

The Effects of Negotiated and Delegated Apologies in Settlement Negotiation

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Previous work has explored the influence that apologies have on the settlement of civil legal disputes. This study explored 2 aspects of apologies that commonly arise in the legal setting—the fact that many apologies may be negotiated with or requested from a wrongdoer in the context of settlement discussions and the possibility that an apology may be offered by a wrongdoer’s attorney rather than personally by the offender. In general, apologies given following a negligent action were found to improve perceptions of the offender and the situation. Full apologies that were given in response to a request by the injured party or at the suggestion of a mediator were viewed in ways that were similar to the same apology given spontaneously. On the other hand, full apologies that were offered by an attorney on behalf of the wrongdoer, although improving perceptions somewhat, were less effective than apologies offered directly by the wrongdoer. The motives attributed to the apologizer and general attitudes toward the civil litigation system also influenced perceptions of apologies.

Keywords: apology, negotiation, impression, management, motives

An authentic apology cannot be delegated, consigned, exacted, or assumed by the principals, no less outsiders, without totally altering its meaning and vitiating its moral force. (Tavuchis, 1991, p. 49)

Even though it may be appropriate to offer an apology to someone one has injured, fears of legal liability are often said to discourage apologies (see, e.g., Gallagher, Waterman, Ebers, Frasier, & Levinson, 2003). Defendants, defense counsel, and insurers worry that statements of apology will be admissible at trial and will be interpreted by fact-finders as admissions of responsibility. In recent years, however, both legal commentators and psychologists have begun to explore the effects of apologies offered in the context of civil harms (see Bornstein, Rung, & Miller, 2002; J. R. Cohen, 1999; Robbennolt, 2003, 2006, 2008; Shuman, 2000; Taft, 2000) and approximately two thirds of the states have enacted evidentiary rules that prevent the admission of some apologies at trial (see review in Robbennolt, 2008). Proponents of apologies in civil litigation believe that apologies will, among other things, avert lawsuits and promote and speed settlement, while providing greater satisfaction to injured parties and offenders (see, e.g., J. R. Cohen, 1999; Shuman, 2000; see review in Robbennolt, 2003).

Apologies, particularly those that accept responsibility for having caused harm, can change injured people’s perceptions of and reactions to harm-causing incidents (Bornstein et al., 2002; Davis & Gold, 2011; Robbennolt, 2003, 2006). In addition,

apologies may fulfill needs that are not satisfied in the same way by monetary settlements or awards—providing assurance that the offender will not reoffend, affirming the importance of the rule that was violated and the social standing of the injured person, and conveying information (see Gold & Weiner, 2000; Shuman, 2000). Accordingly, apologies have been shown to change people’s approach to settlement, affecting their bottom-line goals, their aspirations, and their perceptions of what settlement outcome would be fair (Robbennolt, 2006). These types of *settlement levers* have been found to act as reference points that influence final settlement decisions (see, e.g., Kahneman, 1992; S. B. White & Neale, 1994).

Apologies offered in the context of civil litigation, however, entail some unique complications. First, the desire to receive an apology from an actor who has caused injury raises the possibility that many apologies will be “negotiated” between the parties as part of the settlement process. Just as criminal defendants may sometimes be compelled to apologize to their victims, usually as a condition of probation (see B. T. White, 2006), so too may civil defendants find themselves subject to a request for an apology or pressured to apologize as part of a settlement (see Schneider, 2000). Second, the presence of attorneys may have important effects on the giving and receiving of apologies in this context (see Robbennolt, 2008). Of particular interest here is that a growing number of attorneys would consider offering an apology on behalf of a client in the context of settlement negotiations (see J. R. Cohen, 1999; Levi, 1997).

In addition, self-presentational concerns may be particularly salient in the legal context as the possibility of litigation looms. Because apologies can function as a tool of impression management (see Schlenker & Weigold, 1992), decision-maker perceptions of the motives underlying the apology may influence their responses to the apology (see Banerjee, Bennett, & Luke, 2010; Darby & Schlenker, 1989).

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Negotiated Apologies

Given plaintiffs' desire for apology (see, e.g., [Gallagher et al., 2003](#); [Vincent, Young, & Phillips, 1994](#)) and the hesitance of many defendants to offer apologies (see [J. R. Cohen, 1999](#); [Gallagher et al., 2003](#)), it is not surprising that plaintiff demands for apologies occur in the context of settlement negotiations in civil cases. Plaintiffs may specifically request an apology from the defendant as a precondition to engaging in settlement discussions (see, e.g., [Henry, 2004](#)) or as a condition or element of the settlement itself (see, e.g., [Babula, 2003](#); [Lewis, 1999](#); "Tire Victim," 2001). Even when the other terms of settlement have been agreed, an unfulfilled demand for an apology can be a barrier to finalizing an agreement (see [Dooley & Blaney, 1998](#); [Schneider, 2000](#)).

