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Celebrating Mundane Conflict

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CELEBRATING MUNDANE CONFLICT

Deborah J. Cantrell*

INTRODUCTION

In this article, I suggest a radical reframing of the concept of conflict. I describe how the current dominant narrative about conflict is that it necessitates special skills to navigate. I describe how our language about conflict misdirects us so that we fail to notice how much ordinary conflict we encounter each day. The current narrative also blinds us to the fact that we already navigate most conflict fairly well. In my analysis, I illustrate how embracing the idea of mundane conflict helps us to create new competencies and create new cognitive pathways, which allows us to meet all kinds of conflict more skillfully.

It may initially seem like the goal of my project is fairly grand—to improve people’s overall capacity to meet conflict by creating a mindset that allows them to see conflict more productively. While such an outcome would be terrific, my project actually starts with a more modest goal related to legal needs. I am interested in generally improving people’s capacities to navigate conflict because of a more specific interest in improving people’s capacities to navigate a more particular kind of conflict—those kinds of conflicts that relate to legal disputes. Along with many others, I have a longstanding concern that when a typical, everyday person experiences a legal conflict, they often confront a legal system that controls the ways in which they can participate in solving their own problem, thereby disempowering them.¹ My project is situated in a long tradition of efforts to

* Associate Professor, University of Colorado Law School. Particular thanks to Fred Bloom, Erik Gerding, Mark Loewenstein, Helen Norton, Anna Spain, Harry Surden, and Amy Uelmen for their incisive feedback and critique. Thanks to Howard Lesnick for early conversations that substantially helped me develop my thoughts.

¹ Some exemplary critiques include: Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 999-1086 (2007); Sameer Asher, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879, 1879-1925 (2007); Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 297-309 (1996); Edgar S. & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1317-52 (1964); Peter Gabel & Paul Harris, *Building Power and Breaking*

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push back on the ways in which the legal system, including legal professionals, fail to regard or engage the knowledge and competencies of the people whose lives actually will be affected by the legal dispute. At its core, my project to reframe conflict is a project to acknowledge existing competencies of ordinary people in working with conflict, to believe in their abilities to further develop those competencies, and to respect their ability to successfully navigate conflict.

I first focus on the more particular conundrum of what ordinary people say when asked if their legal needs are being met. I use “unmet legal need” as a proxy for understanding what kinds of interventions the legal system and the legal profession have made in an effort to “help” people have access to the legal system. I describe how several of those efforts, while useful and well intentioned, can mean that how a person gets help will depend on the availability of some kind of legal professional. For example, when unmet need is to be cured by mandating that a person be entitled to a lawyer, as is the goal with the “Civil Gideon” movement,² the intervention is not about empowering the unrepresented person herself, but is about getting that person an expert who will do the work.³

I suggest instead that we think about interventions that help a person directly address their own unmet needs. Thus, I argue that since many unmet legal needs include a need to be able to successfully meet conflict, one of the most important empowerment strategies we should consider is a broad project to improve conflict-handling competencies. It is from that goal of direct empowerment that my reframing project is generated. I conclude by considering some existing efforts that I find hopeful to my project to celebrate mundane conflict.

Images: Critical Legal Theory and the Practice of Law, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 375 (1982) [hereinafter *Building Power*] (calling for “counter-hegemonic” legal practice in which goal is to forge “authentic” political collaborative between client and cause lawyer); Jennifer Gordon, *We Make The Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 407-50 (1995); GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE (1992); Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1383-1408 (2009); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 455-79 (1995); Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 699-769 (1988).

² See Tonya L. Brito et al, Amanda Ward, *What We Know and Need to Know About Civil Gideon*, 67 S.C. L. REV. 223, 223-243 (2016).

³ To be sure, there are advocates in the Civil Gideon movement who are vigorously committed to a model of lawyering that is designed to empower a client. Nonetheless, the point of the movement is to increase legal representation. See generally Brito et al., *supra* note 2.

I. THE CONUNDRUM.

The legal profession regularly is portrayed negatively.⁴ Because of that, we often forget that the profession also has made a genuine and sustained commitment to improving access to the legal system for those who have been underserved or underrepresented.⁵ From early bar association-supported legal aid societies, to a federally-funded national network of legal aid offices, and to current “access to justice” initiatives, there have been legal advocates and scholars who have inquired about who benefits from our legal system, who is improperly rebuffed by the system, and what changes should be made so that the system is more fair and just.⁶

Nonetheless, and despite honest efforts, research shows that many people still report that their legal needs are unmet.⁷ For example, each year, tens of thousands of people have to navigate the court system without counsel.⁸ The fact of such high levels of unrepresented parties has prompted some to frame the issue of “unmet need” as about an unmet need for lawyers.⁹ In other words, the conundrum that we need to solve is how to get lawyers for unrepresented parties. But, when people report about their legal needs, many also report that they do not think they need a lawyer.¹⁰ They

⁴ See, e.g., Fred C. Zacharias, *The Images of Lawyers*, 20 GEO. J. LEGAL ETHICS 73, 73-100 (2007) (describing various public images of lawyers, including several negative views); see also Molly A. Guptill, *The More Things Change The More They Stay the Same: Mr. Tutt and the Distrust of Lawyers in Early Twentieth Century*, 3 CARDOZO PUB. LAW, POLICY & ETHICS J. 305, 305-352 (2004).

⁵ Zacharias, *supra* note 4, at 73-100.

⁶ See Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY. J. PUB. INT. L. 11, 11-36 (2003); see also Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181, 181-292 (1978).

⁷ See generally Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 443-59 (2016) (reviewing what is known about the civil legal needs of the public and discussing “some key gaps in our knowledge”).

⁸ See COURT STATISTICS PROJECT, <http://www.courtstatistics.org/> (last visited Oct. 9, 2016). The Court Statistics Project is a joint endeavor between the National Center for State Courts and the Conference of State Court Administrators. *Id.* The Project is an online database about court caseloads, including information about how many cases include self-represented litigants. *Id.* In 2014, the state of Georgia alone reported that its civil courts handled 114,135 cases involved self-represented litigants. *Id.*

⁹ Sandefur, *supra* note 7, 450-51 (commenting on fact that legal needs include those where a lawyer is required as well as those in which a lawyer is not needed).

¹⁰ *Id.* at 450-52.

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expect to be able to handle their need on their own, or they prefer not to involve a lawyer or go to court.¹¹

That is not to say that a lawyer might not help. For example, a lawyer might help a person become aware of legal rights they did not know she had. Or, a lawyer with experience in a field might help an inexperienced person navigate a more successful resolution.¹² Thus, if the conundrum is about representation, and the goal is to make sure that a higher number of people have the highest chance to effectively protect their legal rights, our legal system should make it easy for people to say “yes” to representation. Recent endeavors in that regard include the “Civil Gideon” movement where the goal is to increase the range of civil cases in which court-appointed counsel is mandated.¹³ Or, efforts to make it easier for lawyers to “unbundle” legal services so that clients can choose from a range of piecemeal services that are lower cost than full representation.¹⁴ Or, efforts to revise restrictions on the “unauthorized practice of law” and to expand the kinds of persons who can provide legal services, like limited license legal technicians.¹⁵

But, even if the legal profession successfully makes it easier for people to be represented, there still likely are people who affirmatively want to handle their legal need on their own.¹⁶ The research about the volume of people who choose to work through a legal dispute on their own suggests that the access to justice conundrum is something beyond a “more

¹¹ *Id.* at 447-50.

¹² For example, claims for disability benefits under Social Security Disability Insurance (“SSDI”) have very high denial rates. *See Outcomes of Applications for Disability Benefits*, SOCIAL SECURITY ADMINISTRATION, OFFICE OF RETIREMENT AND DISABILITY POLICY, https://www.ssa.gov/policy/docs/statcomps/di_asr/2011/sect04.html#chart11 (last visited Oct. 9, 2016). In speaking with lawyers who work on appeals of SSDI denials, they report that many claimants file their first SSDI application without a lawyer’s help and often make technical mistakes in the application that a lawyer could have prevented. *Id.*

¹³ *See Brito et al., supra* note 2, at 224.

¹⁴ *See, e.g.*, MODEL RULES OF PROFESSIONAL CONDUCT. 1.2(c) (AM. BAR ASS’N 1983) (“A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”); *see also* Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. POVERTY, LAW & POL’Y 453, 453-505 (2011).

¹⁵ The Supreme Court of the State of Washington is one of the first to approve limited license legal technicians. ADMISSION TO PRACTICE RULES, r. 28 (SUPREME COURT FOR THE STATE OF WASHINGTON 2016); *see also* Deborah J. Cantrell, *The Obligation of Legal Aid Lawyers to Champion Practice by Nonlawyers*, 73 FORDHAM L. REV. 883, 883-902 (2004) (arguing against unauthorized practice of law restrictions).

¹⁶ Sandefur, *supra* note 7, at 447-48.

representation” conundrum.¹⁷ Thus, we also need to think through what help people need to increase their ability to successfully resolve their particular conflict on their own.

In that regard, the access to justice movement also has been active. However, efforts generally have been focused on helping unrepresented parties proceed through court without counsel.¹⁸ For example, there are projects to make sure court forms are accessible, understandable and available in multiple languages.¹⁹ Courts have hired *pro se* assistants.²⁰ Those assistants generally are court-annexed personnel who provide information to parties so that they understand the court process that lies ahead, and maybe also get some non-legal help filling out forms.²¹ Legal aid offices have created websites for unrepresented parties.²² Some of those offices have harnessed technology in more advanced ways to help unrepresented parties generate court pleadings.²³

The most prominent goal of the above efforts is to assist unrepresented litigants in understanding the technical side of going to court.²⁴ Presumably, if the process is more transparent, and the basic forms follow clearer step-by-step instructions, then unrepresented parties should make fewer procedural and substantive errors, and courts should be able to move through cases efficiently. But, a secondary goal of the efforts understands that most

¹⁷ Sandefur, *supra* note 7, at 447-48.

