *Modern American Usage: A Guide* 56 (New York, 1966) ("With a compound verb...the adverb comes between auxiliary and main verb"); Merriam-Webster's *Dictionary of English Usage* 36 (Springfield, Ill., 1994) ("Since dividing the auxiliary from the verb with an adverb has been approved at least since Lindley Murray 1795, it would seem that Fowler is justified in calling the avoidance a superstition."); Allan M. Siegal, *New York Times Manual of Style and Usage* 10 (New York, 2002) ("an adverb used with a compound verb should normally be placed between parts of the verb").

19. The authorities, although agreeing that auxiliary–adverb–main verb is the normal ordering, are divided as to how strongly to adhere to it. As noted in the text, Fowler demands "special justification" for putting the adverb anywhere but between the auxiliary and main verbs, Fowler, *A Dictionary of Modern Usage*, *supra* note 17, at 464, although he states that "the rejected order becomes the right one if emphasis is to be put on" the auxiliary (as in, "I was thinking of skipping the conference, but I probably will go"), *id.* Bernstein suggests that putting the adverb first is "improper and unnatural," Bernstein, *The Careful Writer*, *supra* note 18, at 26, and Follett calls it "bad," Follett, *Modern American Usage*, *supra* note 18, at 57. Copperud, on the other hand, singles out "not" as, apparently, the only adverb that cannot be placed elsewhere than between the parts of the compound verb, and he distinguishes between authorities who approve placing the adverb between the auxiliary and main verbs, and Fowler, who demands special justification for anything else. Copperud, *American Usage and Style*, *supra* note 18, at 10. Merriam-Webster's usage dictionary, similarly, agrees that Fowler is right to call avoiding the split adverb a superstition, but refrains from endorsing his proscription on placing the adverb elsewhere, Merriam-Webster, *supra* note 18, at 36. The New York Times style guide says only that the adverb should "normally" come between the parts of the compound verb. Siegal, *Manual of Style*, *supra* note, 18 at 10.

In the text above, I have sided with the latter three authorities. In my view, placing an adverb before a compound verb is not a grammatical error of the kind that must be absolutely forbidden to authors, but in most cases it is a stilted and unnatural construction that authors should avoid.

### What the "Rule" Says About Us

As noted earlier, one could cheerfully ignore most bad grammar or style in law review articles. After all, the purpose of law review articles is primarily to enlighten, not to entertain. Let their substance be sound; the style is secondary.

The particular misconception at issue here, however, leads to sentences that not only grate annoyingly on the ear, but reflect badly on our character. As law professors, we have all experienced the desire of students to learn "the rules" of law. We know how hard it is to teach students not to accept and follow rules blindly, but to think about them critically and to challenge them where appropriate. Refusing to split compound verbs makes it look as though we are failing to follow our own advice. Moreover, it suggests that we believe so strongly in following rules that we will blindly follow even rules that are not rules at all. It is as though some ill-informed Mrs. Grundy marked us down in grade school for splitting compound verbs and we have never bothered to challenge her view.

And where did Mrs. Grundy get her information? It seems likely that the "rule" against split compound verbs arose by false analogy to that great grammatical bugaboo, the split infinitive.<sup>20</sup> Everyone knows that one is not supposed to split an infinitive (we should write *boldly to go*, not *to boldly go*). Therefore, some appear to have concluded, one should not split a compound verb either.

The irony here is that not only is the analogy between split infinitives and split compound verbs a false one, but the "rule" against splitting infinitives is itself not much of a rule. Certainly there is a widespread folk belief that splitting an infinitive violates principles of English grammar somehow, but actual grammarians take a much less stringent view. Fowler's comment on the matter is very mild:

We admit that separation of *to* from its infinitive is not in itself desirable . . . . We maintain, however, that a real s. i., though not desirable in itself, is preferable to either of two things, to real ambiguity, and to patent artificiality. . . . [M]ore than that, we will freely admit that sufficient recasting will get rid of any s. i. without involving either of those faults, and yet reserve to ourselves the right of deciding in each case whether the recasting is worth while.<sup>21</sup>

Fowler also classifies the rule against split infinitives as a "superstition" and a "fetish"—a "literary rule[]...misapplied or unduly revered."<sup>22</sup> Bill Bryson

20. See Fowler, *A Dictionary of Modern English Usage*, *supra* note 17, at 464 ("[A] prejudice has grown up against dividing compound verbs. It is probably a supposed corollary of the accepted split-infinitive prohibition...."); Copperud, *American Usage and Style*, *supra* note 18, at 10 ("Most commentators agree that [the rule against split adverbs] is apparently an offshoot of the prohibition against splitting an infinitive.").

21. *Id.* at 581.

