
Apologies and Settlement Levers

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This study uses experimental methods to explore the role of apologies in legal settlement negotiation. Specifically, the study examines the influences of apologies on disputants’ perceptions, and the effects of apologies on a number of judgments that influence negotiation outcomes—settlement levers such as reservation, aspirations, and judgments of fair settlement amounts. Five-hundred-fifty-six participants were asked to take the role of potential plaintiffs, to provide their reactions to an experimental scenario, and to indicate the values they would set for each settlement lever. The nature of the communication with the offender and the description of the evidentiary rule governing the admissibility of the offender’s statement were manipulated. The data suggest that apologies can promote settlement by altering the injured parties’ perceptions of the situation and the offender so as to make them more amenable to settlement discussions and by altering the values of the injured parties’ settlement levers in ways that are likely to increase the chances of settlement. The results suggest further, however, that the nature of the apology itself, as well as the factual circumstances surrounding the incident, may play important roles in how apologies are understood.

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I am indebted to Brian Bornstein, Chris Guthrie, Phil Peters, Grant Robbennolt, and Chris Wells for their insightful comments on earlier versions of this article. Helpful comments were also provided by participants at the Cornell Junior Empirical Legal Scholars Conference, the annual meetings of the American Psychology-Law Society, and the Law and Society Association, and workshops at the University of Illinois and Washington University. I appreciate the helpful research assistance of Jay Hastings. This material is based on work supported by the National Science Foundation under Grant No. 0241355 and by the University of Missouri Law School Foundation.

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The possibility that apologies have a role to play in the settlement of civil disputes has recently received increasing scholarly\(^1\) and popular\(^2\) attention. Despite concern that apologies will be viewed as admissions of responsibility and, consequently, will result in increased liability, interest in apologies’ ability to facilitate the resolution of disputes has gained currency. Plaintiffs claim to want apologies and that receipt of or failure to receive an apology impacts their litigation decisions.\(^3\) Defendants may wish to offer apologies in some cases, but fear that an apology will be used against them in court.\(^4\) Proponents of apologies hope that, at least in some cases, a party’s offer of an

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\(^{4}\)See, e.g., Gallagher, supra note 3.
apology may eliminate the need for a lawsuit or may at least facilitate settlement of the dispute.5

With an eye toward encouraging defendants (or potential defendants) to offer apologies more frequently, legislatures in several states have enacted statutes intended to encourage and protect some apologies by making them inadmissible in court.6 At the same time, some other proponents of apologies have suggested that there might be beneficial effects of offering expressions of sympathy for the harm suffered, while stopping short of explicitly accepting responsibility for having caused the harm. These incomplete, or partial, apologies are suggested as a possible way to minimize the legal risks of apologizing while obtaining at least some of the benefit.7 Critics, however, contend that these protected and partial apologies are insufficient and unlikely to satisfactorily resolve disputes.8

Until recently, this debate has occurred absent an understanding of the effects apologies might have on dispute resolution or of the mechanisms by which such effects might occur. The study reported in this article builds on recent empirical examination of apologies in civil litigation—exploring the ways different types of apologies influence disputants’ perceptions, attributions, and negotiation-related judgments. In particular, this article examines the effects of apologies on disputants’ perceptions of the situation and the offender, and the effects of apologies on a number of judgments that influence negotiation outcomes—settlement levers such as reservation, aspirations, and judgments of fair settlement amounts. This research suggests that apologies can alter perceptions, attributions, and judgments in ways that improve the likelihood of settlement—specifically that apologies result in more positive perceptions and attributions and influence settlement levers in ways that make settlement more likely. The results suggest further, however, that the nature of the apology itself, as well as the factual circumstances surrounding the incident (in this instance, the independent

5See, e.g., Cohen, Advising Clients to Apologize, supra note 1; Stephen B. Goldberg et al., Dispute Resolution 138 (2d ed., 1992); Levi, supra note 1; Orenstein, supra note 1; Shuman, supra note 1.

6See notes 12–18 and accompanying text.

7See note 19 and accompanying text.

8See note 20 and accompanying text.
evidence of the offender’s fault), may play important roles in how apologies are understood.

Section I introduces the issues surrounding the role of apologies in civil litigation. Section II describes existing research examining the effects of apologies on legal settlement decision making. Section III describes the role of negotiator reservation prices, aspirations, and fair settlement judgments in negotiation. These settlement levers may be mechanisms through which apologies influence settlement decision making. Section IV describes the empirical study and presents the results. Section V examines the implications of these results in the debate over the role of apologies in civil litigation.

I. APOLOGIES IN LITIGATION

Proponents of apologies in civil litigation contend that apologizing benefits both the offeror and the recipient of the apology.9 One of these benefits, they claim, is that apologies may avert lawsuits or, at least, promote settlement. Consequently, defendants in civil cases should consider apologizing because an apology may, by altering the disputants’ perceptions, emotions, and relationship, make it possible for them to avoid litigation or to engage in more constructive, timely, and satisfactory settlement discussions.10

Despite growing interest in the promise of apologies for dispute resolution, concerns about the legal risks of apologizing loom large for defendants.11 Defendants avoid apologies, sometimes at all costs, because they fear that an apology will be used against them as evidence of their responsibility if the dispute proceeds to court. In recognition of this barrier to apologies in the context of civil litigation, scholars and regulators have advocated several different approaches. First, in order to encourage more defendants to apologize, several states have enacted statutes that explicitly provide some

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9See, e.g., Cohen, Advising Clients to Apologize, supra note 1.

10Cohen, Advising Clients to Apologize, supra note 1; Levi, supra note 1; Orenstein, supra note 1; Shuman, supra note 1.

11See, e.g., Gallagher, supra note 3; Rae M. Lamb et al., Hospital Disclosure Practices: Results of a National Study, 22 Health Aff. 73 (2003).
apologies with evidentiary protection. The reach of this statutory protection varies. Some statutes apply to apologies offered in civil litigation generally; others apply only in cases of medical error. In addition, many of the statutes protect statements expressing sympathy from admissibility (i.e., “I’m sorry that you were hurt”), while preserving the admissibility of any statement that acknowledges fault (i.e., “It was my fault”). Other statutes have gone further, also providing protection to statements that express “fault,” “error,” or “mistake.” Still other statutes include protections for “apologies” without defining the term. Proponents of all these variants express the hope that if apologetic expressions are protected from admissibility, defendants will be more likely to offer them.

In the absence of such protection (and unless offered in the context of settlement negotiation or in mediation), an apology is likely to be admissible as a party’s own statement, an exception to the hearsay rule. Fed. R. Evid. 801(d)(2). See discussion of admissibility of apologies in Cohen, Advising Clients to Apologize, supra note 1; Robbennolt, Apologies and Legal Settlement, supra note 1.


The extent to which these statutes result in more apologies is an empirical question that, to my knowledge, has not yet been examined. Proponents and opponents of such legislation have characterized these protections for apologies and sympathetic expressions in a variety of different ways—and as designed to serve a variety of different purposes. See, e.g., California Assembly Comm. on Judiciary, Historical Notes to Cal. Evid. Code § 1160 (noting that the author introduced the bill “in an attempt to reduce lawsuits and encourage settlement”); Hawai‘i bill (describing rule as enabling defendants to “reach out to others in a humane way without fear of having such a communication used subsequently as an admission of liability”); Arthur Kane, GOP Pushes Tort Reform, Denver Post, Apr. 6, 2003, at B4 (characterizing the Colorado apology legislation as part of a “flurry of bills to limit lawsuits and damage awards’’); Peggy Lowe, “Sorry” Bill Advances, Rocky Mountain News, Apr. 2, 2003, at 22A (noting that sponsor called the bill the “I’m sorry legislation,” but that opponents called it “anti-patient rights’’).
Second, even in the absence of this type of statutory protection, some have suggested that defendants might minimize the risks of apologizing by offering statements that express sympathy for the other party, but that stop short of admitting responsibility for having caused injury (i.e., “I’m sorry you were hurt.”). They argue that even these incomplete apologetic expressions can help improve relations with the other party and smooth the way toward an acceptable settlement agreement.

Others, however, have argued that both these approaches, carving out statutory protection for apologetic expressions or carefully crafting apologies to be “safe” by limiting them to expressions of sympathy, are suspect. Expressing this view, Lee Taft writes that:

[t]he law recognizes that an apology, when authentically and freely made, is an admission; it is an unequivocal statement of wrongdoing. The law permits such an acknowledgement to enter the legal process as a way to allow the performer of apology to experience the full consequences of the wrongful act. An apology made in this context, with full knowledge of the legal ramifications, is much more freighted than an apology made in a purely social context.

Thus, the content and context of the apology are thought to impact its meaning and effectiveness. In this view, apologies that do not acknowledge responsibility for the wrong committed and that do not expose the offeror to the appropriate legal consequences are diminished in their meaning and effect.

Much of this debate, including legislative changes and client advising, has been occurring in the absence of empirical examination of the effects of apologies on settlement discussions. Although there is an established body of research in psychology on the effects of apologies generally, only recently has there been examination of the role of apologies in the legal settlement context.

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SorryWorks!, available at <http://www.sorryworks.net/WhatIs.phtml> (arguing that apologies increase settlements, improve justice for victims, reduce settlement and defense costs, and reduce medical errors); Tennessee Advisory Comm. Comment on Tenn. R. Evid. § 409.1 (stating that rule is “designed to encourage the settlement of lawsuits”).

19Cohen, Advising Clients to Apologize, supra note 1, at 1048; Levi, supra note 1, at 1188. See also Gallagher et al., supra note 3, at 1004 (describing physician tendency to “choos[e] their words carefully’ when talking with patients about errors”).

