

**GETTING TO THE TRADING ZONE**  
**LESSON #11**

**Dealing with High Emotions: Encouragement in the Face of  
Outrage**

Let's face it. Litigation can bring out the worst in parties on both sides of the "v". Once they are faced with confronting one another in mediation, tempers can flare and tears, anger, fears and raised voices may erupt.

*You don't have to fear the occasional emotional outburst if you do this.*

"Mediating Dangerously", a term coined by Kenneth Cloke, means being fearless in asking questions designed to get "below the surface" and find out what is really keeping the parties from settling their dispute. This means allowing your mediator to bravely ask some open-ended questions of your client, diplomatically yet persistently. As psychologists know, venting and then listening with empathy is a healthy way to respond to anger and fear.

Occasionally, a genuine and heartfelt apology can be negotiated and expressed before the case can be fully resolved. Delivering a well-crafted apology can go a long way towards overcoming or at least accepting the grief and anguish the conflict has created in a party in the right circumstances, as can non-monetary, but meaningful concessions designed to meet the parties' interests.

Although most lawyers (and many mediators) are untrained in going beyond facts, evidence and arguments, people in conflict are often driven by emotions and reactions that may not be rooted in what lawyers consider to be "admissible" evidence. However challenging it may feel to step aside from the battle to explore a client's feelings, I encourage you to permit or even invite your mediator to wade into the messy emotions that present themselves in order to get to a truly satisfying end to the dispute.

*P.S. I am pleased to have published an article in the Daily Journal this month (November 6, 2015) titled, "In Defense of Confidentiality". If you would like to read a copy of the article, please contact me via email.*