



The Art of the Apology

On April 20, 2001, American missionaries Jim and Veronica Bowers were in a small Cessna plane flying along the Amazon River. Accompanying the Bowers were their children, Cory and infant daughter, Charity, plus missionary pilot Kevin Donaldson.

A tragic series of errors and miscommunications had attracted their airplane to the attention of a CIA-operated aircraft looking for drug smugglers. The CIA notified the Peruvian Air Force about the suspicious small plane that was flying through an area frequented by drug runners. By the time the CIA tried to call off the Peruvian fighter pilots, they had riddled the small craft with machine gun fire. Veronica and Charity, sitting on her mother's lap, died instantly when the machine gun round passed through the mother and into the baby's tiny body.

Clearly, this was a terrible mistake, with tragic consequences. Obviously, somebody did something horribly wrong, and it destroyed a young family.

As word spread of what happened, thousands of cards and notes were sent to the surviving family members. Prayer services were held. Everyone, it seemed, was touched by the senseless and tragic loss of life, and many people who never knew the Bowers family and had never dreamed of traveling along the Amazon River basin took time to express their deep regrets to the family over what had happened that fateful morning.

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Significantly, none of the parties who were most responsible for the tragic incident was among those expressing regret. In spite of the reported promise by the U.S. government to pay the family of Veronica and Charity Bowers \$8,000,000, the family is angry with all those responsible for their deaths. The *Grand Rapids Press* reports that Jim Bowers lamented, "Although President Bush has been very kind and very gracious to the victims' family and has apologized to them, it is the people that did it that need to own up to it and apologize, and they never will." Veronica's father, a retired Air Force Sergeant was more blunt: "It was 5 days shy of 11 months before we even got a call of any kind from any government official. I am very very angry at our government. If they had been following procedure this never would have happened."

The people who actually pulled the trigger of the gun that killed Veronica and Charity Bowers have said nothing. Why not? How is it that someone can make a terrible mistake—a mistake that takes another person's life—and not remember the basic lesson set forth in Robert Fulghum's book *All I Really Need to Know I Learned in Kindergarten?* Fulghum wrote: "Say you are sorry when you hurt somebody."

Who knows what comfort the Bowers' survivors might have felt had they simply received an apology from those whose actions caused the tragic deaths. The practiced and artful words of diplomats and politicians are simply no substitute for a heartfelt apology from those actually responsible for a wrongful act. No events illustrate this principle better than tragedy caused when the American submarine USS Greenville accidentally destroyed the Japanese training ship Ehime Maru, taking the lives of four teenage students, two teachers, and three crewmen. President Bush immediately apologized and sent an envoy to Japan to express our nation's sincere sympathy to the families of the victims. But the survivors insisted upon, and were fi-

nally most comforted by, the direct apology of the ship's captain himself.

An apology need not always involve either an admission of wrongdoing or an expression of sincere regret. On April 1, 2001 a United States Navy spy plane was eavesdropping on China. The Chinese scrambled two fighter jets to intercept the spy plane. When two planes collided, the results were disastrous: the Chinese pilot crashed into the ocean and died, and our plane was forced to make an emergency landing in China. Several unsatisfactory attempts were made to agree upon the wording of a statement by our government about the event. The two sides quarreled about whose fault it was and what should be said. Finally, eleven days after the ordeal began, the Chinese agreed to release the U.S. crew. Their decision came after the American ambassador sent a letter that contained careful phrasing meant to allow both sides to claim victory in resolving the diplomatic impasse. Obviously, the dispute over the exact wording of the "apology" highlighted the enormous cultural differences between the countries over the meaning of such statements.

We may be entering an age that sees no boundaries to the healing power of apology and forgiveness. Pope John Paul II has offered an apology for the Crusades and has admitted "mistakes" in the Catholic Church's actions during the Second World War—but has encountered criticism for the lack of an explicit apology for the Church's role during the Holocaust. What all this underscores is that offering an apology for something serious is a complicated art. And recent events prove to me that perhaps the only place in which it is more difficult to obtain an effective apology than in the international political arena is the American legal system, in cases involving allegations of tortious conduct.

