

## Apology in the Criminal Justice Setting: An Update

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### Abstract

Apology has many benefits to offenders and victims. The last 15 years have produced worthwhile quantitative and qualitative studies that have refined our understanding of apology, but have also identified the diversity in what can be said in apology and how it can be received. The apology literature in the last 15 years in social psychology, criminology, and criminal justice is examined, including two and three-way interaction effects and qualitative results that focus on the effectiveness of apology at the contextual and individual levels, and the important role that emotion can play. It is recommended that apology be implemented with a "less is more" approach for apology to be most effective for youth in juvenile justice; and that a venue is provided for a spontaneous/voluntary apology to occur, or a minimally prepared apology, using only broad prescriptions on how it ought to be carried out. By utilizing appropriate research strategies, knowledge about apology and its effectiveness in legal settings including juvenile justice can continue to build to determine what type of apology works best for whom under what circumstances.

### Key words

Apology; criminal justice; interaction effects; juvenile justice; mixed methods research; qualitative research

### Resumen

Las disculpas tienen numerosos beneficios para víctimas y victimarios. En los últimos 15 años se han realizado importantes estudios cuantitativos y cualitativos que han mejorado nuestra comprensión sobre las disculpas, pero que también han identificado la diversidad de lo que se puede decir al pedir perdón y cómo se puede recibir. Se analiza la literatura sobre disculpas de los últimos 15 años en la psicología social, la criminología, y la justicia penal, incluyendo efectos de interacción de dos y tres vías que se centran en la efectividad de las disculpas en los niveles contextual e individual, y el rol tan importante que puede jugar la emoción. Se recomienda que la disculpa se desarrolle bajo un acercamiento de "menos es más" para que sea más efectiva en el caso de los jóvenes en la justicia juvenil; y que se ofrezca un lugar para que se dé una disculpa

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espontánea/voluntaria, o una disculpa mínimamente preparada, empleando únicamente prescripciones generales sobre cómo debería desarrollarse. Al utilizar estrategias de investigación apropiadas, el conocimiento sobre la disculpa y su efectividad en entornos legales, incluyendo la justicia juvenil, puede ayudar a determinar para quién y bajo qué circunstancias funciona mejor cada tipo de disculpa.

**Palabras clave**

Disculpas; justicia penal; efectos de interacción; justicia juvenil; métodos de investigación mixtos; investigación cualitativa

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## 1. Introduction

Over 15 years ago, I came across a serendipitous finding from a family group conferencing study in which youth who did not apologize were three times more likely to recidivate within three years compared to youth who did apologize (Morris and Maxwell 1997). This unusual finding led to an exploration of and subsequent publication on the existing literature on apology that critically reviewed available empirical evidence of the effects of apology in social psychology, sociology, and socio-legal studies (see Petrucci 2002). Theoretical contributions were also examined including Tavuchis' (1991) sociological theory, Weiner's (1992, 1995) attribution and social conduct theories, therapeutic jurisprudence (Wexler 1991, 1998, Wexler and Winick 1996), restorative justice (Braithwaite 1989), and Scheff's (1998) communication of emotions theory in which he combines therapeutic jurisprudence and restorative justice (Petrucci 2002). Ultimately, I recommended the use of apology in criminal justice settings because of its potential to contribute positively to both victims and offenders by virtue of directly addressing the harmful act. According to Scheff (1998), offenders who directly address the harmful act through a genuine apology that includes acceptance of responsibility, will make an emotional connection with victims in the process of giving an apology that allows them to understand and acknowledge the harm they caused, which in turn could result in offenders' lower likelihood of reoffending. Moreover, the process of apology, as explained through attribution theory (Weiner 1992), may be a critical link for offenders to realize the harm they have caused by initiating the "causal attribution search" upon hearing the victim's story. Initially this might lead to the offender making negative self-attributions. Then through an apology, the negative attributions can be replaced with positive self-attributions. This could in turn contribute to an offender's motivation to succeed and not offend further. Victims who receive an apology who had inaccurately taken on blame for the crime may be able to correct those attributions of blame from themselves to the offender, and also decrease their anger and aggression towards the offender. Victims may also feel more empowered as a result of getting what they consider to be a meaningful apology, and by being given the formal opportunity to forgive or not. If victims and offenders benefit from apology, this could also potentially improve the effectiveness of the legal system, including juvenile justice, by providing a conducive environment for apology alongside of standard legal proceedings (Petrucci 2002). This is a particularly compelling imperative in juvenile justice, in which youth have the rest of their lives ahead of them to either reoffend or reintegrate and not reoffend.