For a variety of reasons, it is likely that many of these demands for apology will come in the context of mediation (see [Levi, 1997](#); [Schneider, 2000](#)). And the mediation context—in which a neutral third party assists disputants to reach an accord, but generally has no authority to impose an agreement—may be particularly suited to apologies. First, apology is consistent with the philosophy behind mediation, which focuses on assisting the parties in resolving their disputes and attends to the interpersonal aspects of the dispute ([J. R. Cohen, 1999](#); [Riskin, 1982](#)). Second, mediation may be a particularly "safe" place in which a defendant can apologize. In addition to evidentiary rules that prohibit admission of statements made in settlement negotiations (see, e.g., [Federal Rule Evidence 408, 2011](#)), many states also specifically protect statements made in mediation (see, e.g., [Uniform Mediation Act, 2003](#)).

Consequently, apologies commonly occur in mediation (see [Umbreit, 1994](#)), and it is increasingly likely that during the course of settlement negotiations, an apology will be "encouraged" by a mediator (or by a judge presiding over a settlement conference) who suggests to a defendant that an apology is in order or would break an impasse (see [Levi, 1997](#); [Schneider, 2000](#)). When this is done in the presence of the plaintiff or with the plaintiff's awareness, this may be another form of negotiated or requested apology.

How these negotiated apologies are perceived has been a subject of some controversy but little empirical examination. Some have argued that negotiated apologies, whether they are negotiated by the parties themselves or encouraged by a third party, seem less than ideal, potentially lacking in sincerity (see [J. R. Cohen, 1999](#); [Shuman, 2000](#)) and more apt to be perceived as motivated by "self-serving" concerns (see [Tavuchis, 1991](#)).

On the other hand, there is something compelling about compelled apologies. Even spontaneous and voluntary apologies may be insincere or offered for self-serving reasons (see generally [Keltner, Young, & Buswell, 1997](#)). And negotiated (and even coerced) apologies, although perhaps not ideal, may still ease negative emotions, affirm community standards, require the offender to articulate those standards, express the proper moral relation of the parties, signal that the injured person is a valued member of the community and should be treated as such, and smooth the way toward settlement (see [Latif, 2001](#); [Robbenolt, Darley, & MacCoun, 2003](#); see also [Lazare, 2004](#)).

Some claimants find negotiated apologies to be sincere or see them as otherwise valuable components of their settlement agreements ([Dooley & Blaney, 1998](#); "Tire Victim," 2001). Some are

less concerned with sincerity, but nonetheless see other significance in demanded apologies. To take just one example, consider Michael Dasrath, an Indian American who worked for J. P. Morgan. Dasrath was removed from an airline flight in 2001 and requested an apology, refusing to settle his case without one:

I know for a fact it won't be sincere at this point. I just want them to acknowledge what they did was wrong. They may not believe it, but at least I could say I have it in writing that [they] admitted that what [they] did was wrong. ([B. T. White, 2006](#), p. 1272)

In an early study, [Weiner, Graham, Peter, and Zmuidinas \(1991\)](#) examined responses to "confessions" that included admission of wrongdoing and an apology. Confessions were either given spontaneously or in response to an accusation of wrongdoing (cheating on a test or misusing an expense account). Weiner and colleagues found that both the spontaneous confessor and the accused confessor were perceived as more trustworthy, moral, honest, and sincere than were actors who denied responsibility. Similarly, both spontaneous and accused confessors elicited more sympathy and forgiveness and less anger and desire to punish than did actors who denied responsibility for the wrongdoing. These effects, however, were larger for the spontaneous confessor than for the accused confessor. In addition, the accused confessor was perceived to be more strongly motivated by impression management than either the spontaneous confessor or the denier.

Although offering some initial insight into the effects of negotiated apologies, the apologies in [Weiner and colleagues' \(1991\)](#) study differ in important ways from the type of negotiated apologies at issue here. In particular, the spontaneous confessor not only apologized but also owned up to behavior that might otherwise not have been detected. Thus, some of the effects—particularly those involving assessments of morality and honesty—might have been driven by the confession or admission itself rather than the apology. In addition, apologies were offered in response to an accusation of injury and wrongdoing rather than in response to a request for apology in a situation in which the injury and wrongdoing are clearer.