Recent writers, both in Michigan and nationally, have called for a rule of evidence that would protect the offeror of an apology from having the apology used in subsequent litigation. They theorize that doctors and others

who make mistakes feel restricted from apologizing because they fear that the apology itself will be offered as an admission in a subsequent lawsuit. Proponents of the rule believe that doctors and other potential tortfeasors, freed from the threat of its use at trial, would be encouraged to offer a sincere apology, which could be therapeutic for injured parties and may result in a less adversarial system.

One of the foremost proponents of this rule on a national basis is Kalamazoo County Circuit Court Judge William Schma, who advocates "therapeutic jurisprudence." Therapeutic jurisprudence calls lawyers to see themselves as healers rather than gladiators. Use of an apology by wrongdoers and their lawyers is an art form. The arts, in all ways, are not easily governed by rules, but I have

claimed to have been prohibited from doing so by their insurance carrier.

As lawyers we are accustomed to performing as the masters of rational analysis and argument, interposing ourselves between angry parties and bringing our skills to bear dispassionately on behalf of our clients and the pursuit of truth and justice. But to counsel against apology can mean counseling against truth telling when a client is genuinely sorry and sincerely regrets his involvement in someone else's suffering.

While I favor a rule similar to the rule used for subsequent remedial measures, I fear that any rule may be manipulated by people who really are not sorry at all, or who believe that it will give them some sort of procedural advantage in litigation. Being sorry, genuinely

was stale or some other problem with food, always brought a visit from Arnie with a large box of baked goods and an apology for a bad experience. In later years it resulted in gift certificates for one of his Arnie's restaurants, which were built on the years of success he cultivated through excellent customer service, good and reasonably priced food, and the willingness to admit to being wrong.

From Arnie, I learned that if a client calls with a complaint about my service, loyalty from the client can best be developed by an immediate note from me, a reduction in the bill, or some other attempt to make the problem right. It always starts with a face-to-face visit with the client. When it is over, I always feel better about it. Usually, the client does, too.

And that is perhaps the greatest benefit of a sincere apology: it is two-sided, providing both therapy for the victim and often forgiveness for the actor. It nearly always diffuses anger and ill will—feelings that Veronica and Charity Bowers' family now bear despite the large settlement. A real apology is more than just good business—it is an appropriate response from human beings who care about someone else's feelings.

I am not optimistic that Judge Schma and the others who are interested in therapeutic jurisprudence will be able to totally change the landscape of Michigan law. However, I share Helen Keller's belief that no pessimist ever discovered the secrets of the stars, or sailed to an uncharted land, or opened a new heaven to the human spirit. ♦

Bruce Neckers can be contacted at bneckers@mail.michbar.org.

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watched defense lawyers in injury and criminal cases do a masterful job of expressing genuine remorse on behalf of their clients for the loss suffered by the plaintiff or victim.

Having read an article in the *ABA Journal* and Daniel Shuman's article in the January 2000 issue of *Judicature* magazine on the role of apology, I have tried to observe its impact in cases in which I am involved, either as an advocate or as a facilitative mediator. Shuman says that one of the criticisms of apology in tort law is that the proof of its benefit rests not on scientific research but rather on anecdotal evidence.

Let me add my anecdotal evidence to the mix. In a case in which I represented the plaintiff, the wrongdoer himself tearfully acknowledged his role in the tragic accidental death of my client's son. It had a huge impact on the settlement of the case. There would never have been a lawsuit if the same person had made the same comments to the mother during the 30-day period in which her son lay dying in the hospital, or during the three days his young body was at the funeral home. The sad part in that case is that the defendant and his company wanted to express the same thought near the time of the accident, but

sorry, when you hurt someone, seems to me to be a normal human reaction. Expressing it promptly, not months or years after the fact, seems to offer the greatest hope for healing for the victims, but even a belated apology must be better than no apology at all.

My father-in-law, Arnold Sonneveldt, was a master baker. He had the unique ability to produce baked goods that were both extremely tasty and artfully decorated. He was also a master of the apology, which made him a fantastic businessman. A call from a customer, complaining about a loaf of bread that