

Perceptions of Settlement

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ABSTRACT

Most legal disputes end in settlement, but little is known about how people perceive settlement. Do people view settling defendants as responsible for the alleged conduct? Do they see settlement more neutrally, as a convenient resolution that avoids a costly trial? This article uses survey and experimental methods to begin answering these questions and to set the agenda for studying an important and mostly neglected area of inquiry: public perceptions of settlement. Survey participants report in their own words their inferences about parties' reasons for settling legal disputes in a variety of contexts: #MeToo, policing, crime, regulatory enforcement, and tort. Participants' rich responses informed an experimental study of the tort setting that compares perceptions of settlement with perceptions of other case outcomes such as a jury verdict or the filing of a legal case. Despite common models of settlement as a cost-benefit analysis not necessarily tied to responsibility, the data suggest that lay people attribute responsibility to settling defendants. The data also highlight factors that influence people's inferences about settling defendants, including whether the defendant is an individual or entity. Understanding settlement is key to understanding the U.S. legal system, and this empirical work on perceptions of settlement lays a foundation for analyzing

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the perceived legitimacy of a legal system in which settlement plays such a central role.

TABLE OF CONTENTS

- I. Introduction 95
- II. Settlement’s Role in the Legal System 102
 - A. The Ubiquity of Settlement 102
 - B. Perceptions of Settlement 104
 - 1. Citizen Views of Justice System 104
 - 2. Settlement Models 106
 - 3. Prior Empirical Work on Perceptions of Settlement 109
- III. Public Perceptions of Settlement: Filling the Research Gap 110
 - A. Settlements versus Allegations and Verdicts 111
 - B. Individuals versus Institutions 116
 - C. Criminal versus Civil 117
- IV. Study One: Survey of Perceived Reasons for Settlement 119
 - A. Methods 120
 - B. Results 122
 - C. Discussion 129
- V. Study Two: A Tort Settlement Experiment 131
 - A. Experimental Design 132
 - 1. Settlement versus Allegations and Verdicts ... 132
 - 2. Individuals versus Institutions 133
 - 3. Criminal versus Civil 133
 - B. Methods 134
 - C. Results 136
 - 1. Attention and Comprehension Checks 136
 - 2. Defendant Responsibility 138
 - 3. Reasons for Settling 139
 - 4. Impressions of the Parties 143
 - D. Discussion 144
 - 1. Defendant Responsibility 145
 - 2. Reasons to Settle 146
 - 3. Individual Defendants versus Entities 149
- VI. Implications and Future Directions 151
- VII. Conclusion 154
- Appendix 156

I. INTRODUCTION

In 2017, Teshome Campbell sued a midwestern city and its local police department for constitutional violations.⁴ Campbell had spent eighteen years in prison after a murder conviction. His conviction was ultimately vacated, and in 2016, he was exonerated.⁵ Campbell brought his civil action against the city and police soon after, alleging that their unconstitutional actions led to his wrongful conviction.⁶

The civil action was ultimately resolved in the way that most civil actions end: through a settlement agreement.⁷ The defendants agreed to pay Campbell and his lawyers \$3.5 million dollars in exchange for releasing the claims. Embedded in the settlement was this disclaimer: “This Agreement is made and entered into solely for the purpose of compromising disputed claims. The City and the Defendant Officers deny liability on those claims and intend merely to avoid litigation and buy their peace.”⁸

When the suit settled, a local newspaper characterized the city council’s approval of the multi-million-dollar settlement as a “business decision.”⁹ A council member emphasized that the settlement was “not a reflection on the officers . . . The idea that this is somehow reflective of their conduct is wrong. These were fine officers doing a fine job. This is a business decision because our liability is too high.”¹⁰ The intended message was clear: settlement was no indication of guilt.

4. Complaint, *Campbell v. City of Champaign et al.*, Docket No. 17-cv-1037 at 21 (C.D. Ill. dismissed Sept. 21, 2018).

5. FREDERICK C. STAVINS, CITY OF CHAMPAIGN, EXPLANATION OF COUNCIL B. No. 2018-144, City of Champaign City Council 2018, at 1 (Aug. 31, 2018), <http://documents.champaign.il.us/v/1O5TxeOAAQivxsqwEezHGkxZop9qryg4eK> [https://perma.cc/9Z54-SFLR].

6. Complaint, *Campbell v. City of Champaign et al.*, Docket No. 17-cv-1037 at 21 (C.D. Ill. dismissed Sept. 21, 2018).

7. See generally *infra* notes 33-44 (reporting settlement statistics).

8. Council B. No. 2018-144, 2018 City of Champaign City Council, at 2 (Ill. 2018) Settlement Agreement and Release, *Campbell vs. City of Champaign et al.*, Docket No. 17-cv-1037. The clause was labeled “No Admission of Liability” and went on to say that “[t]he Settlement Payment, and any other consideration given for this Agreement, is not to be construed as an admission of liability or fault of any kind on the part of the City or the Defendant Officers.”

9. ADALBERTO TOLEDO, *Champaign council OKs settling two lawsuits against police for \$3.7M*, NEWS-GAZETTE, (June 27, 2019), https://www.news-gazette.com/news/champaign-council-oks-settling-two-lawsuits-against-police-for-3-7m/article_549d55e5-acaf-58ef-a9c2-0843f167548e.htm [https://perma.cc/APJ9-EEBK]. The newspaper report aggregated Campbell’s \$3.5 million with the settlement of another suit against the same defendants.

10. *Id.*

But how are such messages received? Do people think of settlements as divorced from wrongdoing by the defendant? Anecdotal evidence from our work suggests that, on the contrary, actions may speak louder than words when it comes to settlement. After all, as one of our survey participants put it, defendants settle “[b]ecause they’re guilty; otherwise they wouldn’t have a reason to do it.”¹¹ Commentators in other contexts have made similar statements, noting, for example, that “[y]ou don’t pay a \$100 million fine if you didn’t do anything wrong.”¹² Similarly, in a civil insider trading case brought by the Securities and Exchange Commission (“SEC”), the judge commented that “[t]here is something counterintuitive and incongruous about settling for \$600 million if [the defendant] truly did nothing wrong.”¹³

Despite these hunches, there has been little to no empirical exploration of the signals that settlements send about responsibility. Given the ubiquity of settlements throughout the legal system, this gap in the literature is no small oversight, and filling it will be no small task. This article lays the groundwork for a deeper understanding of this important and mostly neglected area of inquiry: public perceptions of settlement and how they affect attributions of guilt. After outlining the nature and significance of these questions, we report some promising new empirical findings and use these data to set an agenda for future research in this area.

Scholars, lawyers, and commentators agree that settlement is ubiquitous within the U.S. legal system.¹⁴ Although the precise rates

11. See generally Saul Kassin, *False Confessions: How Can Psychology So Basic Be So Counterintuitive?*, 72 AM. PSYCH. 951 (2017) (describing difficulty people have in understanding how an innocent suspect could confess); Kyle C. Scherr et al., *False Admissions of Guilt Associated with Wrongful Conviction Undermine People’s Perceptions of Exonerates*, 26 PSYCH. PUB. POL’Y & L. 233 (2020); Survey Responses.

12. Patrick McGeehan, *\$100 Million Fine for Merrill Lynch*, N.Y. TIMES, May 22, 2002, at A1 (quoting the Attorney General of New York, then-Attorney General Eliot Spitzer, in response to a settlement by Merrill Lynch); KEITH MICHAEL HEARIT, CRISIS MANAGEMENT BY APOLOGY 210 (2006) (“Cannot the willingness to settle and pay a \$100 million fine be read as an admission of guilt?”); Jonathan R. Cohen, *The Culture of Legal Denial*, 84 NEB. L. REV. 247, 260 (2005) (observing claims that “[t]he payment is the acknowledgment of fault”) [hereinafter Cohen, *The Culture of Legal Denial*].

13. Peter Lattman, *Judge is Skeptical of S.E.C. Deal with Hedge Fund*, N.Y. TIMES, (Mar. 28, 2013, 1:26 PM), <https://dealbook.nytimes.com/2013/03/28/judge-questions-s-e-c-settlement-with-steven-cohens-hedge-fund> [<https://perma.cc/M7XZ-E46B>].

14. Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 111, 112 (2009) [hereinafter Eisenberg & Lanvers] (“Whatever uncertainty exists about settlement rates, settlement is the modal civil case outcome.”); see generally Marc Galanter & Mia Cahill, “Most Cases Settle”: *Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339 (1994) [hereinafter Galanter & Cahill]; Marc Galanter, *Reading the Landscape*

depend on the context and measurement tool, there is broad evidence that settlement pervades the U.S. legal system. Not only are overall settlement rates high, but it is a common resolution for all sorts of litigants and disputes.¹⁵ Settlements resolve cases brought by and against individual parties, groups, and government actors. Even criminal authorities and defendants enter into plea agreements, a form of settlement.¹⁶ Indeed, there are few limits to the types of cases that can be settled: the subject matter of a settled dispute may be a straightforward car accident, a divorce, products liability, medical malpractice, armed robbery, securities fraud, police misconduct, or other types of disputes on an almost infinite list.¹⁷

At its simplest, settlement is merely an agreement to resolve a legal dispute. But in the law and in public consciousness, the way settlement is conceptualized is often more complicated. On the one hand, romantic notions of settlement portray it as a quick and satisfactory way to resolve disputes. Judges are trained to promote settlements as a peaceful and efficient way to resolve cases, and this policy

of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society, 31 UCLA L. REV. 4, 26–27 (1983). On the broader debate whether, to what extent, and under what circumstances settlement is a good thing, see generally Owen Fiss, Comment, *Against Settlement*, 93 YALE L.J. 1073 (1984); Andrew W. McThenia & Thomas L. Shaffer, Comment, *For Reconciliation*, 94 YALE L.J. 1660 (1985); Carrie Menkel-Meadow, *Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 GEO. L.J. 2663 (1995); Symposium, *Against Settlement: Twenty-Five Years Later*, 78 FORDHAM L. REV. 1117 (2009).

15. *Id.*

16. Richard Lorren Jolly & J.J. Prescott, *Beyond Plea Bargaining: A Theory of Criminal Settlement*, 62 B.C. L. REV. 1047, 1048 (2021) [hereinafter Jolly & Prescott] (noting that criminal plea bargains, though ordinarily not termed settlements, can be understood as a type of settlement); see generally CYNTHIA ALKON, NEGOTIATING CRIME: PLEA BARGAINING, PROBLEM SOLVING, AND DISPUTE RESOLUTION IN THE CRIMINAL CONTEXT (2019); Cindy R. Alexander & Mark A. Cohen, *The Evolution of Corporate Criminal Settlements: An Empirical Perspective on Non-Prosecution, Deferred Prosecution, and Plea Agreements*, 52 AM. CRIM. L. REV. 537, 587 tbl.12 (2015).

17. A few states have “sunshine-in-litigation laws” that limit settlements when the defendant has created a public hazard, but this category is narrow. *E.g.*, Sunshine in Litigation Act, FLA. STAT. § 69.081 (2019).

favoring settlement was built into the rules governing court procedure.¹⁸ Some headlines, in turn, report settlements as the efficient resolution of cases, without necessarily assigning blame.¹⁹

But settlement has dark sides, too. The pressure to reach an efficient settlement raises the specter of abuse, especially when the parties to the dispute are not equal in power. Innocent defendants may feel pressure to plead guilty²⁰ or to pay damages,²¹ and injured plaintiffs may feel pressure to accept much less than they deserve.²² High-profile cases have presented vivid examples of how settlements—and the non-disclosure agreements that often accompany them—can also be used to quiet plaintiffs and protect repeat offenders.²³ Nefarious secret settlements keep disputes out of the public court system—a judicial version of “capture and kill.”²⁴

Despite a growing body of literature addressing settlement’s central role in the U.S. legal system and its complicated nature, discussed above, little is known about how people perceive the

18. See FED. R. CIV. P. 16(a)(5) (listing “facilitating settlement” as one of the explicit purposes of a judicially supervised pretrial conference); FED. R. EVID. 408 (limiting admission of evidence about compromise negotiations and noting in advisory committee’s note the “promotion of the public policy favoring the compromise and settlement of disputes”); Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 414–31 (1982).

19. Liz Clarke, *Settlement Talks in Pay Dispute May Be the Best Play for U.S. Women’s Soccer Team*, WASH. POST (May 9, 2020), <https://www.washingtonpost.com/sports/2020/05/09/settlement-talks-pay-dispute-may-be-best-play-us-womens-soccer-team/> [https://perma.cc/S5MJ-3LA3] (stating that “the wiser strategy, in the view of some sympathetic to the players’ cause, is abandoning the legal wrangling and brokering a settlement that would end the long-running conflict with their employer.” and describing the former captain as “advocating negotiation to mend what she calls ‘a broken, fractured relationship’”).

20. See, e.g., Allison Redlich et al., *The Psychology of Defendant Plea Decision Making*, 72 AM. PSYCH. 339 (2017) [hereinafter Redlich et al., *The Psychology of Defendant Decision Making*]; Jed Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. BOOKS (Nov. 20, 2014), <https://www.nybooks.com///1/20/-people-plead-guilty/> [https://perma.cc/6AUK-WP5T].

21. See, e.g., Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STAN. L. REV. 497 (1991); FEDERAL TRADE COMMISSION, PATENT ASSERTION ENTITY ACTIVITY (2016).

22. See, e.g., Fiss, *supra* note 14; Galanter & Cahill, *supra* note 14.

23. Patricia Mazzei, *Jeffrey Epstein Settles Lawsuit, Avoiding Testimony From Accusers in Sex Case*, N.Y. TIMES (Dec. 4, 2018), <https://www.nytimes.com/2018/12/04/us/jeffrey-epstein-settlement-sexual-abuse-court.html> [https://perma.cc/U422-3TF3].

24. Ronan Farrow, *Les Moonves and CBS Face Allegations of Sexual Misconduct*, NEW YORKER (July 27, 2018), <https://www.newyorker.com/magazine/2018/08/06/les-moonves-and-cbs-face-allegations-of-sexual-misconduct> [https://perma.cc/A95X-JGZW]. See generally Gilat Juli Bachar, *The Psychology of Secret Settlements*, 73 HARV. L.J. 1 (2022).

settlement of legal disputes or the parties entering into the settlements. But these perceptions of settlement are important. Evaluating how people view settlement is certainly of interest to the parties who must weigh the value of a particular resolution. Whether the public views a party as a wrongdoer or at fault would reasonably form part of the calculation of settlement's risks and rewards; this intuition is supported by the frequency with which settlements are accompanied by explicit denials of culpability, such as those issued in Teshome Campbell's case,²⁵ or by non-disclosure agreements,²⁶ such as those used in numerous high-profile sexual harassment and assault cases. Policymakers, too, have a stake in public perceptions of settlements, and assumptions about how settlement is perceived might inform policies about the amount of information publicly available about settlements.²⁷

Understanding public perceptions of settlement may also be a key step in understanding the way the legal system maintains or erodes popular legitimacy. A large literature on procedural justice explores how participants in the system evaluate its processes.²⁸ Observers' views of courts and their reactions to verdicts and court procedures have also been the subject of study.²⁹ The underlying rationale for these studies is that the perceptions and understandings

25. See, e.g., Settlement Agreement and Release, Campbell vs. City of Champaign et al., *supra* note 4.

26. *Id.*

27. See, e.g., David S. Sanson, *The Pervasive Problem of Court-Sanctioned Secrecy and the Exigency of National Reform*, 53 DUKE L.J. 807 (2003); Richard A. Epstein, *The Disclosure Dilemma: Why a Ban on Secret Legal Settlements Does More Harm than Good*, BOS. GLOBE, Nov. 3, 2002, at D1.