In a closer parallel, [Risen and Gilovich \(2007\)](#) examined requests for apology, distinguishing between the reactions of recipients and observers of apologies in their examination of spontaneous apologies as compared with apologies offered at the urging of a third party. They found that whereas observers distinguished between actors who apologized spontaneously and those who did so in response to a demand—evidencing more liking of, less desire to punish, and greater willingness to work with a spontaneous apologizer—apology recipients evaluated spontaneous and demanded apologies similarly.

Delegated Apologies

Another complication that may arise when apologies are contemplated in the legal arena relates to who has the standing, or moral authority, to apologize (see [Brown & Robbenolt, 2006](#)). In the context of civil litigation, this concern is most likely to arise when the defendant's attorney offers an apology to the plaintiff on behalf of the defendant ([Henry, 2004](#); "Rogers Also Fined," 2005). For example, in one prominent incident involving an altercation between baseball player Kenny Rogers and a cameraman ("Rogers

Also Fined," 2005), Rogers' attorney offered the following statement:

Kenny Rogers would like to make a statement. However, in light of the ongoing investigation, it is not advisable for Kenny to comment directly and publicly at this time.

On Kenny's behalf, though, we would like to express to Mr. Rodriguez, Ranger fans, all baseball fans and his teammates that Kenny is truly sorry for the incident that occurred and regrets that it happened.

Attorneys concerned about the admissibility of apologetic statements may be more comfortable communicating any apology themselves, particularly if they prefer a very precisely worded statement (J. R. Cohen, 1999). The offender may also find it easier to have another speak on his behalf (see generally Eisenberg, 1976). Such apologies might occur during bilateral settlement negotiations, in lawyers' opening statements in mediation, or in public fora.

Apologies, however, are, at their core, "dyadic"—tied to the relationship between the wrongdoer and the injured: "As the offender, for example, I cannot have someone apologize on my behalf any more than I, as the offended, can forgive by proxy or have another bestow this gift without my knowledge or consent" (Tavuchis, 1991, p. 49). Even a company—the Tianjin Apology and Gift Center—that makes apologies on behalf of clients admits, "Of course it is more sincere if you apologize by yourself" (Rosenthal, 2001). Therefore, many are skeptical that such apologies by proxy can be effective (Levi, 1997; Minow, 1998; Tavuchis, 1991). Indeed, the week after the apology given by his attorneys, Kenny Rogers felt obliged (against the advice of counsel) to personally offer an apology ("Rogers Apologizes," 2005).

Here again, however, as with negotiated apologies, there may be some value even in delegated apologies. First, even if the apology itself is delegated to the defendant's attorney, the offender must still approve it (J. R. Cohen, 1999). In addition, although the best apologies have meaning that goes beyond mere ritual, sometimes "we will settle simply for the ritual—so long as it is not transparently insincere" (Murphy, 1988, p. 28).

Data from a small study of 19 medical malpractice cases that were mediated are consistent with these intuitions (Hyman & Schechter, 2006). Ninety-one percent (10 of 11 cases) of the cases in which defense counsel offered an apology settled as compared with only 38% (three of eight cases) of cases in which no apology was offered. These cases differed in more ways than the presence or absence of an apology: Each involved the same defense attorney who chose whether or not to apologize, and no other information about the nature of the settlements was given. Nonetheless, these results are at least consistent with the notion that apologies may help to settle cases even when they are proffered by the defendant's attorney (see also Mazor et al., 2011).

Given the paucity of research examining negotiated and delegated apologies, particularly in the legal context, this study was designed to further explore perceptions of these sorts of apologies in the context of attempts to settle a civil lawsuit.

Method

Participants—146 university staff members ranging in age from 18 to 74 years ($M = 39$ years; 63% women)—visited a Website, read a scenario describing a pedestrian–bicycle accident in which

one party was injured, and took the role of the injured person. Respondents were told that they would negotiate with the offender about a possible settlement and were asked to indicate their aspiration price ("What is the MOST amount of money you would hope to get in an out-of-court settlement?"), their reservation price ("What would be the LEAST amount of money you would accept to settle the case out-of-court—that is, your 'bottom line'?"), and their assessment of what a "fair" settlement would be ("What do you think would be a FAIR settlement in this case?"). In addition, respondents were asked to indicate their assessment of the sufficiency of the apology; their assessments of the nature of the injuries, the other party's conduct and character, and each party's responsibility for causing the incident; the degree to which they were angry at, sympathetic to, willing to forgive, and desired to punish the other party; and their assessments of how the incident would likely affect the relationship and the other party's conduct in the future (7-point scales). Participants were also asked about the motives they ascribed to the other party (5-point scales), completed a seven-item litigation attitudes scale (Hans & Lofquist, 1994; see Table 4), and provided demographic information.