22. *Id.* at 196, 606; see also, Copperud, *American Usage and Style*, *supra* note 18, at 10, 202 ("The consensus of seven critics is that infinitives may be split when splitting makes the sentence

(better known as a travel writer<sup>23</sup>), in his book on the English language, points out that “[i]t is exceedingly difficult to find any authority who condemns the split infinitive” and notes that the rule against split infinitives arose only because early authorities on English grammar took the rules of Latin grammar as their model; they decided that split infinitives should be forbidden in English because they are impossible in Latin. As Bryson observes, that makes as much sense as deciding that “we should forsake instant coffee and air travel because they weren’t available to the Romans.”<sup>24</sup> Bryson also remarks:

I can think of two very good reasons for not splitting an infinitive:

1. Because you feel that the rules of English ought to conform to the grammatical precepts of a language that died a thousand years ago.
2. Because you wish to cling to a pointless affectation of usage that is without the support of any recognized authority of the last 200 years, even at the cost of composing sentences that are ambiguous, inelegant, and patently contorted.<sup>25</sup>

In short, English grammar imposes no actual rule against split infinitives; at most, it suggests a preference for not splitting them, at least where a thought can be expressed equally well with or without splitting an infinitive.<sup>26</sup> Some authors place their adverbs outside their infinitives gracefully, as when Shakespeare has the Chorus in *Henry V* “your humble patience pray, [g]ently to hear, kindly to judge, our play,”<sup>27</sup> but others avoid splitting an infinitive only at the cost of some clunkiness, as when a Supreme Court Justice recently wrote, “[w]e would, however, remain in a position to address promptly the Nation’s obligation under the judgment of the ICJ if that should prove necessary.”<sup>28</sup>

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read more smoothly and does not cause awkwardness.”); Merriam-Webster, *supra* note 18, at 868 (“The upshot is that you can split them when you need to.”).

23. See, e.g., Bill Bryson, *A Walk in the Woods* (New York, 1999); Bill Bryson, *Notes from a Small Island* (London, 1998); Bill Bryson, *The Lost Continent* (London, 1989).
24. Bill Bryson, *The Mother Tongue* 137, 144 (New York, 1990).
25. *Id.* at 144.
26. But see Bernstein, *The Careful Writer*, *supra* note 18, at 425 (“[R]eason and logic are not always the determining considerations in usage. ...Reasonable or unreasonable, the unsplit infinitive must be accepted as today’s norm; it is what readers as well as writers have been taught is correct.”) Even Bernstein, however, concludes that a split infinitive is preferable to ambiguity, clumsiness, or artificiality. *Id.* at 426.
27. William Shakespeare, *The First Part of King Henry the Fifth*, act 1, sc. 34-35.
28. The placement of the adverb in this sentence is awkward because it separates the verb “address” from its object, “the Nation’s obligation under the judgment of the ICJ.” See Fowler, *A Dictionary of Modern English Usage*, *supra* note 17, at 467 (discussing the desirability of not placing an adverb between a transitive verb and its object); Copperud, *American Usage and Style*, *supra* note 21, at 10. If “promptly to address” seemed too pedantic, see Siegal, *Manual of Style*, *supra* note 18, at 314 (calling this construction “artificial”), the Justice might

Rather than write this kind of sentence, authors should recall that the best authorities prefer a split infinitive to awkwardness or ambiguity.

How ironic, then, that the "rule" against splitting infinitives should overflow its proper boundaries and come to influence the splitting of compound verbs; how strange that some authors should feel obliged to respect this putative rule in areas where it does not apply, when it lacks much force even where it does apply. If an author chooses to follow actual rules of English grammar even where they seem stilted or awkward, that is one thing, but surely authors should never force themselves to write bad sentences to comply with rules that are not even rules at all. Perversely protecting infinitives against being split is already an affectation, and extending it to compound verbs is, as noted earlier, like refusing to wear brown shoes before Memorial Day.

It is only natural, I suppose, for lawyers and law professors to lay excessive stress on adherence to rules. We teach our students about the importance of the critical perspective, but a preference for adherence to rules necessarily serves the interests of those who have special expertise in knowing rules, i.e., us. That we are professors may only add a pedant's love of rules to that of the practicing lawyer. All the more reason why we would do well to know the real rules before we insist upon adhering to them.

### Conclusion

If we must be pedants, let us be pedants, but let us not be ignorant pedants. If we cannot bring ourselves to pierce through the fog of law review writing when doing so requires violating a rule, let us at least know what the rules actually are. English grammar has never imposed a rule against splitting a compound verb with an adverb; let us not constrain ourselves with an imaginary rule.

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have chosen to put "promptly" after "ICJ," which would have kept verb and object together. In this sentence, though, the object is made up of so many words that delaying the adverb until the end of it would have been awkward too. See Fowler, *A Dictionary of Modern English Usage*, *supra* note 17, at 467 (mentioning long objects as a condition that can justify putting the adverb between verb and object). The split infinitive "to promptly address" would therefore have been the best solution.

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