

Editing Appellate Opinions: Strategies for Effective & Collegial Communication

Moderator: Judge Jack Sabatino, Presiding Judge,
New Jersey Superior Court, Appellate Division

Panelists: Professor Mary Beth Beazley, UNLV Boyd School of Law
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Editing: A flexible term

- u Line edits & errors
- u Critiques
- u Substantive questions/comments

Substantive Edits: Comments & Suggestions

- u Depth of issue
- u Development needed

What is most effective?

- u Depends on the phase of the draft and the goals of the editor.
- u Depends on the longevity and nature of the relationship between the writer and editor.
- u Depends on the power dynamic between the writer and editor.

Power Dynamics at Play in the Editing Relationship

- u Seniority relationship
- u Peer relationship
- u Collaborative
- u Ongoing relationship
- u Signatory
- u Familiarity

Mindset of a Reviewing Writer: Senior Author & Signatory

- u First principles:
 - u Desire to grow the writers around you.
 - u Desire to invest in a long-term collaborative relationship.
 - u Desire to be grown as a writer by welcoming feedback.

Mindset of a Reviewing Writer: Senior Author & Signatory

- u Like Your Writers
- u Be Kind
- u It's Personal

What does it look like if you like your writers?

- u She genuinely enjoys her writers.
- u He listens and pays attention.
- u She knows their strengths, weaknesses, fears, and insecurities.
- u He knows where his writers' skills are today and he joins them on their journey.
- u She presumes good faith effort.

Why kindness?

- u In the hyper-critical, thick-skinned, Type-A, litigation legal culture, if an editor desires to grow her writers: Be Kind.
- u A Writer-editor growing relationship rises and falls on kindness.
- u Kindness is not reducing expectations or unwarranted or unearned praise. Kindness is honest but it is never cruel.

Kindness is Critical to Growing the Writer

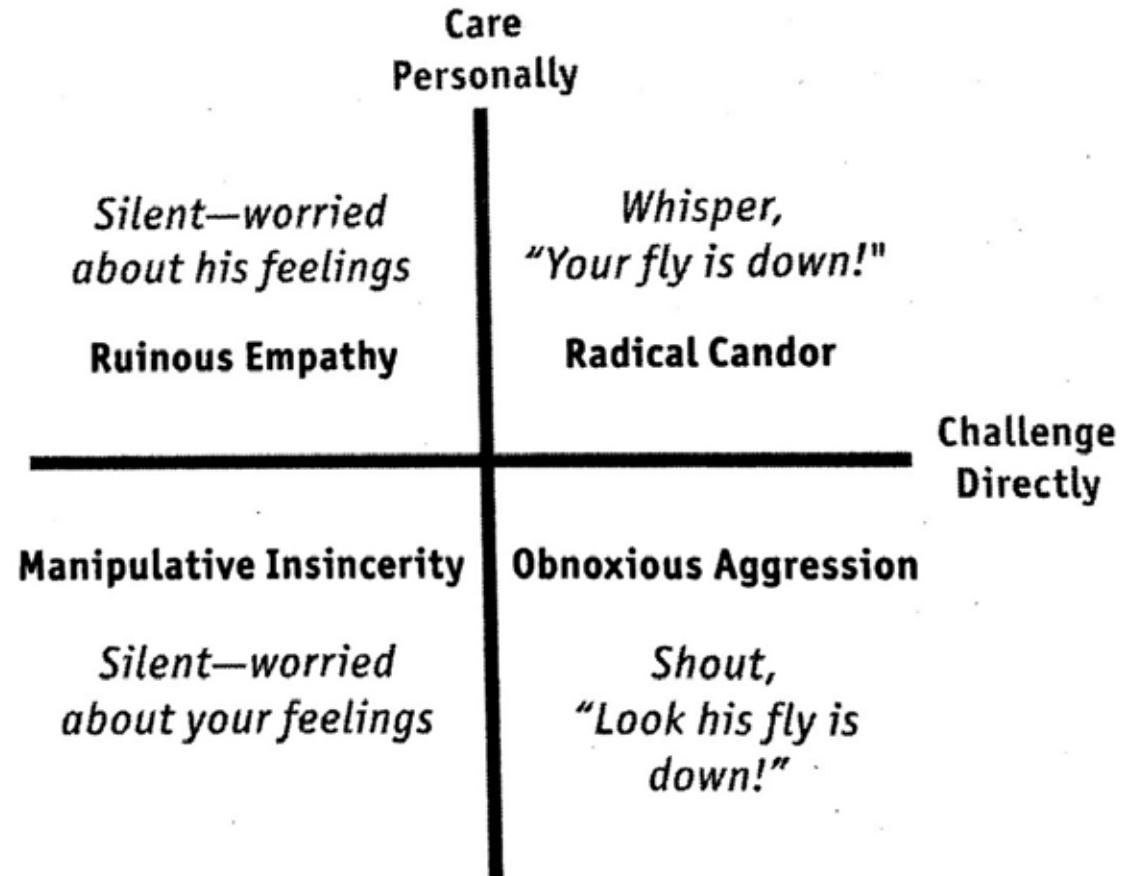
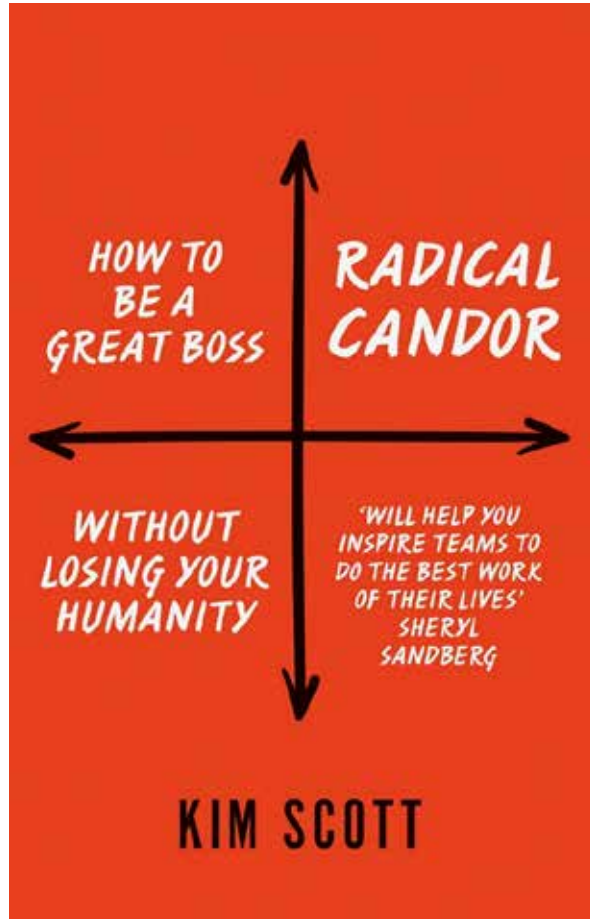
- u Kindness creates the trust that empowers the writer to risk, to ask questions, to struggle, and ultimately to grow.
- u Writers know when “who they are” is not important and they are not treated with disdain and impatience.
- u Kindness terms the editor’s crafting of feedback to ensure that the edits are heard, processed, and incorporated.

