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# Eleven Big Ideas About Conflict: A Superficial Guide for the Thoughtful Journalist

Leonard L. Riskin

*University of Florida Levin College of Law*, RiskinL@law.ufl.edu

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# Eleven Big Ideas about Conflict: A Superficial Guide for the Thoughtful Journalist

*Leonard L. Riskin\**

## I. INTRODUCTION

When Professor Richard Reuben asked me to speak about the most basic ideas in conflict resolution to a group that included renowned journalists and journalism scholars, I balked. Surely these notions would seem too obvious, mundane, or superficial. But Richard—a practicing journalist for many years as well as an expert on conflict—assured me that the audience would find most of them surprising and useful. I hope he is correct.

I plan to present eleven ideas from the dispute resolution literature that I find particularly helpful in my work and life and which I think any journalist would benefit from knowing. The list is a bit idiosyncratic, reflecting my own peculiar journey in the academic and professional worlds of conflict, which has leaned toward the kinds of disputes in which lawyers routinely get involved. So I make no claim that these are *the* top eleven ideas, and I hope that other commentators will supplement and amend this list.

Let us begin with a wholly fictional example of a situation that could be reported in a local newspaper. Imagine that Estelle, a prominent university professor and administrator, tells you that she recently bought a house that is near the university and next door to a house owned by a member of the university's Board of Curators, who for many years has used it principally when he attends university events, including, especially, football games; he actually lives in another city that is several hours away. A few months ago, the Curator allowed a grandson (Bill) and a nephew (Bud), undergraduate students, to live in the house. In the last couple weeks, they have taken to building bonfires in the backyard a few times a week, in a pit, five feet in diameter, surrounded by bricks. Sometimes they use the fire as the centerpiece for a party. Usually these parties begin at 11:00 p.m. and last until 3:00 a.m. Although there is no loud music, the college-age revelers often talk loudly, and their voices carry into the bedroom windows in Estelle's house, interfering with her and her family's sleep. Estelle and her family also are bothered by the smoke that floats into their backyard and open windows. Finally, the parties also disturb Estelle's Border collie, Scout, who tends to bark at the party-goers—and at almost anything—which also interferes with Estelle and her

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\* Chesterfield Smith Professor of Law, University of Florida, Levin College of Law, Gainesville, Florida; at the time of this presentation, he was C.A. Leedy Professor of Law and Isidor Loeb Professor of Law, University of Missouri—Columbia School of Law. This is a revised version of a presentation at *News Reporting and Its Impact on Conflict: A Gathering of Scholars*, sponsored by the Center for the Study of Conflict, Law & the Media, University of Missouri-Columbia, Sept. 15-16, 2006. Many thanks to Professor Richard Reuben for his comments on a manuscript of this essay. Copyright © 2007 Leonard L. Riskin

family's sleep. Estelle is worried about pushing too hard to stop this activity, however, because she fears that Scout's barking may disturb Bill and Bud and perhaps other neighbors.

In case you are wondering how something like this could possibly be reported in a local newspaper, I can tell you two reasons: First, the story takes place in Columbia, Missouri, a small town with a big journalism school and two daily newspapers; these factors combine to produce hordes of desperate reporters and reporting students.<sup>1</sup> Second, as I show below, if the reporter has sophisticated vision, this case has the potential to provide a good deal of valuable material.

### 1. DIFFERENT MEANINGS OF "CONFLICT"

As Professor Bernard Mayer has written, we can understand conflict in many ways: as "a feeling, a disagreement, a real or perceived incompatibility of interests, inconsistent world views, or a set of behaviors."<sup>2</sup> It is also helpful to distinguish, as Professor Dean Pruitt has done, between subjective and overt conflict.<sup>3</sup> If Estelle thinks that Bill and Bud's needs for a certain kind of social life are incompatible with her family's need to sleep, Estelle is in subjective conflict with Bill and Bud, even if they are unaware of it. If Estelle never acts to address this problem, the conflict remains subjective. The conflict becomes overt, if she acts on it in a way that brings it to the attention of the other side. Another way to think about this is that once a person lets the other party know that they have a complaint, and the other party does not act to solve the problem, the "conflict" becomes a dispute. In other words, a dispute is a manifestation of a conflict.<sup>4</sup>

Conflict does not always find expression through disputing behavior; parties may respond in other ways.<sup>5</sup> For instance, Estelle might become depressed because of her situation, thinking that she made a bad investment in her house. Rather than talking to Bill and Bud, she might begin to gossip about them, or use passive-aggressive tactics such as leaving her dog out to bark during their bonfire parties or neglecting to tell them about neighborhood events.