Both the compulsion behind the apology and the standing of the person offering the apology were systematically manipulated. Control participants evaluated a version of the scenario in which no apology was offered. This version was compared with four variants in which a responsibility-accepting apology was offered (i.e., "I want to let you know how sorry I am. The accident was my fault. I was going too fast and not watching where I was going until it was too late. I am so sorry"). This apology was offered either at the offender's own instigation ("Pat contacted you and said . . ."), in response to a request from the injured party ("[Y]ou got in touch with Pat and told her that you thought she owed you an apology. She then said . . ."), at the suggestion of a mediator ("The mediator suggested to Pat that it might help if she apologized to you. Pat then said . . ."), or by the offender's attorney ("Pat's attorney contacted you and said, 'Pat wants to let you know . . .'"). Participants were randomly assigned to one of these five experimental conditions.

Results

Perceptions

Participants were asked a series of questions about their perceptions of the situation and the opposing party. Based on previous work with similar questions, two scales were constructed from these measures.

The first scale ($\alpha = .90$) represented participants' overall assessment of the apology and the information it conveyed, and included participants' ratings of the sufficiency of the apology, the degree to which the offender thought she was responsible, the offender's regret, the degree to which the offender would be careful in the future, the degree to which the offender respected the participant, and the offender's morality. Respondents differentially assessed the apologies and the meaning they conveyed as measured by this scale (see Table 1). Failure to apologize was viewed less positively than a spontaneous apology ($d = -2.71$, 95% CI $[-2.94, -2.49]$), an apology offered at the prompting of a mediator ($d = -2.33$, 95% CI $[-2.63, -2.04]$), an apology offered at the request of the injured party ($d = -3.01$, 95% CI

Table 1
Effects of Negotiated and Delegated Apologies on Perceptions

Perception	No apology	Attorney proxy	Spontaneous apology	Mediator prompted	Requested apology	<i>F</i>	<i>df</i>	<i>p</i>	η_p^2
Assessment of apology	2.55 _a (0.86)	4.22 _b (1.05)	4.95 _c (0.93)	5.12 _c (1.32)	5.01 _c (0.81)	29.735	4, 135	<.001	.468
Evaluation of response ^a	3.39 _a (0.87)	3.96 _{a,b} (0.79)	3.99 _{a,b} (1.08)	4.09 _b (1.02)	4.01 _{a,b} (0.86)	2.621	4, 136	.038	.072
Perceived sincerity	—	3.63 _a (1.84)	4.97 _b (1.23)	5.19 _b (1.94)	4.93 _b (1.16)	5.614	3, 111	.001	.132
Avoid lawsuit motive	—	4.44 _a (0.75)	3.63 _b (1.11)	4.00 _{a,b} (0.88)	3.34 _b (1.08)	6.650	3, 112	<.001	.151
Other-focused motives	—	3.27 _a (0.84)	3.81 _b (0.83)	3.69 _{a,b} (0.83)	3.71 _{a,b} (0.58)	2.654	3, 112	.052	.066

Note. For assessment of apology and evaluation of response scales, higher scores indicate a more positive response. Higher motive scores indicate perceptions that the motives were more likely. Standard deviations are given in parentheses. Means sharing a common subscript are not statistically different at $p < .05$ according to the Tukey HSD procedure.

^a Apologies offered spontaneously and in response to a request by the injured party elicited marginally more favorable evaluations than no apology, $ps < .10$.

[−3.23, −2.79]), or an apology offered by an attorney ($d = -1.77$, 95% CI [−2.02, −1.51]). An apology offered by an attorney, however, was viewed less positively than an apology offered spontaneously ($d = -0.75$, 95% CI [−1.00, −0.51]), an apology offered at the prompting of a mediator ($d = -0.77$, 95% CI [−1.08, −0.46]), or an apology offered at the request of the injured party ($d = -0.86$, 95% CI [−1.10, −0.62]). No differences were found among the three apologies offered by the offender.