28. See generally E. ALAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988); Rebecca Hollander-Blumoff, *Fairness Beyond the Adversary System: Procedural Justice Norms for Legal Negotiation*, 85 FORDHAM L. REV. 2081 (2017); E. Alan Lind et al., *In the Eye of the Beholder: Tort Litigants' Evaluations of Their Experiences in the Civil Justice System*, 24 LAW & SOC'Y REV. 953 (1990); Donna Shestowsky, *Inside the Mind of the Client: An Analysis of Litigants' Decision Criteria for Choosing Procedures*, 36 CONFLICT RESOL. Q. 69 (2018); Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCH. 375 (2006) [hereinafter Tyler, *Psychological Perspectives*].

29. See, e.g., Brian Bornstein et al., *JUST: A Measure of Jury System Trustworthiness*, 26 PSYCHOL. CRIME & L. 797 (2020); John M. Darley, *Citizens' Sense of Justice and the Legal System*, 10 CURRENT DIRECTIONS PSYCHOL. SCI. 10 (2001); DAMON M. CANN & JEFF YATES, *THESE ESTIMABLE COURTS: UNDERSTANDING PUBLIC PERCEPTIONS OF STATE JUDICIAL INSTITUTIONS AND LEGAL POLICY-MAKING* (2016); PAUL H. ROBINSON & JOHN M. DARLEY, *JUSTICE, LIABILITY, AND BLAME: COMMUNITY VIEWS AND THE CRIMINAL LAW* (1995); DAVID B. ROTTMAN ET AL., *PERCEPTIONS OF THE COURTS IN YOUR COMMUNITY: THE INFLUENCE OF EXPERIENCE, RACE AND ETHNICITY: FINAL REPORT* (2003) (studying perceptions of the fairness of state and local courts), <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf> [<https://perma.cc/PPK9-QXJA>]; Tom

of the legal system held by people outside the system are a crucial component of whether the system is perceived to be legitimate.³⁰ This perceived legitimacy of the legal system in turn affects compliance with legal rules and underpins the rule of law.³¹

This recognition of the importance of public perceptions of the legal system, however, makes it all the more surprising that settlement has, so far, been largely omitted from this research. After all, understanding perceptions of the legal system requires more than knowing how people perceive cases resolved through the system's formal mechanisms. It requires asking how people perceive the dominant way disputes are resolved, i.e., settlement. Do people view settling defendants as guilty or responsible for having caused harm? Is settlement seen more neutrally, as a convenient resolution that avoids costly trial? What features of a case or settlement agreement might lead people to reach these conclusions more easily? What features of a party to the settlement might do so?

To begin to answer these questions, this Article uses a survey and experimental methods to explore what laypeople³² infer from the fact that parties have settled a legal dispute and how the context of the settlement influences those inferences. We highlight the rich potential of this approach, with an aim to pave the way for future work. Our findings contribute to the literatures that explore perceptions of the legal system more broadly, settlement decision making, and procedural justice by focusing on a relatively neglected aspect of the system—settlement—and on the relatively neglected viewpoint of outsiders to the settlement: namely, the public.

Our investigation of public perceptions of settlement begins in Part II, where we outline the prevalence of settlement across legal domains and what is known about why parties settle. We situate the

Tyler & John M. Darley, *Building a Law-Abiding Society: Taking Public Views about Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law*, 28 HOFSTRA L. REV. 707 (2000) [hereinafter Tyler & Darley].

30. DAVID B. ROTTMAN ET AL., *supra* note 29 (studying perceptions of the fairness of state and local courts); Tyler & Darley, *supra* note 29 (using the findings of a national survey of U.S. citizens to examine the connection between legitimacy and the goals of the legal system).

31. See Tyler, *Psychological Perspectives*, *supra* note 28; Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCH. PUB. POL'Y & L. 78 (2014) [hereinafter Tyler & Jackson].

32. Throughout this Article, we use “laypeople” and “public” to refer to relative outsiders to the settlement process. Generally, this excludes lawyers, judges, and parties to the settlement.

study of settlement perceptions in existing economic and psychological models of settlement and the literatures on procedural justice and perceptions of the legal system. In Part III, we identify three key areas for inquiry: comparison of settlements with other case postures, including allegations and verdicts; differences between views of individuals and institutions that settle; and potential distinctions among settlement contexts, in particular the key distinction between civil and criminal proceedings. We root the exploration of perceptions of settlement in psychological research about truth bias and the likelihood that denial of responsibility will be ineffective.

In Part IV, we report the results of an initial survey of perceptions of settlement across a variety of case types: a tort case, a #MeToo sexual harassment case, a case alleging the inappropriate use of force by the police, a criminal case, and an insider trading enforcement action. We find that respondents tend to attribute responsibility to settling defendants across these settings, and report what participants said in their own words about the reasons they thought parties settled.

In Part V, we report the results of an experimental study designed to isolate the effects of settlement by comparing perceptions of a tort settlement with perceptions of a filed case and with verdicts for either the defendant or the plaintiff. We evaluate the influence of denials—like that in the Teshome Campbell settlement—by comparing settlements accompanied or not accompanied by the defendant’s denial of responsibility. And we explore potential differences in perceptions of individual defendants or companies. The results confirm what the initial survey suggested: that lay people tend to attribute responsibility to defendants who settle, that the reasons people attribute to settling defendants are varied, and that the strength of many of these perceived reasons differs depending on whether the defendant is an individual or a company. Intriguingly, people assigned responsibility to the defendant to a similar extent whether they heard about untried allegations, settlement, or a plaintiff’s verdict. Only a verdict for the defendant resulted in comparatively less responsibility attributed to the defendant.

In Part VI, we use the results of the survey and experiment to lay the groundwork for future study of settlement. We identify a set of research questions and discuss the implications of these studies and their results for settlement practices and the reliance of the legal system on settlement to resolve disputes. In Part VII, we briefly conclude.

II. SETTLEMENT'S ROLE IN THE LEGAL SYSTEM

A. *The Ubiquity of Settlement*

Disputes in the U.S. are largely resolved by agreement. Estimates of the precise rates of settlement vary depending on the area of the law and type of dispute, but even nuanced work focused on the challenges of measuring settlement notes that “[w]hatever uncertainty exists about settlement rates, settlement is the modal civil case outcome.”³³ In 2020, for instance, less than one percent of civil cases in federal trial courts went to trial.³⁴ One widely referenced rule of thumb is that between 85% and 95% of civil cases exit the court system before trial.³⁵ This figure is sometimes referred to as a “settlement” rate, though as a proxy it is overinclusive; some suits exit the system without settling.³⁶

Even where settlement can be distinguished from other dispositions such as dismissal by the court, the numbers are considerable. One 1986 study, for instance, found that 78% of the civil lawsuits studied were resolved through settlement.³⁷ A study of filings from two federal districts in 2001-2002 found an aggregate rate of 66.9% settlement, with over 70% settling in one of the judicial districts in that study.³⁸

Settlement is also a common resolution of disputes across contexts—civil litigation, criminal plea bargains, agency actions, and other types of lawsuits. Although the terminology differs (for example, parties may enter into settlement contracts, consent decrees,

33. Eisenberg & Lanvers, *supra* note 14, at 114.

34. *U.S. District Courts-Civil Cases Terminated, by District and Action Taken, During the 12-Month Period Ending September 30*, tbl. C-4A, USCOURTS.GOV, https://www.uscourts.gov/sites/default/files/data_tables/jb/c4a_0930.2020.pdf [<https://perma.cc/T5RC-X9FH>] (reporting that 0.5%-1,365 of 270,902 civil cases-reached trial).

35. See Galanter & Cahill, *supra* note 14, at 1339–40 (noting that the “[o]ft-cited figures estimating settlement rates of between 85 and 95 percent” are really the number that do not go to trial).

36. Eisenberg & Lanvers, *supra* note 14, at 114. Despite its limitations, this proxy for settlement may make sense if the driving concern is the widely observed decline in the public trial process. See Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. (2004). See generally William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 LAW & SOC'Y REV. 631 (1980–81) (describing the process of attrition that result in few cases going to trial). See also Catherine R. Albiston et al., *The Dispute Tree and the Legal Forest*, 10 ANN. REV. L. & SOC. SCI. 105 (2014) (describing the ways that cases are resolved).

37. Herbert M. Kritzer, *Adjudication to Settlement: Shading in the Gray*, 70 JUDICATURE 161, 162–64 (1986) (analyzing 1649 lawsuits in 7 state courts and 5 federal judicial districts).

38. Eisenberg & Lanvers, *supra* note 14, at 115.

non-prosecution or deferred-prosecution agreements, or plea bargains), each of the mechanisms shares the basic characteristic of being an agreement to resolve a dispute. Indeed, settlement is the expected outcome in many areas of the law, including aggregate actions such as class actions.³⁹ Settlements are also common in lawsuits over public policy,⁴⁰ including lawsuits brought by government agencies. Many U.S. regulators, for example, report routinely settling the “vast majority” of regulatory enforcement actions.⁴¹ For criminal cases, the U.S. Sentencing Commission compiles statistics of “guilty pleas and trials by type of crime.”⁴² For fiscal year 2020, guilty pleas accounted for 97.8% of all case resolutions.⁴³

Of course, rates of settlement are not constant across all types of disputes. Studies that disaggregate settlement rates have found variations among settlement rates depending on the jurisdiction, area of law, and nature of the parties involved. For example, one study reported different settlement rates by case type, with tort cases at the high end, exceeding 87% in one judicial district studied.⁴⁴ Even with

39. *Id.*, at 112. Securities class actions provide an example. *See, e.g.*, CORNERSTONE RSCH., SECURITIES CLASS ACTION FILINGS: 2020 YEAR IN REVIEW fig. 17 (2021) <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2020-Year-in-Review.pdf> [<https://perma.cc/7RKN-KM7C>] (reporting that securities class actions against public companies were either dismissed or settled, with a vanishingly small percentage in other categories); CORNERSTONE RSCH., SECURITIES CLASS ACTION SETTLEMENTS: 2019 REVIEW AND ANALYSIS (2020) <https://www.cornerstone.com/Action-Settlements-2019-Review-and-Analysis> [<https://perma.cc/5UVS-9W7Q>] (focusing on settlements and reporting the amounts and times to settlement).

40. *See* Maimon Schwarzschild, *Public Law by Private Bargain: Title VII Consent Decrees and the Fairness of Negotiated Institutional Reform*, 1984 DUKE L.J. 887, 888 (consent decrees are “common in every variety of lawsuit over public policy”).

41. Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the H. Comm. on Fin. Serv., 122th Cong. 7, 10 (2012), <https://financialservices.house.gov/uploadedfiles/112-128.pdf> [<https://perma.cc/3PKD-29RR>] (reporting testimony of counsel from the FDIC and the Board of Governors of the Federal Reserve System as pointing to stipulated settlements and consent as the resolution for the “vast majority” of cases). *See generally* Verity Winship & Jennifer K. Robbennolt, *Admissions of Guilt in Civil Enforcement*, 102 MINN. L. REV. 1077, 1088–89 (2018) (outlining the role of settlement in civil enforcement) [hereinafter Winship & Robbennolt].

42. U.S. SENTENCING COMM’N, 2020 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbl. 12 (2021) <https://www.ussc.gov/research/sourcebook-2020> [<https://perma.cc/QTL6-4RPH>].

43. *Id.* (listing 63,157 pleas, 1,408 trials, for a total of 64,565 resolutions); *see also id.* at 204 (“Offenders sentenced subsequent to a plea of guilty or nolo contendere are included in the Plea category. Offenders sentenced subsequent to a trial by judge or jury are included in the Trial category. Rare cases involving both a plea and a trial are included in the Trial category.”).

44. Eisenberg & Lanvers, *supra* note 14, at 114.

these variations in settlement rates, however, these studies taken together support the claim that most cases settle.

B. *Perceptions of Settlement*

Despite the ubiquity of settlement across domains, we know little about how people who are not direct participants in these negotiated resolutions view them.⁴⁵ In studies of the legal system, and particularly of the way in which citizens perceive the legal system, settlement is often at the periphery.⁴⁶ Some of this existing research, particularly about perceptions of the legal system, procedural justice, and settlement, may shed light on how settlements are perceived. There are also a few prior empirical studies that directly consider how settlement is perceived by external observers, all of which focus on the criminal plea bargain.

1. *Citizen Views of Justice System*

Perceptions of legal systems are central in much of the literatures on procedural justice and perceptions of legitimacy. These literatures are large and varied and have their roots in several disciplines, including law and psychology.⁴⁷ One particularly relevant strand emphasizes the potentially far-reaching consequences of outsiders' perspectives, i.e., the public's view of the legal system.

Public perceptions of the procedural fairness and legitimacy of the legal system have concrete consequences.⁴⁸ Tom Tyler's work on the importance of legitimacy and its connection to compliance describes legitimacy as "a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just," and connects legitimacy with people's feeling "that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of

45. Cf. Thea Johnson, *Public Perceptions of Plea Bargaining*, 46 AM. J. CRIM. L. 133, 133 (2019) (noting the absence of research into public understanding of plea bargaining and noting that "the average person's understanding of the plea bargain is essentially unknown") [hereinafter Johnson, *Public Perceptions*].

46. See *infra* notes 48–53.

47. See, e.g., Rebecca Hollander-Blumoff, *The Psychology of Procedural Justice in the Federal Courts*, 63 HASTINGS L.J. 127 (2011) [hereinafter Hollander-Blumoff] (examining the intersecting concerns of the psychology of procedural justice and the treatment of procedural justice and due process in law).

48. See, e.g., Tyler, *Psychological Perspectives*, *supra* note 28; Tyler & Jackson, *supra* note 31; Damon M. Cann & Jeff Yates, *THESE ESTIMABLE COURTS: UNDERSTANDING PUBLIC PERCEPTIONS OF STATE JUDICIAL INSTITUTIONS AND LEGAL POLICY-MAKING* (2016).

fear of punishment or anticipation of reward.”⁴⁹ Empirical work has further connected perceptions of legitimacy with compliance with the law,⁵⁰ cooperation with law enforcement,⁵¹ and beliefs about whether violence is acceptable.⁵² Trust in the legal system also depends on the extent to which the substance of the law tracks lay intuitions.⁵³

Another intersecting strand of the procedural justice literature examines participants’ perceptions of the legal process in which they are involved.⁵⁴ Some of this literature touches on settlement, acknowledging that “the vast majority of legal conflicts are settled through negotiation rather than by a third-party decision maker.”⁵⁵ This work, however, tends to be concerned primarily with the insider viewpoint of parties and their lawyers rather than outsider or citizen

49. Tyler, *Psychological Perspectives*, *supra* note 28, at 375–76.

50. See, e.g., Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513 (2003); Tyler, *Psychological Perspectives*, *supra* note 28; Kristina Murphy et al., *Nurturing Regulatory Compliance: Is Procedural Justice Effective when People Question the Legitimacy of the Law?*, 3 REGULATION & GOVERNANCE 1 (2009); Jonathan Jackson et al., *Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions*, 52 BRIT. J. CRIMINOLOGY 1051 (2012).

