Investigative files made public a few days ago indicate that it probably will be next to impossible to determine with any finality what caused the crash of EgyptAir Flight 990 -- an airliner that, despite investigators’ inability to find any fatal mechanical failure, nevertheless plunged Oct. 31 into the Atlantic Ocean, killing 217 people.

The same may well hold for future crashes if we continue to ignore the recommendation of the National Transportation Safety Board that airplanes be equipped with video cameras as well as voice recorders. The board made this suggestion when suspicions arose that the EgyptAir flight's reserve co-pilot deliberately crashed the plane. Egyptian officials claim this is not so, but -- with only a voice recorder to rely upon -- the matter remains in dispute.

The Air Line Pilots Association, however, objects vociferously to the board's suggestion that video cameras could answer such questions, saying the privacy of the pilots would be violated. That is where the matter remains stuck.

This is a prime example of our culture of confrontation, or what Deborah Tannen calls "the argument culture" in her book by that title. We are quick to dig in rather than to work things out. In Washington, this way of not doing business is called "gridlock."

This culture is most evident in our well-known tendency to file lawsuits (although there seems to be a recent increase in the use of alternative methods to resolve disputes). Our mass culture -- see MSNBC's Hardball, CNN's Crossfire, book reviews, congressional debates -- often imitates courtroom culture, which has seeped into our consciousness via umpteen movies and TV shows. In each arena, both sides make their cases in the strongest terms possible. It is assumed that truth and light will arise out of this clash.

What does all of this have to do with pilot privacy and airline safety? In a less confrontational mode, reasonable heads on both sides -- with perhaps some third-party assistance -- might point out that there are several ways to adequately (albeit not perfectly) protect both the privacy of the pilots and our lives.

For example, the tapes could be erased automatically shortly after an airplane lands, which, given how rare crashes are, would take care of more than 99.9999% of the situations. In the remaining cases, there would be strict rules as to who could gain access to the tapes and what could be released.

If we could learn to approach more matters not as confrontations between individual rights and the common good but as quests for finding ways to work things out, the recent Supreme Court decision about Miranda rights might have taken a rather different form.

Conservatives argue that the requirement that voluntary confessions be thrown out if the suspects have not first had their rights read to them allows killers to walk because of a technicality. Liberals maintain that unless Miranda is strictly adhered to, the police will wring confessions out of innocent people. Presented only with irreconcilable options and unable in our legal tradition to suggest a third approach, the court was forced to choose between stark positions. It sided with the liberal one.

Lost in the confrontation are all kinds of reasonable alternatives. To take but two: A highly regarded law professor, my colleague Jeffery Rosen, has suggested that the requirement to read rights should remain intact, but the police should be allowed to continue to question a suspect even if he or she asked for a lawyer.
I would prefer to find a way to differentiate between those confessions that were given truly voluntarily -- say, blurted out before rights were read -- and those in which the police pressured the suspect. (This may necessitate taping confessions, as is favored by many anyhow.) There might well be other ways to have fewer criminals walk because someone did not read them their rights at the right moment in the right way, while still preventing the police from forcing suspects to incriminate themselves. But we are unlikely to see such ideas in the prevailing confrontational culture.

If we could get into the let's-work-things-out groove, we also could tackle the debate over the inclusion of the names of dangerous mental patients in the Brady Bill databank used for background checks of gun buyers.

Most state laws ban the disclosure of mental patients' records to protect their privacy. But a study of recent serial killings and shootings at workplaces found that about half were committed by people who had been previously institutionalized and who had exhibited violent tendencies. Hence, public authorities requested that the databank include mental patients’ records.

An intermediate position on this issue would allow the names of mental patients to be included in the databank without attaching their records or even an indication as to why their names are there. They simply would be coded -- together with those who are underage and those who have committed offenses -- as not eligible for gun ownership at this time.

When we do work things out, the felicitous results can be gleaned from another clash between individual rights and public safety: When New York City introduced cameras at street corners to catch those who run red lights, civil libertarians objected on the grounds that the privacy of the drivers was being violated.

In response, the cameras were lowered so that they now capture only offenders' license plates, rather than who is smooching with whom in the front seat. It still is possible in this way to identify the offending cars, although identifying the driver becomes considerably more difficult in the new setup.

The idea that one should look for the golden middle is a very ancient one, but that makes it no less valid. Neither individual rights nor the common good should be treated as absolutes. We should be looking for ways to serve both as much as possible. When no such ways can be found, we should hammer out a compromise.

A good place to start would be the nearest cockpit.

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