¹⁸ See *Self-Representation Access: 2016 Findings*, NATIONAL CENTER FOR ACCESS TO JUSTICE, <http://justiceindex.org/2016-findings/self-represented-litigants/> (last visited Oct. 9, 2016) [hereinafter *The Justice Index*]. The report lists thirty-three court-based interventions that the National Center for Access to Justice suggests are helpful to self-represented litigants.

¹⁹ *The Justice Index 2016*, *supra* note 18, at Methodology: Research, Data Collection, and Indexing.

²⁰ *Id.* at About the Justice Index.

²¹ For example, in 2013, the Chief Justice of the Colorado Supreme Court issued a directive detailing what kinds of assistance the court-based self-represented litigant coordinators could provide. Michael L. Bender, *Directive Concerning Colorado Court's Self-Represented Litigant Assistance: Chief Justice Directive 13-01*, SUPREME COURT OF COLORADO: OFFICE OF THE CHIEF JUSTICE 1, 2 (June 12, 2013), https://www.courts.state.co.us/Courts/Supreme_Court/Directives/13-01.pdf. The Chief Justice authorized a range of assistance from generally describing “court procedures and logistics” to offering “educational sessions and materials” to helping a litigant “understand what information is needed to complete filling in the blanks on approved forms.” *Id.*

²² CSP: COURT STATISTICS PROJECT, *2014 Case Loads – Trial Courts*, <http://www.courtstatistics.org/> (2013).

²³ One of the first such programs is I-Can, which is spearheaded by the Legal Aid Society of Orange County California and is coordinated with the local state district court. See *About I-Can Legal*, I-CAN LEGAL, <http://www.legalican.com/> (2014). I-Can now has expanded to include courts in six other states besides California. *Id.*

²⁴ See *About I-Can Legal*, *supra* note 23.

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people outside of the legal profession find courts generally daunting and inhospitable, and experience the adversary system as hostile.²⁵ That appears to be true whether or not a person is represented. But, without advocates an unrepresented litigant will not have a lawyer helping her maneuver her stress, fear, anxiety, or other emotional state related to the conflict.

Thus, another part of the conundrum of ensuring access to justice is figuring out what, in addition to technical information, helps people increase their ability to resolve a legal need in a setting in which they likely feel high stress and anxiety. Yet again, there already have been notable efforts—most of which come under the broad rubric of alternative dispute resolution.²⁶ Encouraged by the idea of a “multi-door courthouse,”²⁷ in which courts and parties could use different kinds of resolution processes tailored to particular kinds of disputes, courts have created programs like early case evaluation, mediation, and victim-offender reconciliation programs.²⁸ Unsurprisingly, a key component of the programs are experts who assist the parties in resolving a dispute.²⁹ Those experts may be judges or attorneys who lead early evaluations, or mediators or reconciliation facilitators.³⁰

The programs rightly presume that it is more likely than not that the parties will come to the process in heightened emotional states that reflect their conflict.³¹ I suggest that those programs have been effective, in large

²⁵ See generally Mitchell J. Callan & Aaron C. Kay, *Associations Between Law, Competitiveness, and the Pursuit of Self-Interest*, in IDEOLOGY, PSYCHOLOGY, AND LAW 193, 194 (Jon Hanson ed., 2012) (describing research in which people report that they perceive the legal system as adversarial and competitive).

²⁶ See generally Deborah Thompson Eisenberg, *What We Need to Know About Court-Annexed Dispute Resolution*, 67 S. C. L. REV. 245 (2015); see also Deborah R. Hensler, *Our Courts Ourselves: How the Alternative Dispute Resolution Movement is Re-Shaping Our Legal System* 108 PENN. ST. L. REV. 165 (2003); Carrie Menkel-Meadow, *Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve*, 57 CURRENT LEGAL PROBLEMS 85 (2004).

²⁷ Professor Frank Sander is credited with the idea of the “multi-door courthouse” stemming from remarks he made at a conference in 1976. Frank E. A. Sander, *Address Before the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice: Varieties of Dispute Processing*, 70 F.R.D. 79, 111 (1976); see also Menkel-Meadow, *supra* note 28, at 101.

²⁸ See Deborah Thompson Eisenberg, *What We Need to Know About Court-Annexed Dispute Resolution*, 67 S. C. L. REV. 245 (2015) (describing types of court-supported ADR and assessing effectiveness).

²⁹ Hensler, *supra* note 26, at 194.

³⁰ Eisenberg, *supra* note 26, at 255; see also Hensler, *supra* note 26 (providing a brief history of types of ADR in the United States).

³¹ See, e.g., Eisenberg, *supra* note 26, at 245-49 (discussing ADR research findings that include participants satisfaction with ADR over litigation).

part, because of the expert resolution professionals. Those professionals are skilled in, and committed to, helping disputants engage in the process in ways that are affirming and productive.³² That is a terrific result. It also is a result, however, that still requires that an expert be in the mix—the expert lawyer is replaced by the expert evaluator/mediator/facilitator.³³ So, the worry is that we replace one unmet need, the need for legal representation, with another unmet need, the need for a sufficient number of expert resolution professionals. And, we still leave unresolved the conundrum that there are a group of unmet legal needs for which people will not choose to hire a lawyer, and which they are reluctant to bring to court because it is perceived as too hostile and adversarial.³⁴

My project inquires whether there might be a different way of viewing unmet needs that would reveal other ways to meet that need that do not rely so heavily on some kind of additional professional assistance. Foundationally, my project is motivated by long historical commitments in the legal aid and access to justice movements that recognize and empower those “in need” to use and further develop their own existing competencies and expertise.³⁵ That broader commitment to self-empowerment contains important components. First, that individuals often have competencies to handle their own needs, but they may not recognize that they have those competencies, or they may not connect a competency as being relevant to helping them meet their need.³⁶ Second, that individuals have a wealth of contextual knowledge that they know better than outside experts, and that can be used to help meet their needs.³⁷ Finally, that most institutions, including courts, are constructed by those in society who hold power.³⁸ As such, most institutions favor the “haves” over the “have nots.”³⁹ Thus, self-

³² John R. Allison, *Five Ways to Keep Disputes Out of Court*, HARVARD BUSINESS REVIEW (January-February Issue 1990), <https://hbr.org/1990/01/five-ways-to-keep-disputes-out-of-court>.

³³ Allison, *supra* note 32.

³⁴ Callan & Kay, *supra* note 25.

³⁵ See Brito et. al, *supra* note 2, at 224-25; Cappelletti & Garth, *supra* note 6, at 224; Piomelli, *supra* note 1; Sandefur, *supra* note 7.

³⁶ See, e.g., Jennifer Gordon, *supra* note 1, at 438-41 (discussing workers’ rights center and its shift to worker-centered strategies).

³⁷ See, e.g., Piomelli, *supra* note 1, at 1392-93.

³⁸ Piomelli, *supra* note 1, at 1385-86 (describing skepticism that courts are places for social change truly on behalf of ordinary people).

³⁹ See generally Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95 (1974).

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empowerment strategies should consider how a person might push against, or avoid being trampled by, institutional power.

My project focuses most on harnessing, developing, and connecting individual competencies and expertise to engage with legal needs. It focuses less on creating institutional change. Nonetheless, my hope is that if an individual feels competent to better participate in handling her own legal need, then she will also feel less engulfed or overpowered by institutions like a court. My project also assumes that many unmet legal needs relate to some kind of conflict. For now, I set aside other kinds of legal needs, like transactional work or legal planning work.

I begin by considering the current framing about what is conflict, and what typical cognitive responses the idea of conflict triggers. I reframe what conflict might mean, and I suggest that we would benefit by overtly thinking about conflict as a spectrum that starts with mundane conflict. Next, I reframe how we perceive basic interactions between people. I challenge the dominant narrative that each of us is independent and self-interested, and replace that narrative with a relational perspective. From those two reframings, I suggest how each of us might become more competent at approaching conflict.

II. THE FIRST REFRAMING: THINKING DIFFERENTLY ABOUT THE LANGUAGE OF CONFLICT.

There is an important starting point about language that relates to conflict. Think of all of the other words we use to describe conflict if we are trying to avoid or downplay it. We call it “a disagreement.” Or we say that we have had a “misunderstanding.” We have “differences of opinion” or we are “crosswise” with each other. I suggest that all of those word choices are designed to make us feel better, or less anxious, about the experience. Those choices are potentially our attempts to signal to others that they need not get anxious about the situation. We expect that misunderstandings can easily get cleared up. We think difference of opinions can either be reconciled or that we can “agree to disagree.” If everyone can stay calm, then the situation will resolve. It will not escalate into a real conflict.

We *know* that the definition of conflict can include misunderstandings and disagreements. We *know* that small frictions are frictions nonetheless. But, when we call something a “conflict,” we generally are signaling that the interaction has more sustained or more powerful levels of friction. Conflict is a word we do not choose to use until we reach some notable level of discord. If we call something a conflict, we understand that means that at

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least one side has escalated the issue. It also means that we expect that resolving or settling the issue will take conspicuous effort, and will be hard.