20Taft, supra note 1, at 1157.
II. PREVIOUS RESEARCH ON APOLOGIES AND SETTLEMENT

The psychological literature examining the effects of apologies in other contexts demonstrates that apologies have generally favorable effects on their recipients and on third-party observers. A number of experimental studies have found that apologies or expressions of remorse favorably influence attributions of offender responsibility, estimates of the likelihood that the behavior will recur, perceptions of the wrongdoer, expectations about the effects of the incident on the parties’ relationship, affective reactions, and behaviors such as forgiveness, aggression, and recommendations for punishment. Apologies have also been found to have positive physiological effects.

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In the legal context, mock juror research has found that defendants are generally evaluated more positively and sentenced less severely when they apologize or otherwise express remorse. See Michael G. Rumsey, Effects of Defendant Background and Remorse on Sentencing Judgment, 6 J. Applied Soc. Psychol. 64 (1976); Christy Taylor & Chris L. Kleinke, Effects of Severity of Accident, History of Drunk Driving, Intent, and Remorse on Judgments of a Drunk Driver, 22 J. Applied Soc. Psychol. 1641 (1992); Chris L. Kleinke et al., Evaluation of a Rapist as a Function of Expressed Intent and Remorse, 132 J. Soc. Psychol. 525 (1992); Randolph B. Pipes & Marci Alesi, Remorse and a Previously Punished Offense in Assignment of Punishment and Estimated Likelihood of a Repeated Offense, 85 Psychol. Rep. 246 (1999). For a review of the role of apologies in criminal cases, see Carrie J. Petrucci, Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System, 20 Behav. Sci. & L. 337 (2002). For some boundary conditions on these types of effects, see Keith E. Nidermeyer et al., Exceptions to the Rule: The Effects of Remorse, Status, and Gender on Decision Making.
effects on both offeror and recipient. However, despite this body of research examining the effects of apologies generally and the growing interest in the role that apologies can play in settling civil disputes, there are only a few empirical studies that have begun to carefully examine the effects of apologies on legal settlement decision making.

In one of these, Kathleen Mazor and her colleagues conducted an experimental study of patients’ responses to medical errors. Members of a health-care plan were asked to respond to one version of a set of written vignettes describing a medical error and the physician’s response. Respondents read about either an error in prescribing a medication to which there was a documented allergy or an error in monitoring the dosage of an anti-seizure medication. In each case, the resulting injury was either relatively minor or life-threatening. The physician either provided little information and did not take responsibility for the error (the “nondisclosure” condition) or provided more information, took responsibility, and detailed steps that would be taken to prevent recurrence (the “full disclosure” condition). Patients who read the full disclosure vignettes were less likely to indicate that they would seek legal advice in response to the incident than were patients who read the nondisclosure version. The vast majority of patients (88 percent) endorsed the notion that following a medical error they “would want the doctor to tell me that he or she was sincerely sorry.”

31 J. Applied Soc. Psychol. 604 (2001). See also Bornstein (finding that defendants in civil trials who showed remorse were perceived more positively by mock-jurors than those who did not).

22 See Charlotte vanOyen Witvliet et al., Please Forgive Me: Transgressors’ Emotions and Physiology During Imagery of Seeking Forgiveness and Victim Responses, 21 J. Psychol. & Christianity 219 (2002); Charlotte Witvliet et al., Victims’ Heart Rate and Facial EMG Responses to Receiving an Apology and Restitution, Psychophysiology 588 (2002).


24 Id. at 413. This effect was qualified by a statistically significant three-way interaction with injury severity and type of error. Though for each type of error and level of injury, fewer of those in the full disclosure condition than in the nondisclosure condition indicated that they would seek legal advice, this pattern was only statistically significant for the condition in which the error was a missed medication allergy and the outcome was less severe. Id. Respondents in the full disclosure conditions were also less likely to indicate that they would change physicians, were more satisfied, reported more trust in the physician, and reported fewer negative emotions than did those in the nondisclosure conditions. Id. at 414.

25 Id. at 415.
Russell Korobkin and Chris Guthrie conducted an experimental investigation of the effects of an apology on litigants’ settlement decisions in a landlord-tenant dispute.26 Participants taking the perspective of the tenant were asked to evaluate an offer of settlement from the landlord. Participants who were told that the landlord had apologized to them, saying, “I know this is not an acceptable excuse... but I have been under a great deal of pressure lately,” were marginally more likely to accept the landlord’s offer than were participants who had not received this “apology.”27

Recently, I conducted a series of experimental studies that specifically examined the effects of different types of apologetic expressions and evidentiary rules on settlement decision making.28 Participants were asked to read a vignette describing a pedestrian-bicycle accident from the perspective of the injured party and to evaluate a settlement offer from the other party. Full, responsibility accepting apologies had a positive impact on settlement decision making—resulting in favorable effects on the injured party’s attributions about the situation and the offender and in an increased tendency for recipients to accept the settlement offer.29 Participants who received a full apology from the offender saw the offender as experiencing more regret, being more moral, as more likely to act carefully in the future, and as having behaved less badly. Participants who received a full apology also felt greater sympathy for the offender, less anger, more willingness to forgive, and believed that the incident would result in less damage to the parties’ relationship.30 In contrast, an expression of sympathy without an admission of fault did not have the same impact on attributions and appeared to increase participants’ uncertainty about whether to accept the offer.31

In a second study, I explored some boundary conditions on these findings. I found that partial, sympathy expressing, apologies may play a


27Id. at 148.

28Robbenmolt, Apologies and Legal Settlement, supra note 1.

29Id. at 487.

30Id. at 488.

31Id. at 497.
positive role in settlement decision making where responsibility is less clear or the injury is relatively minor, but that partial apologies may negatively impact some perceptions either when the offender’s fault is more clear or the injury is severe. In neither of these studies was there evidence that the different evidentiary rules had an influence on participants’ perceptions of the apology or on their settlement decisions.

These studies provide some initial evidence that apologies have an important role to play in the satisfactory settlement of disputes. Consistent with cognitive approaches to understanding negotiation, apologies have been found to have an influence on the way that litigants perceive and construe the conflict situation, on the attributions that they make about the other party, and on their settlement decisions. There remain, however, a variety of additional mechanisms by which apologies may influence settlement decision making that have not been explored. Specifically, apologies and their effects on perceptions and attributions may influence the claimant’s negotiating posture— influencing settlement levers such as the negotiators’ reservation prices, aspirations, and conceptions of fair settlement. These settlement levers, which have been shown to influence negotiation outcomes, may serve as important mechanisms through which apologies influence settlement decisions.

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32Id. at 498.

33Id. at 502.


35See infra Section III.
III. SETTLEMENT LEVERS

A variety of factors have been identified as having important influences on settlement decision making. These “settlement levers”\(^{36}\) include the negotiators’ reservation prices, their aspirations, and their conceptions of fairness. The acceptability of an offer of settlement may well be influenced by a comparison between the offer and one (or several) of these reference points.\(^{37}\) Accordingly, different aspirations, different reservation prices, or different fairness perceptions may result in different subjective assessments of a settlement offer. To the extent that apologies influence any of these settlement levers, they are likely to influence the process and outcome of the settlement negotiation.

A. Reservation Prices

A central concept in negotiation is that of “reservation price”—that is, “the lowest valued outcome (in utility terms) at which the negotiator is willing to accept agreement.”\(^{38}\) When the reservation prices of the negotiators overlap, this overlap is said to create a “bargaining zone” in which agreement is predicted to occur.\(^{39}\) In the context of legal settlement negotiation, a plain-

\(^{36}\)Russell Korobkin, Aspirations and Settlement, 88 Cornell L. Rev. 1, 3 (2002).


\(^{39}\)See, e.g., Raiffa, supra note 38, at 110; Shell, supra note 38, at 37.
tiff’s reservation price is the lowest amount (or lowest valued set of negotiated provisions) that he or she would accept to settle the lawsuit, the defendant’s reservation price is the highest amount that he or she would pay to settle the lawsuit, and the bargaining zone consists of the values, if any, between these two reservation prices.40

Experimental research has demonstrated that negotiators’ reservation prices can influence the outcome of their negotiations. For example, Sally Blount White and her colleagues manipulated the bargaining zone in a two-party negotiation over the sale of a house by assigning negotiators different reservation prices.41 In some conditions, sellers were assigned a reservation price of $210,000 and buyers were assigned a reservation price of $230,000; in other conditions, sellers were assigned a reservation price of $220,000 and buyers were assigned a reservation price of $240,000.42 Parties’ reservation prices had a significant influence on the final sale price negotiated. Negotiators with higher reservation prices and, therefore, a higher bargaining zone negotiated a higher final sale price than did negotiators with lower reservation prices.43 In addition to these effects on individual


41Sally Blount White et al., Alternative Models of Price Behavior in Dyadic Negotiations: Market Prices, Reservation Prices, and Negotiator Aspirations, 57 Organizational Behav. & Hum. Decision Processes 430 (1994).

42Id.