51. See, e.g., Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?* 6 OHIO ST. J. CRIM. L. 231, 236 (2008).

52. Jonathan Jackson et al., *Monopolizing Force? Police Legitimacy and Public Attitudes Toward the Acceptance of Violence*, 19 PSYCH. PUB. POL’Y & L. 479, 479 (2013).

53. Darley, *supra* note 29 at 10 (pointing to a gap between the criminal code and how citizens assign responsibility in criminal law and noting that “[t]hese discrepancies may cause citizens to feel alienated from authority, and to reduce their voluntary compliance with legal codes”); see ROBINSON & DARLEY, *supra* note 29; Tyler & Darley, *supra* note 29 at 719.

54. See, e.g., Hollander-Blumoff, *supra* note 47 at 129.

55. Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473, 478 (2008) [hereinafter Hollander-Blumoff & Tyler, *Procedural Justice*]; see also Rebecca Hollander-Blumoff, *Just Negotiation*, 88 WASH. U. L. REV. 381, 385 (2010) (considering the role of procedural justice in negotiation); Chris Guthrie, *Procedural Justice Research and the Paucity of Trials*, 2002 J. DISP. RESOL. 127, 128 (2002) (pointing to the importance of looking at litigation, including dismissal and settlement, rather than just trial when interpreting parties’ views of procedural justice); Jonathan D. Casper, Tom Tyler, & Bonnie Fisher, *Procedural Justice in Felony Cases*, 22 LAW & SOC’Y REV. 483, 484 (1988) (arguing that procedural fairness concerns apply even in high-stakes criminal cases); Michael M. O’Hear, *Plea Bargaining and Procedural Justice*, 42 GA. L. REV. 407, 420 (2008) (applying principles of procedural justice to proposed reforms in the criminal plea bargaining process).

perceptions of settlement.⁵⁶ Studies consider, for instance, the influence of litigants' perception of fairness on negotiation, including the negotiation of legal settlements.⁵⁷ Other studies assess parties' reaction to judge-led mediation, including settlement conferences.⁵⁸ This "insider" perspective may be limited to parties, or it may also include lawyers, judges, and even legislators who are participants in the legal system.⁵⁹

In sum, the public's view of the legal system—the outsider perspective—has long been a subject of interest in law, psychology, and public policy. The arguments for its importance as a subject of study are well-developed and broadly agreed upon.⁶⁰ Despite this importance, however, public perceptions of the most pervasive outcome of legal disputes—settlement—have been largely left out.

2. Settlement Models

In contrast to the dearth of studies that examine citizens' views of settlement, the mechanics of settlement have received closer attention. Studies of settlement have drawn on economic and behavioral settlement models to examine the perceptions and behaviors of participants in settlement negotiation and their settlement decisions. This work generally looks to explain why and under what conditions parties agree to an out-of-court resolution of their disputes.⁶¹

56. See, e.g., Tom R. Tyler, *A Psychological Perspective on the Settlement of Mass Tort Claims*, 53 LAW & CONTEMP. PROBS. 199, 199 (1990) (examining what clients and claimants want from a mass tort resolution).

57. Hollander-Blumoff & Tyler, *Procedural Justice*, *supra* note 47 at 474–75; E. Allan Lind et al., *In the Eye of the Beholder: Tort Litigants' Evaluations of Their Experiences in the Civil Justice System*, 24 LAW & SOC'Y REV. 953, 954 (1990) (interviewing litigants in personal injury cases and comparing their experiences with trial, court-annexed arbitration, judicial settlement conferences, and bilateral settlement).

58. Nancy Welsh et al., *The Application of Procedural Justice Research to Judicial Actions and Techniques in Settlement Sessions*, in THE MULTI-TASKING JUDGE: COMPARATIVE JUDICIAL DISPUTE RESOLUTION 57, 72–76 (Tania Sourdin & Archie Zariski eds., 2013) (presenting a model questionnaire for litigants who participate in judge-led settlement conferences); Nancy A. Welsh, *Magistrate Judges, Settlement, and Procedural Justice*, 16 NEV. L.J. 983, 988–89 (2016) (examining parties' perceptions of court-annexed mediation/settlement sessions led by magistrate judges).

59. See Hollander-Blumoff, *supra* note 55 at 175 (considering "litigants and other players in the legal system").

60. See *supra* notes 48–53.

61. See, e.g., Lucian Bebchuk, *Litigation and Settlement Under Imperfect Information*, 15 RAND J. ECON. 404 (1984); Christina L. Boyd & David A. Hoffman, *Litigating Toward Settlement*, 29 J. L., ECON., & ORG. 898 (2013); Andrew Daughety & Jennifer F. Reinganum, *Economic Theories of Settlement Bargaining*, 1 ANN. REV. L. & SOC. SCI. 35 (2005); Samuel Gross & Kent D. Syverud, *Getting to No: A Study of Settlement Negotiation and the Selection of Cases for Trial*, 90 MICH. L. REV. 319 (1991); Randall Kiser et al., *Let's Not Make a Deal: An Empirical Study of Decision-*

A prevalent account grounds settlement in economic rationality.⁶² According to this account, parties to litigation make an economic calculation about the comparative risks, costs, and benefits of settlement.⁶³ Roughly speaking, a party will settle if the value of the settlement exceeds the expected value of the litigation, taking into account the probability of a win or loss, as well as the associated costs.⁶⁴

Other research, however, suggests that the economic account leaves out important factors that influence whether and how parties settle, in part because this account is limited to elements that can be easily monetized and priced. Interesting empirical work addresses behavioral factors that influence civil settlement negotiations. For example, some of the work in this body of literature describes the psychological barriers to settlement,⁶⁵ the effects of the gender and relationship of the parties,⁶⁶ and the effects of apologies on settlement dynamics.⁶⁷ Similarly, empirical work on criminal settlement—plea bargaining—describes the various cognitive, social, and developmental influences on plea decision making.⁶⁸ Studies in this line have also expanded what counts as the costs and benefits of settlement

Making in Unsuccessful Settlement Negotiation, 5 J. EMPIRICAL LEGAL STUD. 551 (2008); Robert H. Mnookin & L. Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979); Jennifer K. Robbennolt, *Litigation and Settlement*, in HANDBOOK ON BEHAVIORAL ECONOMICS AND THE LAW 623 (Eyal Zamir & Doron Teichman eds. 2014) (reviewing studies).

62. Richard A. Posner, *An Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399, 417–20 (1973).

63. See generally George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1, 3–6 (1984); John Bronsteen, *Some Thoughts About the Economics of Settlement*, 78 FORDHAM L. REV. 1129 (2009); Shawn D. Bushway et al., *An Explicit Test of Plea Bargaining in the “Shadow of the Trial”*, 52 CRIMINOLOGY 723 (2014).

64. Daughety & Reinganum, *supra* note 61 at 36–41 (describing models for bilateral and multilateral settlement bargaining); Robbennolt, *supra* note 61, at 624 (“For each litigant, the risk discounted value of trial would be compared to the value of a proposed settlement and the litigant would choose the option (trial or settlement) with the highest expected value.”).

65. See, e.g., Russell Korobkin & Chris Guthrie, *Psychological Barriers to Litigation Settlement: An Experimental Approach*, 93 MICH. L. REV. 107 (1994). See also Lee Ross & Andrew Ward, *Psychological Barriers to Dispute Resolution*, 27 ADV. EXPERIMENTAL SOC. PSYCHOL. 255 (1995).

66. See, e.g., Claire B. Wofford, *The Effect of Gender and Relational Distance on Plaintiff Decision Making in the Litigation Process*, 51 LAW & SOC’Y REV. 966 (2017). See also Tim A. Baker, *Sizing up Settlement: How Much Do the Merits of a Dispute Really Matter*, 24 HARV. NEGOT. L. REV. 253 (2019).

67. See, e.g., Jennifer K. Robbennolt, *Apologies and Settlement Levers*, 3 J. EMPIRICAL LEGAL STUD. 333 (2006).

68. See, e.g., Allison Redlich et al., *The Psychology of Defendant Decision Making*, *supra* note 21.

and of trial, including, for instance, costs to dignity in a trial setting.⁶⁹

Although these literatures do not directly address how the public perceives settlement, they are relevant to the inquiry into perceptions of settlement because they suggest some possible ways that settlement might be understood. Do lay people think of settling parties as making the type of rational calculation foreseen by the economic model?⁷⁰ Do they recognize factors beyond the merits of the dispute that might influence settlement? Or do they assume that the merits of the case determine the likelihood of settlement?

Of course, the difference between the insider's perspective and the outsider's view may distort inferences in systematically different ways. Defendant responsibility, in particular, may be only one small aspect of the economic settlement calculation; underlying responsibility is potentially relevant to the risk of losing, but a settling defendant might very well settle even if they bear no responsibility or guilt. A defendant may decide, for example, that even though a loss is unlikely because the defendant is not in fact responsible, it is cheaper or otherwise preferable to settle than to litigate because of the financial and other costs of litigation.⁷¹ Or an innocent defendant might agree to a plea bargain to mitigate the effects of collateral consequences.⁷² On the other hand, such agreements are widely believed to lead to public inferences of responsibility or guilt.⁷³ Whether people actually attribute responsibility to defendants who settle may depend on their views of the dynamics of these negotiations.

69. See generally Matthew Shapiro, *The Indignities of Civil Litigation*, 100 B.U. L. REV. 501 (2020); Marc Galanter, *The Day After the Litigation Explosion*, 46 MD. L. REV. 3, 8–11 (1986).

70. Recent work suggests that judges and lawyers themselves perceive settlements as largely the results of risk, costs, and other economic concerns. Shari Seidman Diamond & Jessica M. Salerno, *Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges*, 81 LA. L. REV. 119, 121 (2020).

71. Robbenolt, *Litigation and Settlement*, *supra* note 61, at 624 (noting that costs of litigation “include not only the financial costs of bringing or defending the suit (e.g., legal fees, discovery costs, experts), but also any implications for future cases, any expected reputational costs, the time and effort allocated to the lawsuit, and the unpleasantness of the process itself”).

72. See Redlich et al., *The Psychology of Defendant Plea Decision-Making*, *supra* note 21, at 343–44.

73. See, e.g., John H. Blume & Rebecca K. Helm, *The Unexonerated: Factually Innocent Defendants Who Plead Guilty*, 100 CORNELL L. REV. 157 (2014) (describing the dilemmas faced by criminal defendants who plead guilty despite factual innocence).

3. *Prior Empirical Work on Perceptions of Settlement*

Although the procedural justice and settlement literatures focus primarily on the insider view of settlement, there are some exceptions. A handful of studies take an empirical look at the public's outsider perceptions of settlement, largely in the context of the criminal plea-bargaining process. For example, a 1989 Canadian study used vignettes to study public perceptions of plea bargaining.⁷⁴ It found general disapproval of plea bargaining, and a connection between views of plea bargaining and opinions about appropriate sentences.⁷⁵ A 2002 study examined public attitudes towards plea bargaining in Israel,⁷⁶ finding general, though not complete, support for the hypothesis that increased transparency in the plea-bargaining process would increase public support.⁷⁷

Even for members of the public with an interest in or training in law, research suggests mixed views at best. A 2019 study surveyed U.S. law students about their perceptions of plea bargains, with a focus on what they understood a plea bargain to be.⁷⁸ The survey included an open-ended question about the reasons "parties in the criminal justice system engage in plea bargaining."⁷⁹ The author reported a tension between the "neutral to positive" terms that respondents used to describe plea bargains and the main drawback that respondents identified: the risk that innocent people would plead guilty.⁸⁰

One other study, ongoing at the time of this article, is especially relevant to the present work. The study examines whether the way a

74. Stanley A. Cohen & Anthony N. Doob, *Public Attitudes Towards Plea Bargaining*, 32 CRIM. L.Q. 85, 93 (1989–1990); see also Sergio Herzog, *The Relationship Between Public Perceptions of Crime Seriousness and Support for Plea-Bargaining Practices in Israel: A Factorial-Survey Approach*, 94 J. CRIM. L. & CRIMINOLOGY 103, 111 (2003). Cohen & Doob, *supra* note 73, at 96–97.

75. *Id.*

76. Sergio Herzog, *Plea Bargaining Practices: Less Covert, More Public Support?*, 50 CRIM. & DELINQ. 590, 608 (2004) (using a factorial design methodology to test whether opening the plea-bargaining process to non-insiders would increase public support).

77. *Id.* at 603, 606.

78. Johnson, *Public Perceptions*, *supra* note 45, at 133 (describing the narratives about plea bargaining prevalent in the media and fictionalized legal dramas, then using a survey to explore "[w]hat narrative, if any, does the public believe about plea bargaining?").

79. *Id.* at 151.

80. *Id.* at 153.

defendant is convicted of a crime influences perceptions of the defendant's guilt.⁸¹ In particular, it used scenarios to compare perceptions of the guilt or innocence of criminal defendants who pled guilty with perceptions of defendants who were convicted at trial.⁸² People tended to view both defendants who pled guilty and defendants who were convicted at trial as likely to be guilty.⁸³ Moreover, those who pled guilty were perceived as even somewhat more guilty/less innocent than those convicted at trial.⁸⁴

Across these works, a common theme emerges: views of criminal plea bargains are tightly interwoven with views of defendant guilt and innocence. Focusing as they do on the criminal context, these studies could be overstating the relationship between settlement and the attribution of responsibility, but without research that crosses contexts it is impossible to know. More broadly, although the prior empirical work on public perceptions of settlement has been limited to the criminal context, our survey and experiment revisit a number of that work's themes.

III. PUBLIC PERCEPTIONS OF SETTLEMENT: FILLING THE RESEARCH GAP

In a growing and influential body of work on how people view legal systems and processes, the absence of views on settlement—the most common outcome for most legal disputes—is surprising. Given the wide variety of settlement processes, settlement outcomes, and contexts in which settlements occur, it is not enough to simply identify settlement as a topic for further study. Instead, we hope to outline an agenda for research that builds on the existing literatures in procedural justice, settlement, and legitimacy discussed above. To begin, we focus primarily on the question of how settlements influence attributions of responsibility. As noted above, research in the context of criminal pleas suggests a relationship between such attributions of responsibility and settlements. Public attributions of responsibility are also, at least anecdotally, on the minds of parties who are considering settlement.

We identify three key areas for inquiry. First, we contrast settlements with other case resolutions. In other words, what is special (if

81. Kelly T. Sutherland et al., *Guilty Pleas Versus Guilty Verdicts—Is There a Preferred Method of Conviction?*, Conference Presentation at the American Psychology-Law Society Annual Conference (Mar. 5, 2020) [hereinafter Sutherland et al.].

82. *Id.*

83. *Id.*

84. *Id.*

anything) about settlements? We draw on the psychological literature to hypothesize about how truth bias and the limited effects of denial might play out in the context of settlement. Second, we note one way in which the identity of the settling party may change perceptions of settlement and settling parties. In particular, we draw on psychological literature to outline potential distinctions between individuals and entities, including corporate entities. Third, we acknowledge that context matters. A broad definition of settlement that looks at its manifestation across the legal system has advantages when assessing systemic reliance on agreements to resolve legal disputes. Key distinctions between different types of cases, however, make it useful to also concentrate attention on individual domains. Essential differences between civil and criminal cases, for example, may result in varying perceptions of settlement. We focus on identifying paths of inquiry and beginning to design an agenda for further study. Our survey and our experiment, reported in the succeeding sections, explore various aspects of these questions.