I think our language choices about conflict have important consequences for our experience of conflict, and our belief in our capacities to meet conflict with steadfastness instead of with fear. The first consequence flows from our choice to focus the label of “conflict” onto the more challenging experiences of friction. Conflict then gets most closely associated with those moments that we genuinely experience as more painful. Further, harder moments of friction actually do take more care and skill to successfully resolve.⁴⁰ Thus, to label only those times as “conflict” means that most of us believe either that we do not have the skills to resolve conflict, or we are daunted by how hard it will be to successfully use the skills we may think we have. After all, there is an entire field of people who call themselves “conflict resolution professionals.”⁴¹ If we are not one of those professionals, we assume, or we worry, that we do not have the special training required to effectively solve conflict.⁴²

The other consequence flows from our choice not to label smaller moments of friction as conflict.⁴³ When we carve out a whole range of frictional experiences as “not conflict,” we train ourselves to mistakenly think of friction as categorical instead of a continuum. In one category there are “disagreements” and “differences of opinion.” In the other category there are “conflicts.” We build a habit of thought that perceives the two categories as different. Of course, when we reflect more carefully, we can see and describe friction along a spectrum, all of which is connected along some shared dimensions. However, our habit of thought is strong and hard to interrupt.⁴⁴ Further, every time we trigger it, we make that habit of

⁴⁰ See, e.g. DOUGLAS STONE, BRUCE PATTON, SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1999).

⁴¹ Bernard Mayer, *Beyond Neutrality*, MEDIATE.COM (July 2004), <http://www.mediate.com/articles/mayerB1.cfm>.

⁴² Mayer, *supra* note 41.

⁴³ To clarify, I am not claiming that there is an objective measure for conflict at any level. In other words, the same event may be experienced by one person as high conflict and by another person as smaller conflict. I think it is important to respect and acknowledge each person’s own assessment of their lived experience. My point is that, in fact, each of us does experience conflict along a spectrum.

⁴⁴ See Paul Brest & Linda Hamilton Krieger, *PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT* 16-19 (1st ed. 2010) (describing how patterns are constructed in the brain and then relied upon intuitively).

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thought stronger.⁴⁵ We reinforce that particular cognitive pathway in our brain and we make it easier for that pathway to get activated.⁴⁶

Because the habit of thought is quick and powerful, it is the cognitive tool that our brain relies on to help organize new information into the two categories of conflict and of friction—that is something other than conflict. If we successfully resolve a disagreement, the capacities we used to do so are capacities that relate to disagreements but not to conflict. If we experience a burst of anger when dealing with a difference of opinion, we think it must be of a different kind than the burst of anger we experience during a conflict.

Having a habit of treating friction as categorical and not as a spectrum dramatically decreases our ability to learn across different kinds of conflict. We associate particular capacities or skills with only one category even if those capacities or skills could help us across the full spectrum of conflict.⁴⁷ For example, think about walking into your house and finding a family member fuming because she can't find the bag she needs to take with her and she is running late. She yells at you, "Where did you put my bag?" You know that she is not really yelling at you, but is yelling because she is anxious about being late. Being able to take her perspective helps you respond calmly instead of yelling back. You think of the situation with your family member as in the category of small moments of friction that happen every day among family. You have learned that not snapping back at family is a skill that helps reduce the category of "not conflict" that includes small frictions within the family.

You also are involved with a longstanding dispute at work between administrative staff and management. Unlike the family setting where you considered the yelling a brief upset, you consider the work friction a challenging conflict. When a management member loses her temper and raises her voice in frustration at a meeting, you feel defensive and respond in kind immediately. You perceive the work conflict as staff versus management—us against them. For those involved in that category of conflict, the expected responses are antagonistic and adversarial. You do not see any similarity between the small family friction and the work conflict. So, you do not consider that you might use the same technique with the work manager as you used with your family member.

⁴⁵ Brest & Krieger, *supra* note 44, at 16-19.

⁴⁶ *Id.*

⁴⁷ See generally Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE UNIV. L. REV. 51 (2010) (generally discussing the concept of transfer of learning and considering the specific example of the transfer of learning in law schools).

Of course, any of you involved in the work conflict *could* make a choice to look to the category of small conflicts and pull techniques from that setting into the work conflict. The challenge is that a categorical approach to conflict makes it harder for us to imagine that we *should* see similarities across categories.⁴⁸ I am suggesting that the simple language choice to overtly and intentionally call all kinds of friction “conflict” will substantially help us. It will be easier for us to see and experience conflict as a spectrum, which in turn will help us transfer learning and skills more smoothly from situation to situation.

III. THE SECOND REFRAMING: CHALLENGING THE NARRATIVE OF SELF-INTEREST AND ACKNOWLEDGING THE FACTUAL TRUTH OF RELATIONALITY.

Having considered the usefulness of labeling all kinds of friction “conflict,” I want to challenge another common frame that I believe unnecessarily heightens our worries and fears about being in conflict. That frame is that we all primarily are self-interested, and that self-interest causes us to engage in the world in self-focused and self-privileging ways.⁴⁹ Under that vantage, the resting position of people, so to speak, is that everyone is separated from everyone else.⁵⁰ Our individuality presumes that our starting relationship with others is one of disconnection. It takes effort to connect. Therefore, the assumption also is that we have choices about *whether or not* we connect. From a self-interested vantage, we could choose to stay disconnected.

Further, from the self-interested frame, we expect that it is more likely than not that people’s self-interests will clash rather than harmonize.⁵¹ Thus, we expect that it is more likely than not that self-interest creates conflict and not unity. Similarly, the dominant narrative about self-interest is that it triggers selfish behavior. The assumption is that we have learned and

⁴⁸ Brest & Krieger, *supra* note 44, at 34-36 (This could be considered an example of a problematic “problem frame”).

⁴⁹ See, e.g., Stephen Meier, *THE ECONOMICS OF NON-SELFISH BEHAVIOUR: DECISIONS TO CONTRIBUTE MONEY TO PUBLIC GOODS* 9-13 (2006) (describing classic economic view of people as self-interested actors).

⁵⁰ See generally Jennifer Nedelsky, *LAW’S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* 41-45 (2011) (describing the dominant conception of people as autonomous, independent selves).

⁵¹ See Meier, *supra* note 49, at 11 (“According to [classic] economic theory, people should take advantage of any opportunity to exploit society or another individual . . .”).

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practiced selfish behavior, so it is much easier to engage in than is cooperative behavior. Again, the self-interested frames treats acting selfishly as the “resting” position.⁵²

However, research shows that people often find it straightforward to lead with cooperative behavior.⁵³ Nonetheless, that research has not been able to change the dominant narrative about people as self-interested and selfish. People who envision themselves as collaborative still find it hard to resist the warning—“Everyone else is looking out for their own interests. You’re a fool and you’ll get taken advantage of if you don’t do the same.”⁵⁴ One of the results of the self-interested perspective is that we brace ourselves to make a constant effort to push and defend our interests from an attack that is sure to come from others. Or, at times in which feel like we do not have the energy to engage the struggle, we do what we can to try and disconnect from others.

The dominant narrative of self-interested persons as islands unto themselves, however thoroughly embraced, misperceives the actual lived experiences of people. In our daily lives, how we experience who we are happens almost constantly by reflecting on and interacting within relationships with other people. As legal scholar Jennifer Nedelsky has described:

The individual self is, then, constituted in an ongoing, dynamic way by the relationships through which each person interacts with others. The values that people experience as central to their selfhood, to the possibility of their flourishing, are made possible through relationships. Autonomy, for example, comes into being (or is harmed) through relationships with parents, teachers and employers.⁵⁵

⁵² Nedelsky, *supra* note 50, at 41-45.

⁵³ See Christopher Boone et al., *Inducing Cooperative Behavior Among Proselfs versus Prosocials: The Moderating Role of Incentives and Trust*, 54 J. CONFLICT RESOLUTION 799 (2010) (discussing social value orientation that can lead people to cooperate or to privilege self-interest and prompts for each orientation); see also Meier, *supra* note 49, at 11.

⁵⁴ Boone et al., *supra* note 53 at 804-05 (noting that individuals who prefer to cooperate will reduce such behavior if worried about exploitation).

⁵⁵ Nedelsky, *supra* note 50, at 3.

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Nedelsky particularly pushes us to understand how autonomy is relational and not isolated individualism.⁵⁶ To be autonomous does not require us to be selfish or self-focused. As Nedelsky sketched out above, our sense of our own self reflects how we engage with and are responded to by others around us.⁵⁷ Nedelsky reminds us that an important component of reasoning is our ability to experience, relate to, and interpret the emotional content of a situation.⁵⁸ Thus, we can best understand autonomy as creative interaction.⁵⁹ As Nedelsky explains, autonomy as a process of creative interaction includes the capacities of attention, receptivity, responsiveness and reflection.⁶⁰

Fundamentally, Nedelsky helps us to more accurately describe the factual world. We observe and experience the tangible, physical world not by identifying one object at a time and then moving to the next object. We take in the entire setting and understand the objects as they are connected to each other because of the setting. We then further understand that particular setting as typical or unusual because we are able to relate it to many other settings we have encountered. Nedelsky situates people as just another part of the tangible, physical world that gets experienced in an interconnected way.⁶¹

I describe the above interconnectedness as being part of the “factual world” as a way of underscoring that connectivity is not a matter of personal choice. We are connected to others, even if lightly or begrudgingly, whether we choose to be or not. The Zen koan, “what is the sound of one hand clapping,” is another way of capturing the point.⁶² We understand the starting point of the riddle only because we already understand the factual connection between hands and clapping.

To explore the idea of one hand clapping requires us to acknowledge that the query relates to the sound of two hands clapping. If we take this understanding of the factual world as interconnected and apply it to people, it helps us see how we have misperceived autonomy as isolation when it is inherently relational. It also helps us see that self-interest, like autonomy,

⁵⁶ See generally Nedelsky, *supra* note 50.

⁵⁷ *Id.* at 3.

⁵⁸ *Id.* at 165.

⁵⁹ *Id.* at 166-67.

⁶⁰ *Id.*

⁶¹ *Id.* at 3.