The second scale ($\alpha = .67$) represented participants' response to the incident, and included participants' ratings of their anger, their sympathy for the offender, the degree to which they thought the offender was responsible for their injuries, their willingness to forgive the offender, and the degree to which they thought the offender should be punished. These emotional and intended responses to the incident differed by apology (see Table 1). As compared with wrongdoers who failed to offer an apology, a significantly more favorable response was elicited by wrongdoers who apologized in response to a suggestion by a mediator ($d = -0.76$, 95% CI [−1.00, −0.51]) and marginally more favorably responses were elicited by wrongdoers who apologized on their own ($d = -0.62$, 95% CI [−0.86, −0.37]) or in response to a request by the injured party ($d = -0.73$, 95% CI [−0.95, −0.51]).

Participants' assessments of the offender's apology acted as a mediator of the effect of the apology on their responses. When assessments of the apology were added as covariates, the effect of apology condition on participants' evaluations of their responses became nonsignificant, $F(4, 131) = 0.841$, $p = .502$, whereas assessment of the apology remained a significant predictor, $F(1, 131) = 33.442$, $p < .001$, $\eta_p^2 = .203$.

There were no effects of apology on respondents' assessments of their own responsibility, $F(4, 139) = 0.395$, $p = .812$, the severity of their injuries, $F(4, 138) = 0.295$, $p = .881$, or their likelihood of winning the case at trial, $F(4, 139) = 1.148$, $p = .337$.

Settlement Levers

Participants also provided their assessment of various settlement levers—their reservation price (or bottom line), their aspirations, and their perception of a fair settlement value for the case. Because the settlement levers data were positively skewed, all analysis of means and correlations was performed on transformed data.¹

The different apology conditions did not produce a straightforward main effect on participants' settlement levers ($ps > .05$). Even so, respondents' apology-related perceptions were related to their settlement levers. As shown in the top of Table 2, and consistent with bargaining theory, the greater the likelihood the respondents thought they had of winning the case in court, the higher the value of their settlement levers. In addition, however, settlement levers were significantly correlated with participants' assessments of the apology and their responses to it. The more favorably participants assessed the apology or their response to it, the lower were their settlement levers.

To minimize the number of separate tests conducted, participants' settlement levers were combined into a single measurement of settlement posture ($\alpha = .87$). As shown in Table 3, participants' assessments of the apology, $\beta = -.389$, $t = -3.008$, $p = .003$, and their evaluation of their responses to it, $\beta = -.428$, $t = -4.606$, $p < .001$, both significantly influenced settlement posture. In addition, participants' evaluation of their responses to the offender's apology acted as a mediator of the effect of their assessments of the apology on their settlement posture. When evaluations were added as a covariate, the effect of the assessment of the apology on settlement posture became nonsignificant, whereas responses remained a significant predictor (Model 3).

Sincerity and Motives

For those conditions in which there was an apology, respondents ($n = 118$) were also asked to assess the sincerity of the apology and to judge the strength of each of five different motives that the wrongdoer might have had for apologizing.

Apologies offered by attorneys were perceived to be less credible than apologies offered by the offender spontaneously ($d = -0.89$, 95% CI [−1.27, −0.50]), in mediation ($d = -0.84$, 95% CI [−1.34, −0.35]), and when requested by the injured party ($d = -0.87$, 95% CI [−1.26, −0.48]; see Table 1).

Perceived motives were subjected to a principal components factor analysis. The items comprised two orthogonal factors accounting for 65% of the variance in the data. A scale based on the first of these factors (Other-Focused Motives, $\alpha = .67$) was

¹ Transformations were conducted to minimize skewness in the data. Reservation prices were square-root transformed. Aspirations and perceptions of fair settlement values were transformed by taking the natural log.

Table 2
Correlations Between Perceptions and Settlement Levers

Perception	Reservation price		Fair settlement		Aspirations	
	<i>r</i>	95% CI	<i>r</i>	95% CI	<i>r</i>	95% CI
Estimated likelihood of winning	.20*	[.04, .35]	.26*	[.10, .41]	.21*	[.04, .36]
Assessment of apology	-.27*	[-.42, -.11]	-.28*	[-.43, -.12]	-.10	[-.26, .07]
Evaluation of response	-.28*	[-.43, -.12]	-.43*	[-.56, -.28]	-.31*	[-.45, -.15]
Perceived sincerity	-.33*	[-.49, -.16]	-.35*	[-.50, -.18]	-.35*	[-.50, -.17]
Avoid lawsuit motive	.17	[-.02, .34]	.15	[-.03, .33]	.12	[-.07, .30]
Other-focused motives	-.29*	[-.45, -.11]	-.28*	[-.44, -.10]	-.22*	[-.39, -.04]
Litigation crisis attitudes	-.27*	[.11, .42]	-.29*	[.13, .43]	-.26*	[.10, .41]

Note. For assessment of apology and evaluation of response scales, higher scores indicate a more positive response. Higher motive scores indicate perceptions that the motives were more likely. Higher litigation attitude scores indicate more negative beliefs about the litigation system.