The last 15 years have seen a host of studies and critical reviews on apology in various contexts (for example, see Hayes [2006] for a discussion of apology in youth justice conferences; Alberstein and Davidovitch [2011] for a discussion of apology research in health care settings; Blecher [2011] for a discussion of apology research in family group conferences; Hornsey and Wohl [2013] for a review of intergroup apology research; Robbennolt and Lawless [2013] for a study of apology in bankruptcy legal settings; and Nick Smith's [2008] comprehensive examination of the elements of apology and more specifically, its application in civil and criminal law [Smith 2014]). The purpose of this paper is to revisit the apology literature fifteen years later to make recommendations for the use of apology for youth in the sentencing process. I review the recent research studies primarily in the social psychology, criminology, and criminal justice literature due to their relevance to criminal justice. I exclude studies in civil law, medical/public health, and the political apology literature due to the different context and purpose of apology in these different settings. I will use this review to advocate the position that apology remain a potentially valuable component in juvenile justice, but that it must be handled carefully in a "less is more" approach. I take the position that the recent research points to the context-specific nature of apology, with too many varying factors to support an overarching theory or approach that could accurately predict a

successful apology across multiple contexts. Instead, I advocate the use of providing or supporting an opportunity for a spontaneous or minimally prepared apology, and I discourage a move toward formal training or detailed guidance in apology for victims or offending youth. Much more is yet to be learned about apology in the juvenile justice and adult criminal justice setting. Therefore, I recommend what appear to be the most fruitful research strategies to continue to evaluate the use of apology. Specifically, I recommend the use of simulation studies rather than hypothetical vignette studies, naturalistic studies, role plays, qualitative and mixed methods studies, and accessing target populations who retrospectively recall the harmful event as either a victim or an offender.

Finally, three notes are in order. First, note that I approach the topic as an evaluation researcher and former social welfare and criminal justice practitioner and not as someone trained in law or legal research. As such, I don't attempt to provide an analysis of the legal research (others such as Jonathan Cohen, Robyn Carroll and Jennifer Robbennolt have done excellent work in this area). Instead, I rely primarily on publications in the social science literature. Second, while the purpose of the paper is to consider apology specifically for youth at sentencing, the apology research is not yet at a stage where this specific context of sentencing can be adequately discussed. Therefore, studies in many different contexts in which the results can reasonably be extrapolated are reviewed here. This includes studies with both youth or juvenile samples, most often referring to youth under age 18 years old, but also included are studies that utilized adult samples. The focus in selecting studies was on variables or constructs specifically related to apology to present the most in depth picture. Third, the phrase "youth" is used to refer to young people in general, who may or may not be involved in the criminal justice system at the juvenile or adult level. The word "offender" is used when studies utilized it in order to stay true to the original studies.

## **2. The distinctive nature of apology**

### *2.1. Two and three-way interaction effects*

Study results tend to agree that more positive results occur, such as a more positive view of the transgressor, or victim satisfaction with the apology, when comparing an apology versus a no apology condition or an apology versus an explanation, account, justification or excuse (Gonzales *et al.* 1994, Ohbuchi and Sato 1994, Morris and Maxwell 1997, Thomas and Millar 2008, Banerjee *et al.* 2010, Dhimi 2012, López-López *et al.* 2013). Mixed results have occurred when analyzing predictors and consequences of apology in which it has become apparent that not everyone interprets an apology in a similar way. These differences often emerge in the research in the form of two-way or three-way interaction effects, in which two or three measured group characteristics (or independent variables) do not "behave" the same way across all combinations of the group levels on the measured outcome (or dependent variable). For example, children ages four to seven and ages six to nine might be the two "levels" of an age variable. A second group characteristic might be gender, with boys and girls as the levels of gender. Groups are then formed by looking at all possible combinations across the levels of the group characteristics (age group and gender) on a specific measured outcome. This can be visualized as a two-by-two table, with the two levels of gender making up the rows and the two levels of age group in the columns. This is referred to as an "interaction effect". In this example, an "age group by gender interaction" on a specific outcome would look at the mean (average) score on the outcome for boys in both age groups and girls in both age groups to see if means are similar across boys and girls in both age groups.

Interactions are often explored in what are referred to interchangeably as multifactorial or factorial analysis of variance or ANOVA designs (Abu-Bader 2011). The "factors" refer to the groups identified as the independent variables. For

example, one of the studies discussed in this paper examined whether an apology occurred or not (as one factor), whether the apology occurred in a low or high arousal situation (a second factor), and whether undeserved feedback was explained or not mentioned (a third factor) (Zechmeister *et al.* 2004). All combinations of these three factors are analyzed to see if mean differences occur on a scaled or numeric dependent variable. In the study referenced, two dependent variables were analyzed: the mean number of volunteer hours and the mean forgiveness rating. Therefore, two factorial analyses were run, one per outcome.

Data for these factorial analyses are often gathered by the researcher creating a series of short vignettes or stories that illustrate each level of each factor in every desired combination. For example, one vignette would include an apology in a high arousal situation with undeserved feedback. The next vignette would illustrate no apology in a high arousal situation with undeserved feedback. And so on, until every combination of the three factors that is logical to the study is represented. Study participants then read the series of vignettes and complete the same series of questions for each vignette. This question response data then becomes the dataset that allows the researcher to examine all of the combinations of the factors on the mean score that is the dependent variable using factorial analysis of variance (ANOVA).