⁶² See Hakuin Ekaku, *The Voice of the Sound of One Hand*, in *SITTING WITH KOANS* (John Daido Loori, ed.) at 211-228 (detailed consideration of the history and meaning of the Koan).

must be relational.⁶³ The “self” is one hand to the second hand of every other “self” we encounter.⁶⁴ Our self-interest is an interest only in relation to the other interests around us.⁶⁵

It is important to highlight how prosaic the interconnectedness and relationality that we experience can be. If we were to watch a video of one of our ordinary days, we would likely see just how many basic interactions we have—the exchange with the employee as we buy our morning coffee, the smile or scowl we give to the driver of the car next to us as the driver either lets us into traffic or does not, the quick “hello” we give to the repair person working on the door to our office building, the “thank you” we give in response to a co-worker’s compliment about an accomplishment, and on and on.

To acknowledge the constancy and unavailability of interconnectedness and relationality, we first must slow down and pay attention to all of the moments of our days that we usually rush by and ignore.⁶⁶ When asked how our day was, we seldom respond: “I said ‘hi’ to the coffee guy, scowled at a driver on the way to work, and said good morning to the repair person.” But, those myriad, mundane moments of relationality make up much of our day and offer us a consistent experience of interconnectedness.⁶⁷ They demonstrate to us that the actual resting space for all of us is interconnection.⁶⁸ To disengage requires effort.⁶⁹

Note too, that all the small moments of relationality exist whether we meet them positively or negatively.⁷⁰ For example, maybe the coffee guy did not return our “hello” and shoved change at us, the driver who would not let us into traffic also threw the finger, and the repair person said sharply to us “you can’t use this door.” The fact that the interaction might be other than positive does not turn it into a non-interaction. That is one of the most important descriptive features of relationality—it exists and it happens,

⁶³ See Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1 (2011) (Discussing the concept of “relational self-interest” as it applies to the legal profession).

⁶⁴ See generally *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

whether we like it or not.⁷¹ The fact that relationality is an ever present feature of our daily lives, whether positive, negative, or neutral, also helps us understand that relationality describes a feature of interconnectedness that is different from connections of affinity or connections of sameness.

As I have noted above, even when we understand that self-interest is factually relational, our dominant narrative about what it means to be self-interested severely limits how we conceive the scope of that relationality. From the dominant narrative, our self-interests mean that we participate in forming a “relationship” only if we feel an affinity with another or if we perceive that we have homogenous interests with another.⁷² From a self-interest frame, a “relationship” is something different from the instrumental interactions in which we engage with another purely for self-gain or self-satisfaction.⁷³ Thus, under a self-interested frame, the morning interaction with the coffee guy is not about relationality, it is about one person’s instrumental need for caffeine and another’s need for profit. The exchange reflects self-interests being satisfied mutually, nothing more.

Just like our language about conflict creates an erroneous sense of conflict as categorical, the self-interested frame creates an erroneous sense of relationality as categorical.⁷⁴ Under the self-interested frame, we have relationships and we have instrumental exchanges.⁷⁵ We then have learned that “relationships” require us to engage another person (or a group of people) in certain ways using certain skills and competencies. Instrumental interactions require something else.⁷⁶ The two categories include some expected behaviors that can be the same—such as a relationship and an instrumental interaction both work better when each participant speaks respectfully to the other.⁷⁷ But, we also learn that each category can require very different behavior.⁷⁸ For example, typically we expect that relationships may require us to show some kind of loyalty whereas instrumental transactions do not.

Like we saw with the categorical approach to labeling conflict, a categorical approach to relationality impedes our ability to see useful

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

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similarities across the spectrum of relationality. If we cabin an entire set of regular, daily interactions as merely instrumental and not as a part of relationality, we stop thinking about those interactions as spaces in which we practice skills of relationality. That hurts us in two ways. We can build bad habits of relationality because we think of the instrumental moments as irrelevant. And, we can build good habits because the instrumental moments are short and easy, yet we cannot transfer that learning to more intense relational settings because we do not see the two settings as connected.

Changing the self-interested frame to a relational frame does not also mean disregarding the fact that self-interest can be a potential motivating factor in relationships. From a relational frame, we still observe people making choices that appear selfish or self-involved. The relational frame, however, encourages us to see connection and to discern how connection matters rather than to presume disconnection. Even when a person chooses to act in a way that privileges her own benefits over all others, that is a relational choice. The only way we factually know that she has chosen to prioritize her own interests is because we can compare her interests to the interests of others.

Further, from a relational perspective, we understand self-interest as one of many motivating factors. That broader perspective allows us to more accurately perceive the fuller range of motivations involved in any one action. Relationality helps us discern that contained in our own interests are interests that we carry for, or towards, others. For example, when someone pushes ahead of us in line, through the self-interest frame, all we see is selfish behavior. The relational frame prompts us to think about the possibility that the behavior also is about the person hurrying to get home to a sick family member or hurrying to take care of something critical for another person. The line crasher surely put her own web of relationships ahead of the very temporary relationality she had with the rest of us standing in line. But, relationality helps us perceive that she might not have been acting as an isolated person making choices without care for any other person.

A. The Ubiquity of Conflict.

A relational frame also helps us understand a feature of conflict in addition to it being a spectrum. Once we understand that relationality is ubiquitous, we see that conflict must also be ubiquitous. When we acknowledge the ubiquity of conflict, we are further reminded that conflict does not describe one static state or one particular kind of experience.

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Relationality reaffirms my earlier linguistic point that conflict is not categorical—it is experienced across a full spectrum.

It is critical to remind ourselves that part of the purpose of claiming the label “conflict” across the full spectrum of friction is to push against the cognitive habit of thinking about conflict only as “bad.” Further, by situating conflict within the constancy of relationality and interconnectedness, we are reminded that the fact of connecting with others always reveals commonalities *and* differences. Zen teacher Diane Musho Hamilton captures the idea nicely:

It helps to keep sight of the fact that conflict is an expression of our profound and inextricable relatedness. . . . Conflict is one of the most direct ways to experience this profound mutuality, even though we rarely see it this way. Circumstances appear oppositional to us, dividing one from another. But conflict itself proves our ultimate inseparability.⁷⁹

Thus, in every relationship, whether mundane and fleeting or long term and important, we can experience conflict. In that way, conflict is neither good nor bad, positive nor negative—it just is. We really do not have a choice about the presence of conflict. We only have a choice about how we wish to react or respond to it. As the notable American journalist, Dorothy Thomas, said: “Peace is not the absence of conflict, but the ability to cope with it.”

Taking relationality seriously does not transform conflict into harmony. In fact, taking relationality seriously should mean we more readily acknowledge how widespread conflict actually is. By foregrounding the ubiquity of conflict, relationality then helps us to introduce some equanimity about all of conflict. When we operate under the flawed linguistic and cognitive habits that understand conflict as unordinary and as high friction, we think that we can avoid it. We think we will not encounter conflict every day. Because we misunderstand conflict as unusual, we also misunderstand how often we engage with conflict. We think we do not engage with conflict often, and therefore may not have good skills related to conflict. Relationality demonstrates that the reverse is true. Conflict is mundane and everywhere. We engage with it regularly and repeatedly every day.

⁷⁹ DIANE M. HAMILTON, *EVERYTHING IS WORKABLE: A ZEN APPROACH TO CONFLICT RESOLUTION* 193 (2013).

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Conflict's ordinariness is the very reason we should be able to meet it with steadiness.

Somewhat counter intuitively, looking at a historical moment of profound conflict might help illuminate my point. Consider the American Civil Rights Movement and Martin Luther King, Jr. Dr. King embraced conflict. In his *Letter From Birmingham City Jail*, he talked about why it was important to continue with nonviolent direct action:

Nonviolent direct action seeks to create . . . a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. . . . I must confess that I am not afraid of the word tension. I have earnestly worked and preached against violent tension, but there is a type of constructive nonviolent tension that is necessary for growth.⁸⁰

Conflict (or nonviolent tension) on its own, however, was not Dr. King's goal.⁸¹ He embraced conflict as the mechanism that would lead to a "beloved community."⁸² Framed in Christian terms of relationality, Dr. King preached that "love of neighbor" and "love in action" were designed to "preserve and create community," and to "insist[] on community even when one seeks to break it."⁸³

For many of us, Dr. King's civil rights work likely is an archetypical example of hard and challenging conflict that could be navigated only by an extraordinary person. Dr. King was such a person. However, I think Dr. King's work also illustrates how a commitment to relationality builds stamina for conflict. Dr. King came to his civil rights work as an adult, after already completing college and his doctorate in theology.⁸⁴ For Dr. King, his everyday, ordinary charge from his faith was to love his neighbor—to be in relation to all others. From that everyday charge, he developed the stamina to be in relationships in a steady way even

⁸⁰ MARTIN LUTHER KING, JR., *LETTER FROM BIRMINGHAM CITY JAIL*, reprinted in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 289, 291 (James M. Washington ed., 1986).

⁸¹ *Id.*

⁸² *See Id.*

⁸³ *Id.* at 20.

⁸⁴ JAMES M. WASHINGTON, *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* xvi (James M. Washington ed., 1986).

in those relationships of unrelenting conflict.⁸⁵ Of course, I am not suggesting that Dr. King was motivated in his work solely because he had learned the command to love his neighbor. But, I do believe that he masterfully showed how one can embrace a seemingly small, ordinary lesson, to love one's neighbor, and use it in profoundly more challenging contexts.

A. The Embodiment of Conflict.

It is important to acknowledge that how we understand conflict also is tied to how we physically respond to it.⁸⁶ We have an embodied understanding of conflict—meaning that our minds have created an understanding of “conflict” that is utterly tied to how our bodies have physically responded to situations we have labelled as “conflict.” As Musho Hamilton describes it, “conflicts can feel no less threatening than wild animals or aggressive humans. Something as ordinary as a disagreement with your mother about the holidays or a neighbor's complaint about your dog can set off the same bodily reactions your ancestors relied on in the savanna to keep them alive.”⁸⁷ Having an embodied understanding of conflict is critical to my project.