* $p < .05$.

constructed and included participants' assessments of the apology as motivated by a desire to express sympathy for the injured party, to preserve good relations, and to diminish the injured party's suffering. The second factor did not result in a reliable scale; the two items loading on that factor (desire to avoid a lawsuit and desire to avoid a guilty conscience) were analyzed separately.

As shown in Table 1, wrongdoers whose attorney offered the apology on their behalf were perceived to be more motivated by a desire to avoid a lawsuit than were wrongdoers who personally offered the apology at their own instigation ($d = 0.85$, 95% CI [0.61, 1.09]) or in response to a request for an apology from the injured party ($d = 1.20$, 95% CI [0.96, 1.44]). In addition, wrongdoers whose attorney offered an apology on their behalf were perceived to have been less motivated by a focus on the other than those who offered the apology spontaneously (at levels approaching traditional standards of statistical significance; $d = -0.66$, 95% CI [-0.87, -0.45]). No differences in perceived desire to avoid a guilty conscience were detected, $F(3, 112) = 0.459$, $p = .712$.

Participants who perceived that the apology was more strongly motivated by other-focused motives assessed the apology more positively, $r = .642$, 95% CI [.52, .74], $p < .001$; found the apology to be more sincere, $r = .607$, 95% CI [.48, .71], $p < .001$; and responded more favorably to it, $r = .375$, 95% CI [.21, .52], $p < .001$. In contrast, participants who perceived that the apology was more strongly motivated by a desire to avoid a lawsuit

assessed the apology less positively, $r = -.464$, 95% CI [-.60, -.31], $p < .001$; found the apology to be less sincere, $r = -.457$, 95% CI [-.59, -.30], $p < .001$; and responded less positively, $r = -.247$, 95% CI [-.41, -.07], $p = .008$.

The motives that respondents attributed to the offender's apology mediated the effect of the apology on their assessments of and responses to the apology and the situation. When other-focused motives and lawsuit avoidance motives were added as covariates, the effect of apology condition on assessments of the apology and the meaning it conveyed became nonsignificant, $F(3, 109) = 1.849$, $p = .143$, and other-focused motives, $F(1, 109) = 52.166$, $p < .001$, $\eta_p^2 = .324$, and lawsuit avoidance motives, $F(1, 109) = 12.594$, $p = .001$, $\eta_p^2 = .104$, remained significant. Similarly, when these motives were added as covariates, the effect of apology condition on participants' responses to the situation became nonsignificant, $F(3, 107) = 0.725$, $p = .539$, and other-focused motives remained significant, $F(1, 107) = 12.532$, $p = .001$, $\eta_p^2 = .105$. Lawsuit avoidance motives approached but did not quite reach traditional levels of statistical significance in this model, $F(1, 107) = 2.750$, $p = .100$.

Finally, as shown in the bottom part of Table 2, the more sincere and other-focused participants thought that the apology was, the lower were their settlement levers.

Litigation Attitudes

Principal components factor analysis was conducted on participants' responses to seven items assessing their attitudes about the civil justice system (see Table 4). The items comprised two orthogonal factors accounting for 52% of the variance in the data. A scale based on the first of these factors (Litigation Crisis, $\alpha = .69$) was constructed. The second factor did not result in a reliable scale and was not analyzed further.

Litigation attitudes were independent of the apology condition received ($ps > .8$), but were associated with the motives attributed to the apologizer. The more participants believed that the tort system was in crisis, the more strongly they attributed a lawsuit avoidance motive to the apologizer, $r = .188$, 95% CI [-.36, -.01], $p = .044$. In addition, the more respondents believed that the system was in crisis, the lower were their settlement levers (see Table 2).