Three-way interactions are particularly revealing of complex relationships and not surprisingly, can be difficult to interpret. For example, in a Colombian study, a combination of three different factors or independent variables constituted a three-way interaction between *apology condition*, *degree of responsibility*, and *severity of the crime* on the dependent variable, willingness to forgive (López-López *et al.* 2013). A significant three-way interaction occurred among just one of four groups of the sample. Raw data from the 400 respondents from Bogotá were first subjected to a cluster analysis based on respondents' willingness to forgive. This resulted in four distinct groups that the authors refer to as clusters: those who would never forgive (N=154), be hesitant to forgive (N=116), forgive depending on the circumstances (N=71), and always forgive (N=59). It is noteworthy that the authors first identified these forgiveness differences and addressed it in their analysis approach to account for the differences across willingness to forgive. Also important within these newly formed clusters of willingness to forgive were the percentage differences found in socio-economic status, which further supports running separate analyses by these four clusters as the authors did. For example, upper middle-class and wealthy participants were primarily in the "never" and "hesitant" forgiveness groups (88% and 80% respectively), while very poor participants were spread almost evenly across the four groups of forgiveness, ranging from 20% to 29% in each group. Looking at the variation of socio-economic status within each forgiveness group, the "never forgive" and "hesitant to forgive" groups had relatively more equal distributions of socio-economic status. The "depending on the circumstances" and "always forgive" groups were primarily very poor or poor (84% and 91% respectively). These differences by socio-economic status and willingness to forgive would have been more difficult to identify if the four clusters of willingness to forgive had not been established.

Four separate multifactorial ANOVAs were then performed on each of the four forgiveness clusters. The largest differences on willingness to forgive between the four apology groups in the apology condition were seen in the "depending on the circumstances" cluster in which a similar pattern of increasing levels of willingness to forgive was seen across the four conditions of apology, with some variation across responsibility groups. More specifically, the "no apology" group in the "depending on the circumstances" cluster had the lowest willingness to forgive, followed by the "accepting responsibility" group with slightly higher forgiveness, and the "apology" and "compensation" groups with progressively higher levels of willingness to forgive. In other words, the fuller the apology, the higher the willingness to forgive, but only in the "depending on the circumstances" cluster of

participants. However, these differences in willingness to forgive and apology condition varied by responsibility (whether the actor in the vignette was the organizer of the violence, an actor in the violence, or a passive bystander) and by severity of crime (with the most severe crime, murder, resulting in the lowest willingness to forgive, followed by increasingly higher forgiveness for the less severe crime categories) (López-López *et al.* 2013).

In all forgiveness clusters except the "never forgive" group (in which mean differences were not found on any of the variables), there were significant main effects for apology, responsibility, and severity. In the "hesitant to forgive" and "depending on the circumstances" groups, there were also significant two-way interactions. The "always forgive" group (N=59) had no significant interactions. The importance of the interactions to this discussion is their illustration of how many ways apology can be viewed differently based on the severity of the crime, the responsibility based on the person's role in the crime, and the apology condition (López-López *et al.* 2013). People tend to fall along a continuum, with no variation among key variables in some groups and variation going in different directions among other groups.

Another significant three-way interaction occurred in a study of 120 school children aged 4 to 9 years old that revealed that children could identify the difference between apologies and excuses (Banerjee *et al.* 2010). The three-way interaction occurred across *apology condition* (apology, excuse, no account), *age group* (4-5 year olds, 6-7 year olds, and 8-9 year olds), and *rule type* (moral or social-conventional), on the dependent variable measured on a scale of 0 to 2 indicating whether children had a positive/neutral (higher) or negative (lower) evaluation of the transgressor. Significant two-way interactions revealed that across all three age groups of children for both moral and social-conventional rule types, apologies resulted in a more positive/neutral view of the transgressor than excuses, and excuses resulted in a more positive/neutral view of transgressors than no account (meaning no apology or excuse). Negative views of the transgressor were in just the opposite direction for two out of three age groups across moral and social-conventional rule types: no account given resulted in the most negative perceptions of the transgressor, followed by somewhat lower negative views for transgressors who gave excuses, and the least negative views for transgressors who apologized. The three-way interaction occurred with the 6-7 year olds in which their negative evaluations of transgressors were more frequent for moral rule-breaking compared to social-conventional rule breaking; for the other two age groups, no differences in negative evaluations were found by rule type.

The presence of apology had opposite effects on aggression across studies in a meta-analysis of 15 studies on mitigating information and aggression (Bartlett 2013). The focus of the meta-analysis was whether mitigating information, such as a justification or an apology, influences subsequent aggressive behavior of one person against another. Using the general aggression model (Anderson and Bushman 2002 as cited in Bartlett 2013), the author posits why this may have occurred. In the general aggression model, when a provoked person applies mitigating information, such as an apology or justification, this can cue a re-appraisal process of the event by the provoked person. This re-appraisal in turn can lead to a response of either lower aggression or higher aggression by the provoked person towards the provocateur. A key factor in the direction of the aggression is whether the provoked person has the time, motivation, and cognitive ability to re-appraise the situation. Four out of the 15 studies included an apology. However, two apology studies resulted in lower aggression and two resulted in higher aggression. Apology was a significant moderator in the preliminary meta-analysis, but because these four apology studies essentially cancelled each other out due to their opposite effects, all four were subsequently removed from the final meta-analysis.