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1. Professor Michael Grinfeld is fond of saying that "Virtually everyone who lives in Columbia for more than a year becomes a victim of the journalism profession." Conversation with Michael Grinfeld, Professor, University of Missouri School of Journalism, in Columbia, Mo. (Sept. 15, 2006).

2. BERNARD MAYER, *THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE* 3 (2000).

3. Dean Pruitt, *Social Conflict: Some Basic Principles*, 2007 J. DISP. RESOL. 149, 149.

4. Another useful way to understand the development of a dispute was presented by Professors William Felstiner, Richard Abel and Austin Sarat. They suggested the following stages: A "perceived injurious event," that a party recognizes by "naming" it; the assignment of fault, or "blaming"; and seeking recompense, or "claiming." William L. F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming and Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1981).

5. See CATHY A. COSTANTINO & CHRISTINA SICKLES MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZATIONS* 5-6 (1996).

## 2. DIMENSIONS OF CONFLICT AND CONFLICT RESOLUTION: COGNITIVE, EMOTIONAL, BEHAVIORAL

It can be very useful to understand conflict as if it existed along three dimensions—behavioral, cognitive, and emotional—an idea suggested by Bernard Mayer.<sup>6</sup> The behavioral dimension, of course, refers to what people did to bring about the conflict or to attempt to resolve it. The cognitive dimension includes the way people think about, understand, or interpret the conflict. Ordinarily, parties in conflict have very different interpretations. In this case, Estelle may think that Bill and Bud have no regard for her family. This interpretation could precipitate the emotional dimension, and produce, say, anger. Bud and Bill also could experience anger, if they think that Estelle, by leaving her dog out, is showing disdain for, or anger toward, them.

Mayer also suggests that full resolution requires resolution along all three dimensions.<sup>7</sup> The parties would stop disputing, have intellectual comfort with the terms of the resolution, and feel emotionally at peace about it.

## 3. VARIOUS PROCESSES FOR ADDRESSING A CONFLICT

The most common way to deal with conflict, of course, is to do nothing—to “lump it.” Another is to contest indirectly. For instance, Estelle might throw a “block party” and not invite Bill and Bud. She might, as mentioned above, stop saying hello or begin gossiping about Bill and Bud with neighbors or fellow faculty members. Either party might use self-help. Estelle could burn down the Curator’s house. Bill and Bud could poison Estelle’s dog, or let it escape.

Then there are more formal processes. Authorities commonly divide such processes into adjudicative, consensual, and mixed processes.<sup>8</sup>

*Adjudicative processes.* These feature a (hopefully impartial) third party who makes a binding decision. Estelle could call the police and ask them to enforce the ordinance that prohibits open burning without a permit. Bill and Bud could call the police, too, and ask them to enforce the noise ordinance against Estelle through a citation or fine. Usually, however, when we think of adjudication, we have in mind proceedings in court, arbitration, or certain kinds of administrative hearing bodies.

- Courts. Proceedings typically are in public and produce judgments that can be reviewed on appeal—for errors in law or procedure—by higher courts. In this case, one of the parties might choose to contest a police citation, which could lead to court adjudication. In addition to trying to enforce these local ordinances, either side could try to invoke the law of nuisance. They could ask the local prosecutor or city attorney to seek a court injunction to suppress the nuisance under either a statute or common law. Regardless of whether the public officials were willing or able to do this promptly, any of the parties could proceed directly to court and

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6. See MAYER, *supra* note 2, at 4-8.

7. *Id.* at 98-108.

8. See LEONARD L. RISKIN ET AL., *DISPUTE RESOLUTION AND LAWYERS* 12-18 (3d ed. 2005) [hereinafter DRL 3d].

conceivably sue for the tort of nuisance, either public or private, and seek an injunction or damages.<sup>9</sup>

- Arbitration. These are less formal adjudications, which theoretically require the consent of the parties. These proceedings usually occur in private and the award may be overturned by a court only in very limited circumstances.<sup>10</sup> The disputing neighbors could decide to submit this matter to an arbitrator and decide the basis on which the arbitrator's award should rest. Typically arbitration is binding, but many courts offer or proffer nonbinding arbitration, and parties could decide on such a process even without court involvement.
- Administrative hearings. Executive branch agencies at every level issue decisions after administrative hearings in the areas in which they have jurisdiction. In some neighborhoods, a private organization, such as a neighborhood association, might have jurisdiction to adjudicate this matter.