Neuropsychology research has made clear that how we cognitively “understand” a situation depends a great deal on the emotions that are triggered by the situation.⁸⁸ By looking at people who have suffered traumatic injuries to regions of the brain that trigger certain emotional responses, researchers have mapped how people with such injuries dramatically misperceive settings compared to those with uninjured brains.⁸⁹

⁸⁵ See, e.g., Deborah J. Cantrell, *What's Love Got to Do With It?: Contemporary Lessons on Lawyerly Advocacy From the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296, 296-340 (2010).

⁸⁶ In a range of fields, scholars have pressed the point that the mind and body never are separated. There is a growing literature in which “embodiment” plays an important role. See Gabriel Ignatow, *Theories of Embodied Knowledge: New Directions for Cultural and Cognitive Sociology?*, 37 JOURNAL FOR THE THEORY OF SOCIAL BEHAVIOUR, 115, 118 (2007); see also Nedelsky, *supra* note 50, at 33-34.

⁸⁷ HAMILTON, *supra* note 79, at 34.

⁸⁸ See ANTONIO DEMASIO, *DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN* 129-130, 228 (1994).

⁸⁹ *Id.* at 52-79.

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The brain-injured people inaccurately respond to settings because their brains fail to provide them with the kinds of embodied emotional responses that allow an uninjured person to fully assess the setting.⁹⁰

Similarly, when a person is presented with a scenario about aberrant behavior, like eating a dead pet, researchers find that the person has an embodied response of revulsion, even when the person struggles to articulate more particularly why she had such a response.⁹¹ In other words, how our bodies and minds feel are crucial components to how we understand, label, and respond to an experience. Thus, while I have argued that changing the language about conflict and changing the frame from self-interest to relationality are necessary to any project to better understand conflict, those changes are not sufficient. We must also tie those changes to changes in our embodied experiences.

Given our current understanding of “conflict” as only the upper and more difficult part of the actual conflict spectrum, we have created cognitive pathways that associate “conflict” with heightened physical and emotional responses. If we think something is “conflict” it often triggers a “freeze, fight, flight” response.⁹² In other words, when we think we are encountering conflict, our bodies physically react in certain ways without us choosing those sensations. Our hearts might start to beat faster, or we hold our breath, or our palms might start to sweat, and none of those physical sensations are intentional choices.⁹³ Further, those physical sensations typically are unpleasant.⁹⁴ Our negative embodied experience of conflict reinforces our intellectual understanding that conflict is only hard and unpleasant.

In contrast, when we think we are encountering “not conflict”—i.e., much of the friction we experience at the lower end of the conflict spectrum—we do not have a harsh embodied response. When the morning coffee guy is abrupt with us, we might notice that we furrow our brow and feel a quick moment of irritation. But, we probably then pick up our coffee and quickly start thinking about what we have to do next. If we were

⁹⁰ *Id.*

⁹¹ See Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOLOGICAL REVIEW 814, 814 (2001).

⁹² Physiologist Walter B. Cannon first described this response and coined the phrase “fight, flight.” WALTER B. CANNON, *BODILY CHANGES IN PAIN, HUNGER, FEAR AND RAGE* (1915).

⁹³ For a simple chart cataloging physical reactions associated with the freeze, fight or flight response, see Psychology Tools, *Fight or Flight Response*, available at http://media.psychology.tools/worksheets/english_us/fight_or_flight_response_en-us.pdf

⁹⁴ *Id.*

preoccupied when we ordered our coffee, we might not even have noticed the coffee guy's abruptness. Mundane conflict gets registered in our neural network as ordinary, and not requiring any kind of heightened embodied state. Therefore, we often can meet it with a steady breath and an even gaze. We probably do not realize how often and consistently we meet mundane conflict with equanimity.

Our habit of treating conflict as categorical can compound the consequences of our embodied responses. We have built a cognitive cycle in our brains that says when we identify something as "conflict," our brain triggers negative emotions and bodily sensations.⁹⁵ We do not like that experience, so we become anxious about encountering conflict. Our anxiousness then can make us more prone to labeling something as potential conflict in order to avoid it. But, our anxiousness about potential conflict means we trigger the same embodied responses that we experience with actual conflict. Unless we can interrupt the cycle, all we do is consistently reinforce both the idea and the experience of conflict as bad and hard.

As long as we treat lower levels of friction as "not conflict," we risk that the negative cognitive cycle about conflict will slowly expand to include friction that we might earlier have been able to meet with equanimity. If we instead can embrace lower levels of friction as mundane conflict, but conflict nonetheless, we can remind ourselves that we know how to respond to conflict in ways other than fight, flight, freeze. By actually paying attention to how our bodies react to different kinds of conflict, we have the opportunity to become more intentional about our responses. We can start to allow for the possibility that we can choose how we meet conflict. Then, we can start to build a more capacious and effective set of cognitive cycles about conflict.

B. Another Reason to Celebrate Mundane Conflict.

Thus far I have suggested that the benefit of changing our language and our framing of conflict is that we will be able to better learn how to meet and resolve conflict. In some ways, the idea of "resolving" conflict is that each person takes some steps so that they can walk away from the conflict. The conflict is over, and each of us goes on with our lives. That certainly is one way forward. However, conflict, particularly mundane conflict, can be the catalyst for creativity and unexpected problem solving. It is not so much

⁹⁵ *Id.*

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that those of us in conflict “resolve” the conflict as it is that we use the conflict to generate the next step.

In many daily situations of ordinary friction, we share a common purpose with the other side. Our conflict is useful because it reveals interesting viewpoint differences or factual differences that relate to our common purpose.⁹⁶ The friction comes because each of us sees the “problem” from our vantage point only, and we often believe that our vantage point is best or that it is more fulsome than it really is.⁹⁷ Our current mindsets about conflict and individualism encourage us to harden in our own vantage points. We have to stand our ground, or make our case. Instead, if we can embrace mundane conflict, the differences that it reveals are the tools by which we can determine how to best move forward.⁹⁸ The end result is a set of actions or commitments that those in conflict co-create. That new way forward could not have been discovered but for the mundane conflict.

Of course, the field of dispute resolution long has acknowledged that conflict can be positively transformative.⁹⁹ Conflict resolution professionals have developed a range of techniques that are intended to harness the creative potential of conflict. The challenge, of course, is that those professionals are having to work against the unhelpful dominant frameworks I’ve described.

While there is a wealth of existing theory and practice that celebrates conflict as positive transformation, I worry that its impact has been cabined. The expansive reframing of conflict is motivated by a commitment to empowering the people engaged directly in conflict, instead of disempowering them by insisting that they can do the work only with the

⁹⁶ See, e.g., Howard E. Gruber, *Creativity and Conflict Resolution* in THE HANDBOOK OF CONFLICT RESOLUTION 391,397 (Deutsch, Coleman & Marcus, eds., 2d ed. 2006) (discussing how the capacity to take another’s point of view improves problem-solving).

⁹⁷ Negotiation theorists have labelled this dynamic as “the truth assumption.” Stone et al., *supra* note 40, at 9-10.

⁹⁸ Affirmatively scanning for differences is an example of what problem solving theorists call “divergent” thinking. Brest & Krieger, *supra* note 79, at 13-14.

⁹⁹ See Joseph P. Folger & Robert A. Baruch Bush, DESIGNING MEDIATION APPROACHES TO TRAINING AND PRACTICE WITHIN A TRANSFORMATIVE FRAMEWORK (2001); WILLIAM URY, THE THIRD SIDE: WHY WE FIGHT AND HOW WE CAN STOP at xix (2000). (“Our goal cannot—and should not—be to eliminate conflict. Conflict is a natural part of life. It brings about change . . . Our challenge, therefore, is not to eliminate conflict but to *transform* it.”) (emphasis in original); Robert A. Baruch Bush & Sally Ganong Pope, *Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation*, 3 PEPP. DISP. RESOL. L.J. 67, 82 (2002); Heidi Burgess & Guy Burgess, *Constructive Confrontation: A Transformative Approach to Intractable Conflicts*, 13 MEDIATION QUARTERLY 305 (1996).

help of some professional. That commitment is shared by many who work in transformative conflict resolution. If participants come to the process and *they* do not already believe in their own capacities, then even the best-intentioned professional will have to start by leading the participants. When transformative conflict professionals constantly have to convince participants that they really can successfully work with conflict, which may affect how fulsomely conflict can be used for creative change.

C. The Important Knowledge We Already Have Is Limited By Our Cognitive Pathways.

Our cognitive pathways about conflict are well-worn and strong. To change them and to build new cognitive pathways and habits will require us to understand how to differently deploy skills we already have, to learn new skills, and to embrace mundane conflict as our practice ground. As noted above, the pragmatic and theoretical knowledge we need to develop our conflict-related practices already exists, and we often are familiar with it. But, we have not needed to think through how that knowledge connects to a practice of responding to mundane conflict.

For example, consider the relationship between listening and conflict. There are rich sources we can mine to learn techniques of deep and thorough listening. There also are rich sources of theory in which listening is central to larger questions of the social good. First, consider some examples of a more abstracted idea of listening.

One example comes from the work of political theorist Richard Dawson. In his book, *Justice as Attunement*, Dawson elegantly creates and curates a conversation about what it means to speak, to listen, to hear, and to understand others and ourselves if the goal is to maximize the possibility that justice will be served.¹⁰⁰ Dawson draws widely from many disciplines to address how the law, the legal system, and participants in both, try to find and make meaning. Dawson worries that “[w]hen a person assumes that her language is adequate as a means of expression, she may readily fail to hear another person’s language, and fail to do him justice, in and out of the culture we call the law.”¹⁰¹ Underlying Dawson’s concern about listening

¹⁰⁰ Richard Dawson, *JUSTICE AS ATTUNEMENT: TRANSFORMING CONSTITUTIONS IN LAW, LITERATURE, ECONOMICS AND THE REST OF LIFE* (2014).