However, in his discussion, Bartlett (2013) took a closer look at the four apology studies. One study that resulted in higher aggression included three-way interactions of *arousal* by *apology* by *offense removal* (Zechmeister *et al.* 2004). Apologies provided in emotionally tense situations (high arousal via time pressure, pressure to do well through offering a monetary incentive for a high score, and random loud noises) versus low arousal (no time pressure, no incentive, no noise) resulted in more negative effects (more retaliation measured multiple ways including fewer promised volunteer hours and a lower rating on a one to five scale of forgiveness of the research confederate) when the mistake made was not removed by the research confederate (offense removal). When the apology occurred in the high arousal situation in tandem with correcting the mistake (the offense was removed), significantly higher positive effects occurred (more volunteer hours were promised and the mean forgiveness rating was higher). However, similar differences were not found in the low arousal condition in which the presence and absence of apology resulted in a similar rating on forgiveness. Zechmeister *et al.* (2004) surmised that the apology without correcting the mistake was likely viewed as insincere, thus resulting in a lower rating on forgiveness. If we apply Bartlett's (2013) discussion of the general aggression model, the research subjects' emotional response to the mitigating information (apology with or without offense removal) could have hindered their willingness or ability to re-appraise the situation, which could have contributed to the more retaliatory ratings. In the *high arousal* condition, an insincere apology (an apology offered without correcting the mistake) resulted in *lower* ratings on forgiveness than no apology, with or without correcting the mistake. In the *low arousal* condition, this did not occur; outcomes were similar regardless of whether an apology was provided, and whether the mistake was corrected (Zechmeister *et al.* 2004). In other words, the effects of apology varied considerably in a stressful environment compared to a non-stressful environment, perhaps due to those involved not having the time, motivation, or cognitive ability to cognitively process an apology in the heat of the moment, as theorized in the general aggression model.

Two-way interactions were also common and were sometimes intuitive. Day and Ross (2011) examined the degree to which remorse expressed through an apology or other types of verbal responses including excuses, justifications, denials, or silence decreased or increased speeding ticket costs. Among 518 Canadian drivers who were stopped for a speeding ticket averaging 17 miles per hour over the speed limit, *admitting responsibility* when stopped at *lower* speeds (at 10 miles per hour over the speed limit) resulted in *lower* fines but admitting responsibility at *higher* speeds (at 25 miles per hour over the speed limit) did not impact ticket costs. This result is reasonably intuitive; higher speeds over the speed limit may have resulted in higher perceived risks on the part of the officer writing the ticket, leading to less desirability to lower the fine. Speeding at lower speeds over the speed limit may have been less of a concern to the officer, though still warranting a speeding ticket. (Note that police officers in Canada had discretion to vary the amount of the fine). In another study, Thomas and Millar (2008) reported a significant two-way interaction between college students who put little effort into thinking about things carefully and those who enjoyed thinking about things carefully (referred to as *low* and *high need-for-cognition*) and the apology condition (apology, no apology, control) on anger. Students low in need-for-cognition are not prone to want to think deeply about an issue; students high in need-for-cognition enjoy greater effort in thinking. Students *low* in need-for-cognition were *more angry* than students with *high need-for-condition*, but only in the *no apology* condition. In the *apology* and *control conditions*, students *low in need-for-cognition* were *less angry* than students *high in need for condition*. A similar result was found when looking at participants thinking the research confederate's motivation was to annoy the participant; students *low* in need-for-cognition were *more annoyed* than students *high* in need-for-cognition in the no apology condition. This suggests that students more prone to thinking about what happens may take the time to rationalize reasons why no



apology was given, that may in turn allow them to hold off on getting angry. Students less likely to think carefully about things (those low in need-for-cognition) may simply be guided by their emotions and get angry. These results suggest that a willingness to thoughtfully analyze or consider reasons why an apology may or may not occur may be another reason why apologies are perceived differently by different people (Thomas and Millar 2008).

In this discussion of interaction effects, we see the important interplay of emotion and apology, and the complex role it can take, particularly in the aggression meta-analysis (Bartlett 2013) and the need-for-cognition study (Thomas and Millar 2008), but perhaps implicitly in the other two and three-way interaction studies. Weiner's (1995) social conduct theory clearly lays out the *thought-affect-action* sequence of the judgment process that may explain the important role that emotion plays. Building from Weiner's (1992) work in attribution theory, his (Weiner 1995) social conduct theory considers: what an observer thinks about an event (how *controllable* it was and the perceived *responsibility* of the offender), and how the observer feels (their *affect*) toward the offender, and how this in turn influences an *action* (such as a decision on the severity of punishment or to accept an apology). Most relevant to this discussion, research on social conduct theory has shown that emotion or *affect* (most often, anger) is a stronger influence on *action* (an observer's decision about the event) than what an observer *thinks* related to how much the offender controlled the event or how responsible he or she might have been (Weiner 1995, Rodrigues and Lloyd 1998, *also see* Petrucci 2002, pp. 350-351). When observers are less likely to exert a rational thinking process about controllability or responsibility of an offender in an event, as occurs among people low in need-for-cognition, and their emotions, such as anger or aggression, are high, then their *emotions* will be a stronger influence on their action, such as acceptance of an apology, even when an offender takes responsibility for the wrongdoing.

A "regulator" of sorts on this emotional decision-making process was identified in other research (Lerner *et al.* 1998). Participants in a vignette study who believed they were accountable (by being told they would be interviewed about their responses after the study) were more likely to select less punitive attributions for the harm described in the vignettes, regardless of their anger. In other words, when participants had to report to a neutral third party, they applied a more balanced decision-making process in which they ostensibly considered both thoughts and affect. Open-ended responses by those who were accountable indicated that they considered how they would justify the choice they made about the punitive response or punishment they selected in the vignette study. In other words, study participants who were accountable to a third party knew they could not make a more punitive decision based solely on emotion.

