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# Symposium on Federal Government Simplification Experiences

## A Proposal for Guidelines for Drafting and Editing in a Substantive Law Context

The Honorable Robert E. Keeton\*

### I. Developing a Model Set of Drafting Principles

As professionals in law in the United States, even though in my perhaps biased view we did better in the 1990s than in, for example, the 1890s, more improvements are surely possible if legal professionals cooperate in encouraging and practicing respect for worthier standards of writing and editing. The key question is this: Is it time for a Model Set of Drafting Principles? My answer is three-fold.

*First.* It is time for a model document on the subject of drafting by professionals in law. Stating a set of drafting principles would be a very good thing. But we should do more. I propose that we aim for stating something more down-to-earth and functional than principles. Call them model guidelines.

*Second.* Make a contribution to building bridges between thinking about drafting and thinking about substantive law. Aim for helping legal drafters understand and practice using style and substantive content as mutually reinforcing aids to accuracy, precision, clarity, and brevity.

*Third.* Extend the principles and guidelines to editing as well as initial drafting. We learn, and help others learn, by editing their drafts and our own drafts.

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## II. Uses for Guidelines for Drafting and Editing

Imagine just a few of the ways in which professionals in law could use a good set of Guidelines for Drafting and Editing in a Substantive Law Context.

1. Use them in drafting and editing statutes, or proposals for legislation.
2. Use them in drafting and editing administrative rules and regulations.
3. Use them in drafting and editing rules of practice, procedure, and proof in court.
4. Use them in drafting and editing scholarly publications.
5. Use them in drafting and editing course materials for learning and teaching substantive law.
6. Use them in drafting and editing course materials for learning and teaching professional skills.
7. Use them in drafting and editing judicial opinions.
8. Use them in drafting and editing verdict forms and charges to the jury.
9. Use them in training associates in law offices.
10. Use them in training law clerks in judges' chambers.
11. Use them in teaching other professional skills.
12. Use them in teaching substantive law.

## III. Using Guidelines in Teaching

The progression through the suggested uses of a good set of Guidelines for Drafting and Editing in a Substantive Law Context moves toward thinking about how we learn and teach. No teaching occurs in fact unless somebody is learning. The better we adapt our course materials and our teaching methods to improve learning, the better our teaching becomes. The quality of our teaching is best demonstrated by the learning it produces in others.

Learning professional skills in a substantive law context can be a transforming experience. The learner is different after the learning experience. The learner can do some professional service for a client or for the community that he or she could not do, or could not do as well, before the learning experience.

## IV. Problem Exercise for Use in Teaching

After I had made some remarks on learning and teaching at an ABA sponsored workshop about four years ago, one of the law teachers in the group chastised me for not having drafted some problem exercises in torts, one of my favorite subjects, to illustrate

concretely what I was saying. I think he may have used the word “preaching” instead of “saying.” I thought he had a good point.

So I have tried to do what he suggested. With the encouragement and advice of my coeditors of a supplement to our Teaching Manual for Keeton, Sargentich, and Keating, *Cases and Materials on Tort and Accident Law* (1998), I have tried to draft a problem exercise in a way so that other teachers, working from this draft, can, with minimum investment of time and energy, prepare materials to their own special tastes.

The copyright on this supplement to our West Group publication explicitly authorizes teachers to copy and use this Exercise, modifying it to focus on a different body of substantive law and different professional skills. This particular Exercise focuses on the law governing interference with free speech and advantageous relationships in a setting of disputes over Town policies and practices. The title is *Pena v. Town*.

## V. Principles or Guidelines?

How does a principle differ from a guideline? Is a preference for using the word “principles,” or using the word “guidelines,” only a preference of style and not of substantive meaning?

I believe something more than style is involved and that the differences concern degrees of variation in statements along a spectrum defined by what we commonly call generalization, at one pole, and specificity or particularity at the other pole. A principle is closer to the pole of generalization. A guideline is ordinarily somewhere near the middle or farther toward the pole of specificity. I propose that we not worry at the early stages of our joint efforts about whether each particular proposition we want to state should be placed in the category of principles or instead in the category of guidelines. Let us concentrate on whether we can come to some agreement on what we want to say.

## VI. Conclusion

In conclusion, my answer to the question is YES, PRINCIPLES, and MORE. I propose that by beginning promptly and working together in months and years to come we can aim for developing a model set of *Guidelines for Drafting and Editing in a Substantive Law Context*.

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