A. *Settlements versus Allegations and Verdicts*

It is an open question whether settlements send different signals than those conveyed by allegations, complaints, verdicts, or other case resolutions. This question is particularly important in relation to attributions of responsibility or guilt. Participants considering or negotiating a settlement likely care about the views of observers to the settlement for a number of different reasons, including personal reputation or public relations. The signal a settlement sends, particularly about responsibility, is also tied to broader views of the legal system. Commentators and researchers often ask whether systems that allocate responsibility and blame are perceived as fair. To the extent that settlement has this effect—conveying guilt, for instance—it raises similar questions about systemic legitimacy.⁸⁵

To reach these broader questions, we need to develop a more nuanced understanding of lay perceptions of settlement and settling parties. The psychological literature, discussed below, provides some basis for hypotheses about how lay people perceive settlements and whether they attribute responsibility to settling defendants.⁸⁶ Parties may settle lawsuits for a variety of reasons, some of which stem from responsibility for the alleged underlying behavior and some of

85. See generally Tyler & Jackson, *supra* note 31.

86. See *infra* notes 102 and accompanying text.

which do not. Psychological theory, however, suggests that once allegations have been made, those allegations will form part of the observer's mental map of the situation.⁸⁷ Moreover, the allegations may be assimilated without regard for their credibility or truth,⁸⁸ a potentially devastating tendency in the context of public allegations of wrongdoing. This initial impression of truth is difficult to overcome, even with additional information or spirited denials.⁸⁹

Research demonstrates that people tend to accept information presented to them as true—a phenomenon known as the *truth bias*.⁹⁰ While it might seem that people would be equally likely to accept or reject claims that they encounter, they are actually more likely to default to believing that a statement is true than to label it as false.⁹¹ “Even though an allegation may be unsubstantiated, perceivers are, in a sense, hardwired to unquestioningly incorporate this information into their belief structure and then only un-accept it under certain conditions.”⁹² This tendency is consistent with conversational norms that prescribe that contributions to conversational exchanges be

87. See *infra* notes 102 and accompanying text.

88. See *infra* notes 96–97 and accompanying text.

89. See *infra* notes 97 & 103 and accompanying text.

90. Nadia M. Brashier & Elizabeth J. Marsh, *Judging Truth*, 71 ANN. REV. PSYCH. 499, 502 (2020) [hereinafter Brashier & Marsh, *Judging Truth*]. The underlying psychological mechanisms of truth bias, including precisely how information is labeled as true or false, are still being explored. See Daniel T. Gilbert, *How Mental Systems Believe*, 46 AM. PSYCH. 107 (1991) [hereinafter Gilbert, *How Mental Systems Believe*]; Daniel T. Gilbert et al., *Unbelieving the Unbelievable: Some Problems in the Rejection of False Information*, 59 J. PERSONALITY & SOC. PSYCH. 601 (1990); Daniel T. Gilbert, Romin W. Tafarodi & Patrick S. Malone, *You Can't Not Believe Everything You Read*, 65 J. PERSONALITY & SOC. PSYCH. 221, 231 (1993); Uri Hasson et al., *Believe It or Not: On the Possibility of Suspending Belief*, 16 PSYCH. SCI. 66 (2005); Lena Nadarevic & Edgar Erdfelder, *Spinoza's Error: Memory For Truth and Falsity*, 41 MEMORY & COGNITION 176 (2013); Myrto Pantazi et al., *The Power of the Truth Bias: False Information Affects Memory and Judgment Even in the Absence of Distraction*, 36 SOC. COGNITION 167 (2018); Tobias Richter, *Validation and Comprehension of Text Information: Two Sides of the Same Coin*, 52 DISCOURSE PROCESSES 337 (2015) (reviewing studies); Tobias Richter, Sascha Schroeder & Britta Wöhrmann, *You Don't Have to Believe Everything You Read: Background Knowledge Permits Fast and Efficient Validation of Information*, 96 J. PERSONALITY & SOC. PSYCH. 538 (2008) [hereinafter Richter et al., *You Don't Have to Believe Everything You Read*]; Chris N. H. Street & Daniel C. Richardson, *Descartes Versus Spinoza: Truth, Uncertainty, and Bias*, 33 SOC. COGNITION 227 (2015).

91. Brashier & Marsh, *Judging Truth*, *supra* note 90, at 501–502.

92. Donald L. Ferrin et al., *Silence Speaks Volumes: The Effectiveness of Reticence in Comparison to Apology and Denial for Responding to Integrity- and Competence-Based Trust Violations*, 92 J. APPLIED PSYCH. 893, 896 (2007). See also Stephan Lewandowsky et al., *Misinformation and Its Correction: Continued Influence and Successful Debiasing*, 13 PSYCH. SCI. PUB. INT. 106, 112 (2012) [hereinafter Lewandowsky et al., *Misinformation and Its Correction*] (“Although suspension of belief is possible,

true.⁹³ A bias toward truth is also adaptive given that most routine information that people encounter is true.⁹⁴ Thus, it generally makes sense for people to default to believing that information is true and then to update their beliefs as necessary.

Truth bias may be particularly prevalent when observers do not have any “validity-relevant background information” that would lead them to question the information presented.⁹⁵ But there can also be a bias toward truth when information is presented as uncertain, or even when it is presented as false. Of particular relevance in the context of reported settlements is research that has found that people do not always clearly distinguish between certain and uncertain information presented in news articles.⁹⁶ And even when the initial information is labeled as potentially false or later determined to be false, truth bias can occur and persist.⁹⁷ Exposure to a particular story, for

it seems to require a high degree of attention, considerable implausibility of the message, or high levels of distrust at the time the message is received. So, in most situations, the deck is stacked in favor of accepting information rather than rejecting it.”)

93. H.P. Grice, *Logic and Conversation*, in SYNTAX AND SEMANTICS: SPEECH ACTS 41, 45–46 (P. Cole & J. Morgan eds., 1975).

94. Brashier & Marsh, *Judging Truth*, *supra* note 90, at 501 (“From a Bayesian perspective, it is rational to assume that incoming information is true and then to revise in light of new evidence.”).

95. Richter et al., *You Don’t Have to Believe Everything You Read*, *supra* note 90. In contrast, when circumstances highlight the potential for deception, the default can switch to an expectation of falsity. See, e.g., Christian A. Meissner & Saul M. Kassir, “He’s Guilty!”: Investigator Bias in Judgments of Truth and Deception, 26 L. & HUM. BEHAV. 469 (2002). But see Chris N.H. Street & Daniel Richardson, *Lies, Damn Lies, and Expectations: How Base Rates Inform Lie-Truth Judgments*, 29 APPLIED COGNITIVE PSYCH. 149 (2015) (finding that beliefs about the base rate of lies influenced truth judgments, but truth bias later returns and holds sway).

96. Nathalie Blanc, Jennifer J. Stiegler-Balfour & Edward J. O’Brien, *Does the Certainty of Information Influence the Updating Process? Evidence from the Reading of News Articles*, 48 DISCOURSE PROCESSES 387, 400–01 (2011).

97. See Ulrich K.H. Ecker et al., *The Effects of Subtle Misinformation in News Headlines*, 20 J. EXPERIMENTAL PSYCH.: APPLIED 323 (2014) [hereinafter Ecker et al., *The Effects of Subtle Misinformation*]; Hollyn M. Johnson & Colleen M. Seifert, *Sources of the Continued Influence Effect: When Misinformation in Memory Affects Later Inferences*, 20 J. EXPERIMENTAL PSYCH.: LEARNING, MEMORY, & COGNITION 1420, 1427 (1994); Lewandowsky et al., *Misinformation and Its Correction*, *supra* note 92, at 112; Lee Ross et al., *Perseverance in Self-Perception and Social Perception: Biased Heuristic For Judging Frequency and Probability*, 32 J. PERSONALITY & SOC. PSYCH. 880, 881 (1975); Lee Ross et al., *Social Explanation and Social Expectation: Effects of Real and Hypothetical Explanations On Subjective Likelihood*, 35 J. PERSONALITY & SOC. PSYCH. 817, 818 (1977); Elaine Walster et al., *Effectiveness of Debriefing Following Deception Experiments*, 6 J. PERSONALITY & SOC. PSYCH. 371, 371 (1967); Daniel M. Wegner et al., *The Transparency of Denial: Briefing in the Debriefing Paradigm*, 49 J. PERSONALITY & SOC. PSYCH. 338, 340 (1985) [hereinafter Wegner et al., *The Transparency of Denial*]. See also Gilbert, *How Mental Systems Believe*, *supra* note 90; Emily Thorson, *Belief Echoes*, 33 POL. COMM. 460 (2016).

example, can lead to the search for information that would confirm that possibility—*confirmation bias*.⁹⁸ And the more times that a claim is repeated, the more true it seems—a phenomenon known as *illusory truth*.⁹⁹

The potential implications of truth bias in the context of legal decision making are significant. In the case of lay legal observers—that is, jurors and other members of the public—consider the frequency with which they are assailed with factual claims in the form of allegations, complaints, and testimony. Truth bias research suggests that these claims are more likely than not to be believed, and once believed, they are difficult to dislodge. One study puts some of the potential danger of truth bias in stark relief, finding no differences in the moral judgments that lay people made of conduct underlying an indictment as compared to that underlying a conviction.¹⁰⁰

Given the psychological tendency for people to believe claims made, how can defendants avoid the inference of responsibility or wrongdoing, especially when they have agreed to settle a case rather than litigate the claims? People tend to have a psychological preference for consistency, making it challenging to revise their understanding of an event.¹⁰¹ The initial information that is presented forms the foundation of the observer's mental model of the event.¹⁰² Revising or replacing that information in the model takes cognitive effort. The initial information constrains the interpretation of new information, which is processed and understood in relation to that initial foundation.¹⁰³

98. See, e.g., Gilbert, *How Mental Systems Believe*, *supra* note 90, at 115.

99. Brashier & Marsh, *Judging Truth*, *supra* note 90, at 503. See, e.g., Christian Unkelbach et al., *Truth by Repetition: Explanations and Implications*, 28 CURR. DIR. PSYCH. SCI. 247, 252 (2019). See also Kimberlee Weaver et al., *Inferring the Popularity of an Opinion from Its Familiarity: A Repetitive Voice Sounds Like a Chorus*, 92 J. PERSONALITY & SOC. PSYCH. 821, 831 (2007) (finding that repetition of an opinion leads perceivers to believe the opinion is more widespread).

100. Avital Mentovich & Maor Zeev-Wolf, *Law and Moral Order: The Influence of Legal Outcomes on Moral Judgments*, 24 PSYCH. PUB. POL'Y & L. 489, 498 (2018) (“These findings may also suggest that people judge indictment and conviction in the same manner. Unlike the legal doctrine of innocent till proven otherwise, people see those under indictment as immoral till proven otherwise.”). See generally Elinor Amit et al., *Outsourcing Moral Judgment* (Sept. 5, 2018) (unpublished manuscript) (on file with author). See also Nicholas Scurich & Richard S. John, *Jurors' Presumption of Innocence*, 46 J. LEG. STUD. 187 (2017).

101. Brashier & Marsh, *Judging Truth*, *supra* note 90, at 501.

102. Lewandowsky et al., *Misinformation and Its Correction*, *supra* note 92, at 114.

103. Ecker et al., *The Effects of Subtle Misinformation in News Headlines*, *supra* note 97, at 332; Wegner et al., *The Transparency of Denial*, *supra* note 97, at 339 (“On encountering denied information, the person typically has that information available

Settling defendants often try to mitigate the damage by loudly and vehemently denying the plaintiff's claims, as they did in the Teshome Campbell case. A denial, however, is "processed as an addendum" to the original information, meaning that the denial is not likely to completely erase the initial impression made by the allegations.¹⁰⁴ On top of that, to deny an allegation, the defendant often has to *repeat* that allegation—even if only to deny it. But, as we saw above, repetition tends to make things seem more true.¹⁰⁵ The denial could therefore go beyond ineffectiveness; it could actually make things worse. And, of course, observers may be skeptical of the denial itself, viewing it as self-serving and questioning its credibility. All of this means that denials face an uphill battle. It is difficult to dislodge the beliefs created by the allegations and the settlement.¹⁰⁶

In the context of settlement, truth bias and the difficulty of countering initial impressions with denials paint a grim picture for defendants, and that picture frames this Article's predictions. The literature described above suggests that people will infer a degree of responsibility on the part of a defendant who is accused of wrongdoing. Even bare allegations in a complaint may convey some degree of responsibility. When cases settle, the allegations are likely to be repeated, even if the defendant denies their substance. Both the initial allegations and the repetition should therefore lead observers to infer—at least to some degree—that the allegations are true. Moreover,

for processing despite the denial. This is because people, unlike computers, have no 'reset button' that can completely eradicate memory. Rather, people process information cumulatively, always adding to their store of knowledge, and cannot use one item of information to delete another." See also Brashier & Marsh, *Judging Truth*, supra note 90, at 507 ("The trouble is that people concurrently store corrections and the original misinformation, as indicated by activity in the left angular gyrus and bilateral precuneus; the newer correction is forgotten at a faster rate than the older misconception."); Michael Koller, *Rebutting Accusations: When Does It Work, When Does It Fail?*, 23 EUR. J. SOC. PSYCH. 373, 385 (1993).

104. Wegner et al., *The Transparency of Denial*, supra note 97, at 340 ("Far from erasing an impression, then, a denial accompanies an impression."). See also Daniel M. Wegner et al., *Incrimination Through Innuendo: Can Media Questions Become Public Answers?*, 40 J. PERSONALITY & SOC. PSYCH. 822, 824–25 (1981) (finding that a denial/negation headline (e.g., "Bob Talbert Not Linked to Mafia") resulted in more negative perceptions of a target).

105. Lewandowsky et al., *Misinformation and Its Correction*, supra note 92, at 115.

106. On the debunking of misinformation, see generally Man-pui Sally Chan et al., *Debunking: A Meta-Analysis of the Psychological Efficacy of Messages Countering Misinformation*, 28 PSYCH. SCI. 1531 (2017); JOHN COOK & STEPHEN LEWANDOWSKY, *THE DEBUNKING HANDBOOK* (2011); Lewandowsky et al., *Misinformation and Its Correction*, supra note 92.

a defendant's willingness to settle the claims may itself be interpreted as confirming the allegations, amplifying the tendency to accept the allegations as true. In general, then, one would expect observers to attribute some degree of responsibility to named defendants, whether they are the subject of allegations, have settled their case, or have been found responsible by a factfinder, and we would expect denials to be largely ineffective. The open question, however, is the relative attribution of responsibility, i.e., whether settlements convey more or less information about responsibility than allegations, complaints, or verdicts.

B. *Individuals versus Institutions*

Settling parties, like litigants more generally, each have their own characteristics. A nuanced understanding of perceptions of settlement will reflect both the mechanics of settlement and the real-world mix of settling parties, taking into account how perceptions may differ across different types of parties. Socioeconomic factors, such as wealth and the relative status of the parties, as well as race, gender, and age, all likely influence the attributions and inferences that people make after a settlement. Rather than attempt to pull apart all such factors at the outset, however, we begin with a more structural difference: the distinctions between individuals and institutions as parties to the suit.