## 2.2. Different perceptions of apology by victims and offenders

The qualitative research sheds light on striking differences in how apology is perceived by victims and offenders. This was evident in a naturalistic case study of juvenile mediation that indicated that juvenile offenders and their victims interpreted meaningful apologies differently, and that communicating apology was complex (Choi and Severson 2009). Youth in four mediation cases were instructed to write apology letters by providing three things: an explanation of what happened, their feelings after the incident, and what they felt they needed to do to make up for the wrongdoing. These were the directions given to the youth as described by the study authors. The youth then had to read the apology letter in a face-to-face meeting with the victims, their parents, and the mediator.

Each youth felt their apology was genuine and heartfelt and that victims perceived them positively, but the victim responses did not bear this out (Choi and Severson 2009). Most notable was victims' mention that youth didn't seem genuinely sorry.

Some victims wanted a longer apology; others wanted a shorter apology. As surmised by Hayes (2006) in his earlier analysis of the research in youth justice conferences, the instructions themselves could have inadvertently influenced the apology away from simply saying I'm sorry and taking responsibility, and instead toward explaining in a way that could have been interpreted by victims as making excuses. The qualitative responses from the victims indicated that they missed both of these aspects of apology (saying I'm sorry and taking responsibility). It is interesting to note that the three specific questions in the instructions seem to implicitly suggest key elements of apology; for example, when asked to discuss their feelings after the incident, this could have been intended as a "cue" for expressing remorse or empathy for victims. Asking what youth need to do to make up for the crime would seem to suggest making reparations in the form of restitution or at a minimum, saying it won't happen again, which are additional key elements of effective apologies. However, the initial focus on *explaining* what happened may have started apologies off on the wrong footing; instead of immediately making a statement of responsibility and saying I'm sorry, youth were asked to explain. This could have been interpreted by victims and their parents as avoiding responsibility and making excuses, which is implied in some of the qualitative responses. Hayes (2006) makes a similar point that youth may tend to have "discursive drift" and go back and forth between an apology and an explanation. An explanation is not an effective element of apology (Tavuchis 1991, Gonzales *et al.* 2004, Petrucci 2002, Hayes 2006). The authors conclude that the form, content, and context of the apology should be considered carefully and recommend "teaching the offender specific skills to deliver an effective apology" (Choi and Severson 2009, p. 819) as well as teaching victims about what is involved in making an apology.

With one possible exception discussed shortly, I disagree with this emphasis on training both victims and offenders with what appears to be a high level of specificity. First, if apologies are to be as effective as possible, it follows that both victims and offenders ought to benefit. The emotional exchange between a victim and offender that can occur in an apology is central to achieving effectiveness (Scheff 1998). However, one of the hallmarks of victimization is a loss of personal control due to the offender's actions (Andrews 2007). Victim-centered approaches in criminal justice settings that emphasize the needs and concerns of the victim have been developed to counter this lack of control, although there is not widespread acceptance of this approach (Zehr 1990, Buzawa *et al.* 2012). Some research supports a victim-centered approach. For example, lower revictimization rates were found with victim-centered prosecution for domestic violence cases compared to an evidence-based approach that emphasized swift, certain, and severe punishment (Finn 2013). In a truly victim-centered approach that empowers victims in the criminal justice setting by giving them confidence and control in the apology process, then perhaps *victims* ought to be the ones to decide whether an apology is offered or not (rather than having it predetermined in a set policy). Certainly victims ought to be able to determine whether they wish to listen to an apology if it is offered, or whether an apology is accepted or not, but most importantly, isn't it really up to the victim to decide whether an apology is genuine or not? In Dhami's (2012) study, she specifically mentions that restorative justice mediators are trained *not* to instruct offenders to apologize. If an apology is made, mediators are also trained *not* to suggest that victims accept the apology. In Robbennolt's (2013) work, she explains that the request for an apology should be initiated by the victim. These approaches seem to support a victim-centered approach more than an approach which, though well intentioned, advocates training victims about the *offender's* anxiety in an apology as suggested by Choi and Severson (2009).

A second issue that seemed apparent in Choi and Severson's (2009) study was overthinking the apology appeared to take away from the genuineness of it. One

victim stated outright that “a simple I’m sorry” was all that was needed (Choi and Severson 2009). Highly scripted apologies have been noted to risk *not* being perceived as genuine (Hayes 2006, Gerkin 2009 as cited in Choi *et al.* 2012). Unplanned (and unrehearsed) or *spontaneous apologies* have been identified in the research, and appear to have the potential to be effective (Day and Ross 2011, Dhimi 2012). A key factor in a genuine apology is the ability to express remorse effectively (Tavuchis 1991, Scher and Darley 1997, Maxwell and Morris 2001 as cited in Hayes 2006, Petrucci 2002, Strang 2002 as cited in Hayes 2006). Concern exists, however, on how difficult it is for observers to accurately recognize remorse in defendants (Bandes 2016). Choi and Severson's (2009) important study seemed to suggest that this expression of remorse can get lost in the midst of youth being asked to explain.