Always: It's Personal

Premise: No matter the stage of the draft, the writer's handing over of her written work for review and comment is an intensely personal experience.

Why: It is virtually impossible to separate the writer from the writing.

Clear & Candid Feedback is Kind



How to be a Kind Editor

- u Focus on the document, not the writer.
- u Use “I” statements, not “you” or “this”
- u Focus on the needs of the reader rather than making qualitative statements
- u Don't take mistakes personally

Expectation Setting: Asking for the Edits Needed

Power Dynamics Matter

- u Who is asking for feedback and edits?
- u Established v. New Relationship?
- u What level of feedback is welcomed?
- u Is this an initial draft or a final review?

Pre-empting Easy Questions and Concerns

- u What does the writer need to know before writing?
- u Using samples effectively
- u Creating a form that answers basic questions for each project

Getting Inside the Writer's Head

- u Becoming allies in the writing process
- u Using written “sidebars” to capture questions and problems during the writing process
- u Specific critiques will get you to the final draft faster
- u Post-critique debriefing: are we on the same page about what happens next?

Edits in track changes:

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s action.”

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Coats, Wendy

But these facts go to his dispute of when the COA for breach of fiduciary duties arose NOT to whether there was a breach of the parties' contract.

Take a look at our arguments in this section. Your law portion is good. Now tie the arguments to the legal standard you set up at the beginning. Right now there is a disconnect between the guiding law and the arguments about our case that follow it.

Edits in track changes:

in *Bufano*
the City's
ownership
Bufano, 233
(1941) 44



Author September 29, 2018



Take a look at this sentence before the yellow highlighting. You've essentially said Defendant asserts that the limitation period in *Bufano* tolled for Reason X. You've said that's incorrect. Now tell, me what the Court determined and why. If she's wrong about what happened in the *Bufano* case, tell me what the court actually did in that case.

Author
Formatted: Highlight

Edits in track changes:

for the best interests of the corporation. *Id.* at 360–61 (citing William Meade Fletcher, 3 *Fletcher Cyclopedia of the Law of Private Corporations* § 837.60, 182–83 (rev. 2002)).