43Id. at 437. See also Robin L. Pinkley et al., The Impact of Alternatives to Settlement in Dyadic Negotiation, 57 Organizational Behav. & Hum. Decision Processes 97, 107 (1994). See also Vandra L. Huber & Margaret A. Neale, Effects of Cognitive Heuristics and Goals on Negotiator Performance and Subsequent Goal Setting, 38 Organizational Behav. & Hum. Decision Processes 342 (1986); Vandra L. Huber & Margaret A. Neale, Effects of Self and Competitor Goals on Performance in an Interdependent Bargaining Task, 72 J. Applied Psychol. 197 (1987) [hereinafter Huber & Neale, Interdependent Bargaining Task]; Melvin J. Kimmel et al., Effects of Trust, Aspiration, and Gender on Negotiation Tactics, 38 J. Personality & Soc. Psychol. 9 (1980); Margaret A. Neale & Max H. Bazerman, The Effect of Externally Set Goals on Reaching Integrative Agreements in Competitive Markets, 6 J. Occupational Behav. 19 (1985); Gregory B. Northcraft et al., Joint Effects of Goals and Training on Negotiator Performance, 7 Hum. Performance 257 (1994). Though these studies indicate that they are examining “aspirations” or “goals,” they operationalize this variable as a level below which the negotiator’s settlement outcome is not permitted to drop. This is more like a reservation price as it has been described here. See also Sally Blount et al., The Price is Right—Or is It? A Reference Point Model of Two-Party Price Negotiations, 68 Organizational Behav. & Hum. Decision Processes 1 (1996)
negotiator outcomes, other studies have found that more challenging reservation prices (i.e., a higher reservation price for a seller or plaintiff or a lower reservation price for a buyer or defendant) are associated with more integrative bargaining.44

The effects of negotiator reservation price on negotiation outcome may occur though a number of different mechanisms. Experimental research has demonstrated that negotiators with more challenging reservation prices tend to hold higher expectations for their performance in the negotiation,45 make more exacting demands,46 are willing to devote more time to the negotiation,47 and exchange more information.48 All these effects of holding more challenging reservation prices can lead, in turn, to more favorable objective outcomes. On the other hand, negotiators with more challenging reservation prices are more likely to be dissatisfied with the results of the negotiation given the same objective outcome than those with less challenging reservation prices.49

(finding that the effect of reservation price on negotiation outcome depended on context).

44See, e.g., Huber & Neale, Interdependent Bargaining Task, supra note 43 (finding increased integrative bargaining with moderately challenging limits—but not with the most difficult); Melvin J. Kimmel et al., supra note 43, at 15 (finding that higher limits resulted in higher joint gain as measured by the lower of the negotiators’ profit). See also Dean G. Pruitt & Steven A. Lewis, Development of Integrative Solutions in Bilateral Negotiation, 31 J. Personality & Soc. Psychol. 621 (1975) (limits and integrative bargaining). When negotiators engage in integrative bargaining they create value to increase joint gains—improving the position of one or both negotiators without negatively impacting the position of the other. See Raiffa, supra note 38, at 191; Shell, supra note 38, at 88–116.

45See, e.g., Robin L. Pinkley et al., supra note 43, at 107.


47See, e.g., Kimmel et al., supra note 43, at 14 (examining time spent); Neale & Bazerman, supra note 43 (examining the number of transactions completed); Northcraft et al., supra note 43 (same).

48See, e.g., Kimmel et al, supra note 43, at 14 (number of statements made).

B. Aspirations

More recently, negotiation scholars have begun to address the role of goals or “aspirations” in bargaining. A negotiator’s aspiration has been defined as “the highest valued outcome (in utility terms) at which the negotiator places some nonnegligible likelihood that that value would be accepted by the other party(ies).”50 In the context of legal settlement negotiation, a litigant’s aspiration level is the best settlement agreement that he or she could hope to reach through negotiation with the other party.51

Just as it has with reservation prices, research on negotiation has also demonstrated the importance of negotiator aspirations for negotiation outcomes. For example, Sally Blount White and Margaret Neale varied the aspirations of both the buyer and the seller in a negotiation over the sale of a house while holding both parties’ reservation prices constant.52 Sellers, who all had reservation prices of $225,000, were assigned aspirations of either $240,000 or $260,000. Buyers, who all had reservation prices of $235,000, were assigned aspirations of either $200,000 or $220,000.53 White and Neale found that both buyer and seller aspirations had a significant influence on final selling prices. Sellers with higher (i.e., more challenging) aspirations negotiated a higher final sale price than did sellers with lower aspirations.54 Buyers with lower (i.e., more challenging) aspiration prices negotiated lower final sale prices than did buyers with a higher aspiration level.55

50White & Neale, Role of Negotiator Aspirations, supra note 38, at 304–05. See also Lax & Sebenius, supra note 38, at 130–32; Raiffa, supra note 38, at 293–94; Shell, supra note 38, at 22–38.

51Korobkin, supra note 36, at 3 (“The term ‘aspiration’ is defined here as the ideal target settlement sum, or set of terms, for which a litigant strives in negotiations, although achieving that target provides no discontinuous external benefit.”).

52White & Neale, Role of Negotiator Aspirations, supra note 38.

53Id.

54Id. at 311.

As with the effects of reservation prices, research has demonstrated that the effect of aspirations on negotiation outcomes is potentially mediated by a variety of different processes. Experimental research has demonstrated that negotiators with more challenging aspirations make more exacting demands, are willing to devote more time to the negotiation, make concessions at a slower rate, and are more willing to engage in “bluffing” behavior. Russell Korobkin also found that setting high aspirations may influence judgments about other settlement levers—negotiators given higher aspirations generated higher reservation prices and higher estimates of what a fair settlement would be than did negotiators who were given lower aspirations. As with reservation prices, negotiators with more challenging aspirations have been found to be less satisfied with the outcome of the negotiation than are negotiators with more modest aspirations.

C. Fair Settlements

Settlement behavior is also likely influenced by the negotiators’ perceptions of fair settlement. A wide variety of research has demonstrated that fairness is important to decisionmakers generally and that negotiators are reluctant to agree to settlements that they perceive to be unfair.

56See, e.g., Korobkin, supra note 36, at 20; Thompson, supra note 49, at 515; Hamner & Harnett, supra note 55, at 336.

57See, e.g., Korobkin, supra note 36.

58See, e.g., Hamner & Harnett, supra note 55, at 337.

59See, e.g., Korobkin, supra note 36.

60Id. at 39–40.

61Id. at 43.

62Id. at 35; Thompson, supra note 49, at 518.

A now classic example of this phenomenon is that demonstrated by the ultimatum bargaining game. In the ultimatum game, one person is given an amount of money to divide between herself and another player. The first player is to propose a division of the money that the second player chooses to accept or decline. If the division is accepted, then both players receive the proposed allocation; however, if the division is declined, both players receive $0. Although decisionmakers who are unconcerned about fairness would propose and accept a division that allocates only a nominal amount to the second player, experiments using the ultimatum game have found equal or nearly equal divisions to be common and that proposals allocating nominal amounts to the second player are often declined.

Equity theory also suggests that fairness will play a role in legal settlement negotiation. Equity theory posits that inequity in a relationship is distressing to the participants in that relationship, motivating them to attempt to restore equity to the relationship. As Russell Korobkin notes:

[Litigants'] propensity to accept settlement proposals might depend on the extent to which they feel they are in a socially equitable relationship with their opponent. A settlement proposal that might be acceptable to a litigant who feels personally validated and fairly treated by her opponent, despite the legal dispute, may be unacceptable to a litigant who feels ignored, unheard, or invalidated by her opponent.

In rejecting the other’s offer of settlement, the litigant may, in part, be attempting to restore balance between the parties by responding in kind to a perceived inequity.

Decisionmakers’ perceptions of equity and fairness, then, are likely to play an important role in legal settlement negotiation. Importantly, it is litigant perceptions of fairness that are likely important, rather than some measure of objective “fairness.” It is unlikely that litigants will always (or even

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65 Id.


67 Korobkin, supra note 36, at 17.
usually) agree as to what constitutes a “fair” outcome. Not only are there multiple criteria by which fairness can be determined, but even when disputants apply the same fairness criteria, their application of such criteria may vary with their different perceptions and interpretations of the events surrounding the dispute. The more ambiguous the circumstances and communication surrounding the dispute, the more likely it is that the litigants’ fairness perceptions will diverge.

D. Influences on Settlement Levers

Thus, there is ample evidence that each of these settlement levers—reservation prices, aspirations, and fair settlement judgments—may have an influence on settlement behavior. In considering whether these settlement levers play a role in mediating any effect of apologies on settlement decision making, it is also important to consider the factors that are likely to influence these values.

Negotiation theory would suggest that negotiators’ reservation prices are influenced by factors such as their expectation about the likely result at trial—that is, the litigants’ “best alternative to a negotiated agreement” (BATNA) in the litigation setting—and their expectations about the costs associated with litigating and with settling out of court. Consistent with this

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68Morton Deutsch, Equity, Equality, and Need: What Determines Which Value Will be Used as the Basis of Distributive Justice, 31 J. Soc. Issues 137 (1975); Kwok Leung & Michael W. Morris, Justice Through the Lens of Culture and Ethnicity, in Handbook of Justice Research in Law 352 (Morton Deutsch & Peter Coleman eds., 2000); A. Roth & K. Murnighan, The Role of Information in Bargaining: An Experimental Study, 50 Econometrica 1123 (1982); Welsh, supra note 63, at 754 (“People often disagree, however, regarding the criteria that should be applied in order to determine whether an outcome is fair. As is obvious from reading judicial opinions in appellate cases, even impartial and educated people can review the identical record and reach widely disparate yet equally principled conclusions regarding what constitutes a fair outcome.”); White & Neale, supra note 38. See discussion of the self-serving bias, supra notes 74–87.

69Leigh Thompson & George Loewenstein, Egocentric Interpretations of Fairness and Interpersonal Conflict, 51 Organizational Behav. & Hum. Decision Processes 176, 177 (1992) (“Ambiguity, in turn, permits multiple interpretations of ‘fair’ or equitable settlements.”).

