

# **The Power of Apology**

**Association for Conflict  
Resolution, Hawaii  
October 31, 2013**

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## **Lou Chang**

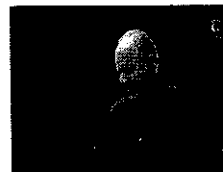
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"The media has been very desirous that a black quarterback do well...he got a lot of credit that he didn't deserve."



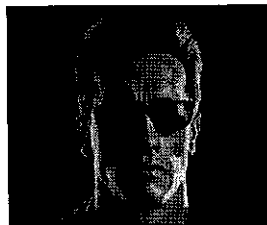
"My comments...were directed at the media and were not racially motivated... I offered an opinion. This opinion has caused great discomfort to the crew, which I regret... I love [the show] and do not want to be a distraction.... Therefore, I have decided to resign [from ESPN]. I wish all the best to those who make it happen."

"If I wasn't right, there wouldn't be this cacophony of outrage that has sprung up in the sports writer community."

## **Rush Limbaugh Comments re: Donovan McNabb**

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"Yes, its true that I was on rowdy movie sets and I have done things that were not right, which I thought was playful but now I recognize that I offended people. Those people that I offended, I want to say to them I am deeply sorry about that and I apologize because that's not what I'm trying to do."

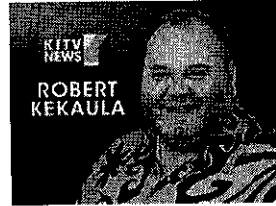


From now on, I will be a "champion for the women."

## **Arnold Schwarzenegger after 6 women report sexual harassment**

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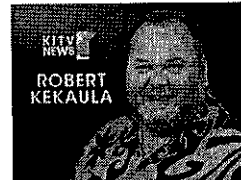
Angered by technical difficulties on air and after being called a fat a\_\_ by his executive producer, Kekaula grabs him by the neck or collar and pins him against a desk



## **Robert Kekaula**

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- "I'm not going to defend myself because I can't. I shouldn't have touched him. I'm wrong."
- Kekaula calls his boss the evening of the incident and leaves an apology on the answering machine, promising that it would never happen again
- "I blew it big time. I lost my dream job."
- "I'll never touch anyone again, never."



## **Robert Kekaula after assaulting his boss on TV News 8**

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- **Full** acknowledgement of blame and responsibility. (I'm sorry, it was my fault.)
- **Partial** (I'm sorry that you are in such pain.)
- **Limited**/lacking sincerity
- **Conditional** (I will apologize if ...)
- **Unilateral** (without expectation of reciprocation)
- **Bilateral**

## **Types and scope of apologies**

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- Acknowledge responsibility.
- Express remorse, understanding and regret for pain caused.
- Expressed with honesty, compassion, sincerity & humility
- Describe affirmative action to make amends, follow through
- No excuses. Affirm intentions not to hurt
- Affirm commitment to the relationship
- Promise of no repetition

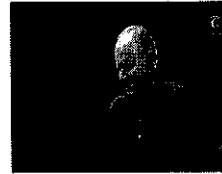
## **Elements of a good apology**

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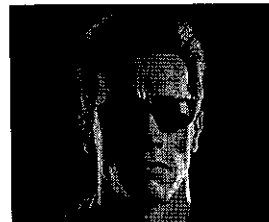
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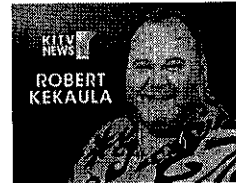


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## **Elements of a good apology**

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- Consider expectations of injured party(ies)
- Individual offense
- Entity & institutional considerations
- Should apology be public, private or both
- Consider cultural expectations

### **Who should deliver/receive the apology?**

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- Can apology be too early? Too late? “The “right apology” at the wrong time can become a wrong apology.” (Nina Meierding)
- Testing receptivity & potential impact before giving apology
- Identify conditions for apology
- Be thoughtful/strategic about providing an apology (before, contemporaneous, after settlement agreement)

### **Timing Considerations**

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- Guilt, Shame & Embarrassment
- Loss of face
- Admission of guilt or legal responsibility
- Acknowledgment of error or went too far
- Loss of power, one-up
- Sign of weakness, fear of vulnerability
- Fear of repetition

## **Barriers to an effective apology**

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- Cultural/ritual (high context, relational culture) Saving face
- Are existing cultural values involved? Are they shared?
- Fairness, fate, truth, forgiveness, revenge
- Face. Saving & giving. Individual, group, general stature
- Family, ethnic, religious, organizational...
- Continuing relationships or transactional/situational.
- Ex. Ho'oponopono. Expectation of acknowledgement of wrong, forgiveness and ending running dispute. Harmony and ohana.