Two studies that captured “spontaneous” apologies support the idea that expressions of remorse occur alongside of other types of verbal responses. In a retrospective study of Canadian drivers previously described (Day and Ross 2011), *remorse* and *explanations* occurred in verbal responses that drivers reported making to officers who had stopped them for speeding. The different responses were coded by researchers so care was taken in carefully identifying one from the other. Remorse, defined as an expression of regret such as “I’m sorry”, was coded in about one third of drivers’ responses (29.7 percent). Explanations in the form of an excuse that was stated as a reason for a shortcoming, such as “My speedometer was broken”, was coded in one quarter of drivers’ responses (24.5 percent). Remorse was a clear contributing factor to lower speeding ticket costs compared to the absence of remorse, while an explanation in the form of a reason for a shortcoming did not impact ticket costs. While the remorse-by-speed interaction was not significant ( $p < .06$ ), expressing remorse resulted in lower ticket costs more so at higher speeds over the speed limit than lower speeds over the speed limit and also contributed to a greater likelihood of getting a warning rather than a ticket (Day and Ross 2011). Unfortunately, Day and Ross (2011) did not count across verbal responses within participant responses, however, the second study did. In Dhimi’s (2012) qualitative analysis of 56 mediation cases, a spontaneous apology consisting of saying “I’m sorry” occurred in 35.7% of cases. Five other components of apology were also identified and counted. Acknowledging harm was the most prevalent, appearing in 83.3% of the 56 cases, followed by expressing remorse (in 39.6% of cases), offering reparation (in 39.2% of cases), admitting wrongdoing (in 33.3% of cases), and an offer of forbearance (25.9% of cases). The “fullness of apology” was defined by counting the number of components that occurred within each apology. In the largest group (41.5%), only one apology component was stated and it was either admitting wrongdoing or acknowledging harm. The second largest group were cases in which the offender included all five components of apology (16.9%), followed by an equal number of cases that had two components or three components of apology (15% each), and four components (5.6% of cases). The offender said only “I’m sorry” without any of the five components in 5.6% of cases. In other words, in some mediations in which apology coaching or training was not present, not only did offenders spontaneously apologize, but they did so including multiple components of apology that have been identified as important elements of effective apologies (Petrucci 2002), ostensibly without coaching or training to do so (Dhimi 2012).

Other related research analyzed a coerced apology compared to a voluntary apology, in which the apology appeared to be spontaneous from the perspective of study participants, with positive results (Jehle *et al.* 2012). In this laboratory study, someone of higher status than the confederate research assistant coerced the apology in front of study participants. College students rated a voluntary apology as more sincere than an explicitly or implicitly coerced apology.

The one possible exception to my disagreement with training how to apologize is the use of role plays as a way to prepare for apology including role reversal (a

youth offender role playing as a victim who receives an apology). The purpose would be to give youth the broader perspective of what it is to receive an apology, so that they will be better prepared to give an apology that is meaningful. Demeter (2007) recommends role plays as a way to collect data on apologies because they are more likely to result in genuine and authentic apologies that fit the context. Here it is suggested to extend this use of role plays as a tool to help prepare youth to apologize, but only if it does not result in an over-rehearsed or less sincere apology. This could very well be challenging to accomplish since some youth offenders will lack the confidence in their ability to present a meaningful apology without rehearsal, but it is suggested as a goal nonetheless.

Circumstances specific to youth are also important to consider. In his review of research from youth justice conferences in Australia, Hayes (2006) notes that youth may not have the maturity to allow themselves to be vulnerable enough to show the emotion necessary to connect with victims when making an apology, particularly in front of a group, as is common in restorative justice conferences. This results in a youth's apology coming across less convincing or even insincere. Youth may end up saying things that sound more like accounting for their behavior (explaining or making excuses) rather than actually taking responsibility.

Taken together, what these two-way and three-way interactions and differences based on diverse perceptions of victims and offenders tell us is that people apologizing or receiving an apology vary in important ways that could impact how the utility, meaningfulness, and effectiveness of an apology might be viewed. Indeed, what constitutes a "meaningful apology" may be in the "eyes of the beholder". This is without considering that some victims may reject what might be seen as a meaningful apology by others, or accept an insincere apology. All of these differences tell us that context matters. Situational circumstances, including the type of crime, the severity of the crime, and the offenders' role in carrying out the crime, as well as personal characteristics of both victims and offenders, including socio-economic status, thinking styles, age, willingness to forgive, among many others, may all be important in understanding how and when apology may be effective. Whether an apology includes simply saying "I'm sorry" and showing remorse and whether it is perceived as voluntary rather than coerced may also impact the effectiveness of apology. Effective apologies have been described in different ways (Wagatsuma and Rosett 1986, Holtgrave 1989, Tavuchis 1991, Scheff 1998) but central features seem to be the communication of emotion such as remorse or sadness, ideally in a face-to-face interaction, at the appropriate time (Petrucci 2002). All of these characteristics may be too numerous to reasonably include in statistical models of apology. In short, apology may be too specific to each circumstance to recommend the use of one universal approach that would allow reliable prediction of what constitutes an effective apology in a juvenile criminal justice setting.