*Consensual processes.* In consensual processes the parties themselves make decisions by mutual consent, sometimes through representatives, who often are lawyers. Negotiation and mediation are the most common consensual processes.

*Negotiation.* In negotiation, the parties discuss and try to develop a solution to their problem.<sup>11</sup> This would ideally be the first step for Estelle and Bill and Bud.

- Mediation. Mediation (sometimes called conciliation) is facilitated negotiation.<sup>12</sup> A third party who aspires to be impartial helps the disputants understand their situation, consider options, and negotiate a solution. Mediation services are available in most large- and medium-sized cities in the U.S. Providers may include prosecutor's offices, court-connected mediation programs, community mediation centers, and private mediators. There also could be an informal, mediative intervention—by, say, a neighbor who has the trust of both sides.

*Mixed processes.* Mixed processes include elements of adjudicative processes (such as nonbinding decisions) and consensual processes (such as negotiation or mediation). Well-known processes of this nature bear names such as mini-trial, summary jury trial, and early-neutral evaluation.<sup>13</sup> These are unlikely to be appropriate for this kind of dispute, but journalists who are aware that such unique processes exist are more likely to notice and report on them.

Within each of the types of processes mentioned here, numerous variations appear.

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9. See OSBORNE M. REYNOLDS, JR., *HANDBOOK OF LOCAL GOVERNMENT LAW* 409-11 (2d ed. 2001). This article does not address the question of whether any of these actions would succeed. That would depend on the precise facts and the details of the law in a given jurisdiction.

10. See DRL 3d, *supra* note 8, at 506-623.

11. See *id.* at 157-282 (collection of readings on negotiation).

12. See JAMES J. ALFINI ET AL., *MEDIATION: THEORY AND PRACTICE* (2d ed. 2006).

13. See DRL 3d, *supra* note 8, at 16-18, 677-723.

#### 4. THE DIFFERENCE BETWEEN POSITIONS AND INTERESTS

This is the most important and useful idea in the field, and was popularized by *Getting to Yes: Negotiating Agreement without Giving In*, by Roger Fisher, William Ury and Bruce Patton.<sup>14</sup> A position is what you say you want or are entitled to. An interest is the motive or need that you seek to fulfill by asserting the position. A wonderful illustration of this distinction appears in a cartoon that shows a king and a queen sitting on either side of the king's counselor. The counselor, looking at the king, says, "You say 'Off with her head,' but what I am hearing is, 'I feel neglected.'"<sup>15</sup> So the king's *position* is that the queen should lose her head. But the *interest* that he seeks to promote seems to relate to his need for self-esteem or attention. Similarly, Estelle's position might be that Bill and Bud should stop burning and having late-night parties. Her interests include getting rest, protecting her family's health, and safeguarding her investment. Bill and Bud's position could be that Estelle should keep her dog muzzled. But their interest might be having a happy social life.

#### 5. DIFFERENT APPROACHES TO NEGOTIATION: COMPETITIVE AND COLLABORATIVE

The two major approaches to negotiation are distinguished primarily by the degree to which they emphasize positions and interests. A variety of dichotomies describe different approaches to negotiation, including: interest-based versus position-based; competitive versus collaborative; value-claiming versus value-creating; distributive versus integrative; interest-based versus position-based.<sup>16</sup> The competitive-collaborative language generally is the most useful for journalists writing for the general public.<sup>17</sup> Competitive negotiation is characterized not only by a focus on positions, but also by extreme opening positions, few and small concessions, limited disclosure of information, and attempts to mislead. Collaborative negotiation, in contrast, stresses interests rather than positions. In addition, the most widely-known articulation of this approach suggests that the negotiators treat the people and the problem separately (being "hard on the problem," but "soft on the people"); generate many options before deciding on a particular solution; use objective criteria (such as custom or fair market value)<sup>18</sup>; and develop their "best alternative to a negotiated agreement" (BATNA).<sup>19</sup> Thus, if the neighbors negotiated solely in a competitive way, they would each try to assert their positions—e.g., Estelle's position that the boys stop partying late at night; Bill and Bud's position that they continue partying and that Estelle get rid of her dog. In collaborative negotiation, on the other hand, they would recognize each others' interests—Estelle's interest in ensuring the health of her family and Bill

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14. ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2d ed. 1991) [hereinafter GTY 2d].