Many different types of institutions may become parties to a legal dispute. These institutions may be business organizations, such as a corporation, or other entities, such as a governmental agency or department. A key aspect, however, is that the institutions do not act directly, but rather must act through employees or members. This distributed responsibility means that the attribution of institutional guilt or fault for a particular act is likely to be more complicated than an analogous attribution of individual responsibility for one's actions. Indeed, attributions of motive or intent are necessarily less straightforward when assessing the actions of an institution, because there is no single individual mind to contemplate.¹⁰⁷

Prior research supports the idea that attributions differ between individual and institutional parties, at least when it comes to jurors

107. See, e.g., Steven J. Sherman & Elise J. Percy, *The Psychology of Collective Responsibility: When and Why Collective Entities Are Likely To Be Held Responsible For the Misdeeds of Individual Members*, 19 J. L. & POL'Y 137 (2010); Tom R. Tyler & Avital Mentovich, *Punishing Collective Entities*, 19 J.L. & POL'Y 203 (2010).

judging defendants who are individuals versus companies.¹⁰⁸ People tend to be largely supportive of the aims of American business and extremely concerned about the potential negative effects of excessive litigation on business corporations. At the same time, they hold corporate defendants to more exacting standards compared to individual litigants, and expect businesses to exhibit a high degree of care for workers and consumers.¹⁰⁹ Jurors expect companies to be better able to capitalize on the expertise of their employees and their organizational advantages to anticipate problems.¹¹⁰ They, therefore, tend to find companies more responsible for the same conduct than they do individuals.¹¹¹ Lay perceptions of settling institutions may mirror this pattern.

C. *Criminal versus Civil*

It is useful to note the range of domains in which negotiated resolutions are the norm, particularly when assessing the predominance of settlement in the U.S. legal system across subject matters and contexts. As noted above, agreements to resolve cases—i.e., settlements—are prevalent in the criminal context and take a few forms. Plea agreements are ubiquitous, and non-prosecution or deferred prosecution agreements have emerged as a common resolution of matters brought against institutional defendants or targets.¹¹² To this extent, then, the use of settlement characterizes both criminal and non-criminal contexts.

108. Valerie P. Hans, *The Illusions and Realities of Jurors' Treatment of Corporate Defendants*, 48 DEPAUL L. REV. 327, 327-28 (1999) [hereinafter Hans, *Illusions and Realities*]. See also Valerie P. Hans, *Attitudes Toward Corporate Responsibility: A Psycholegal Perspective*, 69 NEB. L. REV. 158, 167, 170 (1990) (describing public attitudes toward business as “complex and multidimensional” that reflect a “curious schizophrenia”).

109. *Id.*

110. *Id.*

111. Hans, *Illusions and Realities*, *supra* note 108, at 335–36; Valerie P. Hans & M. David Ermann, *Reponses to Corporate Versus Individual Wrongdoing*, 13 LAW & HUM. BEHAV. 151, 151 (1989). These differences do not appear to be a “deep-pockets” effect. See Hans, *Illusions and Realities*, *supra* note 108, 163-64; Robert J. MacCoun, *Differential Treatment of Corporate Defendants by Juries: An Examination of the “Deep-Pockets” Hypothesis*, 30 LAW & SOC'Y REV. 121, 121 (1996); see also Thomas R. Shultz et al., *Assigning Vicarious Liability*, 17 EUR. J. SOC. PSYCH. 377, 377 (1987). There is also no evidence that jurors' judgments differ from those of judges or that jurors are more pro-plaintiff in cases with corporate defendants than in cases with individual defendants. Hans, *Illusions and Realities*, *supra* note 108, at 342.

112. Cindy R. Alexander & Mark A. Cohen, *The Evolution of Corporate Criminal Settlements: An Empirical Perspective on Non-Prosecution, Deferred Prosecution, and Plea Agreements*, 52 AM. CRIM. L. REV. 537, 587 tbl.12 (2015); see also *supra* notes 33–44.

There are, however, important differences among domains,¹¹³ particularly between criminal cases and civil actions. The consequences of settlement across the two settings, for one thing, are starkly different. Criminal consequences, including deprivation of physical liberty, likely shape views of the reasons defendants might agree to settle and even whether negotiated resolutions are appropriate at all.

Another aspect of the difference between agreements to resolve criminal cases and those to resolve civil cases is in the specific content of the agreement. Defendants who enter agreements to resolve a criminal case are almost uniformly required to admit wrongdoing, regardless of whether the resolution takes the form of a plea, non-prosecution, or deferred prosecution agreement.¹¹⁴ One reason to require explicit admission of wrongdoing in the criminal context is the concern with bolstering the legitimacy of a condemnatory action that is not based on a jury's finding.¹¹⁵

It is worth mentioning the interstitial case of civil government enforcement agencies, such as the enforcement arms of the SEC or the Federal Trade Commission. These settlement policies straddle the criminal and private-litigant civil models, with intermittent policy debates about whether these civil enforcement settlements must include admissions.¹¹⁶

Even in the criminal context, attributions of guilt and their relation to negotiated resolutions may not be obvious without more inquiry. Thus, each domain presents additional possibilities for this research. Take, for example, the intriguing finding of a study that those who pled guilty to criminal charges were perceived as somewhat guiltier than those convicted based on proof beyond a reasonable doubt at trial.¹¹⁷ The conclusion is not necessarily that these contexts will have predictably differing outcomes, but rather that these important differences are worthy of further attention.

113. See e.g., Jolly & Prescott, *supra* note 16, at 1049–50.

114. Samuel W. Buell, *Liability and Admissions of Wrongdoing in Public Enforcement of Law*, 82 U. CIN. L. REV. 505, 506–08 (2018); Brandon L. Garrett, *Corporate Confessions*, 30 CARDOZO L. REV. 917, 921–22 (2008). An exception is the *Alford* plea with which a defendant simultaneously pleads guilty and maintains innocence. *North Carolina v. Alford*, 400 U.S. 25 (1970). *Alford* pleas, however, are generally disfavored. See Buell, *supra* note 115, at 507. See generally Allison D. Redlich & Asil Ali Özdoğru, *Alford Pleas in the Age of Innocence*, 27 BEHAV. SCI. & L. 467 (2009).

115. Redlich & Özdoğru, *supra* note 114, at 487.

116. See Winship & Robbennolt, *supra* note 41, at 1082.

117. Sutherland et al., *supra* note 81.

IV. STUDY ONE: SURVEY OF PERCEIVED REASONS FOR SETTLEMENT

Little is known about public perceptions of settlement and what lay people think motivates parties to settle. Although the legal and psychological literatures provided us with some hypotheses,¹¹⁸ we began with a deceptively simple method of finding out what people think: we asked them. More precisely, in Study One, we provided lay participants with one of several realistic examples of settlement, in the form of a mock news article, and then asked them to provide likely reasons that each party to the case might have had for settling.

To create the articles that were used in this survey, we drew on a variety of actual cases covered in local and national news outlets. Media descriptions of settlements are likely to be a common source of information for the public, and they vary widely in terms of detail and perspective.

To reflect the wide variety of situations in which settlements may come to the public's attention, we drafted five different news articles, each covering a different legal context. The first article described an SEC enforcement action,¹¹⁹ the second described a criminal case against an individual,¹²⁰ the third was a prototypical personal injury case,¹²¹ the fourth was a suit alleging excessive force against a police department,¹²² and the last case was a workplace

118. See *supra* Part III.

119. See *infra* Appendix, Scenarios and Questions, Study One. Draft news article was based on SEC Charges Certified Public Accountant with Insider Trading, Litigation Release No. 24240, SEC. & EXCH. COMM'N (Aug. 21, 2018), <https://www.sec.gov/litigation/litreleases/2018/lr24240.htm> [<https://perma.cc/EFH8-F54K>].

120. See *infra* Appendix, Scenarios and Questions, Study One. Draft news article was based on Joe Marusak, *Charlotte Man Scammed Hundreds of Computer Users Through 'Tech-Support' Scam, Feds Say*, CHARLOTTE OBSERVER (Mar. 21, 2019, 5:44 PM), <https://www.charlotteobserver.com/news/local/.html> [<https://perma.cc/LAS9-7Q5K>].

121. See *infra* Appendix, Scenarios and Questions, Study One. Draft news article was based on Jessica James, *Lorain Driver Charged for Death of 38-Year-Old*, THE MORNING JOURNAL (Apr. 5, 2013), https://www.morningjournal.com/news/lorain-driver-charged-for-death-of-38-year-old/article_75ec3f55-9c71-5a9c-9843-1be62b9be221.html; *Wade v. Mancuso*, 2018-Ohio-1563, 111 N.E.3d 575 (Ohio Ct. App. 2018), *appeal denied*, 2018-Ohio-3450, 106 N.E.3d 65 (Ohio 2018).

122. See *infra* Appendix, Scenarios and Questions, Study One. Draft news article was based on Betty Simpson, *Lawsuit Filed Against City & 2 Police Officers*, WCIA.COM (May 29, 2018, 9:05 PM), <https://www.wcia.com/news/local-news/lawsuit-filed-against-city-2-police-officers/> [<https://perma.cc/UZQ9-93UY>].

sexual harassment complaint.¹²³ Once our participants had generated their own description of possible reasons for the settlement described, we also asked them to rate some inferences that we had generated.

It should be noted that we designed this survey to be descriptive rather than to test any particular hypotheses. The stories and the hypothetical underlying cases were not intended to be directly comparable, except that they each described a settlement. Instead, the responses we gathered paint a rich and intriguing initial picture of lay perceptions of settlement.

A. *Methods*

We recruited 278 adult participants through Amazon's Mechanical Turk platform to review the five stories we created, aiming to have at least 50 participants assigned to each story.¹²⁴ We excluded 13 (5%) of them for failing an attention check.¹²⁵ The remaining 265 participants ranged in age from 18 to 71 ($M = 38$).¹²⁶ They received \$1.00 for participating.

Each participant saw one of five short news articles, randomly assigned, reporting that a legal case had settled. As noted above, the

123. See *infra* Appendix, Scenarios and Questions, Study One. Draft news article was based on Ronan Farrow, *Les Moonves and CBS Face Allegations of Sexual Misconduct*, NEW YORKER (July 27, 2018), <https://www.newyorker.com/magazine/2018/08/06/les-moonves-and-cbs-face-allegations-of-sexual-misconduct> [https://perma.cc/J45S-TTUW].

124. For a general review of Mechanical Turk as a tool for this sort of research, including its limitations, see, e.g., Herman Aguinis et al., *M Turk Research: Review and Recommendations*, 47 J. MGMT. 823 (2021). We used CloudResearch (formerly TurkPrime) to administer the survey. See generally Lieb Litman et al., *Turk-Prime.com: A Versatile Crowdsourcing Data Acquisition Platform for the Behavioral Sciences*, 49 BEHAV. RES. METHODS 433 (2017).

125. Because Mechanical Turk participants may complete our surveys from any location and at any time, we are aware that they may be rushed or distracted by any number of factors external to our research. So-called "attention check" questions are included to measure only whether the participants are carefully reading, providing a minimal level of quality assurance. See generally Joseph K. Goodman et al., *Data Collection in a Flat World: The Strengths and Weaknesses of Mechanical Turk Samples*, 26 J. BEHAV. DEC. MAKING 213 (2013) [hereinafter Goodman et al., *Data Collection in a Flat World*].

126. 61% identified as male; 37% as female; 3 (1%) as "other"; and 2 (<1%) did not respond. We provide these and other descriptive statistics to give a sense of the sample population. We had no *a priori* reason to look for systematic relationships between these demographic characteristics and the responses, and we did not do so. The responses are necessarily idiosyncratic to our sample, and we make no claims about their application to the general population; the purpose of this survey was to gather illustrative viewpoints.

cases were designed to be examples of a variety of different types of cases that might be settled. The cases were:

- A case brought against an accountant by the SEC for alleged insider trading (“SEC,” $n = 50$);
- A criminal case brought against an individual for several counts of computer crime related to an alleged tech support fraud scheme (“Crime,” $n = 52$);
- A civil wrongful death case brought against the driver of a car that hit and killed a pedestrian (“Tort,” $n = 57$);
- A civil case brought against a police officer and the city alleging excessive use of force, false arrest, malicious prosecution, and intentional infliction of emotional distress (“Police,” $n = 51$); and
- A lawsuit, filed by a former employee against a television station, related to allegations of sexual harassment by the station manager (“#MeToo,” $n = 55$).

After reading the story, participants were asked to indicate the extent to which they agreed or disagreed with four items assessing their views of the defendant’s responsibility for the alleged wrongdoing (e.g., “[The defendant] probably did engage in [the alleged wrongdoing].” “[The defendant] is probably *not* at fault for what happened in this case.” “I think [the defendant] is innocent.” “Sometimes things like this just happen, and no one is really to blame.”)¹²⁷ Higher numbers on a scale constructed from these items indicate more responsibility attributed to the defendant.

Participants were also asked to describe in their own words why they thought the defendant and the plaintiff, agency, or prosecutor in the case had each agreed to settle the case. These open-ended responses were coded by two independent coders into themes defined by common ideas among the responses. Disagreements were resolved via discussion with one of the authors.

Finally, participants were asked to indicate the extent to which they agreed or disagreed with six possible reasons that the defendant might have settled the case (i.e., (1) he wanted to avoid harsher consequences, (2) he was pressured into agreeing, (3) he was told to settle by his lawyers, (4) he saw it as a way to move on from the situation, (5) he believed that it would be less costly than contesting

127. These items were measured on 7-point Likert scales ranging from strongly disagree to strongly agree. Responses to these items loaded onto a single factor accounting for 67% of the variance (all factor loadings > .64) and were averaged to give a composite measure of responsibility ($\alpha = .83$).

the allegations at trial, or (6) he was afraid he would lose at trial). Each item was rated on a 7-point Likert scale ranging from strongly disagree to strongly agree.¹²⁸

B. Results

On average, across all five stories, participants' scale ratings showed that they tended to agree that the defendant was responsible or guilty; in other words, they attributed responsibility to the defendant.¹²⁹ Moreover, participants attributed responsibility to the defendant in each of the five settlement scenarios.¹³⁰

Survey respondents also described in their own words why they thought the parties settled. Coders classified these descriptions into several broad categories; Table 1 displays these categories. Many responses fell into more than one category, but overall, the most common reasons that participants ascribed to the defendant were: (1) that the defendant was responsible for the underlying conduct or harm (29%); (2) that the defendant was worried about the evidence and the risk of losing (27%); (3) that the defendant wanted to minimize the harshness of any consequences (27%); and (4) that the defendant wanted to minimize negative publicity or harm to reputation (27%). Also common was the belief that not settling would have resulted in lengthy, expensive, and more difficult litigation (14%).

As noted above, the classifications were not mutually exclusive, and they overlapped significantly. Concerns about the risk of losing were often connected to attributions of responsibility or guilt. As one participant noted, "the evidence shows his guilt. If he actually was innocent then he probably didn't want to deal with the gamble that is court." There were similar connections when participants identified concerns about minimizing punishment ("To avoid harsher penalties if the case went to trial. It seems like he was guilty of insider trading and was trying to get the best outcome he could.").

Other reasons for settling were also attributed to the defendant, but less frequently and only in some of the scenarios. The defendant's desire to end the case and move on or avoid the stress of trial was

128. The full text of the scenarios and the questions are provided in the Appendix.

129. See *infra* Appendix, Table A1. The overall mean of 5.02 was significantly higher than the midpoint of the scale (4 = neither agree nor disagree), $t(264) = 12.43$, $p < .001$. Each individual item also indicated attributions of responsibility to the defendant. Did it/was responsible, $t(264) = 15.60$, $p < .01$; things just happen/not to blame, $t(264) = -5.84$, $p < .01$; defendant not at fault, $t(264) = -10.20$, $p < .01$; defendant innocent, $t(264) = -10.67$, $p < .01$.