### **3. Recommended approaches to consider for apology in practice**

The discussion of the context-specific nature of apology is not to say that it should not be pursued in practice and in research. We know a lot about what constitutes an effective apology and what doesn't. We know that a simple "I'm sorry" might often be enough (Choi and Severson 2009, Dhimi 2012). We know there are recognized key elements of apology numbering anywhere from one to fifteen (Petrucci 2002, Blecher 2011, Dhimi 2012). We know that most people including very small children recognize a sincere and genuine apology from one that isn't (Darby and Schlenker 1989, Ohbuchi and Sato 1994, Banerjee *et al.* 2010). We know that the timing of an apology can impact its effectiveness; typically, sooner is better (Tavuchis 1991) with the possible exception of more severe offenses (Wyrick and Costanzo 1999). We know that face-to-face apologies are typically more effective and can be viewed as more sincere (Tavuchis 1991, Levi 1997, Scheff 1998), and it's better if apologies are done privately rather than in a public setting

with other parties beyond the victim and offender present (Tavuchis 1991, Hayes 2006). We also know that genuine apologies require an emotional connection between victims and offenders that can be difficult for both (Scheff 1998, Hayes 2006), and that somehow when and how apologies occur needs to take this into consideration if apologies are to be effective.

In practice settings, I recommend incorporating a spontaneous or voluntary apology as suggested by Cohen (1999) and Blecher (2011), or a minimally prepared apology, despite their noted less frequent occurrence (Hayes 2006, Blecher 2011, Dhami 2012). The details of this will vary by context, and are best developed appropriate to each setting. Perhaps most important would be for practitioners to consider the research, and as much as possible, incorporate the following strategies: encourage or support spontaneous face-to-face apologies between victims and offenders by saying as little as possible about apology unless it is brought up by the youthful offender or the victim, and then share brief examples of what some in a similar context have considered a meaningful apology; by not coaching youth on the specific content or strategy of the apology beyond role plays; and by providing a venue that is as private as possible in which an apology can comfortably and feasibly occur. In the minimally prepared apology, a broad, less detailed prescription might simply be to recommend apologizing, with minimal instruction except to suggest to youth that they start with saying they're sorry and what they're sorry for and stop there. If role plays are used, suggest that youth apologize in a way that they would like if the situation was reversed. Using a reverse role-play (in which the youth is the one to whom the apology is directed) might help youth clarify their own thoughts on how they would perceive an apology and ultimately how they'd like to apologize, without using it to coach or dictate specifically what youth ought to say.

The importance of not overthinking apology is reinforced by research with young children in which they can clearly differentiate between an apology, an excuse that minimized intent and responsibility, and neither occurring (Darby and Schlenker 1989, Ohbuchi and Sato 1994, Banerjee *et al.* 2010). It's unlikely that adolescents have forgotten or don't know how to apologize, but it is possible for them to get distracted and to lack the maturity to manage their emotions (Hayes 2006). Being overly detailed in instructions around apology seems counterintuitive and as discussed, can inadvertently tilt what is said away from apology and more toward explanations and excuses, with negative consequences (Choi and Severson 2009). Moreover, voluntary apologies are perceived as more sincere than coerced apologies (Jehle *et al.* 2012), thus spontaneous apologies likely have a better chance of being effective.

Clearly there are risks with either of these approaches to apology. In the spontaneous apology approach, the biggest risk is that the apology won't occur at all, although Dhami's (2012) study suggests at least one of the recognized components of apology (admitting wrongdoing, acknowledging harm, expressing remorse, offering forbearance, or offering reparation) is likely to occur. Two additional risks that apply to both spontaneous and minimally prepared apologies are that the apology won't be considered sincere or meaningful by the victim (Choi *et al.* 2012), or that it will have a negative emotional consequence for one or both parties. In mediation or court contexts, these two risks could be lessened if the victim or offender seeks counsel or support after an apology has occurred. While it may not seem like an ideal circumstance, if the control of whether and how the apology occurs lies first with the victim and secondarily with the youthful offender (and not the attorney or judge), the trade-off is that having made the choice to proceed will make harmful consequences less likely.

#### 4. Recommended approaches to consider for future research in apology

Several research designs seem to have greater potential for more reliable and generalizable results for apology. These recommended approaches for future research in apology include: simulations of actual interactions with people (Jehle *et al.* 2012); role plays (Demeter 2007); qualitative designs that track actual interactions (Hayes 2006, Choi *et al.* 2012) along with mixed methods designs; and a sampling structure that incorporates people who have experienced the harmful event of interest as either a victim or an offender (or both) (Allan *et al.* 2006, López-López *et al.* 2013).

Results indicate that simulations with real people might be superior to standard written vignette approaches. Jehle *et al.* (2012) found that when their study was done using a hypothetical written vignette approach, study participants did not differentiate their perceptions of an offender who apologized voluntarily, did not apologize at all, or who was implicitly or explicitly coerced to apologize. Respondents' recommended punishment was also the same across the four types of apology in the vignette study. However, differences were found by apology type when the study was done as a simulation with a confederate research assistant. Offenders who voluntarily apologized or who were implicitly coerced to apologize were rated more positively than those who did not apologize. Therefore, depending upon the research methodology used, different results occurred. A similar phenomenon was found in another study in a college setting (DeCremer *et al.* 2011). A "real interaction" laboratory design was used in which study participants were paired with a confederate research assistant in a trust game, in contrast to a hypothetical imagined response condition. Study results were not the same across the two groups; students did not respond in the same way when they imagined getting an apology compared to when they actually received the apology in the simulation condition.

In other work, role plays as part of collecting data for apology were recommended (Demeter 2007). Similar to the discussion of spontaneous apologies as a means to avoid overthinking, Demeter (2007) points out that role plays provide a context for apology that can contribute to its authenticity and genuineness. People are more likely to say what they would actually say in a real world setting, contributing to the effectiveness and potential acceptance of the apology.