¹⁰¹ *Id.* at 3.

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and justice is the premise that failing to listen leads to injustice.¹⁰² We also understand that injustice will be experienced as a kind of conflict.

Dawson joins other theorists in reclaiming listening as a crucial *active* component of any kind of community engagement.¹⁰³ Quoting political theorist Susan Bickford, Dawson agrees when she argues that:

Listening . . . involves an active willingness to construct certain relations of attention [W]e cannot hear but *as* ourselves, against the background of who we are. But without moving ourselves to the background, we cannot hear another at all [I]f I somehow absent myself when you speak, in order to “hear” you, and you do the same for me, in what sense are we really together as peers?¹⁰⁴

From Dawson’s and Bickford’s work, we understand how listening becomes a critical component to constructing theories of justice and positive politics. We understand that part of the point of justice and positive politics is to acknowledge conflict and resolve it.

Similarly, we might consider Stuart Hampshire’s well-known call to “hear the other side” in his theory of process as justice. In *Justice is Conflict*, Hampshire elegantly articulates the need to hear the other side as a response to the ubiquity of conflict.¹⁰⁵ As he describes: “Neither in a social order, nor in the experience of an individual, is a state of conflict the sign of vice, or a defect, or a malfunctioning. It is not a deviation from the normal state of a city or of a nation, and it is not a deviation from the normal course of a person’s experience.”¹⁰⁶ Hampshire rejects the idea that a polity could ever reach consensus on what constitutes substantive “justice.”¹⁰⁷ He argues that the best a political system can do to ensure that justice is achieved is to create a set of processes that encourage disagreements to be raised openly and considered honestly—to hear the other side.¹⁰⁸

Dawson, Bickford and Hampshire are relevant to our inquiry because they remind us that we already have theoretical knowledge that

¹⁰² See generally *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 10.

¹⁰⁵ STUART HAMPSHIRE, *JUSTICE IS CONFLICT* (2000).

¹⁰⁶ *Id.* at 33.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

considers conflict and justice, which embraces an abstracted idea of listening as a key piece of resolving conflict justly. We could use that theoretical knowledge to support choices about how we act. In other words, if we believe in the worldviews created by Dawson, Bickford or Hampshire, we could consider whether such a worldview calls on us to take particular actions. What kind of a setting would require the active political listening called for by Bickford? Do all kinds of disagreements require us to “hear the other side” in order to reach justice as conceived of by Hampshire?¹⁰⁹

The challenging move for us is to connect our broadly situated theoretical knowledge to actual behavior about conflict. Our cognitive pathways do not typically link theoretical knowledge to everyday experiences. There is no cognitive link between “hear the other side” and our reaction to the repairperson telling us to use the other door at our office building. Thus, we often are not able to translate theory, and its requisite, but abstracted behaviors, into actual daily behavior. As a result, our theoretical knowledge loses some of its potency and usefulness. Or, to put it another way, our cognitive links restrict the settings in which we apply our very relevant and potent theoretical knowledge. We have built the cognitive pathways to *talk* profoundly about the importance of deep listening and conflict, but our talk about listening does not create the practical skills *to listen*.

So, consider instead whether starting with practical techniques for good and deep listening better enable us to respond to conflict. There is a wealth of extraordinary teaching materials from which we can learn how to listen carefully, clearly, and thoughtfully. Importantly, the goals of the techniques include many of the goals of the theoretical work—to move to a just result, to engage all in the conversation, to avoid privileging only certain views, and to correct unintentional misassumptions.

For example, several disciplines rely on the technique of “active listening.”¹¹⁰ Active listening is designed to allow a listener to check back

¹⁰⁹ *Id.*

¹¹⁰ Psychologist Carl Rogers is credited with developing the techniques of active listening in his book, *ACTIVE LISTENING* (1957). Active listening has moved expansively from the counseling field. See, e.g., Liz Bryant, *The Art of Active Listening*, 27 PRACTICE NURSE 49 (2007) (active listening for nurses); DAVID A. BINDER, PAUL BERGMAN, PAUL R. TREMBLAY & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed., 2011); STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE & ANN C. SHALLEK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (both include guides for active listening by lawyers); *HAVE YOU HEARD?: ACTIVE LISTENING* (SLIM GOODBODY’S LIFE SKILLS 101) (2009) (children’s book).

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with the speaker to ensure the listener heard what the speaker actually intended.¹¹¹ Active listening contrasts with regular or passive listening in two regards. First, an active listener comes to the conversation knowing that she will be responsible for reflecting back to the speaker what the speaker has said.¹¹² The active listener intends for the speaker to feel heard. So, the listener really does have to listen in order to be able to reflect back. Similarly, the listener also intends to double check with the speaker that the meaning the listener has heard through her own ears is how the speaker intended to be heard.¹¹³ In that regard, the listener is making sure that how she translated what the speaker said is accurate. That translation process often also makes transparent unstated assumptions made by either the speaker or listener.¹¹⁴ The second dimension of active listening is that the listener attempts to interrupt or hold in abeyance the listener's own desire to immediately start crafting her own response or counter-argument.¹¹⁵ Active listening understands that once a listener starts crafting a response or counter-argument, she no longer actually is listening.¹¹⁶

The technique of active listening makes concrete Bickford's call for a listener to acknowledge that they must be aware that what she hears can reflect her own background experiences as much as it reflects what the speaker actually intends.¹¹⁷ The technique also reflects Dawson's concern that the unchecked translation that happens in every conversation can be the start of injustice.¹¹⁸

The explicit goals of active listening are to reduce friction sufficiently so that each participant can "hear the other side." Clearly, then, technical training about listening should directly help us engage with conflict. Unlike theory, where the challenge is how to translate it into daily action, technical training focuses on daily actions. Nonetheless, technical training may be less helpful than we hope. That is because the examples of conflict used in many training materials often involve high conflict or conflict that people typically experience as hard or scary.

¹¹¹ ELLMANN ET AL., *supra* note 111, at 27-28.

¹¹² *Id.* at 27-28.

¹¹³ *Id.* at 29-33.

¹¹⁴ *Id.* at 36-47.

¹¹⁵ STONE ET AL., *supra* note 40, at 163-71.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Our categorical approach to conflict buttresses the training we get about listening. We learn that the listening techniques apply to “conflict.” Because we think of conflict as a category, we do not associate the listening techniques with all of the other kinds of friction that are “not conflict”—disagreements, differences of opinion and the like. We make a strong cognitive connection between deep listening and higher levels of friction. We fail to make a cognitive connection between deep listening and the rest of the conflict spectrum.

Unfortunately, by limiting deep listening to high conflict settings, we inadvertently put ourselves in the position of trying to learn and practice deep listening in times where it is the hardest to do that. When we are faced with a genuinely hard or tricky conflict, we know that our embodied response can impede learning. For example, the physical manifestations of anxiety, with its pounding heart and elevated blood pressure, distract us and impede our ability to hear what someone is saying. Thus, our categorical approach to conflict both limits when we think listening techniques should be used and limits our chances of successfully learning deep listening. So, starting with practical knowledge about conflict-resolving techniques leads us to a similar place as did starting with theory—we lack some set of requisite cognitive links to make our knowledge broadly useful.

D. Pulling the Strands Together.

We have inquired into three different strands of thought to help illuminate why we consistently and fulsomely respond to “conflict” negatively, and perceive “conflict” to be hard to engage with and challenging to resolve. Now let us consider how to pull the three strands together. I suggest that putting the strands together reveals three very simple truths.

First, embracing the idea of relationality and the resulting descriptive fact of mundane conflict creates regular opportunities to practice responding successfully to conflict.¹¹⁹ Second, creating intentional connections between mundane conflict and broader theories of “the good society” helps us take the practice of responding to mundane conflict seriously.¹²⁰ As a result, we see why and how everyday practice matters, and we learn that if we do not practice successfully navigating mundane conflict, we dramatically

¹¹⁹ Cantrell, *supra* note 85, at 330.

¹²⁰ Cantrell, *supra* note 85, at 330.

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undermine our ability to navigate the serious conflict that matters to us most.¹²¹ Finally, putting the strands together shows us that we have multiple entry points into our practice, including through intellectual engagement and through an embodied awareness of physical reactions and emotional responses.¹²²

For the three simple truths to make a difference, however, we must become intentional about mundane conflict.¹²³ We must celebrate it.¹²⁴ We have to embrace mundane conflict as an exemplary practice site.¹²⁵ We know the importance of foundational practice in other arenas—think of playing scales on a musical instrument or ball handling drills in some sports. We also know that practice builds stamina as well as improves technique—think about gradually increasing distance to train for running a 10k for the first time. We should think about mundane conflict as the practice field for our conflict-handling drills.¹²⁶

The literature on conflict resolution already gives us our drills, from active listening, to making “I” statements,¹²⁷ to “separating the people from the problem,”¹²⁸ or “adopting liberating assumptions.”¹²⁹ Our task is to commit to practicing those drills.¹³⁰ Our challenge is to practice mindfully.¹³¹ As earlier sections have made clear, we already have habits of mind and embodied responses related to conflict.¹³² We know that our cognitive pathways are strong and easy to activate.¹³³ To disrupt those pathways and create others requires intention and attention.¹³⁴ Further, we

¹²¹ *Id.*

¹²² *Id.* at 340.

¹²³ *Id.* at 330.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Cantrell, *supra* note 85, at 330; *see also* Mary C. Gentile, GIVING VOICE TO VALUES: HOW TO SPEAK YOUR MIND WHEN YOU KNOW WHAT’S RIGHT (2010) (addressing the challenge of speaking about values when under pressure and suggesting practicing conversations before hand with confidants).

¹²⁷ Stone, *supra* note 40, at 189-95.

