How Apology and Forgiveness Affect Decision Making in Mediation

George F. Knox
70% of people don’t mean it when they apologize.

When it comes to avoiding confrontation, there’s nothing like an insincere apology, according to a recent OnePoll survey of 4,000 adults. The top reasons for saying you’re sorry? Bumping into someone on the street or making a mistake at work.

“In everyday life, many apologies are not heartfelt,” says Thomas Gilovich, a Cornell University psychology professor. “But amazingly, even obviously coerced apologies are often effective in repairing rifts.”

What’s more, women excel at saying “I’m sorry,” doling out 10 apologies a day compared with six for men. Apparently, “sorry” doesn’t seem to be the hardest word after all.
Effective management of apologies can be one of the most valuable exercises of process expertise a mediator can offer.
Proper Apologies Have Three Parts

1. What I did was wrong.
2. I feel badly that I hurt you.
3. How can I make this better.
MOST RESEARCH SUGGESTS THAT EFFECTIVE APOLOGIES ARE THOSE THAT:

- Appear to be sincere
- Contain an acknowledgement of the wrongful act and its impact on the victim
- Accept responsibility
POWERSHIFTS

APOLOGY IS A RITUAL INVOLVING POWER SHIFTS AND EXCHANGES OF VULNERABILITY
What About the Legal Repercussions?

- Mediators, be cognizant of the strategic and evidentiary barriers impeding the party from apologizing.

REMEMBER:
- Mediation is a confidential process.
- In many jurisdictions there are explicit protections given to acknowledgments of fault in settlement discussions.
Statutory Protection

- Connecticut General Statutes, Sec. 52-184d(a)(4)(b):
- In any civil action brought by the alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, and any and all statements, affirmations, gestures or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, and that relate to the discomfort, pain, suffering or injury or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.
The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence in a civil action. A statement of fault, however, which is part of, or in addition to, any of the above shall be admissible pursuant to this section.
Faux Apologies

- “I’m sorry that you…”
- “…Choice of words”
- “I apologize to ...(others)”
- “My Bad”
- “Sorry ‘bout that”
Sometimes things happen:
Libya Says NATO Bombed Residential Area in Tripoli, Killed Civilians-June, 2011

- “It appears that one weapon did not strike the intended target and that there may have been a weapons system failure which may have caused a number of civilian casualties.”

- “NATO regrets the loss of innocent civilian lives and takes great care in conducting strikes against a regime determined to use violence against its own citizens.”
“We take these deaths very seriously and I grieve with their families.”

“I have children of my own, and I feel the pain of this.”

“I know that no apology can bring back the lives of the children or the people who perished in this tragedy…but I want you to know that you have my apology and we will do the right thing by the families.”
Wade: "No Ill Intent On Me"

- “He knows it’s no ill intent on me to do that,” “I never wanted that kind of outcome.”
- “I don’t know if anybody wants me to get down on my knees in front of the world and [apologize], I don’t have to do that.”
21st Century Fox is pleased to announce that it has settled Gretchen Carlson’s lawsuit. During her tenure at Fox News, Gretchen exhibited the highest standards of journalism and professionalism. We are proud that she was part of the Fox News team. We sincerely regret and apologize for the fact that Gretchen was not treated with the respect and dignity that she and all of our colleagues deserve.”
“biggest mistake I made,” attributing it to his inexperience in politics. Turning to the cameras and addressing the president, he said, “I personally apologize for the 50th time.”
Sometimes in the heat of debate, and speaking on a multitude of issues, you don't choose the right words or you say the wrong thing. I have done that. "And believe it or not, I regret it. I do regret it, particularly where it may have caused personal pain."
"The media focus has been on historical events that show the standards to which we operate today were not universally in place in our Swiss operations eight years ago.

"We must show we understand that the societies we serve expect more from us. We therefore offer our sincerest apologies."
However, The Daily Beast understands that others may have interpreted the piece differently. Accordingly, we have made some editorial changes to the article, responding to readers’ concerns, and are again sorry for any upset the original version of this piece inspired.”
“Olympics: Michael Phelps shares historic night with African-American.”