15. Cartoon on file with author. Neither the author nor the editors have been able to identify the cartoonist or the publication in which it appeared.

16. See DRL 3d, *supra* note 8, at 167 n.2.

17. In some cultures "collaboration" has a very negative connotation.

18. GTY 2d, *supra* note 14, at 15-94.

19. *Id.* at 97-106.

and Bud's interest in having a good social life—and try to come up with options that would address such interests. These might include limiting times for partying, burning, and barking.

#### 6. THE NEGOTIATOR'S DILEMMA: THE TENSION BETWEEN COMPETITIVE AND COLLABORATIVE NEGOTIATION

Competitive and collaborative moves can interfere with each other.<sup>20</sup> If a negotiator is too competitive, the negotiation may never address underlying interests. Thus, if Estelle pushes her position too hard, she and Bud and Bill may never discuss underlying interests, and such a discussion may be required in order to meet everyone's needs. If, however, she reveals that she is mainly concerned about her family's health, Bill and Bud might build fires only when Estelle is out, or say that she should close the windows, turn on the air conditioning, or buy devices that produce "white noise."

#### 7. ANCHORING

The concept of anchoring rests on the idea that the first offer or demand can dramatically affect expectations and the final outcome. Thus, when a person makes an extreme opening offer or demand, he is likely to get a more favorable result.<sup>21</sup> In theory, if Estelle demands that Bill and Bud stop partying completely, they are likely to accommodate her more than if she just asks them to cut back the partying—unless, of course, her request impairs the relationships or angers Bill and Bud.

#### 8. EVERY CONVERSATION AS "THREE CONVERSATIONS"

It is useful to look at every difficult conversation as if it were three conversations, in the view of Doug Stone, Bruce Patton, and Sheila Heen, who wrote *Difficult Conversations: How to Discuss What Matters Most*.<sup>22</sup> The three conversations are about the facts, the emotions, and the identities of the parties. So, as Estelle prepares to have a difficult conversation with Bill and Bud, she needs to be aware that it will likely involve these three aspects. They may disagree about the facts: the lateness and loudness of the parties, or how much Scout barks. They may blame and attribute intentions to each other. Estelle may think Bill and Bud have distain for her family's wellbeing. Bill and Bud may have no idea that they are causing a problem. Estelle and the boys may have a range of emotions that influence their perceptions and behavior in the conversation.

And the conversation may affect each person's sense of identity. Stone, Patton, and Heen assert that in times of difficulty, most people are inclined to ask

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20. See DAVID A. LAX & JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN 29-45 (1986); ROBERT H. MNOOKIN ET AL., BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES 11-43 (2000).

21. See Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777, 787-89 (2001).

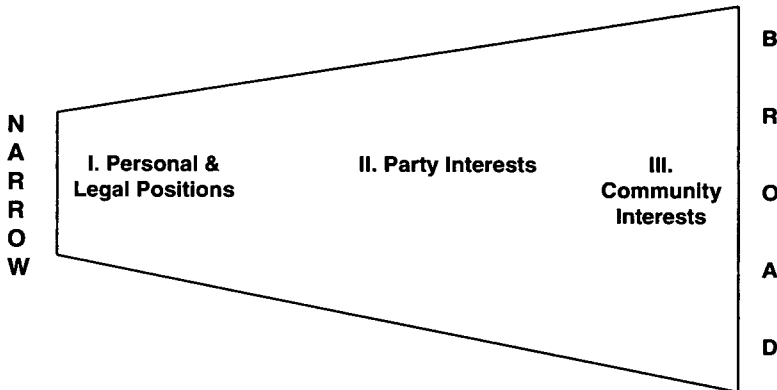
22. DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 3-20 (1999).

three questions related to their identity: “Am I competent?” “Am I a good person?” “Am I worthy of love?”<sup>23</sup> It is easy to see how each of these issues could arise for the neighbors here as they consider talking about these problems, actually talk, and follow up on the conversations.