70See Raiffa, supra note 38, at 110; Priest & Klein, supra note 40. See White & Neale, Role of Negotiator Aspirations, supra note 38, at 305 (reservation prices are “determined within the context of prevailing market conditions, alternative investment opportunities, and the transaction costs associated with initiating alternative negotiations”).
theory, experimental research has demonstrated that negotiators given BATNAs of higher value generate more challenging reservation prices.\(^{71}\) Correspondingly, negotiators’ aspirations are also influenced by the negotiators’ BATNAs, with higher-valued BATNAs resulting in higher aspirations for the negotiation.\(^{72}\)

Experimental research has also shown that there are a number of additional factors that influence these settlement levers.\(^{73}\) For example, a rich tradition of research in psychology has examined the self-serving (or egocentric) bias—a cognitive heuristic under which individuals perceive and interpret information and make judgments in a manner that is favorable to their own position.\(^{74}\) Research has shown, for instance, that spouses’ estimates of their contributions to the work of the household add up to more than 100 percent,\(^{75}\) that the majority of people estimate that they are above-average drivers,\(^{75}\) that most newlyweds predict that they will not get divorced even though they are aware of the relatively high rate of divorce,\(^{76}\) and that football fans from opposing teams make different judgments about the fairness and conduct of the teams in the game.\(^{77}\) In the legal context, Chris Guthrie and his colleagues showed that a large majority of the magistrate

\(^{71}\) See, e.g., Pinkley et al., supra note 43, at 107. Similarly, reservation prices in market-based negotiations are influenced by the information available about pricing in the market. See, e.g., Henrik Kristensen & Tommy Garling, Determinants of Buyers’ Aspiration and Reservation Price, 18 J. Econ. Psychol. 487, 494 (1997).

\(^{72}\) See, e.g., Pinkely et al., supra note 43, at 107. In market-based transactions, aspirations are also influenced by the available market information. See, e.g., Kristensen & Garling, supra note 71, at 496.

\(^{73}\) Pinkley et al., supra note 43, at 111 (noting that their findings “suggest that there is much more involved in setting one’s reservation price than a simple step-up from one’s BATNA”).


\(^{75}\) See, e.g., Ola Svenson, Are We Less Risky and More Skillful Than Our Fellow Drivers? 47 Acta Psychologica 143 (1981).


judges in their study estimated that at least half their peers had higher reversal rates on appeal than they did.\footnote{Chris Guthrie et al., Inside the Judicial Mind, 86 Cornell L. Rev. 777, 802–03 (2001). See also Theodore Eisenberg, Differing Perceptions of Attorney Fees in Bankruptcy Cases, 72 Wash. U. L.Q. 979 (1994) (bankruptcy judges and lawyer fees).}

Self-serving biases also play a role in negotiation decision making. To the extent that litigants make self-serving judgments of fair settlement and are disinclined to settle for an amount that they find to be unfair, they may choose to reject an offer of settlement that they would otherwise have found acceptable. In addition, to the extent that litigants make self-serving predictions of the likely result at trial, this is likely to influence their reservations prices and aspirations and, ultimately, their settlement decisions. In one study, Leigh Thompson and George Loewenstein asked participants to participate in a simulated negotiation between union and management representatives over wages.\footnote{Thompson & Loewenstein, supra note 69.} Each exchange of offers counted as one “day” of negotiation and a “strike” with increasing costs began after two “days” of negotiation.\footnote{Id. at 183.} Across two studies, they found that larger differences in the parties’ prebargaining perceptions of a fair settlement were associated with lengthier negotiations (i.e., longer “strikes”).\footnote{Id. at 184 (Study 1) and 189 (Study 2).}

In a similar study in the context of legal settlement negotiation, George Loewenstein and his colleagues conducted a simulated pretrial negotiation in an automobile accident case.\footnote{George Loewenstein et al., Self-Serving Assessments of Fairness and Pretrial Bargaining, 22 J. Legal Stud. 135 (1993).} Before they engaged in the negotiation, participants were asked to indicate what they considered to be a fair settlement and what they thought a judge would award.\footnote{Id.} Consistent with the self-serving bias, the fair settlement values and predictions about the likely judicial award of those assigned to the role of the plaintiff were higher than those of the participants in the defendant role.\footnote{Id. at 150.} This disparity in both these
assessments had an influence on the settlement behavior of the participants. Negotiators who reached a settlement had “more similar assessments about what a fair settlement was and what a judge would award” than did negotiators who were not able to reach a settlement. In addition, for those negotiators who did reach agreement, perceptions of fairness and estimates of the judge’s likely award by those in the defendant role influenced the final settlement amount. When defendants’ fair settlement assessments were higher or when defendants estimated higher judicial awards, the final settlement amount was higher.

Interestingly, the interactions between the disputants may influence these settlement levers as well. In particular, the ways that disputants treat each other during the negotiation process may influence fair settlement judgments and, ultimately, settlement decision making. For example, studies have shown that the process of engaging in a negotiation moderates the self-serving bias in fairness judgments. Recent work has shown that the fairness of the interpersonal treatment that negotiators encounter in the negotiation can diminish this bias even further. Kwok Leung and his colleagues varied the fairness of the conduct of negotiators’ opponents in a union-management salary negotiation modeled on the Thompson and Loewenstein studies described above. As compared to unfair treatment, fair treatment resulted in greater decreases in the disparity between the negotiators’ fair settlement judgments, less frequent impasse, and

85Id. at 151.

86Id. at 152–53. See also Linda Babcock et al., Biased Judgments of Fairness in Bargaining, 85 Am. Econ. Rev. 1337 (1995); Linda Babcock & George Loewenstein, Explaining Bargaining Impasse: The Role of Self-Serving Biases, 11 J. Econ. Persp. 109 (1997); Colin F. Camerer & George Loewenstein, Information, Fairness, and Efficiency in Bargaining, in Psychological Perspectives on Justice: Theory and Applications 155 (R.M. Mellers & J. Baron eds., 1993) (finding effects of fairness perceptions on propensity to settle and time to settle).

87See, e.g., Thompson & Loewenstein, supra note 69, at 188.

88Kwok Leung et al., Effects of Interactional Justice on Egocentric Bias in Resource Allocation Decisions, 89 J. Applied Psychol. 405, 407 (2004). The opponents were trained in either “fair” (“display of openness and neutrality, willingness to provide explanations, showing understanding, willingness to listen, and appreciation for suggestions”) or “unfair” (“insistence on own point of view, frequent remarks that the other side was wrong, unwillingness to provide explanations, impatience in listening and frequent interruptions, and little appreciation of the other side’s position and suggestions”) tactics. Id.
settlements that were reached more quickly. Other research has shown that the ways negotiators treat each other during the negotiation influences their satisfaction with the outcome of the negotiation.

Other aspects of the process of negotiating itself may also influence negotiator settlement levers. For example, Gary Yukl found that both aspirations and reservation prices were influenced by the time pressure that negotiators were under, the rate at which their opponents made concessions, and their exposure to information about the pay-off schedule of their opponents—aspirations and reservation prices were higher when time pressure was low, when opponents made large concessions, and when the negotiators had complete information about opponents’ payoffs. Yukl also found that negotiators adjusted their aspirations over the course of the negotiation, with aspirations falling over time.

IV. APOLOGIES AND SETTLEMENT LEVERS

One mechanism by which apologies might influence settlement decision making is through their effects on these settlement levers. The limited research on the role of apologies in legal settlement negotiation to date has not examined these potential effects. There are a number of possible ways, however, that apologies could influence these factors.

First, apologies may influence these settlement levers by changing disputants’ estimates of the likelihood of winning at trial. To the extent that the apology serves as evidence that the offender was at fault for having caused injury, plaintiffs might assess their chances of winning as being higher than they previously thought. If disputants are sensitive to the content of the apology, it might be expected that the effect of an apology on

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89Id. at 408–09.

90See Tina Nabatchi & Lisa B. Bingham, Expanding Our Models of Justice in Dispute Resolution: A Field Test of the Contribution of Interactional Justice, SSRN (finding that an index comprised of questions about the interactions between the negotiators had a significant influence on outcome satisfaction).


92Id. at 233.
disputants’ expectations of the likely trial result will differ depending on the nature of the apology. A partial apology that does not acknowledge fault may not increase the expected likelihood of winning as much as a full apology that admits responsibility. Similarly, if disputants are sensitive to the ramifications of whether the apology is admissible at trial, the applicable evidentiary rule should influence their assessments. To the extent that disputants make higher estimates of their likelihood of winning at trial, their reservation prices, aspirations, and fair settlement judgments may all be higher.

Second, apologies may influence these settlement levers in the opposite direction if the apology serves to fulfill needs of the claimant that would otherwise have been addressed by the financial aspects of the settlement. The claimant may value an apology more than or differently from monetary compensation. Indeed, claimants are likely motivated by a variety of considerations in addition to monetary recovery.93 A financial settlement may most appropriately compensate financial losses that may result from an injury. An apology, however, may have a role to play in compensating for less tangible damage,94 expressing the proper relative moral positions of the parties,95 providing the injured party with positive information about their social identity,96 assuring the injured party that the offender will not reof-

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93See Carrie Menkel-Meadow, Whose Dispute is it Anyway? A Philosophical and Democratic Defense of Settlement (In Some Cases), 83 Geo. L.J. 2663, 2677 (1995) (“people and entities in disputes may have a wide variety of interests (of which legal principles may be one class) and may decide that, in any given case, social, psychological, economic, political, moral, or religious principles should govern the resolution of their dispute”); Jean R. Sternlight, Lawyers’ Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Nonadversarial Setting, 14 Ohio St. J. on Disp. Resol. 269, 302–06 (1999) (detailing a number of nonmonetary goals that parties may have).