Qualitative and mixed methods studies can provide a more multi-faceted and insightful analysis of the process and outcomes of apology than strictly quantitative studies (Allan *et al.* 2006, Choi and Severson 2009, Banerjee *et al.* 2010, Day and Ross 2011, Dhami 2012). This was probably most apparent in Choi and Severson's (2009) naturalistic case study that included 37 audio-recorded interviews and observations in which reasons why victims responded the way they did could be cautiously extrapolated from the qualitative responses. Given the common occurrence of interaction effects in the quantitative research, getting a deeper level of understanding from qualitative responses can be illuminating and contribute to our understanding of the mechanisms explaining apology. Dhami's (2012) analysis of 56 cases that were coded in a detailed manner was another strategy that brought real-world data to the forefront and provided a rich analysis of mediation events. Day and Ross (2011) utilized a retrospective survey that included open-ended responses about actual interactions that participants had related to speeding tickets. Participant data was then systematically coded. Allan *et al.* (2006) combined the use of questionnaires and structured interviews to add nuanced understanding to their results. Banerjee *et al.* (2010) also used a combination of open-ended and closed-ended questions in a survey format with children, administered as an interview. Each of these studies provided a rich understanding of the interactions behind apology that went beyond what mean differences and strictly statistical analyses can provide.

A sampling structure that incorporates people who have actually experienced a harmful event that occurred outside of a laboratory setting as either a victim or an offender is another strategy that can provide results that are likely more generalizable. Allan *et al.* (2006) did this with a South African sample who had experienced the proceedings of the South African Truth and Reconciliation Commission. López-López *et al.* (2013) gathered a sample of citizens in Bogotá who had experienced the violence depicted in the vignettes. Day and Ross (2011) accessed a Canadian sample who retrospectively shared their actual experiences of being stopped for a speeding ticket. In each of these studies, there was an added layer of depth to the data collection and study results that contributed to the utility of the data.

Pawson and Tilley's (1997) realist evaluation seems particularly well suited to studies in apology because realist evaluation systematically customizes research to each unique setting. Realist evaluation utilizes the context-mechanism-outcomes (CMO) model to determine effectiveness of programs or policies. It explores the "how and why" of practice (also referred to as interventions), rather than just the "whether" it works or not. In the CMO model, the context is the environment in which the practice takes place, such as apology in a victim-offender mediation setting. The mechanism(s) are the internal workings or processes of practice, and might include the elements of apology utilized by each youth (such as acknowledgement, remorse, remuneration, etc.) and the nature of the emotional connection. The outcomes include both the intended and unintended consequences from the mechanisms, such as an apology occurring or not and whether it is perceived as effective by victims, and what relationship this has to the elements of apology that were used and the presence or absence of an emotional connection. The goal is to determine which mechanisms result in which outcomes in which contexts or - said more simply - what works best for whom under what circumstances. Mixed methods are easily supported within the realist paradigm. Realist evaluation can support experimental, quasi-experimental or non-experimental designs. Various existing theories can also be supported in realist evaluation as long as they are clearly linked with the CMO model. Or alternatively, theory can spring directly from an understanding of the CMO model. Ongoing research can then examine how well the proposed practice theories hold across multiple contexts. These theories, based on the practice mechanisms, then provide a clear explanation of how and why apology works, rather than just whether it works. This lays the groundwork for replication and further testing.

## 5. Summary and conclusions

This paper revisited the apology literature and reviewed some of the recent research primarily in social psychology, criminology, and criminal justice. I argue that the context-specific nature of apology, with a multitude of variables that have been found to impact its effectiveness at both the contextual and individual levels, leads to a recommendation that apology be implemented with a "less is more" approach to be most effective with youth in juvenile justice. Two and three-way interaction effects across studies that examined degree of responsibility, severity of crime, willingness to forgive, socio-economic status, how severe the harmful event was, and how deeply individuals think about things were presented as examples of how apologies can vary in their influence on outcomes. The important role that emotion plays was also illustrated. The qualitative research described how an apology could be perceived quite differently by victims and offenders, leading victims to question the sincerity of an apology that an offender perceived as sincere. The overly explicit instructions about writing an apology that was part of one study along with other research contributed to a recommendation that training on apology should be minimal, that it should be up to victims whether apologies occur, and that overthinking apology should be avoided. A recommended strategy is to provide a venue for a spontaneous or voluntary apology to occur, or a

minimally prepared apology using only broad prescriptions on how it ought to be approached, with the brief instruction of starting with "I'm sorry" and what a youth is sorry for. Also recommended is continued use of several research designs that have rendered the most useable results. These include: simulations using actual interactions with people, role plays, qualitative and mixed methods designs, and a sampling structure that incorporates people who have experienced the harmful event of interest as either a victim or offender (or both). Realist evaluation seems particularly well suited to support future research. Apology has many benefits to offenders and to victims. The last 15 years have produced many worthwhile studies that have refined our understanding, but have also identified the diversity in what can be said in apology and how it can be received. By utilizing appropriate research strategies, knowledge about apology and its effectiveness in legal settings including juvenile justice can continue to build to determine what type of apology works best for whom under what circumstances.

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