Table 3
Predictors of Settlement Levers

Variable	Settlement levers		
	Model 1	Model 2	Model 3
Attorney proxy apology	-.062	.020	-.020
No apology	-.251**	-.095	-.201
Assessment of apology	-.389*	—	-.174
Response to apology	—	-.428*	-.371*
<i>F</i>	3.056*	7.117*	5.775*
<i>df</i>	3, 103	3, 103	4, 102
<i>R</i> ²	.055	.148	.153

Note. $n = 106$. Table presents standardized coefficients (β). Attorney proxy apology and no apology are compared with apology offered personally by the offender (spontaneous, in mediation, and negotiated).

* $p < .05$. ** $p < .10$.

Table 4
Attitudes About Civil Litigation System

Attitude	Example
Litigation crisis ($\alpha = .69$)	People are too quick to sue, rather than trying to solve disputes in some other way. There are too many frivolous lawsuits today. Jury awards are too large. The large number of lawsuits show that our society is breaking down.
Legitimacy/utility of system	By making it easier to sue, the courts have made this a safer society. Juries do a good job determining outcomes of lawsuits and assessing damages. Most people who sue others in court have legitimate grievances.

Discussion

Consistent with past research, the responsibility-accepting apologies studied here had a positive influence on attributions about the situation and the offender. Respondents believed that offenders who personally offered full apologies accepted more responsibility and experienced more regret, would be more careful in the future, were more moral, and displayed more respect for the injured party. Participants also responded to such offenders more positively, experiencing less anger and desire to punish and more sympathy and willingness to forgive. In turn, these more positive perceptions and anticipated reactions were associated with lower settlement levers.

Importantly, respondents did not seem to devalue negotiated apologies—either those requested by the injured party or those offered at the suggestion of a mediator. Both types of negotiated apologies resulted in perceptions of and responses to the situation and the offender that were better than those of an offender who offered no apology and similar to the perceptions that respondents had following a spontaneous apology. These results highlight the potential value of negotiated apologies and suggest that there is merit in the theory that mediation can be a useful place for offering apologies.

It may be that because even a negotiated apology is ultimately offered by the offender, recipients make a dispositional attribution—presuming that an actor who apologizes is actually sorry—and pay relatively less attention to the circumstances that gave rise to the act of apology, a reaction that is consistent with the fundamental attribution error (see [Risen & Gilovich, 2007](#); [Robbenolt, 2003](#)). Indeed, respondents in this study found spontaneous and negotiated apologies to be equally sincere. So, too, may recipients desire to believe that an offender is truly sorry and follow a social script that dictates that apologies be accepted ([Bennett & Dewberry, 1994](#); [Risen & Gilovich, 2007](#)).

That even negotiated apologies may be valued by litigants also provides indirect support for the value of apologies offered postsettlement. Negotiation scholars have long argued for the utility of “postsettlement settlements” in which an agreed-on settlement can be replaced by a revised agreement if both parties agree (see [Raiffa, 1995](#)). Secure in the knowledge that a default agreement has been reached, the parties can disclose additional information and explore solutions that might make at least one (and maybe both) side better off without harming the other. J. R. [Cohen \(1999\)](#)

similarly raises the possibility of postsettlement apologies given after a release of liability. Such apologies are less legally risky for defendants, but may still be valuable to injured parties. If negotiated apologies are not devalued by their recipients, such postsettlement apologies may have a role to play in the satisfactory settlement of some disputes.

For apologies offered via an attorney or others who might offer apologies by proxy, the story is more complex. Although respondents did view an apology offered by the attorney as better than no apology at all, respondents did not view apologies—even full, responsibility-accepting apologies—offered by the offender’s attorney as positively as apologies personally offered by the offender. Apologies offered by attorneys were also viewed as less sincere and were more likely to be perceived as being motivated by a desire to avoid a lawsuit than were the same apologies offered personally by the wrongdoer. It seems likely that apology recipients are less prone to make positive dispositional attributions about the wrongdoer when he or she does not personally offer the apology. They may question why the wrongdoer did not personally offer the apology, and be less compelled to follow an apology script from which the wrongdoer has already departed.

Finally, this study builds on work by [Weiner and colleagues \(1991\)](#) in exploring a mechanism for how apologies influence settlement that has not been as focal in previous research—the motives that are attributed to the apologizer. In this study, the motives attributed to an actor who apologizes for having caused harm were influenced by the circumstances of the proffered apology. In particular, apologies offered by attorneys were seen as more strongly influenced by a desire to avoid a lawsuit and less strongly driven by other-focused motives. In addition, those who were more skeptical about the civil justice system were—perhaps not surprisingly—inclined to be more cynical about the motives underlying apologies offered in the context of a civil lawsuit. [Exline, DeShea, and Holeman \(2007\)](#) have found that the most common attribution given for one’s own apologies is a desire to help the other person or the relationship. In this legal settlement context, however, the desire to avoid a lawsuit was thought to be a primary motive for another’s apology.