130. SEC, $t(49) = 5.79$, $p < .01$; Tort, $t(56) = 2.32$, $p = .02$; Police, $t(50) = 4.20$, $p < .01$; #MeToo, $t(54) = 6.23$, $p < .01$; Crime, $t(51) = 11.85$, $p < .01$.

raised in the tort (15%) and #MeToo cases (21%). The fear that failing to settle would result in additional (and unwelcome) investigation arose in several of the cases, but most prominently in the police use of force case (17%). A small handful of participants pointed to the role of lawyers (3%) or insurance (1%). Others, but very few and only in the police and #MeToo cases, noted that settlement is the routine way in which cases are resolved. And some participants, particularly in the tort case, noted that the defendant may have felt bad for what happened (19%). Examples of each category can be found in Table 2.

TABLE 1. REASONS WHY DEFENDANT MIGHT HAVE SETTLED

	Overall	Tort	Crime	SEC	Police	#MeToo
Defendant was responsible	29%	29%	22%	43%	37%	15%
Worried about risk of losing/evidence	27%	38%	35%	26%	22%	13%
Minimize punishment/payout	27%	13%	54%	45%	17%	6%
Publicity/Reputation	27%	10%	7%	12%	39%	68%
Cost/time/difficulty of trial	14%	19%	17%	7%	12%	15%
Desire to move on/get it over with/avoid stress	7%	15%	--	--	--	21%
Forestall further investigation	6%	4%	7%	--	17%	4%
Remorse	5%	19%	2%	--	2%	--
Advice of lawyer	3%	10%	4%	--	--	--
Covered by insurance	1%	4%	--	--	--	--
Routine	1%	--	--	--	2%	4%

Note. Percentage of respondents who gave a codable response. Categories are not mutually exclusive. Percentages can, therefore, sum to more than 100%.

TABLE 2. EXAMPLES OF PERCEIVED REASONS FOR DEFENDANT TO SETTLE

Defendant was responsible	<ul style="list-style-type: none"> ● I think he settled the case because he was guilty and he knew it. (Crime) ● Because they're guilty; otherwise they wouldn't have a reason to do it. (Police Use of Force) ● [The accused] was guilty, so they paid her to go away. (#MeToo) ● He was mostly likely at fault. (Tort) ● Because he is guilty. (SEC)
Worried about risk of losing/evidence	<ul style="list-style-type: none"> ● The evidence shows his guilt. If he actually was innocent then he probably didn't want to deal with the gamble that is court. (SEC) ● There was probably enough evidence to find him at fault. (Tort) ● [H]e didn't want to take the risk of going to trial. Whether you are guilty or innocent, you can still lose a trial. It's a big risk. He probably got an offer that he was more comfortable with paying rather than going to trial. (Tort) ● It seems the evidence against [him] is quite damning, and it would be difficult for him to dispute the allegations. (SEC) ● Because they knew they couldn't win. (Police) ● He took the deal because there was a good chance he'd be found guilty in court. (Crime) ● [T]here was likely enough evidence that pointed towards guilt. (#MeToo)
Minimize punishment/payout	<ul style="list-style-type: none"> ● He probably got a deal or a lighter sentence or punishment if he pleaded guilty. Had it gone to a trial by jury, his sentence might have been more severe. (Crime) ● To avoid harsher penalties if the case went to trial. It seems like he was guilty of insider trading and was trying to get the best outcome he could. (SEC) ● They . . . didn't want to lose potentially tens of millions of dollars. (Police) ● I think they wanted to avoid going to trial on the lawsuit because of . . . the strong possibility that the damages would be greater in the lawsuit than if they settled out of court. (#MeToo) ● He was afraid that a jury would award the plaintiff with substantially more money than the settlement does. (Tort)
Publicity/Reputation	<ul style="list-style-type: none"> ● They wanted to save face in the eyes of the media. They didn't want to tarnish their reputation. (#MeToo) ● He might have settled because he didn't want to go through the public spectacle of a lawsuit. (Tort) ● Probably to try and sweep the issue under the rug and get it over with/out of the media cycle as soon as possible. (SEC) ● I'm thinking it's because he didn't want any bad publicity for his company. He also might not want any publicity snooping into her personal life as well. (Crime) ● I think that the city wanted to settle it as quick as possible so to cover them and not let more bad press come out. (Police Use of Force)

Cost/time/difficulty of trial	<ul style="list-style-type: none"> ● Economically speaking, it's often cheaper to settle, than engage in a long, protracted jury trial. (#MeToo) ● The legal fees would have been more costly taking this to court, than simply reaching an agreement. (SEC) ● It was cheaper than going to court. (Tort) ● Fighting the charges alone might have also been very expensive. (Crime) ● I think that the city chose to settle this case out of court because it would cost them a lot less money, would not go public, or get as much publicity as it would had it gone to trial. (Police Use of Force)
Desire to move on/get it over with/avoid stress	<ul style="list-style-type: none"> ● Killing someone accidentally must [weigh] heavily on a person, I imagine that the driver just wanted to get the situation behind him and move on with his life. (Tort) ● They also want to get past it and just proceed being a company and not have to spend time in court and paying for lawyers and stuff. (#MeToo)
Forestall further investigation	<ul style="list-style-type: none"> ● They wanted to avoid a lengthy trial that could expose more of their wrongdoings. (Crime) ● I think they may have been covering up further victims and just wanted to get it over with so they wouldn't have to deal with this issue any longer. They could have been hiding something bigger as crooked as they are in this case. (#MeToo) ● He wanted to avoid investigation into questionable decisions he made. (Tort) ● The city settled the case because it did not want a lengthy investigation into its policing procedures and practices. (Police Use of Force)
Remorse	<ul style="list-style-type: none"> ● [H]e wanted to relieve some feelings of guilt. (Tort) ● I am sure he also felt horrible about hitting the pedestrian. (Tort)
Advice of lawyer	<ul style="list-style-type: none"> ● He settled the case more than likely because his lawyer told him it would be in his best interest to do so. [The defendant] more than likely had a lawyer whose job is to instruct him on the best legal advice for him to stay out of trouble. (Tort) ● I believe that [the defendant] settled the case based on legal advice he probably received. (Crime)
Covered by insurance	<ul style="list-style-type: none"> ● I would assume that the insurance company would have settled. (Tort)
Routine	<ul style="list-style-type: none"> ● This is how usually large corporation go about when there's lawsuits against. (#MeToo) ● Most municipalities will settle. (Police Use of Force)

While most of the comments about the defendant’s responsibility reflect the assumption that the defendant was responsible, there were a few exceptions. One participant wrote: “I don’t believe it proves that he did it. He may have done it, but I would want to know more details before I drew a conclusion” (#MeToo). Another noted

that “[t]he settlement amount was not given, so the mere fact that they settled provides almost zero information” (Police).

When asked to rate the extent to which they agreed with several provided reasons for settling, participants agreed that each was a probable reason for settling (Table 3).¹³¹ Of this set of reasons, avoiding harsher consequences was rated as the most probable reason for the defendant to settle.

TABLE 3. RATINGS OF POSSIBLE REASONS FOR DEFENDANT TO SETTLE

	Overall	Tort	Crime	SEC	Police	#MeToo
Avoid harsher consequences	6.03	5.70	6.33	6.14	6.02	5.98
Less costly	5.90	5.70	6.12	5.82	5.86	6.00
Is a way to move on	5.88	5.86	5.62	5.74	5.98	6.16
Afraid would lose at trial	5.79	5.79	6.15	5.86	5.76	5.42
Lawyers advised to settle	5.71	5.63	5.79	5.46	5.73	5.91
Pressured into settling	4.27	4.26	3.83	4.30	4.37	4.58

Note. Responses measured on a 1 to 7 scale. Higher numbers indicate more agreement. Ordered by agreement overall/across scenarios.

Table 4 displays the reasons that participants generated for why the plaintiff, agency, or prosecutor might have settled each case. Overall, the most common reasons that participants ascribed to the plaintiff were that the plaintiff had obtained a satisfactory outcome through the settlement (32%) and that settling avoided lengthy, expensive, and more difficult litigation (31%). Also common was the belief that the plaintiff wanted to end the case and move on (20%) and that the plaintiff was worried about the risk of losing (19%). Other reasons for settling were attributed to the plaintiff, but less frequently and only in some of the scenarios. These included the plaintiff's desire to minimize publicity or harm to reputation (8%), to

131. Each reason was rated as being above the midpoint of our scale, indicating agreement. Avoid harsher consequences, $t(264) = 29.12, p < .001$; Less costly, $t(264) = 25.95, p < .001$; Move on, $t(264) = 27.87, p < .001$; Afraid lose, $t(264) = 23.60, p < .001$; Lawyer advice, $t(264) = 24.72, p < .001$; Pressured to settle, $t(264) = 2.69, p = .008$.

record a win or “close” the case (7%), or to avoid the need to relive painful events (6%). Examples of each category can be found in Table 5.

TABLE 4. REASONS WHY **PLAINTIFF/AGENCY/PROSECUTOR** MIGHT HAVE SETTLED

	Overall	Tort	Crime	SEC	Police	#MeToo
Satisfactory outcome	32%	42%	26%	21%	30%	38%
Cost/time/difficulty of trial	31%	17%	52%	44%	25%	19%
Desire to move on/get it over with	20%	35%	13%	5%	16%	28%
Worried about risk of losing	19%	27%	13%	14%	30%	11%
Publicity/Reputation	8%	2%	–	5%	2%	28%
Get a win/close the case	7%	–	24%	7%	5%	–
Avoid the stress of trial/Not want to relive the event	6%	8%	–	–	2%	19%
Need money now	2%	2%	–	2%	5%	–
Advice of lawyer	2%	2%	–	–	5%	2%
Routine	1%	–	2%	2%	–	–

Note. Percentage of respondents who gave a codable response. Responses not mutually exclusive. Percentages can, therefore, sum to more than 100%.

TABLE 5. EXAMPLES OF PERCEIVED REASONS FOR PLAINTIFF/AGENCY/
PROSECUTOR TO SETTLE

Satisfactory Outcome	<ul style="list-style-type: none"> • [I]t was the best possible deal. (Crime) • He was probably offered an adequate financial settlement. (Police Use of Force) • She was paid enough that she felt she received justice. (#MeToo) • I think [the defendant]'s family was satisfied with the settlement terms. (Tort) • [I]t was a good deal for them too. (SEC)
Cost/time/difficulty of trial	<ul style="list-style-type: none"> • They didn't want to drag the court case out for years and risk having to pay a lot in lawyer fees. (Tort) • They may have been better off settling than paying costs associated with the case. (SEC) • Logically settling the case is best for him instead of spending a lot of time and energy chasing [this] case. (Police) • The prosecutors probably agreed because they might not have wanted to spend the time, energy, and resources on a long drawn out trial. (Crime) • To avoid costly and lengthy legal proceedings. (#MeToo)
Desire to move on/get it over with	<ul style="list-style-type: none"> • Probably so they could move on to other cases. (Crime) • Just to get the case over with. (SEC) • [T]o get over with it and get on with life. (Police) • Maybe she wanted it to be over. (#MeToo) • They were grieving and wanted to put it behind them. (Tort)
Worried about risk of losing/evidence	<ul style="list-style-type: none"> • To force the case to trial could have jeopardized her chance at monetary compensation. (#MeToo) • Because they were scared of the case going wrong. (Tort) • [M]aybe because they didn't have enough evidence. (SEC) • They didn't want to take the chance of losing. (Crime) • Although he might have had a good case, you never know what can happen in a court case. (Police Use of Force)
Publicity/Reputation	<ul style="list-style-type: none"> • To avoid being in the media spotlight. (#MeToo) • To avoid a lot of publicity. (SEC) • Because they wanted . . . to avoid a public spectacle. (Tort) • To avoid . . . fame. (Police Use of Force)
Get a win/close the case	<ul style="list-style-type: none"> • The prosecutors agreed to the guilty plea because they get a win, their conviction rate goes up. (Crime) • Because they want a "win" and a settled case is considered a win. (SEC) • He is just glad to win and get a settlement. (Police Use of Force)
Not Want to Re-Live/ Trauma/Cross-Exam/ Stress	<ul style="list-style-type: none"> • It was less stressful to settle than to go to trial. (Crime) • [T]o avoid being made to testify and re-live any trauma. (#MeToo) • They felt that it was less tra[u]matic than having to go to trial. (Tort)

Need money now	<ul style="list-style-type: none"> ● [The plaintiff] likely agreed to the settlement because of a need for the money now. (Police Use of Force) ● The SEC likely agreed to the settlement so it could . . . receive some amount of money sooner rather than later from the reduced fine that it likely agreed to impose in exchange for [the defendant]’s guilty plea. ● They probably . . . needed the money. (Tort)
Advice of lawyer	<ul style="list-style-type: none"> ● Because . . . her lawyers advised her to. (#MeToo) ● [T]he attorney most likely advised that they were getting a good settlement. (Police Use of Force) ● [T]heir attorney probably recommended it. (Tort)
Routine	<ul style="list-style-type: none"> ● Prosecutors want to avoid trials at every opportunity. (Crime) ● I think they likely see similar case as this one regularly. So they applied the settlement because it is common to do so. (SEC)

C. Discussion

This broad survey provides an intriguing initial glimpse into how people might think about settlements across many different domains. The responses show a remarkable depth and variety of initial inferences about the parties, the cases, and the broader social contexts in which the cases may have arisen. However, even among all of this variety, we find commonalities. As discussed below, participants were remarkably willing to assume that the defendant was at fault, even as they acknowledged ways in which settlement might be efficient. The responses may also hint at some interesting contrasts among the cases, including some that we pursue in Study Two below.

Across the cases, attributions of responsibility to the settling defendant were common. On a scale in which higher numbers indicated greater attribution of responsibility to the defendant, when the different settings were viewed together, the overall mean attribution was significantly higher than the scale’s neutral midpoint. Respondents were often straightforward in pointing to this rationale. One respondent reacted to the criminal scenario with this comment: “I think he settled the case because he was guilty and he knew it.” In the tort context, one respondent said simply, “He was mostly likely at fault.”

Views of settlement were not only about attributing responsibility, though. Many participants suggested that the parties may have settled because they were satisfied with the proposed outcome, and many also noted the difficulties and potential costs of going to trial. In other words, like some of the cost-benefit models of settlement, these lay observers view a settlement as a potentially more efficient means of resolving a case.

As noted above, the scenarios used to represent different types of cases were not designed to be equivalent on any dimension other than the type of resolution, i.e., settlement, and comparisons between cases must be made with caution. Nonetheless, we observed a few interesting patterns when looking across scenarios. These patterns, in turn, suggest possible avenues for additional research on lay perceptions of settlement across a range of substantive legal areas, including criminal and civil contexts.

For example, we see some indications that individual defendants might be viewed differently than entities. Publicity was frequently given as a concern for the #MeToo defendant (68%). Publicity was also seen by many as a factor for the police department defendant (39%). Note that these are the only two defendants in our case set that are entities—a television station and a police department—rather than individuals. In addition, very few participants attributed settlement to routine practices, but when it came up, it was in relation to these entity defendants.¹³²

Second, some of the results suggest that context may influence people's views of settling parties. We found that the focus on mitigating punishment was particularly pronounced for the criminal defendant (54%) and the SEC target (45%) as compared to the other cases. With respect to beliefs about plaintiffs, the two governmental actors bringing cases—criminal prosecutors and the administrative agency (SEC)—were identified as wanting to close cases (24% and 7%, respectively) and as engaging in settlement as a routine matter. Although we framed one area of inquiry as the distinction between civil and criminal actions,¹³³ these examples suggest that it may also be useful to contrast government actions with private plaintiffs. Of course, it is also possible that participants viewed both the criminal case and the SEC case as fundamentally criminal in nature, although this does not track the legal powers of the SEC. This kind of confusion may be particularly likely in a scenario like the one we presented where the allegations were of insider trading, activity that can be pursued either criminally or civilly.