95See Jeffrie Murphy, Forgiveness and Resentment, in Forgiveness and Mercy 14, 25 (1988); Nicholas Tavuchis, Mea Culpa: A Sociology of Apology and Reconciliation 13 (1991); Walster, supra note 66.

fend, or achieving restorative justice. To the extent that the claimant may trade off an apology against additional monetary compensation, we might expect reservation prices, aspirations, and fairness judgments to be lower. Settlement levers may be similarly affected to the extent that an apology contributes to feelings of fair treatment or contributes to a positive relationship between the parties. In addition, a positive emotional response to an apology is also likely to influence claimants’ settlement decisions.

Apologies may also lower claimants’ aspirations, reservation prices, and judgments of fair settlement values in ways separate from their ability to fulfill one or more needs of the claimants. Rather, claimants may feel bound by norms of reciprocity to respond favorably to an apology. The reciprocity norm requires “that we should try to repay, in kind, what another person has provided us.” When one party offers the “concession” of an apology, the other may feel obligated to respond with a concession of his or her own. Indeed, there is evidence that an apology “script” prescribes that the socially appropriate response to an apology is to accept the apology and to forgive

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97 See Robbennolt, Apologies and Legal Settlement, supra note 1. See also Gold & Weiner, supra note 1.


99 For studies finding effects of apologies on emotional responses see, e.g., Bennett & Earwaker, supra note 21; Gold & Weiner, supra note 21; Ohbuchi et al., supra note 21; Weiner et al., supra note 21.

100 See Peter H. Huang & Ho-Mou Wu, Emotional Responses in Litigation, 12 Int’l Rev. L. & Econ. 31 (1992) (describing economic model of the influence of emotions on litigation decisions to sue, settle, or go to trial). For additional discussions of the role of emotion in litigation decision making, see Jeremy Blumenthal, Law and the Emotions: The Problem of Affective Forecasting, 80 Ind. L. J. 155 (2005); Chris Guthrie, Better Settle Than Sorry: The Regret Aversion Theory of Litigation Behavior, 1999 Ill. L. Rev. 43. For a discussion of research on emotion in negotiation generally, see Bazerman et al., supra note 34, at 285–86. For research exploring the relationships among emotions, interactional and procedural justice, attributions, and retaliation, see Laurie J. Barclay et al., Exploring the Role of Emotions in Injustice Perceptions and Retaliation, 90 J. Applied Psychol. 629 (2005).

the offender. Accordingly, an apology may create pressure on the claimant to moderate his or her bargaining position or to make additional concessions in bargaining.

This section describes an experimental study that was designed to examine the effects of apologies on disputants’ reservation prices, aspirations, and fairness judgments as they approached settlement negotiation in a civil case.

A. Method

The respondents were 556 staff members at a midwestern university. Respondents were randomly selected and were recruited by direct email solicitation to participate in the study. Respondents were asked to visit a website and read a scenario describing an incident in which one party, a pedestrian, was injured when hit by a bicyclist. They were asked to take on the role of the injured person and told that they would be attempting to negotiate a settlement with the bicyclist. Respondents were then asked to indicate their bottom line (i.e., the lowest amount for which they would settle the case), their aspiration price (i.e., the highest amount they would hope to receive in a financial settlement), and the amount that they thought would be a fair settlement amount. Respondents were also asked to provide their assessment of the sufficiency of the apology; the motives they ascribed to the other party; their assessments of the nature of the injuries, the other party’s conduct and character, and each party’s responsibility for causing the incident; their degree of anger at, sympathy for, and willingness to forgive the other party; their assessments of how the incident would likely affect the relationship and the other party’s conduct in the future; and their assessment of the likelihood that they would win the case if it went to trial.

Three variables were manipulated. First, the nature of the apology offered was varied such that participants evaluated a version of the scenario in which the other party did not offer an apology, offered a partial apology

102 See Mark Bennett & Christopher Dewberry, “I’ve said I’m sorry, haven’t I?” A Study of the Identity Implications and Constraints that Apologies Create for Their Recipients, 13 Current Psychol. 10 (1994) (finding a tendency for participants to accept even an unconvincing apology). See also William Ian Miller, Faking It 92 (2003) (arguing that “the victim is as often forced by social pressure to forgive no less than the wrongdoer is forced to apologize. Or he forgives because it is embarrassing not to once the wrongdoer has given a colorable apology”).

103 Ages from 18 to 69, mean age = 39; 63 percent women.
that merely expressed sympathy for the injuries, or offered a full apology that took responsibility for having caused the injuries. Second, the evidentiary rule that was described to participants was varied such that either nothing was mentioned about the rules of evidence, participants were explicitly told that apologies were protected and would not come in as evidence, or participants were explicitly told that apologies were admissible as evidence. Finally, the evidence of the offender’s fault was varied such that participants either evaluated a version of the scenario in which it was relatively clear that the offender was at fault in causing the injuries or a version of the scenario in which the offender’s fault was more ambiguous. These variables were

104 The condition in which the offender offered a partial apology stated in relevant part: “After the accident, Pat contacted you and said: I am sorry if you were hurt. I really hope that you feel better soon.” The condition in which the offender offered a full apology stated in relevant part: “After the accident, Pat contacted you and said: 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.”

105 In the conditions in which apologies were protected, the rule was described as follows: “Please assume that the law of your state prevents apologies from being used against defendants in court. Thus, Pat’s statements to you will not be admissible in court as evidence that Pat was at fault for the accident. Assume that this was common knowledge and that Pat knew that if she apologized it could not be used against her if there was a lawsuit.”

106 In the conditions in which apologies were not protected, the rule was described as follows: “Please assume that Pat’s statements to you could be introduced in court as evidence that Pat was at fault. Assume that this was common knowledge and that Pat knew that if she apologized it could be used against her if there was a lawsuit.”

107 In the conditions in which the offender’s fault was somewhat ambiguous, participants were told: “A number of your other neighbors saw the accident or the events leading up to it. One of them reported that she thought the bicyclist might have hit some sort of obstruction in the path. One of them said later that she had found a large pothole near the place where the accident occurred. You had been mulling over a problem you had been having at work and aren’t sure that you were really paying attention to your surroundings or where you were going.” In the conditions in which the offender’s fault was more clear, participants were told: “A number of your other neighbors saw the accident or the events leading up to it. Several of them reported that the bicyclist was riding too fast given the curves in the path and the number of people out walking. One of them observed that the rider appeared to be reaching for a water bottle while riding at excessive speed. A bystander further down the path reported that she saw the cyclist almost hit another pedestrian shortly before the collision.” This manipulation was successful: participants rated the offender as more responsible in the condition in which the offender’s responsibility was more clear (mean = 5.68) than they did in the condition where responsibility was more ambiguous (mean = 4.51). F(1,526) = 92.505, p < 0.001, η² = 0.150. In addition, participants rated their own responsibility as greater in the ambiguous condition (mean = 2.55) than in the clear evidence condition (mean = 1.94). F(1,526) = 42.126, p = 0.001, η² = 0.074.
fully crossed, resulting in 18 different versions of the scenario—participants were randomly assigned to these conditions.\textsuperscript{108}

\textbf{B. Results}

1. Perceptions

Participants were asked a series of questions designed to elicit their perceptions and attributions about the situation and the other party. To facilitate analysis of these perception questions, two scales were constructed from these measures.\textsuperscript{109}

The first scale 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 he or 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’s conduct offended the participant, the degree to which the offender respected the participant, and the offender’s morality.\textsuperscript{110} The second scale\textsuperscript{111} represented participants’ evaluations of their response to the incident, and included participants’ ratings of the offender’s responsibility for the inci-

\textsuperscript{108}Thus, the study used a 3 (apology) $\times$ 3 (evidentiary rule) $\times$ 2 (offender fault) factorial design.

\textsuperscript{109}The groups of variables to be included in each scale were determined by a principal components factor analysis. Factor analysis is a procedure that is used to determine whether a larger number of variables cluster together into a smaller number of constructs. The procedure is “applied to a single set of variables where the researcher is interested in discovering which variables in the set form coherent subsets that are relatively independent of one another. Variables that are correlated with one another but largely independent of other subsets of variables are combined into factors.” Barbara G. Tabachnick & Linda S. Fidell, Using Multivariate Statistics 597 (2nd ed., 1989). The factor analysis was conducted on 15 questions (each measured on a seven-point Likert scale); varimax rotation was utilized to enhance the interpretability of the factors. The analysis demonstrated that the items comprised three orthogonal factors accounting for a total of 58 percent of the variance. Scales based on the variables that loaded on the first two factors (cutoff = 0.500), labeled Assessment of Apology and Evaluation of Response, are described more fully, infra notes 111–115, and were used in subsequent analyses. The third factor did not result in a reliable scale (alpha = 0.41); thus, the remaining items were analyzed separately.

\textsuperscript{110}Alpha = 0.89.

\textsuperscript{111}Alpha = 0.74.
dent, their anger, their sympathy for the offender, their willingness to forgive the offender, and the degree to which they thought the offender should be punished.

a. Assessment of apology. The type of apology clearly influenced participants’ assessment of the apology and the information it conveyed to the disputant. Participants who received a full apology made more positive assessments of the apology and the information conveyed by the apology than did participants who were told they had received only a partial apology, who, in turn, made more positive assessments than did participants who received no apology (see Table 1).