However, if a director allegedly breached a duty of care, the court would examine “whether the director's conduct represents a gross deviation from the level of care that an ‘ordinarily prudent person’ would have exercised in the

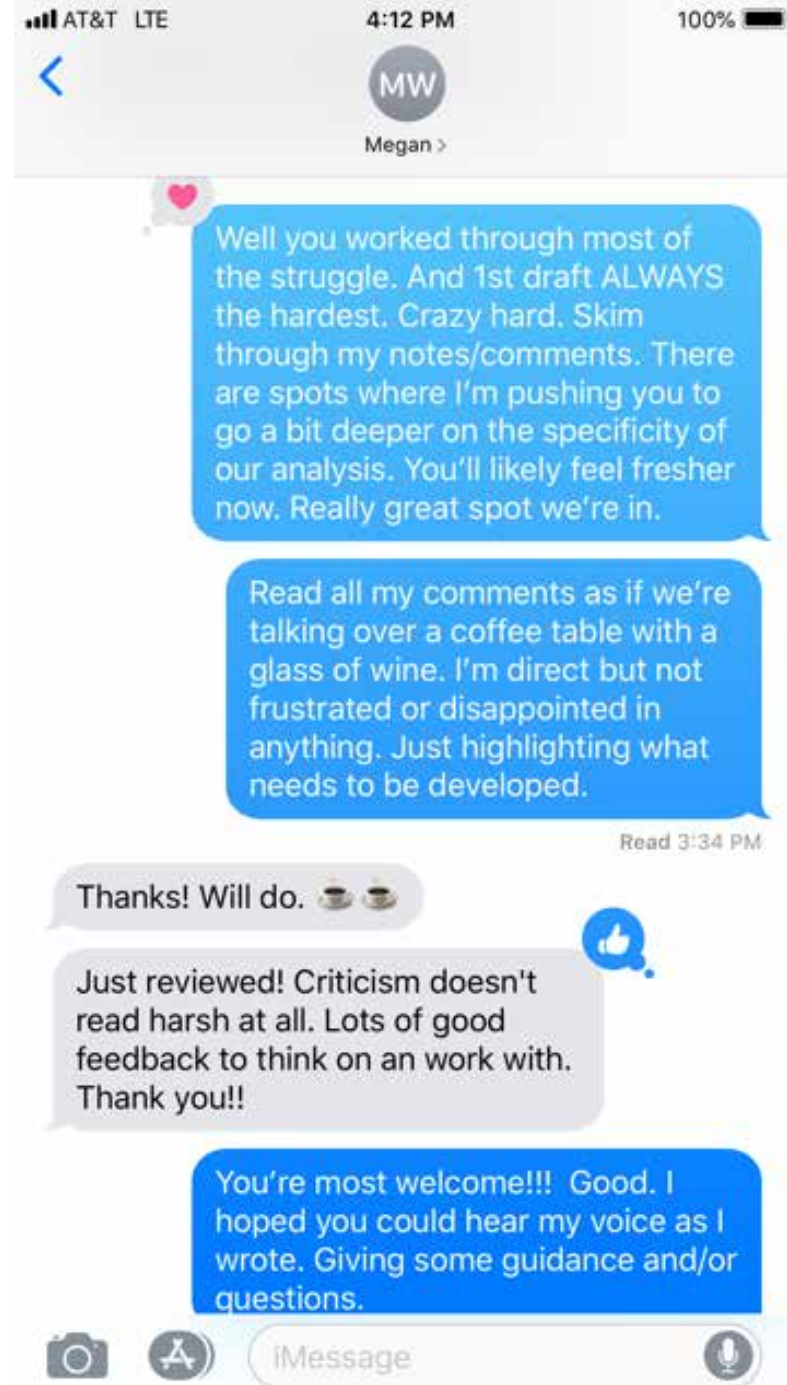


Coats, Wendy

I'm struggling with these few paragraphs of legal discussion to understand why they're here.

We're defending an appeal. So let's get back to the SOR. And how a court evaluates this? I think there is probably good stuff in these cases but I'm not clear on why we are discussing them and in this way. Keep focused on the heading and the legal point we're making and why these cases support affirming the trial court's order.

Editing with Intention



Style Preferences v. “Correctness”

Power Dynamics Matter

- u Who defines the style?
- u Style Guides & Personal Preferences
- u Agreed upon “correctness” guides for rules.

Planning for the Future

Creating an Editing Protocol

- u Editing logistics: who writes? How do edits circulate?
- u Substantive edits first
- u Signals to readers (roadmaps, headings, thesis sentences)
- u Fussy stuff
- u More for the next generation than the current one

Big-picture Protocol

- u Does the majority agree not only on outcome, but on the reason(s) for it?
- u Is the opinion's infrastructure explicit?
- u Does the opinion address the losing side as appropriate?
- u Does this opinion need a Privacy review?
- u Other big-picture concerns

Style Roadblocks

- u Style has right and wrong, but not always and never
- u Choosing a style that reflects the goal of the written work product
- u Defining and communicating the goal of the written work product to the drafting team.

Empowering Your Writers

- u Coaching
- u Breaking down barriers to effective editing
- u Bridge building from across the power dynamic

Empowering Your Writers

- u Dealing with multiple decision-makers
- u Deal-breakers v. Reasonable minds can differ
- u What decisions can you let go?
- u When to let go of the reins

Questions & Opinions

u Thank you for joining us!