Finally, some views of the plaintiffs and their reasons for settling also seem to be particularized to the context in which the case arose. For example, remorse came up primarily regarding the tort case, a civil case with a private plaintiff (“I am sure he also felt horrible about hitting the pedestrian.”). This case was also the scenario in

132. See *supra* Table 1.

133. See *supra* Part III.C.

which the defendant might have been thought to have acted the least intentionally, a situation in which agent regret might be expected, regardless of fault, and a case which involved great harm (“Killing someone accidentally must [weigh] heavily on a person, [I] imagine that the driver just wanted to get the situation behind him and move on with his life.”) On the other hand, participants cited a concern for reputation or unwanted publicity (28%) and the potential trauma of going to trial (19%) most often for #MeToo plaintiffs.

V. STUDY TWO: A TORT SETTLEMENT EXPERIMENT

If our primary research question was simply whether or not people made inferences of responsibility or guilt in the wake of a settlement, then the above survey provides an answer: yes. This is both novel, in as much as public perceptions of settlement have been largely overlooked thus far, and somewhat unsurprising, given that people make attributions of guilt and responsibility in virtually every legal context. Nonetheless, as a first step this survey also provides us with encouraging evidence that people’s inferences from settlement go beyond a simple assumption that the settlement represents an admission of wrongdoing.

However, as we have already indicated, public perceptions of settlement are likely to vary systematically across different kinds of cases and contexts. Moreover, if the survey demonstrates that people will make inferences based on a settlement, it does nothing to show that the inferences made differ in any way from the inferences they might make following a bare allegation or even a legal judgment. If, as we contend, public perceptions of settlement are worthy of study in their own right, then a foundational question is whether settlement is in some way special; that is, we need to examine whether and how settlements are viewed differently from other outcomes.

The survey helped us identify several potential inferences that people might make across a variety of cases, and we turn next to a controlled experiment to begin to answer the question of what—if anything—makes settlement special. In our initial survey, the cases that participants read varied on several different dimensions, including the relevant substantive law, the nature and extent of the alleged harm, the identity of the plaintiff or complainant, and the identity of the defendant. Having made a broad initial inquiry across domains, we now focus on a single familiar context: a personal injury tort case. This particular context is a useful point of departure because it is both familiar and prototypical. Below, we describe the experimental

manipulations that we chose and report the method and results of this experiment.

A. *Experimental Design*

For the preliminary experiment reported here, our experimental manipulations were designed to mirror just a few of the broad structural and systemic ways in which tort cases like this one might vary. Our experimental design coincides with the three broad areas of inquiry described above:¹³⁴ settlements versus allegations and verdicts; individuals versus institutions; and criminal versus civil contexts.

1. *Settlement versus Allegations and Verdicts*

Our survey simply asked respondents for their reactions to a variety of cases that had settled. Because all of them involved settlement, the survey provided little information about the extent to which settlement differs from other resolutions or from mere allegations. For example, we note that many survey participants suggested that the defendant's feeling of responsibility may have driven them to settle, but it is not possible to say whether these ratings represent a greater or lesser degree of attributed responsibility than might be inferred from a jury verdict or even the mere filing of a complaint, because participants read only about settlement.

Therefore, we move from survey methods to experimental methods to help us tease out some of these implications. We randomly assigned MTurk participants to read one of several versions of the tort case, each varying only in how the case posture or outcome was described. In addition to the case that settled, we included a case that had been filed but not litigated, one in which a jury had heard the case and found for the plaintiff, and one in which a jury had found for the defendant.

By comparing the reactions of participants who read about settlement to those who read about a filed complaint or a jury verdict, we can isolate the effect of the settlement itself. If settlement is viewed as simply an efficient means to resolve a suit, we might expect to see that participants do not treat settlement differently than they treat a filed complaint. Under this view, the fact that a case settled provides no additional information about fault. On the other hand, if settlement is viewed as either an admission of responsibility or as a reflection of the strength of the plaintiff's evidence, then participants might not distinguish between a settlement and a verdict in favor of

134. *See supra* Part III.

the plaintiff. Finally, if settlement is viewed as a surrender by the plaintiff or a sign of weakness in the underlying case, responses to it might look like those to a jury verdict in favor of the defendant.

In part because it reflects variations found in current settlement practices, we differentiated between scenarios that report settlements containing denials and those that report just the fact the case was settled. As noted above, denial is unlikely to erase the initial impression made by the allegations and, by repeating the allegation, may even reinforce the assumption of truth.¹³⁵ Accordingly, we predicted that participants in the tort experiment would report little to no difference between a settlement with a denial and a settlement with no additional information.

2. *Individuals versus Institutions*

We also hypothesized that, when there is a settlement, people might make systematically different inferences about the motives of a corporate defendant than they do about an individual one. As we noted above, though it did not come up often, our survey participants seemed more inclined to cite the advice of lawyers or to attribute a settlement to routine practice when the defendant (or the plaintiff) was an institution.¹³⁶ Experimentally manipulating the defendant's status allows us to test whether that apparent pattern holds up when other aspects of the cases are held constant. In the context of the tort scenario that we used, this meant varying whether the defendant was an individual truck driver or a trucking company that employed the driver.

3. *Criminal versus Civil*

By design, the experiment reported here drills down on a single, civil context, that of a tort. This type of targeted study allows for a more detailed look at perceptions of settlement in a focused way. It is also a necessary first step toward comparisons among the different contexts, including the potentially significant divide between how people react to resolution by agreement in the criminal versus the civil context.

We look for the effects of settlement on several key measures, first by asking participants to rate the degree to which the defendant was responsible for the plaintiff's injuries. We also asked them to rate the extent to which they believed the parties were motivated to settle

135. See *supra* notes 104–106.

136. See *supra* Part IV.C.

by a variety of reasons we provided; these were drawn from the open-ended responses to our initial survey. We then asked participants to judge the character of the plaintiff and the defendant on several dimensions.

B. *Methods*

We recruited 592 participants through Amazon's Mechanical Turk platform.¹³⁷ We later excluded 43 (7%) of them for failing an attention check and an additional 158 (25%) for failing to identify the correct party as the plaintiff.¹³⁸ The remaining 391 participants were 61% male¹³⁹ and ranged in age from 19 to 76 ($M_{age} = 37$). Participants were paid \$1.00 upon completion of the study.

Participants were asked to read a short news article reporting a legal case. The case was based on the civil wrongful death case brought against the driver of a car that hit and killed a pedestrian from our initial survey, with the modification that the pedestrian in the tort experiment was injured rather than killed.¹⁴⁰ As noted above, two variables were manipulated. First, the posture of the case was varied such that the news article reported (1) that the case had simply been filed; (2) that the case had been settled, but no other details were available; (3) that the case had been settled, but the defendant denied responsibility; (4) that a jury had found for the plaintiff (finding the defendant liable for the harm caused); or (5) that a jury had found for the defendant (finding the defendant *not* liable for the harm). Second, we varied the type of defendant such that the defendant was described as either an individual driver or the company that employed the driver of the truck.

137. We had 10 total conditions (see below) and, as in Study One, hoped to have 50 usable participants per condition. Because of the quirks of random assignment and the likelihood that we would need to exclude at least some responses for inattention, we aimed for 550 responses but include all complete response sets (592) in our initial dataset.

138. Goodman et al., *Data Collection in a Flat World*, *supra* note 125. For more on the excluded participants, see *infra* note 146 and accompanying text.

139. 61% male ($N = 239$); 39% female ($N = 151$); 1 binary (< 1%). As with Study One, we had no *a priori* hypotheses about participant gender or other demographic characteristics, and we therefore do no further analyses of those characteristics; without a reason to look for systematic differences by gender or age, any patterns that we might find would be suspect and difficult to interpret.

140. We made this change for two main reasons: (1) so that the plaintiff about whom participants answered questions was the person involved in the accident rather than that person's estate, and (2) to reduce the severity of the harm and minimize the risk of extreme reactions or ceiling effects caused by a loss of life.

Fully crossing the five variations in case posture (filed, settled with denial, settled without denial, defendant wins, plaintiff wins) and the two defendant types (company or individual), the overall design had ten total conditions. Each participant was randomly assigned to one condition and read just one version of the article.

Immediately after reading the mock news article, participants were asked to respond to three multiple-choice comprehension check questions that reinforced the key elements of the story. The first asked them to identify the plaintiff and the second asked them to identify the defendant. For these two questions, the provided set of answers was the same: (a) the pedestrian; (b) the driver of the truck; (c) a trucking company; or (d) the city in which the accident occurred. The third comprehension question asked participants to identify “what happened in the lawsuit,” i.e., the case posture, and all five possible case postures were given as choices.

Participants were then asked to indicate the degree to which they agreed or disagreed with five items that assessed their views of the defendant’s responsibility for the allegations (e.g., “The truck probably did drift off the road.” “[The defendant] was probably *not* at fault for what happened in this case.” “[The defendant] should not have to pay for this harm because it was [the plaintiff’s] own fault.”). These items were measured on 7-point Likert scales ranging from strongly disagree to strongly agree and the items were presented in random order. Responses to these items loaded onto a single factor¹⁴¹ with good reliability ($\alpha = .82$) and so were averaged to give a composite measure of responsibility. Higher numbers on this scale indicate more responsibility attributed to the defendant.

Next, respondents indicated their perceptions of defendant and plaintiff on eight 7-point semantic differential items (e.g., good-bad, moral-immoral, greedy-deserving). The order in which respondents evaluated the parties was randomized as were the items within each block. Principal components factor analyses¹⁴² on these characteristics for each party demonstrated that the items comprised two distinct factors,¹⁴³ one made up of seven of the characteristics and the other consisting of participants’ evaluations of how greedy or generous the party was. For each party, scales based on the characteristics

141. Accounting for 61% of the variance. All factor loadings > .28.

142. Varimax rotation was used to enhance the interpretability of the factors.

143. Accounting for 74% (defendant) and 74% (plaintiff) of the variance. All factor loadings > .81.

that loaded on the first factor were created (overall impression of defendant, $\alpha = .93$; overall impression of plaintiff, $\alpha = .93$). Higher numbers on this scale indicate more positive impressions. Because the factor analysis revealed the item assessing greedy-generous to be unique, it was analyzed separately.

Participants assigned to either of the two case posture conditions in which a settlement was reported (i.e., settlement with denial or settlement without denial) then completed an additional set of measures indicating the extent to which they agreed or disagreed with ten possible reasons that the defendant might have settled the case (e.g., "because he wanted to avoid harsher consequences") and nine possible reasons that the plaintiff might have settled the case. The order in which respondents evaluated the parties was randomized, as were the items within each block. Each item was rated on a 7-point scale ranging from strongly disagree to strongly agree. Participants in the non-settlement case posture conditions (i.e., case filed, defendant wins, plaintiff wins) were not given these questions.¹⁴⁴

C. Results

1. Attention and Comprehension Checks

Overall, 70% of participants correctly identified the pedestrian as the plaintiff in the case. As noted above, those who failed this check or a separate attention check¹⁴⁵ were eliminated from the sample before any substantive analysis was conducted. All other complete responses were included. Of the remaining participants, 81% correctly identified the defendant in their particular condition, i.e., either the individual driver of the truck (84% correct) or the trucking company (78% correct).

144. The text of a representative scenario and the questionnaire can be found in the Appendix. All participants also responded to seven questions designed to assess their attitudes about whether there is a litigation crisis in the U.S. See e.g., Valerie P. Hans & William S. Lofquist, *Perceptions of Civil Justice: The Litigation Crisis Attitudes of Civil Jurors*, 12 BEHAV. SCI. & L. 181 (1994) (analyzing the litigation crisis attitudes of the American public and civil jurors specifically). They also responded to three items designed to assess their views of vicarious liability. A series of Multiple Analyses of Variances (MANOVAs) including litigation crisis attitudes (as a continuous variable; full model including all interactions) revealed that litigation crisis attitudes did not interact with case posture or defendant type to influence our dependent measures. We therefore do not discuss these variables further in this paper.

145. The additional attention check directed participants to choose "Somewhat agree." Participants who did not respond correctly were eliminated on the basis of an *a priori* rule intended to provide us with a minimal assurance of data quality. Incorrect answers strongly suggest inattention to either the scenario (in the case of identifying the plaintiff) or the questions (in the case of the "Somewhat agree" question).

Participants had more difficulty identifying the posture of the case, i.e., whether the newspaper article in the scenario reported (1) a verdict for defendant, (2) a verdict for plaintiff, (3) the mere filing of a case, or (4) a settlement (with or without a denial). Thus, while most participants correctly identified the case posture when a jury found the defendant liable for the harm to the plaintiff (81%), only 61% of participants answered this question correctly overall, and the rate at which they did so varied dramatically according to their assigned condition.

In the two settlement scenarios, with and without denial, participants often correctly identified that the scenario involved a settlement. For example, participants who read a scenario that involved a settlement without a denial correctly identified that a settlement was involved (60%). They struggled, however, with distinguishing whether the settlement contained a denial. In the same group (settlement without denial), 33% incorrectly thought it was a settlement with a denial. As we discuss in greater detail below, this suggests that observers may infer that a defendant has denied responsibility even when that is not explicit.¹⁴⁶

The participants' perception of what happened in the case is, of course, vital to understanding and interpreting their subsequent responses. To learn about participants' reactions to a verdict for the plaintiff, for example, we look at participants who think the plaintiff won a verdict, even if they are incorrect. To put it differently, we are interested in the participants' responses to what they believed happened, not the independent effects of having read a particular version of the story. Moreover, because the actual implementation of the case posture variable was relatively subtle—especially as between the settlement conditions with and without denial, which varied by just one line in the news article—the act of answering the comprehension questions, whether or not they did so accurately, likely served to crystallize participants' perceptions of the case posture. Because participants had to actively select a response, rather than passively read about the case status, it may even have served as a stronger manipulation of the variables than the differences in the stimuli.¹⁴⁷ In light

146. See *infra* Section V.C.2. See *infra* Appendix, Table A2 for more detail on the pattern of responses.

147. In this way, the comprehension question, coming so early in the questionnaire, may have served as a kind of self-imposed suggestion, in cognitive terms. *C.f.*, Karen J. Mitchell & Maria S. Zaragoza, *Repeated Exposure to Suggestion and False Memory: The Role of Contextual Variability*, 35 *J. MEMORY & LANGUAGE* 246, 246–60 (1996) (studying the effect of repeated exposure to suggestion on memory).

of this, we decided to use the participants' response to this question—that is, their perceived case posture condition—as the independent variable for our analyses.¹⁴⁸

Because of participants' evident confusion between the settlement conditions in particular, and because we find very few differences between the two conditions, we have also collapsed the settlement conditions with and without denial for most of the analyses below, leaving four case posture conditions: case filed, settlement, plaintiff wins, and defendant wins. Doing this simplifies the reporting and does not change the results in any statistically meaningful way. The only responses that we did not analyze in this way were the parties' perceived motives for settling, because participants saw those questions only in the two settlement conditions.