Motive attributions, in turn, influenced other perceptions of the wrongdoer and the situation and participants’ approach to settlement. In particular, when the apology was seen as more strongly motivated by the desire to avoid a lawsuit, the apology was seen as less sincere and participants made less positive assessments of the offender’s felt responsibility, regret, future conduct, and respect. In contrast, when the apology was seen as motivated by a focus on the injured party, the apology was seen as more sincere and participants made more positive assessments. In addition, the less other-focused the apology was perceived to be, the greater the value of the settlement levers set by participants.

[Weiner and colleagues \(1991\)](#) found that an accused confessor was perceived to be more motivated by impression management than was a spontaneous confessor or one who denied responsibility. In contrast, the study reported here found no differences in the motives attributed to spontaneous and negotiated apologizers. Importantly, however, the context of the apologies offered in these studies differed in important ways. First, in the study reported here, the injury to the victim and the nature of the wrongdoing were fairly transparent. Thus, the apologies explored here—although they did involve acceptance of responsibility—did not involve

confessions or admissions in the same way that the apologies in the Weiner et al. studies did. Second, as noted above, the requests for apology considered here differed from the sorts of accusations studied by Weiner and colleagues. And, finally, the conduct at issue here—negligent bicycling—differed from the fraudulent behaviors examined by Weiner and colleagues. Research has shown that the type of behavior at issue—in particular, whether the breach implicates the actor's competence or integrity—influences reactions to apologies (Kim, Dirks, Cooper, & Ferrin, 2006; Kim, Ferrin, Cooper, & Dirks, 2004).

Limitations and Future Research

This study provides new insight into how apologies operate in the context of legal negotiation, but there are many questions remaining. Experimental data such as those presented here offer a window into the types of settlement decisions that are difficult to observe in the field and provide a way in which to isolate the impact of an apology. Of course, in interpreting these results, it is important to bear in mind the limitations inherent in such simulated decision making. In addition, although this study had acceptable levels of power for detecting moderate to large differences, it was less likely to be able to detect small to moderate effects (see J. Cohen, 1988). Although this study found no evidence of differences between apologies offered spontaneously, at the instigation of a mediator, or at the request of the injured party, future research ought to explore the possibility of more subtle effects.

In addition, the apologies examined here—full, responsibility-accepting apologies—may have signaled a level of sincerity that surmounted any skepticism that might have been associated with the fact that the apology was not offered spontaneously. It may be, however, that less complete apologies that are offered during the course of settlement negotiation or by an attorney will have different effects. Thus, future research ought to explore the interactions among the context and source of the apology and its content.

Another avenue for research in this area would be to explore the effects of negotiated and delegated apologies on the apologizer. Because the giving and receiving of apologies is a dynamic and interactive process involving at least two parties, it is important to consider how requests for apologies or the delegation of an apology to an attorney affects the perspective of the apologizer and his or her interactions with the injured party. Hodgins and Liebeskind (2003) have, for example, found that a harsh reproach by the injured party can lead to more defensiveness on the part of the wrongdoer, can cause the wrongdoer to be more pessimistic about any future relationship between the parties, and can result in the wrongdoer offering less complex apologies. If the effects of negotiating for an apology are similar, then some types of requests for apology may result in less satisfactory apologies, which are responded to more negatively by plaintiffs. Thus, attention should be paid to how requests for apologies are made in negotiation, the effects of different kinds of requests on apologizers, and the resulting effects on injured parties.

Finally, future work might explore the importance to the injured party of exercising her own agency in demanding or negotiating the apology (see Bandura, 2001). Plaintiffs may benefit from being self-efficacious in eliciting apologies from offenders, or may find comparable merit in having another person or group demand or

negotiate apologies on their behalf (see Bolivar, Aertsen, & Vanfraechem, 2012; Mazor et al., 2011).²

Decisions about whether and how to apologize and how to respond to apologies in the context of potential civil liability are complex. The data reported here, however, help to inform that puzzle, provide new evidence about the psychological mechanisms through which apologies operate, and can assist lawyers and mediators in their role of helping litigants to evaluate the strategic and nonstrategic considerations surrounding the offering and receiving of apologies in litigation.

² My thanks go to an anonymous reviewer for suggesting this line of thinking.

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