• “Olympics: Stanford’s Simone Manuel and Michael Phelps make history.”
“We apologize for an insensitive headline earlier on a story about Simone Manuel and Michael Phelps’ medal wins.” It changed the headline of the story, by Elliott Almond, to read “Olympics: Stanford’s Simone Manuel and Michael Phelps make history.” “The original headline on this story was insensitive and has been updated to acknowledge the historic gold medal wins by both Simone Manuel and Michael Phelps. We apologize for the original headline. The story has also been updated.”
"The current dispute has occurred as we have failed to make efforts to improve corporate governance and enhance transparency,
"We will be bold in reform in order to address concerns held by the people of Korea, our shareholders, contractors and employees,"
"I apologize for the worries that have been caused by the recent prosecutorial investigation, amid the ongoing power struggle at the company over the last year. I feel we have not met the standards expected by the people and society."
Due to editing errors, the headline was wrong on our front-page story Tuesday. There are several factors that can help explain what happened. We’ve been struggling to adapt to a new software system. And on this particular story, we were making changes to the design of the page and in doing so strayed from our normal process for writing and editing headlines.

But none of that excuses what was a massive and embarrassing error. We failed to live up to the standards our readers expect. And for that, we sincerely apologize. We are in the process of hiring additional editors who will help us do a better job of avoiding and catching mistakes.

In the meantime, we’re instituting a new process for proofing our pages to ensure that our readers receive the quality product they deserve.
June 7th, 2017

VIA ELECTRONIC MAIL
Mr. Benjamin Jacobs
The Guardian
900 17th Street NW
Washington, DC 20006

Dear Mr. Jacobs:

I write to express my sincere apology for my conduct on the evening of May 24. My physical response to your legitimate question was unprofessional, unacceptable, and unlawful. As both a candidate for office and a public official, I should be held to a high standard in my interactions with the press and the public. My treatment of you did not meet that standard.

Notwithstanding anyone’s statements to the contrary, you did not initiate any physical contact with me, and I had no right to assault you. I am sorry for what I did and the unwanted notoriety this has created for you. I take full responsibility.

I understand the critical role that journalists and the media play in our society. Protections afforded to the press through the Constitution are fundamental to who we are as a nation and the way government is accountable to the people. I acknowledge that the media have an obligation to seek information. I also know that civility in our public discourse is central to a productive dialogue on issues. I had no right to respond the way I did to your legitimate question about healthcare policy. You were doing your job.

In the hope that perhaps some good can come of these events, I am making a $50,000 contribution to the Committee to Protect Journalists, an independent non-profit organization that promotes press freedom and that protects the rights of journalists worldwide.

I made a mistake and humbly ask for your forgiveness.

Sincerely,

[Signature]

Greg Gianforte
I’m so sorry things turned out the way they did
Elwin Wilson, a former supporter of the Ku Klux Klan, apologized for racist acts.

“Well, my daddy always told me that a fool never changes his mind and a smart man changes his mind. And that’s what I’ve done and I’m not ashamed of it. I’m not trying to be a Martin Luther King or something like that.”
Two Lives Linked by Murder, Coincidence and Reconciliation

It took Mr. Rowe several minutes to lower his guard. Mr. Colon shook his hand. “He said, ‘Brother, I’ve been praying for you. I forgave you. I’ve been praying I would see you again.’”

Mr. Rowe: “It was more painful for me to be forgiven than to know that he was an enemy and wanted to hurt me.”
Correction of an Apology – Taking it to the limit

“The Ottawa Citizen and Southam News wish to apologize for our apology to Mark Steyn, published Oct. 22. In correcting the incorrect statements about Mr. Steyn published Oct. 15, we incorrectly published the incorrect correction. We accept and regret that our initial regrets were unacceptable and we apologize to Mr. Steyn for any distress caused by our previous apology.”
THANK YOU

gknox1017@gmail.com