¹²⁸ Roger Fisher & William Ury, GETTING TO YES 12 (2d ed. 1991).

¹²⁹ Stone, *supra* note 40, at 141-44.

¹³⁰ Cantrell, *supra* note 85, at 329.

¹³¹ *Id.* at 329.

¹³² *Id.* at 327.

¹³³ *Id.* at 335.

¹³⁴ *Id.* at 314.

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must sustain our intention and attention over time because, like any practice, in order for it to be successful, it must be iterative. If we want our practice of using mundane conflict actually to build skills, we must try a skill, receive feedback, reflect on the feedback, and try the skill again—repeating that iterative process many, many times.¹³⁵

I am confident that reflective practice with mundane conflict *can* improve our skills to respond to higher levels of conflict. I am much less sanguine about whether it *will*. I worry that the existing narratives about conflict and about self-interest¹³⁶ are so strongly believed that many will reject at the outset the idea of mundane conflict or reject that it has positive value. For those who hold such vantage points, paying attention to mundane conflict inappropriately diverts their efforts away from the work they need to do to deal with “real” conflict.¹³⁷

I also worry that the reflective practice that I am proposing, while not technically difficult, can be hard in other ways. As already mentioned, reflective practice requires a sustained level of intention and attention. In order to use mundane conflict to change deep habits of thought and embodied responses to conflict, we have to have a daily practice.¹³⁸

I think a “daily” practice means something very modest. It may mean paying attention to only one or two moments of mundane conflict each day and using those moments to practice some skill. A daily practice does not mean we have to succeed in each of our efforts, but it does mean we need to reflect on each attempt.¹³⁹ I think a daily practice could take us as little as two to ten minutes. Nonetheless, even a time demand as small as two minutes is useless unless we have cultivated the intent to actually practice in those two minutes.¹⁴⁰

IV. SIGNS OF HOPE.

This article proposed a fairly focused goal—to expand a person’s capacity to meet her legal needs in a way that would make her less likely to

¹³⁵ See, e.g., Susan Bryant, et al. TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY x, 23-23 (2014) (introducing reflective, iterative practice as a core goal for lawyering).

¹³⁶ Cantrell, *supra* note 85, at 305.

¹³⁷ *Id.* at 305.

¹³⁸ *Id.* at 329-30.

¹³⁹ *Id.* at 329-30.

¹⁴⁰ *Id.* at 326.

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have to rely on the services of a specially-trained professional like a lawyer or a dispute resolution professional. To make progress towards that goal, however, a broad reframing of conflict and challenging the narrative of self-interest is required. Broad reframing is the only way to work *directly* on creating individual change and empowerment.¹⁴¹ If this article speaks only to professionals already active in the access to justice movement, and they become better at working with people in conflict, that is a positive result, but falls short of the goal of empowering those who actually have unmet legal needs.

Ironically, broad reframing further reveals that celebrating mundane conflict offers the most hope if it can take root well before a person encounters a legal need.¹⁴² That is because many legal issues likely involve the kinds of conflict that people experience as being on the higher end of the conflict spectrum.¹⁴³ For example, think about going through a divorce, which is not an uncommon experience. It is common in divorce for parties to be unrepresented and to submit to court-mandated dispute resolution like mediation.¹⁴⁴ This setting offers clear possibilities for a person who already has competencies working in conflict to harness the conflict for good problem solving.¹⁴⁵ On the other hand, it is the kind of setting that is sufficiently stressful that it will be challenging for a person to have to learn new competencies about conflict in that moment.¹⁴⁶

Thus, looking for signs of hope that there are programs and efforts that celebrate mundane conflict and embrace the idea that conflict skills can be practiced and improved, this article highlights programs that are situated early in one's development. Although any conflict training that happens long before a person needs to use it may make it harder to demonstrate that the training matters to a present day conflict, this article is about the benefit of a daily practice with conflict that is more akin to the adage that "you

¹⁴¹ *Id.* at 327 (stating that an individual, such as Rosa Parks, "was immediately transformed into action about broad social change").

¹⁴² *Id.* at 331-32.

¹⁴³ *Id.* at 305.

¹⁴⁴ See, e.g., Comm. on Res. for Self-Represented Parties, *Strategic Planning Initiative*, REP. TO JUD. COUNCIL, 1, 5 (2006); Judicial Council of Cal., *A Report and Analysis of Action Plans Throughout California*, at 6 (2003); Bruce D. Sales, Connie J. Beck & Richard K. Haan, *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS UNIV. L. J. 553, 554 (1993) (looking at increase in unrepresented parties in Maricopa County from the period of 1980-90).

¹⁴⁵ Sales et al., *supra* note 144, at 598-99.

¹⁴⁶ Sales et al., *supra* note 144, at 599-600.

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never forget how to ride a bike.” The idea is that if one learns some core capacities about working in conflict and practices those capacities to create strong cognitive pathways, then those capacities are easy to deploy even if the training happened long before. So, I look to programs working with youth in the hopes that youth will find their conflict skills “just like riding a bicycle” when they need to use those skills later in their lives.

A. Youth-Led Conflict Resolution Programs and Restorative Justice in Schools.

Community efforts to train youth in conflict resolution skills and efforts to introduce students to restorative justice initiatives in primary and secondary education are the kinds of programs that are very hopeful.

School districts across the country have established conflict training and resolution programs.¹⁴⁷ Many are peer programs where students are trained in conflict skills so that they can train other students to act as peer conflict resolvers.¹⁴⁸ Importantly for this project, the students work with all kinds of conflict,¹⁴⁹ including “mundane conflict” like two youth speaking disrespectfully to each other. For the students, the programs affirm that conflict happens along a spectrum.¹⁵⁰ As one commentator notes of his program, “[t]he Center recognizes that conflict is an inevitable part of life and that differences of opinion are a part of human nature.”¹⁵¹

Also, the programs typically have an explicit goal of empowering students to see themselves as capable of resolving conflict instead of having a solution crammed down upon them.¹⁵² For example, an evaluation of an elementary school-level peer mediation program found that before the training “students seemed conditioned to look to the classroom teacher for

¹⁴⁷ See Melinda Smith, *Conflict Resolution for Children, Youth, and Families*, 3 DISP. RESOL. MAG. 11 (1996); Glenda L. Cottam, *Mediation and Young People: A Look At How Far We've Come*, 26 CREIGHTON L. REV. 1517, 1523 (1996); see also *Restorative Practices: Fostering Healthy Relationships and Promoting Positive Discipline in Schools* 1, 6-7 (2014) (report published jointly by Advancement Project, American Federation of Teachers, National Education Association, and National Opportunity to Learn Campaign).

¹⁴⁸ Cottam, *supra* note 147, at 1522-24.

¹⁴⁹ LACBA Civic Mediation Project, LACBA <https://www.lacba.org/give-back/civic-mediation-project/youth-services> (last visited Oct. 16, 2016).

¹⁵⁰ *Id.*

¹⁵¹ Rob Klieger, *Peaceful Resolutions*, 36 L.A. LAW. 26 (2013).

¹⁵² LACBA Civic Mediation Project, *supra* note 149.

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dispute resolution.”¹⁵³ After students received mediation training, they communicated directly with the disputant and felt comfortable trying out their newly-learned skills.¹⁵⁴

Most programs focus on teaching youth tangible, practical skills including active listening, techniques to express feelings (“I” statements), and cooperative processes, such as not interrupting another speaker.¹⁵⁵ These programs focus on practical skills in the hopes that “children taught mediation skills and peaceful conflict resolution at each stage in their development have a greater potential for developing lifelong social and interpersonal skills.”¹⁵⁶

Related, schools also are building restorative justice programs.¹⁵⁷ Restorative justice recognizes and privileges relationality.¹⁵⁸ A core tenet of restorative justice is that individuals and communities are more likely to flourish if relationships are nurtured.¹⁵⁹ If relationships fracture because a person has caused hurt or harm to another, the individuals and the community benefit from efforts to repair that fracture.¹⁶⁰

Schools that have adopted restorative justice programs often attempt to interrupt more serious conflict and explicitly seek to interrupt the school to prison pipeline.¹⁶¹ There is a possibility that students see restorative justice as applicable only to high conflict settings. But, many schools are creating more holistic restorative justice systems as a way of building a consistently positive environment for the school community.¹⁶² As one training guide describes:

¹⁵³ Cottam, *supra* note 147, at 1523.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 1524.

¹⁵⁶ *Id.*

¹⁵⁷ TREVOR FRONIUS, ET AL., RESTORATIVE JUSTICE IN U.S. SCHOOLS: A RESEARCH REVIEW, 1 (WESTED 2016).

¹⁵⁸ GERRY JOHNSTONE ET AL., HANDBOOK OF RESTORATIVE JUSTICE 7 (Gerry Johnstone & Daniel W. Van Ness, 2007).

¹⁵⁹ JOHNSTONE ET AL., *supra* note 158, at 24.

¹⁶⁰ Sharpe, *supra* note 95, at 24-31.

¹⁶¹ Michael D. Sumner, et al., *School-Based Restorative Justice as an Alternative to Zero-Tolerance Policies: Lessons From West Oakland*, THELTON E. HENDERSON CENTER FOR SOCIAL JUSTICE AT UNIVERSITY OF CALIFORNIA, 2-3.

¹⁶² LACBA Civic Mediation Project, *supra* note 149.

