

John W. Davis—An Early Advocate of Plain English

By Judge Chad C. Schmucker

Many lawyers assume that plain English is a new concept in the law. Some lawyers are more inclined to embrace the principles because they assume the concept is new. It is more attractive to them because they like new ideas and change. For others, the fact that it is new is reason enough to be against it.

I would suggest that the name plain English is perhaps new, but the underlying concepts have existed for a long time. The concept of using clear, understandable, and succinct prose is not new. An excellent example of an attorney who promoted plain-English concepts before the term became popular is John W. Davis.

John W. Davis was one of the most celebrated and successful attorneys of this century. He was considered for the Democratic presidential nomination in 1920 and received the Democratic presidential nomination in 1924 against Republican Calvin Coolidge. He started his legal career in a

small town in West Virginia and shortly thereafter was elected to the United States Congress. After serving in Congress, he accepted an appointment as Solicitor General of the United States, which he held for three years. President Woodrow Wilson appointed him Ambassador to England, and he served as the Ambassador to the Court of St. James for several years before returning to private practice in New York City. The Wall Street firm he practiced with still bears his name—Davis, Polk & Wardwell. It was while he was a member of this law firm that he received the Democratic nomination for the presidency.

His reputation as one of the most successful lawyers in this century was established not by his involvement in politics but by his practice before the United States Supreme Court. He argued more cases—141—in the United States Supreme Court than any another twentieth-century lawyer. Only two nineteenth-century lawyers are believed to have argued more cases than he did. Daniel Webster is believed to have argued 185 cases, and Walter Jones argued

317 cases between 1801 and 1850. Although many of the cases that John Davis argued in front of the Supreme Court were during his appointment as Solicitor General, he argued more cases as a private practitioner than he did as Solicitor General. He was also involved in some of the most important cases of his era including the steel-company-takeover cases and *Brown v Board of Education*.

The description of Davis in *Lawyer's Lawyer The Life of John W. Davis*, by William H. Harbaugh,¹ suggests that Davis believed in many of the principles of plain English and that is one of the reasons why he was such an effective advocate. When Davis was asked for advice, he usually offered two maxims, one from Jefferson and the other one from Webster: "Never use two words where one will do" and "The power of the clear statement is the great power at the bar."² In describing Davis' strengths as a teacher, Harbaugh notes that he was inclined toward simple Anglo Saxon words and had a passion for clarity.

In 1953, when Davis was 80 years old, he rewrote a bar committee's recommendation to the Attorney General regarding an appointment to the United States Court of Appeals. Although Harbaugh does not describe the membership of the committee, you can reasonably assume that the members were successful and well-educated lawyers. The committee prepared the following recommendation:

To you, Sir, has been entrusted the enormous responsibility of recommending to the

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. For information about the Plain English Committee, see our web site—www.michbar.org/committees/penglish.

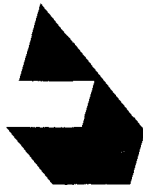
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Michigan Land Title Standards Fifth Supplement (1998) to the 5th Edition

The Land Title Standards Committee of the Real Property Law Section of the State Bar has prepared and published the Fifth Supplement (1998) to the 5th Edition of the Michigan Land Title Standards.

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- Standard 20.3—Duration of General Tax Lien
- Standard 20.7—Notice of General Tax Lien Assessed After January 1, 1962
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- Standard 22.6—Notice Required Prior to Tax Sale
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Davis rewrote the bar committee's recommendation as follows:

*We recognize the great responsibility you bear in making recommendations to the President for appointments to vacancies on the federal bench. Perhaps no function of your office has more lasting character. We do not doubt either your desire or your ability to perform this important duty to the best interests of the Country that you serve. We offer these suggestions therefore with a sincere purpose to aid and support you in the carrying out of this great task.*⁴

Perhaps some lawyers prefer the committee's version, but I would suggest that the clarity and force of Davis's revision resulted in a more persuasive recommendation to the Attorney General.

I recognize that many lawyers may still not embrace the concept of plain English, but plain English can no longer be favored or disfavored because it's believed to be new. The concepts of clarity, avoiding legalese, and using simpler words and shorter sentences have been embraced by many lawyers for a long time—including John W. Davis, one of the celebrated and effective lawyers of this century. ■

Judge Chad C. Schmucker serves on the Jackson Circuit Court. At his suggestion, the Plain English Committee has written a plain-English lawyer's oath as an option to the current oath. The oath was passed by the Representative Assembly in September and will now be considered by the Supreme Court.

Footnotes

1. Oxford University Press, New York, 1973, reprint University of Virginia, 1990.
2. *Id.*, p 400.
3. *Id.*, p 259.
4. *Id.*

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