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112Reverse coded.

113Reverse coded.

114Reverse coded.

115$F(2,526) = 268.619, p < 0.001, \eta^2 = 0.505$.

116Follow-up analysis was conducted using the Tukey test; $p < 0.001$. All analyses conducted to explore differences among more than two groups used the Tukey test. See Geoffrey Keppel & Sheldon Zedeck, Data Analysis for Research Designs 174–76 (1989). Similarly, participants also rated full apologies as being more sincere than they rated partial apologies. $F(1,349) = 72.094, p < 0.001, \eta^2 = 0.171$. 

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### Table 1: Effects of Apology on Perceptions*

<table>
<thead>
<tr>
<th>Assessment of Apology</th>
<th>Clear Fault</th>
<th>Ambiguous Fault</th>
</tr>
</thead>
<tbody>
<tr>
<td>No apology</td>
<td>3.3</td>
<td>4.1</td>
</tr>
<tr>
<td>Partial apology</td>
<td>3.6</td>
<td>4.6</td>
</tr>
<tr>
<td>Full apology</td>
<td>4.0</td>
<td>4.4</td>
</tr>
</tbody>
</table>

*Values reported are means on scales running from 1 to 7; higher values indicate more positive assessments, higher expectations of winning, and more positive evaluations. 
The degree to which the offender appeared to be at fault also influenced participants’ assessment of the apology.\(^{117}\) Participants made more favorable assessments of the apology and the information conveyed by the apology when the offender’s fault was more ambiguous than when it was relatively clear.\(^{118}\)

The type of evidentiary rule also influenced participants’ assessment of the offender’s apology.\(^{119}\) However, the nature of this effect differed by the type of apology.\(^{120}\) When the offender gave a full apology, there was no effect of the evidentiary rule on assessments of apology.\(^{121}\) It may be that when a full apology was offered, participants made a personal attribution—attributing the apology to the disposition of the offender (i.e., they apologized because that is the kind of person they are), rather than focusing on the finer points of the legal context. When the offender did not provide an apology, participants made less negative assessments when they were explicitly told that apologies were not protected than they did either when they were told that apologies were protected or when no rule was specified.\(^{122}\) In this case, it may be that highlighting the lack of protection provided an excuse for the lack of apology. Finally, when the offender gave a partial apology, participants gave more positive assessments when they were explicitly told either that apologies were protected or that apologies were not protected than they did when no rule was specified.\(^{123}\) Thus, describing either rule resulted in more positive assessments of partial apologies. Here, it may be the descriptions of either rule made salient the legal risks of apologizing and provided an alternative attribution for the incomplete apology.

\(^{117}\) \(F(1,526) = 25.843, \ p < 0.001, \ \eta^2 = 0.047.\)

\(^{118}\) Ambiguous fault mean = 4.34; clear fault mean = 3.97.

\(^{119}\) \(F(2,526) = 9.722, \ p < 0.001, \ \eta^2 = 0.036.\)

\(^{120}\) \(F(4,526) = 4.440, \ p = 0.002, \ \eta^2 = 0.033.\)

\(^{121}\) Full apology: no rule specified mean = 5.27; apology protected mean = 5.11; apology not protected mean = 5.33.

\(^{122}\) No apology: no rule specified mean = 2.65; apology protected mean = 2.75; apology not protected mean = 3.35.

\(^{123}\) Partial apology: no rule specified mean = 3.83; apology protected mean = 4.50; apology not protected mean = 4.38.
b. Evaluation of response. The degree to which the offender appeared to be at fault also influenced participants’ evaluations of their response to the incident—their evaluations of the offender’s responsibility, their anger, their sympathy for the offender, and their inclination to forgive or to desire that the offender be punished.124 Participants made more positive evaluations when the offender’s fault was more ambiguous than when it was relatively clear.125

The degree of the offender’s fault also moderated the influence of the type of apology on participants’ evaluations (see Table 1).126 When offender fault was relatively clear,127 participants who received a full apology made more positive evaluations than did participants who were told they had received only a partial apology, who, in turn, made more positive evaluations than did participants who received no apology.128 When offender fault was more ambiguous,129 participants who received a partial apology made more positive evaluations than did participants who received no apology;130 participants who received a full apology also made evaluations that were somewhat more positive than those who received no apology, but this difference did not reach traditional levels of statistical significance.131

There was no statistically significant influence of evidentiary rule on evaluations.132

c. Expectations. The evidence of the offender’s fault, not surprisingly, influenced participants’ expectations about the likelihood that they would win at

\[ F(1,526) = 84.756, \ p < 0.001, \ \eta^2 = 0.139. \]

125Ambiguous fault mean = 4.36; clear fault mean = 3.66.

126\[ F(2,526) = 3.437, \ p = 0.033, \ \eta^2 = 0.013. \]

127\[ F(2,270) = 12.816, \ p < 0.001, \ \eta^2 = 0.087. \]

128These follow-up analyses were conducted using the Tukey test; \( p < 0.05 \).

129\[ F(2,268) = 4.741, \ p = 0.009, \ \eta^2 = 0.034. \]

130This follow-up analysis was conducted using the Tukey test; \( p < 0.01 \).

131This follow-up analysis was conducted using the Tukey test; \( p < 0.12 \).

132\[ F(2,526) = 0.668, \ p = 0.513, \ \eta^2 = 0.003. \]
trial.\textsuperscript{133} Participants estimated their chances of winning as higher when the offender’s fault was more clear than when it was relatively ambiguous.\textsuperscript{134}

In addition, participants’ expectations about the likelihood that they would win at trial were influenced by the apology.\textsuperscript{135} Participants who received an apology that accepted responsibility for having caused the injuries estimated their chances of winning as higher than did participants who received only an expression of sympathy.\textsuperscript{136}

There was no statistically significant influence of evidentiary rule on expectations about the likelihood that participants would win at trial.\textsuperscript{137}

2. Settlement Levers

The next set of analyses examined the influences of apology, offender fault, and evidentiary rule on aspirations, estimates of fair settlements, and reservation prices. Separate analyses of variance (ANOVA) were conducted for each settlement lever.\textsuperscript{138}

\textit{a. Effect of apology.} Apologies had an effect on settlement levers. Across all three settlement levers, the general pattern was similar, with offender fault proving to be an important moderator: apologies influenced each settlement lever when the evidence of offender fault was relatively clear and had little effect when the evidence was more ambiguous (see Table 2 and Figure 1).

First, participants’ aspirations were jointly influenced by the type of apology and the offender’s fault.\textsuperscript{139} Apology had a statistically significant

\begin{enumerate}
\item $F(1,526) = 20.201, p < 0.001, \eta^2 = 0.037$.
\item Ambiguous fault mean = 4.85; clear fault mean = 5.28.
\item $F(2,526) = 4.797, p = 0.009, \eta^2 = 0.018$.
\item This follow-up analysis was conducted using the Tukey test; $p < 0.01$. No apology did not differ significantly from either a full or partial apology, $\eta < 0.05$ (Tukey).
\item $F(2,526) = 0.932, p = 0.394, \eta^2 = 0.004$.
\item Because the distribution of values for each settlement lever was highly skewed, outliers were recoded to the next highest value within each condition and the analyses were conducted on square-root transformed data.
\item $F(2,515) = 3.131, p = 0.045, \eta^2 = 0.012$.
\end{enumerate}
effect on aspirations when the offender’s fault was relatively clear. \(^{140}\) Compared to the condition in which they received no apology, participants set lower aspirations when they received a full apology \(^{141}\) and marginally lower aspirations when they received a partial apology. \(^{142}\) In contrast, when the

\(^{140}\) \(F(2, 268) = 5.894, p = 0.003, \eta^2 = 0.042.\)

\(^{141}\) This follow-up analysis was conducted using the Tukey test; \(p = 0.002.\)

\(^{142}\) This follow-up analysis was conducted using the Tukey test; \(p = 0.062.\) The aspirations of those receiving partial and full apologies did not differ; \(p = 0.518 \text{ (Tukey).}\)
offender’s fault was ambiguous, there were no differences in aspirations among participants in the different apology conditions.\(^{143}\) Examining the cell means (see Table 2) demonstrates that aspirations were similar in all conditions, except that participants held higher aspirations where the offender’s fault was relatively clear and no apology was offered.

Similarly, for participants’ fair offer estimates, the interaction between the type of apology and the offender’s fault was statistically significant.\(^{144}\) Apology only had a statistically significant effect on participants’ estimates of a fair settlement when the offender’s fault was relatively clear.\(^{145}\) When fault was clear, participants’ fair settlement estimates were lower when they received either a full or a partial apology compared their estimates when they received no apology.\(^{146}\) In contrast, when the offender’s fault was ambiguous, there were no differences in fair settlement estimates among those in the various apology conditions.\(^{147}\) Again, examining the cell means (see Table 2) demonstrates that fair settlement estimates were similar in all conditions, except that participants’ estimates of a fair settlement were higher where the offender’s fault was relatively clear and no apology was offered.\(^{148}\)

Although it does not reach statistical significance in this analysis, the pattern of the joint influence of apology and offender fault on reservation

\(^{143}\)F\((2,259) = 0.068, p = 0.934, \eta^2 = 0.001.\)

\(^{144}\)F\((2,514) = 3.876, p = 0.021, \eta^2 = 0.015.\)

\(^{145}\)F\((2,264) = 9.920, p < 0.001, \eta^2 = 0.070.\)

\(^{146}\)These follow-up analyses were conducted using the Tukey test; p < 0.001. The fair offer estimates of those receiving partial and full apologies did not differ; p = 0.980 (Tukey).