Staff and student interaction and learning don't just happen in the classroom—it happens on school buses, in cafeterias, on the playground, and in school counselor offices. Restorative practices can be used throughout the school campus by all staff to create and maintain a safe physical space, a supportive school climate, an academically and developmentally appropriate environment, and healthy relationships between students, peers, and staff.¹⁶³

In this regard, restorative justice practices include techniques like active listening and affective “I” statements, and also look to use mundane conflict as a practice site.¹⁶⁴

Further, many of the components of restorative justice ask students to engage with each other directly to resolve their conflict.¹⁶⁵ For example, students participate in “talking circles” in which they follow guidelines about respectful, honest, and empathetic speech.¹⁶⁶ Engaging directly with peers and successfully navigating a range of conflict helps build positive cognitive pathways about conflict.¹⁶⁷ Importantly, the practices are iterative and involve self-reflection.¹⁶⁸ Especially in those schools in which restorative justice practices are systemic, students have consistent opportunities to practice their skills, get immediate feedback from their peers and teachers, then reflect on that feedback and practice again.¹⁶⁹

B. Resiliency Training for Youth.

Another hopeful move is resiliency training for youth. Resiliency training comes from the field of positive psychology.¹⁷⁰ There also is related curriculum coming from the field of mindfulness practice.¹⁷¹ In both, a core

¹⁶³ *Restorative Practices: Fostering Healthy Relationships and Promoting Positive Discipline in Schools*, *supra* note 147, at 7.

¹⁶⁴ *LACBA Civic Mediation Project*, *supra* note 149.

¹⁶⁵ *Id.*

¹⁶⁶ See Patricia Leigh Brown, *Opening Up, Students Transform a Vicious Circle*, *NEW YORK TIMES*, (April 3, 2013), http://www.nytimes.com/2013/04/04/education/restorative-justice-programs-take-root-in-schools.html?_r=0.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See generally Martin E. P. Seligman, *FLOURISH*, (Nicholas Brealey Publishing 2011).

¹⁷¹ See generally MINDFUL SCHOOLS, <http://www.mindfulschools.org/> (last visited Oct. 17, 2016).

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goal is to become aware of emotions and the embodied responses they trigger and to pay attention to the cognitive conclusions that we draw from such experiences.¹⁷²

Positive psychology proposes that each of us has a set of strengths that, if we cultivate, will help us flourish in our lives.¹⁷³ In training developed for schools, youth learn about the “self-talk” that automatically happens in their heads when they experience an event—either positive or negative.¹⁷⁴ Youth then learn about some basic cognitive processing patterns, particularly the pattern to correlate a negative experience with a negative assessment of their own character (i.e., “I did badly on my math test, therefore, I must be stupid.”).¹⁷⁵ As the training progresses, students learn a variety of techniques that help them develop their capacities to experience an event, its emotional component and its embodied response, and then to pause and remind themselves of common cognitive processing errors before responding or before inaccurately making a negative assessment of themselves.¹⁷⁶ They learn to cultivate their strengths, which then leads them to be more resilient in the face of challenges.¹⁷⁷

Because the resiliency training often is trying to interrupt inaccurate negative assessments, and those assessments commonly are triggered by some kind of conflict, the training provides students with many opportunities to use mundane conflict for practice.¹⁷⁸ Like all competencies though, the lessons from resiliency training require iterative practice to truly develop.¹⁷⁹ School-based resiliency training that is a one-off may not make much of a difference.¹⁸⁰

Similar to resiliency training, school-based mindfulness curricula have a goal of interrupting habituated responses to all kinds of experiences,

¹⁷² *Id.*

¹⁷³ See generally, Seligman, *supra* note 170.

¹⁷⁴ See *The Penn Resilience Program for Middle School Students*, sample curriculum available at <https://ppc.sas.upenn.edu/sites/ppc.sas.upenn.edu/files/prplessons.pdf> [hereinafter *Penn Resilience*].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See *Emotional Training Helps Kids Fight Depression*, NATIONAL PUBLIC RADIO (January 18, 2010), <http://www.npr.org/templates/story/story.php?storyId=122526518> (transcript of audio report) [hereinafter *Emotional Training*].

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

including conflict.¹⁸¹ As one school-based mindfulness organization describes it, mindfulness is “a moment-by-moment awareness of our thoughts, emotions, sensations and surrounding environment.”¹⁸² Like resiliency training, school-based mindfulness training is designed to help students flourish, by learning both how to cope with stressors, including conflict, and how to cultivate a positive mindset.¹⁸³ Mindfulness curricula typically are designed to be integrated into each school day.¹⁸⁴ Thus, the practices become regular and iterative.¹⁸⁵ The practices are guided by a teacher, but include times for reflection and feedback by students.¹⁸⁶ Like training coming from positive psychology, mundane conflict becomes an easy source of experiences to use for practicing mindfulness techniques.¹⁸⁷

As I said at the outset of this section, I have focused on projects that involve youth because I hope that the earlier we are able to build positive cognitive pathways about conflict, the more likely it is that a person has sustained practice time for those skills.¹⁸⁸ And, the more sustained practice time, the more likely it is that the person will build positive cognitive pathways that are strong and easily available when she experiences harder conflict.¹⁸⁹ If a youth experiences difficult conflict, I am counting on the programs discussed above to provide reflective settings in which the youth practices conflict resolution skills. Then, when a youth moves into settings in which she is less likely to have guidance or coaching, she already has well-formed skills that she knows how to use on her own.

¹⁸¹ MINDFUL SCHOOLS, *supra* note 171.

¹⁸² *Why Mindfulness is Needed in Education The Impact of Toxic Stress on School Communities*, MINDFUL SCHOOLS, <http://www.mindfulschools.org/about-mindfulness/mindfulness-in-education/> (last visited Oct. 31, 2016).

¹⁸³ See *From the Source: Children Talking About Handling Difficult Emotions with Mindfulness*, Mindful Schools video available at <http://www.mindfulschools.org/resources/explore-mindful-resources/#starter-lesson> [hereinafter Mindful Schools, *Handling Difficult Emotions*].

¹⁸⁴ Mindful Schools, *Lesson One: Introduction – Mindful Bodies & Listening* <http://www.mindfulschools.org/wp/wp-content/uploads/2015/06/starter-lesson.pdf> [hereinafter Mindful Schools, *Lesson One*].

¹⁸⁵ Mindful Schools, *Handling Difficult Emotions*, *supra* note 183.

¹⁸⁶ *Id.*; MINDFUL SCHOOLS, *Lesson One*, *supra* note 184.

¹⁸⁷ Mindful Schools, *Handling Difficult Emotions*, *supra* note 183.

¹⁸⁸ See also Sandra V. Sandy, *The Development of Conflict Resolution Skills: Preschool to Adulthood*, in *THE HANDBOOK OF CONFLICT RESOLUTION*, 356, 356 (Deutsch, Coleman & Marcus, eds., 2d ed. 2006) (arguing for the importance of early childhood education on conflict resolution skills).

¹⁸⁹ *Id.*

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Clearly, though, there is a lot of space, time, and uncertainty between the projects I have described and someone experiencing a legal conflict. My project is not trying to prove an empirical claim (e.g., that youth resiliency training *will* make the subsequent adult less fearful of handling a legal conflict on her own), it does, however, propose a fairly profound change in mindset. My hope is that a changed mindset can disrupt well-worn cognitive pathways about conflict, and create new pathways that ultimately lead to a more capacious and effective use of conflict. To that end, this project plays the long game.

I appreciate the vantage point, which says that if we genuinely experience as negative the kinds of conflict that require engaging the legal system,¹⁹⁰ the long game is too inefficient and too ineffective. Further, I appreciate that there may be some conflicts where it is important to have a public face and space, like court—think of rights-claiming litigation.¹⁹¹ Thus, there are times when conflict is as the dominant narrative says it is: hard and intractable.¹⁹² For those kinds of conflict, our goal should be to make sure the legal system offers a structured space for which difficult conflicts can be brought to and resolved. The main function of the legal system should be to shepherd the parties in a contained and controlled way so that their conflict can be presented to a third-party decision-maker.

But, if we are committed to empowering a person to work with her own conflict, as I am, then it is critical to acknowledge that disputants themselves typically have the most accurate information needed for creative problem solving.¹⁹³ Thus, while we may always need a court system to be available,¹⁹⁴ we should still want that system to help participants reach the best result possible. This should mean we should resist taking the problem-solving process away from participants themselves. To that end, I hope that my project may help.

¹⁹⁰ Sales et al., *supra* note 144, at 599-600.

¹⁹¹ See, e.g., David Luban, *Settlements and the Erosion of the Public Realm*, 83 GEO. L. REV. 2619, 2623 (1995); Owen Fiss, *Against Settlement*, 93 YALE L. J. 1073, 1083 (1984).

¹⁹² Sales et al., *supra* note 144, at 599-600; Fiss, *supra* note 191, at 1075; Luban, *supra* note 191, at 2631.

¹⁹³ For example, in the state trial court near my law school, I regularly have heard judges in family law cases say to the parties that they are in much better positions than is the judge to decide what kinds of arrangements will work best for the family. Judges often admonish parties “not to leave the decision to the person in the black robe.”

¹⁹⁴ Luban, *supra* note 191, at 2641.

V. CONCLUSION.

This project begins with a modest goal of considering how we may better empower people to more effectively meet the conflicts that are typically associated with a legal dispute. This modest goal, however, requires a profound and fundamental reworking of the current dominant narratives we hold about conflict. This reframing is driven by a careful exploration of the factual world and an examination of whether our current cognitive habits reflect the factual world as accurately and usefully as they could.

From my inquiry, I suggest that we embrace the notion that the factual world is one of deep and complete relationality, which helps make clear to us that conflict is “profound mutuality.”¹⁹⁵ Conflict is ubiquitous and we cannot and should not avoid it. Further, we already have rich and beneficial theoretical knowledge about conflicts as well as very practical techniques already developed by the conflict resolution field.

Our challenge is to overcome a current mindset that treats such knowledge as accessible and usable primarily by professionals. If we embrace and celebrate our daily experiences of mundane conflict, we would find a regular practice site to develop our own competencies. And, in developing our own competencies, we can ensure that we maintain our place at the conflict resolution table.

¹⁹⁵ HAMILTON, *supra* note 79, at 193.