PhD Abstract

‘Mea culpa’ in the courtroom: Juror perceptions of defendant apology at trial

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Apologies are common utterances in everyday life (Scher and Darley 1997). They are offered in recognition of a social predicament or a violated norm and often come in the form of the statement, ‘I’m sorry’ (Rehm and Beatty 1996). Recent research confirms apology’s role in the legal system. Legal scholars argue for its increased use in mediation (Levi 1997, Bolstad 2000), alternative dispute resolution (Wagatsuma and Rosett 1986, Cohen 1999, Shuman 2000) and settlement negotiations (Brown 2004, Cohen 1999, 2002). Scholars agree apology is effective at preventing litigation and is becoming more common as a result (Cohen 1999, 2000, Shuman 2000, Rehm and Beatty 1996, Schneider 2000). Anecdotal evidence from recent cases echoes this finding (Tanner 2004). More than a way to avoid litigation, apology may also be an effective component of trial defense (Bornstein et al. 2002). Defendants, and especially defendants with demonstrable overt responsibility, may benefit...
from apologizing at trial for the very same reasons apology prevents litigation in the first place. Communication of apology can assuage hurt feelings, disarm anger and resentment, and lead to more positive evaluations by third parties. Failure to achieve these effects can equate to real consequences for parties in litigation.

Supported by recent research, this empirical study explores how the communication of apology during a mock civil trial may influence mock jurors’ perceptions, party credibility ratings, and verdict outcomes. A defendant organization’s apology may alleviate anger and reduce sanctioning by third party fact-finders, benefiting both parties involved. A defendant apology at trial is expected to increase defendant liability, increase defendant credibility and reduce sanctioning in terms of damage awards.

Using a one-way experimental design, this study examines how the presence of a complete apology, partial apology, or the lack of apology may influence perceptions and attributions of blame against a corporate defendant. A total of 186 participant ‘mock jurors’ viewed a video of a truncated civil proceeding containing simulated attorney presentations and jury instructions in a nursing home negligence case in order to answer the question of whether a corporate nursing home defendant’s communication of apology during trial will influence judgments about its credibility, accountability, or blameworthiness. Two experimental groups viewed summary legal arguments including manipulated levels of apology: (1) a complete or ‘full’ apology containing four apology elements; and (2) a perfunctory or ‘partial’ apology containing a single apology element. A third group acting as a control group heard summary arguments lacking any mention of apology whatsoever. Participants played the role of jurors deciding a verdict in the case. After viewing the case stimulus, participants completed an assessment of their verdicts as well as additional relevant dependent measures.

Results generally demonstrated that a defendant’s full apology did not influence liability assessments or damages awards compared to when a defendant made no mention of apology. Statistical analysis of the mean differences in percentage of liability and damages awards did not obtain statistical significance. Data do not support the conclusion that an apology expressing remorse, accepting responsibility, offering repair, and promising forbearance benefited the defendant’s trial outcome more than an equivocal expression of remorse. However, the full apology did result in some positive benefits.

Participant-jurors perceived a defendant offering a full apology as delivering the most sincere trial message. A sincere message, or at least one perceived as significantly more sincere than the control stimulus, contains a greater number of apology components. Interestingly, participant-jurors did not perceive the
full apology as significantly more sincere than a partial apology. Confirming previous findings by Scher and Darley (1997), data from this study suggest the expression of remorse shared by both the full and partial apology arguments may have been important to sincerity ratings. Mock jurors also perceived the defendant offering a full apology as more apologetic, more willing to compensate the plaintiff, more accepting of responsibility for what happened, and more willing to correct the situation, demonstrating that a complete apology can benefit defendant organizations.

Data also generated discussion in additional areas. First, that apology at trial may be too late to affect a defendant's trial outcome. Apology at trial was generally ineffective at improving outcomes for the defendant. Scholars recognize the importance of a well-timed apology. Shuman (2000) identifies the temporal dimension of apology, suggesting that timeliness is directly related to an apology's sincerity. Shuman (2000) suggests more specifically that an apology 'on the eve of trial...is a settlement tactic, not a sincere expression of regret' (p. 185). Mock jurors' positive perceptions of apologetic nursing home defendants suggest apology may be beneficial when used as an ongoing organizational communication strategy or in specific trial circumstances depending on factors such as the severity of injury and the strength of evidence.

Second, this study does not support the hypothesis that a defendant's equivocal 'partial' apology leads to a boomerang effect. Equivocal and evasive communication did not result in less desirable results for the nursing home defendant compared to no apology at all. Compared to no apology, a defendant offering a partial apology did not receive higher mean attributions of liability, higher mean damages awards, or statistically significant differences in mean ratings of sincerity, willingness to compensate the plaintiff, willingness to correct the situation, belief the defendant accepted responsibility, or the belief that the defendant's staff of doctors and nurses felt badly about what happened. Offering a partial apology did not leave defendants worse off than when offering no apology at all.

Finally, this study uncovers some interesting gender differences. Males tended to be more lenient on the nursing home defendant and were more accepting of the defendant's trial argument, regardless of the apology content. Males perceived the defendant's argument as more sincere across all conditions. This pattern of gender differences is instructive for advocates representing both nursing home defendants and plaintiffs involved in nursing home litigation. In total, the findings enlighten the nature of apology in the legal system, specifically at trial, and provide some instruction for attorney-advocates taking nursing home litigation to jury trial.
References