\(^{147}\)F\((2,262) = 0.960, p = 0.384, \eta^2 = 0.007.\)

\(^{148}\)This apology by fault interaction qualified the main effect of apology (F\((2,514) = 5.868,\) p = 0.003, \eta^2 = 0.022): participants receiving either partial or full apologies provided lower values than did participants who received no apology; p ≤ 0.05 (Tukey). The fair settlement estimates of participants receiving partial and full apologies did not differ significantly; p = 0.513 (Tukey). Although the fair settlement estimates are in a direction consistent with this interaction pattern in all of the rule conditions, a significant three-way interaction between rule, apology, and fault indicated that this pattern was only statistically significant in the condition in which participants were told that apologies were not protected. F\((4,514) = 2.481, p = 0.043, \eta^2 = 0.019.\)
prices is similar.\textsuperscript{149} As with the other settlement levers, apology had a statistically significant effect on reservation prices when the offender’s fault was relatively clear.\textsuperscript{150} Compared to the condition in which they received no apology, participants’ reservation prices were lower when they received a full apology\textsuperscript{151} and marginally lower when they received a partial apology.\textsuperscript{152} In contrast, when the offender’s fault was ambiguous, there were no differences in reservation prices among the apology conditions.\textsuperscript{153} Examining the cell means (see Table 2) demonstrates that reservation prices were similar in all conditions, except that participants had higher reservation prices where the offender’s fault was relatively clear and no apology was offered.

\textbf{b. Effect of offender fault.} Reservation prices were clearly influenced by the degree to which the offender was at fault. Participants set higher reservation prices when the offender’s fault was relatively clear than they did when the degree of fault was more ambiguous.\textsuperscript{154}

It might be expected that the additional information regarding the offender’s fault would cause participants to make a more favorable assessment of their chances of winning at trial (their BATNA) and, accordingly, to set an increased reservation price. Indeed, the effect of the strength of the evidence of offender fault on reservation prices was mediated by participants’ estimates of their likelihood of winning at trial.\textsuperscript{155}

\begin{align*}
149 & F(2,523) = 1.976, \ p = 0.140, \ \eta^2 = 0.007. \\
150 & F(2,273) = 3.803, \ p = 0.024, \ \eta^2 = 0.027. \\
151 & \text{This follow-up analysis was conducted using the Tukey test; } p = 0.028. \\
152 & \text{This follow-up analysis was conducted using the Tukey test; } p = 0.083. \text{ The reservation prices of those receiving partial and full apologies did not differ; } p = 0.910 \text{ (Tukey).} \\
153 & F(2,262) = 0.326, \ p = 0.722, \ \eta^2 = 0.002. \\
154 & F(1,523) = 4.635, \ p = 0.032, \ \eta^2 = 0.009. \\
155 & \text{To establish a mediating relationship, four requirements must be established. First, the initial variable (i.e., offender fault) must be correlated with the outcome variable (i.e., reservation price). Second, the initial variable must be correlated with the proposed mediator (i.e., estimated likelihood of winning). Third, the proposed mediator must be correlated with the outcome variable. And, finally, the direct effect of the initial variable on the outcome variable must be diminished on controlling for the proposed mediator. Reuben M. Baron & David A. Kenny, The Moderator-Mediator Variable Distinction in Social Psychological Research: Conceptual, Strategic, and Statistical Considerations, 51 J. Personality & Soc. Psychol. 1173, 1176–77.}
\end{align*}
The degree to which the offender was at fault also influenced both participants’ fair settlement estimates and their aspirations, but only when no apology was given. When no apology was offered, participants had lower aspirations and estimated lower fair settlements when the offender’s fault was more ambiguous than they did when the degree of fault was relatively clear.

c. Effect of evidentiary rule. Aspiration level was the only settlement lever to be influenced by the evidentiary rule with which participants were provided. Participants had higher aspirations when they were explicitly told that apologies were not protected by an evidentiary rule than they were either when explicitly told that apologies were protected or when no rule was specified.

A series of regression equations were conducted to test these relationships. First, as just reported, the offender’s fault was found to influence reservation prices. $F(1,539) = -2.228, p = 0.026$. Second, the offender’s fault was found to influence participants’ estimates of their likelihood of winning if the case proceeded to trial; participants thought that they were more likely to win when the evidence was relatively clear than they did when the evidence was more ambiguous. $F(1,526) = 20.201, p < 0.001$. Third, participants’ estimates of the likelihood of winning at trial were correlated with their reservation prices; participants with higher expectations of winning set higher reservation prices. $F(1,527) = 5.131, p < 0.001$. And, finally, when reservation prices were regressed on both fault and likelihood of winning estimates, only likelihood of winning estimates had a statistically significant influence on reservation prices. $t = 4.790, p < 0.001$. In this model, the offender’s fault no longer had a statistically significant influence on reservation prices. $t = -1.281, p = 0.201$. Thus, the effect of the strength of the evidence of offender fault on reservation prices was mediated by participants’ estimates of their likelihood of winning at trial.

These follow-up analyses were conducted using the Tukey test; $ps < 0.05$. No rule specified mean = 141; apology protected mean = 139; apology not protected mean = 156. There was no significant effect of evidentiary rule on participants’ reservation prices, $F(2,523) = 1.594, p = 0.204, \eta^2 = 0.006$. There was a marginally significant effect of evidentiary rule on judgments of fair settlement ($F(2,514) = 2.670, p = 0.070, \eta^2 = 0.010$) that was qualified by a significant three-way interaction among evidentiary rule, apology, and offender fault ($F(4,514) = 2.481, p = 0.043, \eta^2 = 0.019$). For no combination of offender fault and type of apology did the effect of evidentiary rule reach significance; $ps > 0.10$ (Tukey).
d. **Effects of perceptions.** Participants’ estimates of their chances of winning the case if it went to court had a significant influence on reservation prices,\textsuperscript{161} aspirations,\textsuperscript{162} and fair settlement judgments.\textsuperscript{163} In each case, the greater the participant’s estimate of his or her chances of winning the case in court, the higher the value of the settlement lever.

In addition, participants’ assessments of the apology and the information that it conveyed had a significant influence on reservation prices,\textsuperscript{164} aspirations,\textsuperscript{165} and fair settlement judgments.\textsuperscript{166} For each of these settlement levers, the more positive the participant’s assessment, the lower the value of the settlement lever.

Similarly, participants’ evaluations of their response to the incident also had a significant influence on reservation prices,\textsuperscript{167} aspirations,\textsuperscript{168} and fair settlement judgments.\textsuperscript{169} For each of these settlement levers, the more positive the participant’s evaluation, the lower the value of the settlement lever.

**V. IMPLICATIONS**

**A. The Effects of Apologies**

This study provides further evidence that apologies can change the dynamics of settlement negotiation. The data suggest that apologies can promote settlement by altering the injured parties’ perceptions of the situation and the offender so as to make them more amenable to settlement discussions.

\textsuperscript{161} F(1,527) = 26.326, p < 0.001, R^2 = 0.048.

\textsuperscript{162} F(1,524) = 16.622, p < 0.001, R^2 = 0.031.

\textsuperscript{163} F(1,525) = 28.810, p < 0.001, R^2 = 0.052.

\textsuperscript{164} F(1,527) = 7.149, p = 0.008, R^2 = 0.013.

\textsuperscript{165} F(1,524) = 7.817, p = 0.005, R^2 = 0.015.

\textsuperscript{166} F(1,525) = 12.798, p < 0.001, R^2 = 0.024.

\textsuperscript{167} F(1,527) = 49.738, p < 0.001, R^2 = 0.086.

\textsuperscript{168} F(1,524) = 49.610, p < 0.001, R^2 = 0.086.

\textsuperscript{169} F(1,525) = 56.091, p < 0.001, R^2 = 0.097.
and by altering the values of the injured parties’ settlement levers in ways that are likely to increase the chances of settlement. When an injured party’s reservation price is lower, it is more likely that a bargaining range will exist and any existing bargaining range will be larger. When an injured party’s reservation price, aspiration value, or estimate of a fair settlement is lower, his or her subjective evaluation of the other’s offer may be more positive. In these ways, the prospects for reaching settlement or settling more quickly are increased.

Full, responsibility accepting apologies appear to have the strongest effects on participants, suggesting the importance of offenders taking responsibility for having caused injury.170 Nonetheless, while some of the effects of partial, sympathy expressing apologies were smaller in magnitude than those of full apologies, partial apologies showed a similar directional pattern of effects. In contrast to previous studies using the same basic scenario finding that the effects of offering a partial apology differed little from the effects of offering no apology at all,171 the current study found that partial apologies influenced both perceptions and settlement levers. Why the difference? One change in the scenario may be responsible: in the earlier studies the apology was described as being offered in a phone message; in the study reported here, the offender was simply said to have “contacted” the injured party and offered the apology. Offering a partial apology in a phone message may have been less satisfactory than a partial apology offered by some other (here unspecified) medium. A partial apology, in particular, may be difficult to interpret and recipients may be especially attentive to signals that elaborate its meaning and indicate the sincerity with which it is offered. This highlights the possibility that other factors surrounding the offering of an apology, particularly a partial apology, may have important influences on how the apology is interpreted.

Indeed, the data reported here provide additional evidence that the effects of apologies are quite complex and context dependent. In particular, the available evidence of the offender’s fault moderated many of the effects of apologies found here. When the offender’s fault was clear, apologies influenced participants’ assessments, evaluations, and settlement levers.