## **Culture and Context Considerations**

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- Acknowledgement, restorative, healing of relationships, address feeling of abandonment
- Opens communication, opportunity for learning.
- Transform tragedy into something positive
- Defuse anger and restore trust
- Prevents repetition or re-occurrence
- Opens way to forgiveness

## **Benefits of effective apology-1**

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- Simple, cheap, reduces need for money
- Release of negative acidic effect on body, reduction of stress
- Emotional support & health benefits
- Reduce desire for punitive damages
- Closure & moving on

## **Benefits of effective apology-2**

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- **Lawyers: "Keep your mouth shut. Make no admissions or statements of responsibility." "Anything you say can be used against you."**
- **Survey of several thousand physicians in scenarios of serious, clear-cut errors:**
  - 42% would inform patient that an error occurred.
  - 37% would provide information about preventing future errors. Newsweek, Oct. 16, 2006

## **Traditional Defensive Response**

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- **In malpractice cases, when doctors and medical facilities apologize,**
- **Rates of litigation drop**
- **If suit, parties accept less**
- **"Disclosure, apology and early financial compensation dramatically reduced the number of malpractice suits..."**  
Newsweek, 10-16-06. Veterans hospitals, Colorado (COPIC) U. Michigan. Johns Hopkins.
- **Kaiser experimentation for improvement in peer review and quality of care enhancements**

## **Research Findings**

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- People who received a full apology were willing to accept a lower settlement amount than people who did not receive apology
- Where “justification” was a component of the apology, results were not uniform

## **Robbenolt Research**

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- Delta assigned a claims representative to each injured person/family. Instructed and authorized to do whatever and anything the family needed to get through the difficult times, funerals, babysat, medical care
- After investigation, the same claim representative to communicate an apology from the company, acknowledge the terrible consequences caused the family. We have tried to be fair with you and hope that we can resolve this and that you will be fair with us.
- Settled with 80% of claimants. 75% of usual amount.
- Many of the passengers had been members of one college sorority. Delta established a scholarship and endowment at the sorority in their memory. The families of the sorority sisters killed accepted less, some contributed their recoveries to the scholarship fund.

## **Delta Airlines crash**

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- Apology Laws. 36 states have “apology” laws.
- Uniform Mediation Act. 11 States plus D.C. adopted UMA which establishes mediation/mediator privilege
- Limited evidentiary rule protection

## **Can apologies be protected?**

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- Evidence of statements or gestures that express sympathy, commiseration, or condolence concerning the consequences of an event... is not admissible to prove liability for any claim growing out of the event.
- ... rule does not require the exclusion of an apology or other statement that acknowledges or implies fault even though contained in, or part of, any statement or gesture excludable under this rule.

### **Hawaii Evidence Rule 409.5. Admissibility of expressions of sympathy and condolence.**

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- **Mediation Privilege:** A mediation communication is privileged and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded.
- **Who has the privilege?** The mediator, parties and non-party participants such as expert witnesses, insurance adjusters, witnesses. [Thus the statements and reports of expert witnesses are privileged. Parties and their attorneys should specifically address whether expert reports are to be covered by the mediation privilege by specific agreement.]

## **Uniform Mediation Act: Hawaii (July, 2013)**

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- Hawaii: Evidence of ... (3) mediation or attempts to mediate ... is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations or mediation proceedings is likewise not admissible. ... This rule does not require exclusion when the evidence is offered for another purpose.
- Federal Ct. mediation L.R. 88.1: "Except as otherwise provided by this rule and/or applicable law, all communications made in connection with any mediation under this rule shall be subject to Rule 408 of the FRCP.

## **Evidence Rules 408 re: Mediation**

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- Assess carefully. Apologies are not always appropriate.
- Do not make premature assumptions and conclusions
- Consider timing
- Consider content and quality of apology
- How apology should be said and by whom and to whom given
- Consider UMA, HI Ev. Rule 408 & 409.5

## **Mediator Considerations**

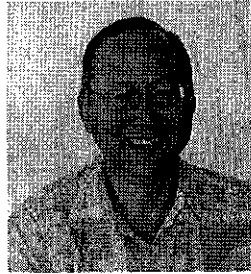
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- “Resentment is like drinking poison and waiting for your enemy to die.” Nelson Mandela
- Where do you want to be after this is done?
- Are you the victim or hero in this story?
- Tell me why an apology is so important to you?
- Life is short. Can life be made better with...?
- Can there be positive benefits if...?
- Its not a fun way to live. We can reduce the burden...
- Explore contingent commitments. What if...

## **Motivating apologies**

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## **Mahalo**



**For more information,  
articles and tips, see:**

**[LouChang.com](http://LouChang.com)**

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## **Viewpoints on apology**

- “The past is not erased, but the present is changed.” Carl D. Schneider, Ph. D.
  - “It’s a culture that says, yes, we have a problem, lets shine a light on it and fix it rather than trying to cover it up.” Andy Whittemore, M.D., Chief Med. Officer, Brigham & Women’s Hospital, Boston
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- “...any work done by Haoles, Japs, Paranges, Pakes, you can just take away right now.” 2/25/13
- Threatens to cut funding to State Foundation of Culture and the Arts if she did not get art works from Native Hawaiian artists

## **Rep. Faye Hanohano**

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- **First and foremost, I'd like to express my sincere apology to any individuals or groups who may have been offended by my comments. Clearly comments that were intended to be an impassioned plea for increasing the visibility and support for Native Hawaiian artists were expressed in a manner that did not accurately reflect their intent, sentiment or the integrity of this office.**
- **I accept full responsibility for this unfortunate incident and, again, I apologize.**

## **Hanohano written apology**

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