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David Spratt

American University Washington College of Law, dspratt@wcl.american.edu

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WRITER'S BLOCK

MISPLACED MODIFIERS—SAY WHAT?

BY DAVID H. SPRATT



"I could not love you any less."

Utter that phrase to a significant other. One of two things will happen: anger or happiness. When I once said these words to a girlfriend, expecting a smile, surprisingly I was confronted with anger. I thought, "How could she be angry?" I just told her that I couldn't imagine a time when I was not as massively in love with her as I was at that moment. Unfortunately, she thought I was telling her I wasn't really that in to her. Luckily for me, this was an easy misunderstanding for me to correct, but my ambiguous (ahem—poor) choice of words resulted in an unintentionally tense moment.

As lawyers, we are wordsmiths. Clients pay us for the correct word choice, and lack of precision or ambiguity can have disastrous consequences. Some of you might remember the *Peerless* case¹. In that case, the buyer agreed to purchase bales of cotton arriving from Bombay upon the ship *Peerless*. Two ships named *Peerless* sailed from Bombay several months apart, both carrying cotton. Because there was a contractual ambiguity, and the contract did not state which ship was meant, the court held there was no binding contract.

What is the moral of this story? If we write fearless, we are haunted by *Peerless*? Not really, but kind of. Lawyers must strive for clarity, choosing each word carefully to ensure that each sentence conveys its intended meaning. One way of achieving this clarity (among many others) is to eliminate misplaced modifiers.

A misplaced modifier is a word, phrase, or clause that acts on something other than what the writer intended, usually because the word, phrase, or clause is placed too far from the noun or pronoun it describes. For example:

Abraham Lincoln wrote the Gettysburg address while traveling from Washington to Gettysburg on the back of an envelope.

Was this an early version of air mail? Or did Lincoln suddenly find himself with Harry Potter at Hogwarts? Although misplaced modifiers often lead to laughter, as legal writers, we do not aspire for comedy (in fact, misplaced modifiers can lead to malpractice lawyers having the last laugh). In the above example, the writer should have said, "Abraham Lincoln wrote the Gettysburg address on the back of an envelope while traveling from Washington to Gettysburg," as "on the back of an envelope" purports to describe the method of inscription rather than the method of travel.

Fortunately, misplaced modifiers are easily corrected. To correct a misplaced modifier, follow these two simple steps:

- 1) Make sure that your modifier actually has something to modify; and
- 2) Move the modifier as close as possible to the word or phrase it is describing.

Let's look at a few more examples. Several years ago, I was driving through the Dulles Greenway Toll Plaza and noticed this sign:

Please do not exit your vehicle for safety reasons!

Now, I fancy myself an open-minded kind of guy—to each his or her own I say. Still, despite my tolerance for individual expression, did the people who designed this sign really mean to say that? If they did, a driver at the toll plaza who needs to exit her car to pee may do so freely, but a driver at the toll plaza who needs to exit her car to ensure her personal safety is prohibited from doing so. Say what?

To fix this sign (and hopefully convey its intended meaning), pair the modifying phrase as close as possible with the words the phrase is intended to modify. The result is much clearer, safer, and results in much less laughter:

For safety reasons, please do not exit your vehicle!

Here is another example:

Mark refused to service the car belonging to the man who insulted him with good reason.

The above sentence might be absolutely correct and unambiguous. Perhaps Mark had poor customer service skills, and the man was justified in insulting Mark, after which time Mark stubbornly refused to fix his car. More than likely, however, the sentence contains a misplaced modifier, as "with good reason" is meant to modify Mark's refusal to service the car and not the propriety of the insult. To convey this meaning, the revised sentence should read as follows:

Mark refused with good reason to service the car belonging to the man who insulted him.

You are now getting the hang of it. Let's move to a sentence that one might find in a legal document:

Being beyond any doubt insane, the court ordered the patient's transfer to a state mental hospital.

One of the cardinal rules of legal writing is to remember your audience. If the above sentence appeared in a brief filed with a trial court as part of a motion for reconsideration, how might the trial court - the intended audience - react? To be a bit cheeky, such language might drive the court "crazy," as the writer is saying that the court was insane when it ordered the patient's transfer to a state mental hospital. As much as lawyers might sometimes disagree with a court, does calling the court "insane," even as a result of bad writing, truly further a client's cause?

What the writer should have written is:

Being beyond any doubt insane, the patient was transferred by court order to a state mental hospital.

It is after all better to call a patient "insane" than the court!

Finally, let's look at one last example. Recently, I was wine tasting at a local Virginia winery and noticed this sentence on a flyer announcing an upcoming barrel tasting:

Join winery owner as he guides you through an intimate tasting of our reds while still in barrel.

Well, you get the picture! And, to reward myself for finishing this column, I get a glass of Virginia wine (try it - you will not be disappointed!).

As always, questions, comments, or suggestions are welcomed (even encouraged).

Notes:

- 1) *Raffles v. Wichelhaus*, 2 H. & C. 906, 159 Eng. Rep. 373 (Ex. 1864).

David H. Spratt is a professor at The American University, Washington College of Law, where he teaches Legal Rhetoric, Introduction to Advocacy, and Family Law Practice and Drafting. Professor Spratt practiced family law for 10 years and is a former chair of the VBA Domestic Relations Section.