171Robbennolt, Apologies and Legal Settlement, supra note 1.
When the offender’s fault was more ambiguous, however, this consistent pattern of effects did not hold. The finding that fault moderated the effects of apology such that many of the effects of apologies were found primarily when the offender’s fault was relatively clear suggests that apologizing may have the most potential benefit when the risks (in terms of liability) are lowest (given the independent evidence of fault).

While not providing a direct test of whether plaintiffs will tend to accept a lower financial settlement when in receipt of an apology, this study suggests that plaintiffs may trade off apologies against the financial terms of a settlement. Participants who received an apology from a clear offender had lower reservation prices, aspirations, and conceptions of fair settlements. Previous research on negotiations suggests that this is likely to result in lower final settlement values. This raises the concern that plaintiffs may be persuaded by an apology to agree to a settlement that does not provide them with the monetary settlement to which they may be legally entitled, a concern that is part of a larger debate over the virtues of settlement.

Articulating the concern in this context, Deborah Levi has asked whether “if a plaintiff settles because she’s emotionally fulfilled by an apology, isn’t she being duped out of her legal entitlement—an entitlement that the apology itself makes concrete?” If one anticipates that some apologies may be insincerely offered, concern for plaintiffs gathers even more force.

A concern for plaintiffs’ outcomes is based in part on the assumption that a legally defined monetary entitlement is the appropriate benchmark. Importantly, however, some injured parties may be more satisfied with a combination of financial compensation and an apology than they would be with a larger monetary settlement and no apology. In addition to monetary

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172 See Section III.
174 Levi, supra note 1, at 1171. See also Cohen, Advising Clients to Apologize, supra note 1.
175 See O’Hara & Yarn, supra note 1, at 1186 (“apology can be used as a tool for organizations to strategically take advantage of individual victims’ instincts to forgive in the face of apology”). Compare Miller, supra note 102, at 78 (arguing that apologies are easy to “fake”) with Orenstein, supra note 1, at 241 (arguing that “the emotion of contrition is hard to fake in person”).
compensation, plaintiffs may value the symbolic function of an apology that reaffirms the moral value of the plaintiff in the community, is consistent with a positive social identity, and signals that the offensive behavior will not recur.\textsuperscript{176} The present data are consistent with this view. Participants who received a full apology made higher estimates of their likely success at trial (their BATNA) and a belief that success at trial was more likely was associated with higher settlement lever values. Thus, participants were not insensitive to the evidentiary value of the apology. However, despite this appreciation, the overall effect of apologies was to lower participants’ reservation prices, aspirations, and fair offer estimates.\textsuperscript{177} These results suggest that the intangible value of an apology to participants was sufficiently large as to outweigh the value of the apology for furthering the participants’ monetary self-interest.\textsuperscript{178}

The concern for plaintiffs is also rooted in a suspicion of offenders’ motives for offering apologies and misgivings about injured parties’ abilities to detect insincere apologies. Certainly, it would not be surprising if some number of insincere apologies were offered as purely strategic moves.\textsuperscript{179} As an ethical matter, the motives of the offender (i.e., whether the apology is motivated by purely strategic concerns or by remorse and concern for the injured party) and whether the injured party is free to accept or reject a settlement are of central concern.\textsuperscript{180} Plaintiffs ought to be free to assess the

\begin{thebibliography}{9}
\bibitem{176} See notes 94–101 (discussing the nonfinancial motives that may be pursued by litigants and the possibility that an apology may serve some purposes as well as or better than financial compensation). See also Jennifer K. Robbennolt et al., Symbolism and Incommensurability in Civil Sanctioning: Decision-Makers as Goal Managers, 68 Brook. L. Rev. 1121 (2003) (arguing that legal decisionmakers simultaneously pursue numerous instrumental and symbolic goals).
\bibitem{177} See notes 140–154.
\end{thebibliography}
value of a particular apology and to judge their willingness to settle accordingly. Indeed, even an insincere apology may be valuable to an injured party—serving to acknowledge the wrongdone and to reestablish respect for the injured party in the eyes of the witnessing community.\textsuperscript{181} Those who do not value the apology, or value it less, should be free to negotiate for a higher monetary settlement. This and other studies of apology have provided some evidence that plaintiffs can distinguish among different forms of apology—that is, sympathy expressions as opposed to full, responsibility accepting apologies.\textsuperscript{182} Nonetheless, plaintiffs may feel bound by norms of reciprocity to respond favorably to an apology,\textsuperscript{183} possibly feeling powerful social pressure to accept an offender’s apology even if it is less than sincere,\textsuperscript{184} and may not be conscious of the ways an apology influences their decision making. Given the relative dearth of empirical research in this area, it is essential that additional research be conducted regarding disputants’ responses to insincere apologies and the role of plaintiffs’ counsel in advising clients.\textsuperscript{185}

B. Evidentiary Rules

Consistent with previous studies, the data reported here do not appear to provide support for the proposition that apologies protected by evidentiary rules will be automatically devalued. In contrast with the previous studies, the evidentiary rules in this study had some effects—but these effects were few and were not in a pattern that suggests a devaluing of protected apologies. Full apologies were not assessed any differently among the different rule conditions. Partial apologies were not assessed differently when they were protected as compared to when they were not protected, and were assessed

\textsuperscript{181}See Cohen, Advising Clients to Apologize, supra note 1, at 1066 (“Saying you’re sorry may help you to feel sorry.”); Miller, supra note 102, at 88–89 (describing apology as a “ritual . . . of humiliation” that “even if performed badly, pretends to make some sort of amends to the wronged party, which the latter can choose to accept or not”); Robbennolt et al., supra note 176, at 1147 (describing even an insincere apology as “a degradation ceremony that restores equal footing between victim and offender”).

\textsuperscript{182}See notes 116–117, 137; Robbennolt, Apologies and Legal Settlement, supra note 1.

\textsuperscript{183}See note 101.

\textsuperscript{184}See note 102.

\textsuperscript{185}See Cohen, Advising Clients to Apologize, supra note 1; Robbennolt, Apologies and Legal Settlement, supra note 1.
more positively when they were protected as compared to when no rule was specified. It remains to be seen whether evidentiary rules will influence an understanding of apologies under circumstances not examined here—for example, apologies that are offered much later in the litigation process. It is also possible that such rules might have an effect on responses to apologies over an extended period of time as they shape the broader meaning of apologies within the culture. In the meantime, these data yield no evidence to support claims that making apologies “safe” via the rules of evidence will make them less effective or valued by claimants.

Interestingly, explaining that the rules of evidence do not protect apologies from admissibility resulted in improved assessments in some circumstances. When they were explicitly told that apologies were not protected, participants made more positive assessments of offenders who did not apologize and made more positive assessments of offenders who offered partial apologies. Perhaps drawing attention to the legal risks of apologizing helped to provide a situational explanation for a failure to apologize or for failure to offer a complete apology.

As I have previously noted, there are a variety of considerations relevant to whether evidentiary protection for apologies is appropriate and the proper contours of any such protection. Evidentiary protections for apologies may affect the perceptions and behavior of a number of different actors in the system, including defendants and potential defendants, plaintiffs, jurors, and judges. The findings of the current study empirically address only one of the questions relevant to a discussion of whether evidentiary protection for apologies is appropriate—whether litigants will devalue apologies offered soon after an accident when they are protected by the rules of evidence. No such devaluation was detected. This study was not designed to address the effects of evidentiary protection for apologies on other actors in the system or at other stages of the process. A more complete policy discussion of such statutes ought to take into account, for example, whether these statutes will, in fact, encourage more apologies; whether they will encourage insincere or strategic apologies; the effects of evidentiary protection on plaintiffs’ abilities to bring lawsuits; how parties will react if an apology is offered, no settlement is reached, and the protection of such a statute is

186See note 124.

187See notes 123–124.
invoked; and the probative value of different types of apologies.\textsuperscript{188} Several of these issues are empirically testable, and future research examining them would be valuable to the debate.

VI. Conclusion

The findings reported here advance our understanding of the role of apologies in legal settlement decision making in several ways. At a fundamental level, this study provides support for the notion that apologies can facilitate legal settlement. Apologies had consistent effects on a variety of judgments relevant to settlement negotiation. Importantly, the data suggest that the intangible and symbolic value of apologies to plaintiffs may outweigh their strategic and economic value. In addition, the study provides further support for the notion that apologies must be considered in context. In this study, the content of the apology and the clarity of the offender’s fault moderated the effects of apology on settlement judgments. Similarly, it is likely that other contextual variables such as the relationship between the parties, the timing of the apology, the medium by which the apology is conveyed, and many other factors will play important roles in how apologies operate. Most importantly, this study is the first to examine the effects of apologies on a set of settlement levers—reservation prices, aspirations, and judgments of fair settlement amounts—that are known to influence settlement decisions. The findings of this study provide evidence for the role of these settlement levers as a mechanism by which apologies influence settlement processes, decisions, and outcomes.

\textsuperscript{188}Neither this study, nor previous studies in this research program, Robbennolt, Apologies and Legal Settlement, supra note 1, at 505 & n.217, were intended to provide an overall normative assessment of these apology statutes. A detailed examination and balancing of the pros and cons of such statutes is beyond the scope of this article. But cf. Lee Taft, Apology Within a Moral Dialectic: A Reply to Professor Robbennolt, 103 Mich. L. Rev. 1010 (2005). For detailed discussion of these pros and cons, see Cohen, Legislating Apology, supra note 1. See also Orenstein, supra note 1.
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