9. THE PROBLEM-DEFINITION CONTINUUM

Parties in conflict have choices about how to define its scope. In Professor Donald Schon’s terms, there is a difference between “setting” the problem—deciding what it is—and trying to solve it.<sup>24</sup> The figure below shows a problem-definition continuum that runs from narrow to broad.

### Problem-Definition Continuum



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Figure 1

At the narrowest point (I), the focus is on the parties’ positions (e.g., “Get rid of your dog” or “Stop the bonfires”), which may be based, wholly or partly, on claims of legal rights (e.g., “An ordinance prohibits extended barking” or “An ordinance prohibits open burning without a permit”). A broader problem-definition (II) would address the parties’ underlying interests. It might focus on Estelle’s needs for safety, for instance, and Bill and Bud’s needs for socializing. At the widest point (III), the problem-definition includes the interests of others who might be affected. Immediate neighbors would be the most obvious example. But other residents in the subdivision, even if the noise or smoke did not bother them, might worry about the potential adverse affect on property values. Con-

23. *Id.* at 111-13.

24. See DONALD A. SCHON, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION 18 (1983).



ceivably, others who seem remote from this conflict could be affected. To take a preposterous example, if the Curator gets upset at the way Estelle treats his grandson, he could retaliate against the program in the university with which she is affiliated. So the problem definition could include something about the interests of Estelle's department.

#### 10. "CORE CONCERNS" THAT PRECIPITATE EMOTIONS

Roger Fisher and Daniel Shapiro suggest that everyone has five "core concerns" (autonomy, affiliation, appreciation, status, and role) that precipitate emotions—emotions that will affect our negotiations, no matter how hard we try prevent that from happening.<sup>25</sup> Everyone wants to have freedom (autonomy), to be connected (affiliation), to have others appreciate them, to have status, and to have a useful role. When Estelle and Bill and Bud begin to negotiate, each has these concerns. And each side can use their counterpart's concerns to build positive emotions. Estelle, for instance, can explicitly acknowledge Bill and Bud's need for autonomy in their social lives (having recently escaped their parents' control) and their needs for affiliation with people they care about. She can express appreciation for their situation and contributions (such as keeping the lawn neat, if they do). She can acknowledge their status (such as being students at a very good university or members of a nice family). And she can try to help them have a useful role (say, in protecting the safety of the neighborhood).

#### 11. EFFECTS OF CONFLICT: CONSTRUCTIVE AND DESTRUCTIVE

Conflict can have destructive or constructive outcomes, as numerous scholars have noted.<sup>26</sup> This conflict, for instance, could lead to enmity between the parties, anger, or even violent methods of self-help. In contrast, it also could lead to small adjustments in activities and to large or small transformations in perceptions and relationships that could make the three parties, and even other neighbors, better off.

## II. CONCLUSION

What, if anything, about this conflict should appear in the local news? That depends partly on how it evolves; if Bill burns down Estelle's house, that is a news story. If they spend a bundle on litigation, that is news, too. But what if they negotiate, mediate, or arbitrate? What if, through any of such processes, they arrive at a good working arrangement—and maybe improve their relationship and conditions in the neighborhood? What parts of that a story, if any, should get into the local media?

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25. ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* 16-21 (2005).

26. See, e.g., Mary Parker Follett, *Constructive Conflict*, in *DYNAMIC ADMINISTRATION: THE COLLECTED PAPERS OF MARY PARKER FOLLETT* 30-31 (Henry C. Metcalf & L. Urwick eds., 1941). See generally LEWIS COSER, *FUNCTIONS OF SOCIAL CONFLICT* (1954); MORTON DEUTSCH, *THE RESOLUTION OF CONFLICT: CONSTRUCTIVE AND DESTRUCTIVE PROCESSES* (1973).

I hope that some of the ideas in this essay will provide at least a few journalists fresh ways of looking at some conflicts. As Marcel Proust put it, "The real voyage of discovery consists not in seeing new landscapes, but in having new eyes."<sup>27</sup>

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27. MARCEL PROUST, REMEMBRANCE OF THINGS PAST 29 (C.K. Scott-Moncrieff, Terence Kilmarlin & Andreas Mayor trans., Random House 1981) (1934).