2. *Defendant Responsibility*

Attributions of responsibility varied by the case posture.¹⁴⁹ The least responsibility was attributed to the defendant when a jury determined that the defendant was not liable ($M = 3.78$). More responsibility was attributed to the defendant in each of the other cases, filed ($M = 4.59$), settled ($M = 4.31$), or when a jury found that the defendant was liable ($M = 4.53$) ($ps < .05$), and these cases did not statistically differ from each other (Figure 1).¹⁵⁰ Defendant identity had no effect on attributions of responsibility.¹⁵¹

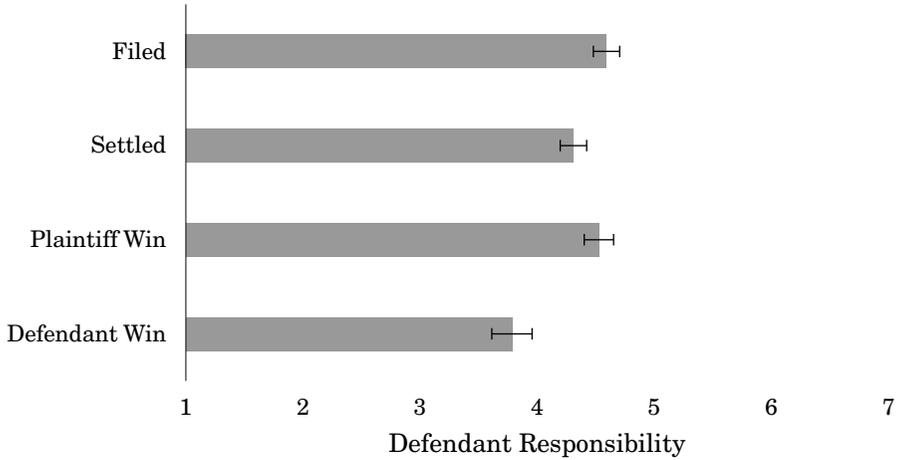
148. We also ran the analyses using participants' assigned conditions; with a few exceptions, reported in notes below, the results do not change meaningfully.

149. $F(3,383) = 6.55, p < .01$.

150. In the assigned condition analysis, an additional pairwise difference between the settlement condition and the condition in which a jury found the defendant liable emerged ($p < .05$). All analyses exploring differences among more than two groups used the Tukey test.

151. $F(1,383) = 1.65, p = .20$. In the assigned condition analysis, there was a significant interaction between case posture and defendant identify, $F(3,383) = 2.64, p = .049$, such that the main effect of case posture was driven by differences in the individual defendant condition.

FIGURE 1. ATTRIBUTION OF RESPONSIBILITY TO DEFENDANT



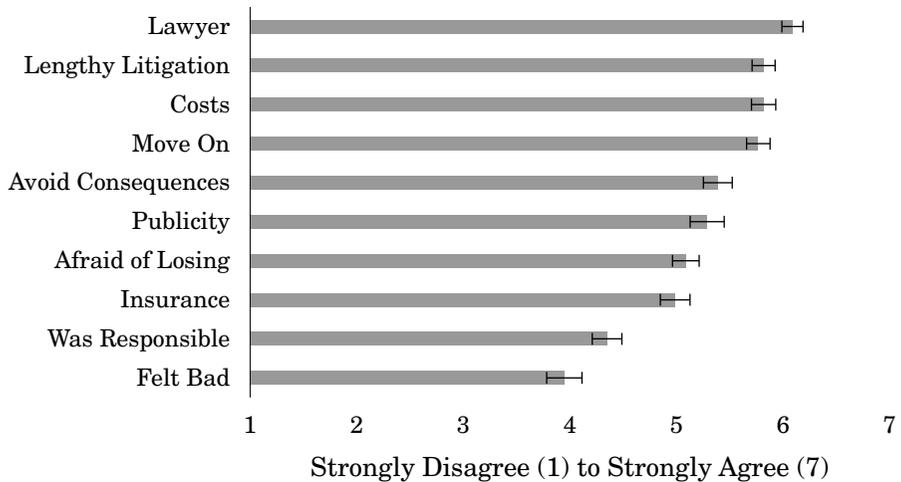
3. Reasons for Settling

Participants in the two settlement conditions (case postures in which the case settled, either with or without a denial)¹⁵² were asked to evaluate ten possible reasons the defendant might have had for agreeing to settle the case (Figure 2) and nine reasons the plaintiff might have agreed to settle the case (Figure 4). For each possible reason, we compared the mean responses¹⁵³ between the defendant types (company or individual) and settlement information (with or without a denial).

152. As noted above, we used the participant’s self-reported beliefs about which case posture condition they were in to analyze the results. Because the “reasons for settling” portion of the survey was only shown to participants who were actually assigned to one of the two settlement conditions, this sub-section of the results includes a slightly narrower group of participants (n = 92), i.e., those who were assigned to one of the settlement conditions (and therefore had the opportunity to answer these questions) and who believed they were in one of the settlement conditions (as measured by their previous response about the posture of the case).

153. Using a MANOVA model.

FIGURE 2. DEFENDANT REASONS FOR SETTLING



Participants rated several of the defendant's possible reasons for settling differently based on whether the defendant was an individual or a company (Figure 3). Most strikingly, participants reported that a company was significantly more likely to have settled the case to avoid the publicity of a trial ($M = 5.98$) than was an individual defendant ($M = 4.77$).¹⁵⁴ Participants also believed that a company was more likely to have settled the case because an insurance policy would cover the costs ($M = 5.33$) than was an individual defendant ($M = 4.73$),¹⁵⁵ and similarly that a company was more likely to have settled because of advice from a lawyer ($M = 6.33$) than was an individual defendant ($M = 5.90$).¹⁵⁶ Participants also thought a company defendant ($M = 4.68$) was more likely than an individual ($M = 4.10$) to have settled because the company defendant knew they were responsible for the plaintiff's injuries.¹⁵⁷ None of the defendant's other possible reasons for settling were judged differently based on defendant type.

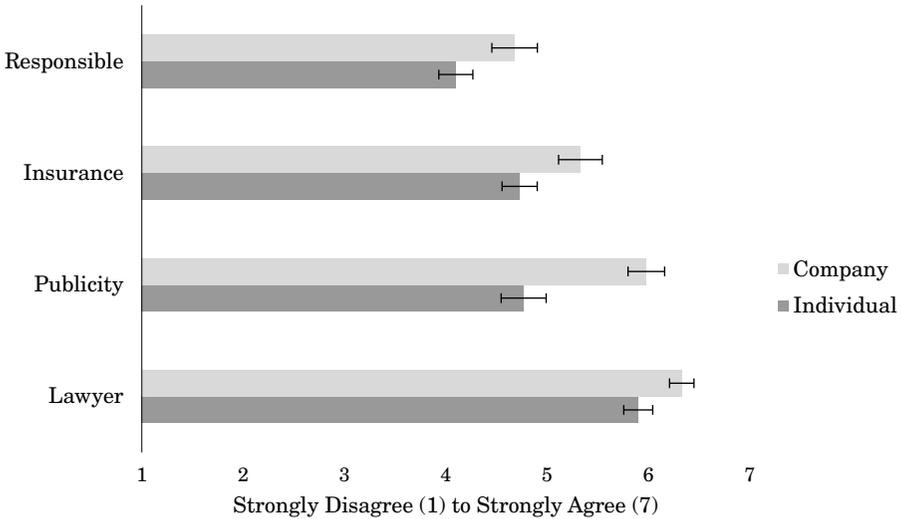
154. $F(1,89) = 15.80, p < .001$.

155. $F(1,89) = 4.21, p = .04$. This effect was not present in the analysis using only assigned condition, $F(1,150) = 1.93$.

156. $F(1,89) = 4.67, p = .03$. This effect was not present in the analysis using only assigned condition, $F(1,150) = 0.03$.

157. $F(1,89) = 3.98, p = .05$.

FIGURE 3. COMPANY AND INDIVIDUAL DEFENDANT REASONS FOR SETTLING



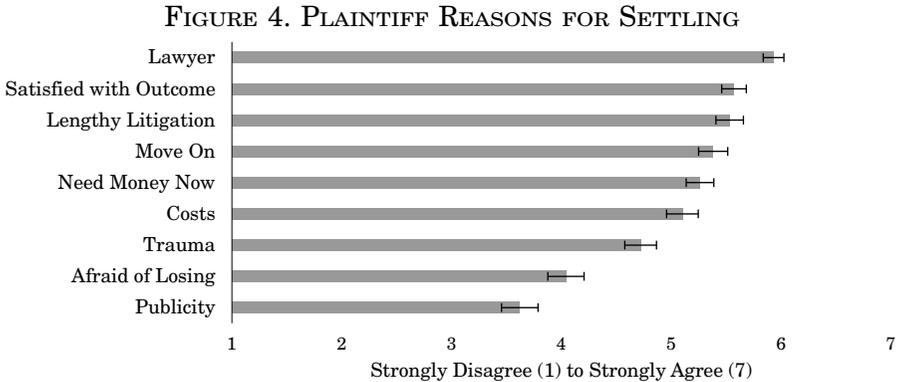
In contrast, we found no significant main effects of whether the defendant denied responsibility on the defendant’s perceived reasons for settling.¹⁵⁸ Of the possible reasons the defendant may have settled the case, only one—the desire to avoid long litigation—showed a marginally significant interaction between defendant type and settlement condition.¹⁵⁹ Participants were more likely to think that the company defendant sought to avoid long litigation if the settlement announcement included a denial of responsibility from the company ($M = 6.12$) than if the settlement announcement had no additional information ($M = 5.60$). When the defendant was an individual, the opposite pattern emerged; participants thought an individual defendant was more likely to have settled to avoid long litigation when the settlement announcement included no additional information ($M =$

158. In the assigned condition analysis, there was a main effect of settlement information on participants’ beliefs that the defendant settled because it was less costly than a trial, such that participants thought a defendant was less likely to have settled for this reason when the settlement was accompanied by a denial of responsibility than when there was no information provided, $F(1,150) = 2.44, p = .04$. There was also a main effect of settlement information on participants’ likelihood to agree that the defendant because they felt bad. In both settlement information conditions, participants judged it more likely that the defendant settled because they felt bad when the settlement was accompanied by a denial than when there was no additional information, $F(1, 149) = 5.84, p = .02$. However, this effect was larger when the defendant was a company than when the defendant was an individual, $F(1,150) = 3.95, p = .05$.

159. $F(1,89) = 3.81, p = .054$.

6.00) than when the announcement included a denial of responsibility from the individual ($M = 5.62$). There were no other statistically significant interactions.

There were no significant differences by case posture condition or defendant type for any of the plaintiff's possible reasons for settling.¹⁶⁰ Figure 4 below shows the aggregate averages for each of the perceived reasons that the plaintiff settled.



Although the list of possible reasons that the plaintiff and the defendant might have had for settling did not overlap entirely with each other, there were six items that participants were asked to evaluate for both parties.¹⁶¹ Participants rated the defendant as more likely than the plaintiff to have settled as a way to move on ($M_{\text{defendant}} = 5.77$; $M_{\text{plaintiff}} = 5.38$),¹⁶² due to concern about losing at trial ($M_{\text{defendant}} = 5.09$; $M_{\text{plaintiff}} = 4.04$),¹⁶³ because settling would be less costly than a trial ($M_{\text{defendant}} = 5.82$; $M_{\text{plaintiff}} = 5.10$),¹⁶⁴ to avoid lengthy litigation

160. When we looked only at the participants' assigned conditions, there was a significant main effect of defendant type on the likelihood that the plaintiff settled to avoid lengthy litigation, $M_{\text{company}} = 5.05$, $M_{\text{individual}} = 5.49$, $F(1,150) = 4.23$, $p = .04$.

161. For those six items, we also did a within-subjects comparison to see if participants thought one party was significantly more likely to have relied on a given reason. The full model for each of the analyses in this sub-section was a repeated measures ANOVA with two between-subjects independent variables (defendant type, case posture), one within-subject variable (party), three two-way interaction terms (defendant type * case posture, defendant type * party, and case posture * party), and one three-way interaction term (defendant type * case posture * party).

162. $F(1,88) = 5.56$, $p = .02$.

163. $F(1,88) = 19.84$, $p < .001$.

164. $F(1,88) = 18.90$, $p < .001$. The assigned condition analysis also includes a statistically significant interaction between party and case posture, $F(1,149) = 4.43$, $p < .01$, because participants rated the defendants who settled without denying responsibility as more likely to have settled due to costs than they did defendants who denied responsibility, $t(150.38) = -2.15$, $p = .03$.

($M_{\text{defendant}} = 5.82$; $M_{\text{plaintiff}} = 5.53$),¹⁶⁵ and to avoid negative publicity ($M_{\text{defendant}} = 5.29$; $M_{\text{plaintiff}} = 3.62$).¹⁶⁶ Participants did not think either the plaintiff or the defendant was significantly more likely to have settled on the advice of a lawyer.

4. Impressions of the Parties

Case posture significantly influenced overall impressions of the defendant¹⁶⁷ and the plaintiff.¹⁶⁸ The pattern of means suggests that defendants were perceived more positively when a jury found them not liable ($M = 4.17$) or they settled ($M = 4.18$) and more negatively when a jury found them liable ($M = 3.84$) or when the case was simply filed ($M = 3.85$). None of these pairwise comparisons between cases, however, reached statistical significance.¹⁶⁹ Plaintiffs were perceived more negatively when a jury found the defendant not liable ($M = 3.82$) than in any of the other conditions; filed ($M = 4.32$) ($p = .045$), settled ($M = 4.37$) ($p = .019$), or when a jury found that the defendant was liable ($M = 4.39$) ($p = .01$). There was no effect of defendant type on overall impressions of the defendant or the plaintiff.

Case posture did not significantly influence the perceived greediness of the defendant or the plaintiff.¹⁷⁰ There was, however, a marginally significant effect of defendant type on the perceived greediness of the defendant, such that entity defendants ($M = 4.07$)

165. $F(1,88) = 7.14$, $p = .02$. A significant interaction, $F(1,88) = 4.23$, $p = .04$, reflects a smaller difference between estimates for the plaintiff and defendant when the defendant was an individual ($M_{\text{plaintiff}} = 5.67$, $M_{\text{defendant}} = 5.73$) than when the defendant was a company ($M_{\text{plaintiff}} = 5.35$, $M_{\text{defendant}} = 5.93$). The interaction between defendant type and settlement condition was also statistically significant in this model, $F(1,88) = 8.10$, $p = .01$. This effect mirrors the one described above: when the defendant was a company, participants were more likely to think the company sought to avoid long litigation if the settlement announcement included a denial of responsibility from the company than if the settlement announcement had no additional information. When the defendant was an individual, the opposite pattern emerged.

166. $F(1,88) = 75.58$, $p < .001$. A significant interaction between party (defendant versus plaintiff) and defendant type (company versus individual), $F(1,88) = 9.27$, $p < .01$, reflected a larger difference between ratings of the plaintiff and the defendant when the defendant was a company ($M_{\text{plaintiff}} = 3.60$, $M_{\text{defendant}} = 5.98$) than when the defendant was an individual ($M_{\text{plaintiff}} = 3.63$, $M_{\text{defendant}} = 4.77$).

167. $F(3,383) = 2.75$, $p = .04$. In the assigned condition analysis, this case posture main effect was marginally significant, $F(3,383) = 2.37$, $p = .07$.

168. $F(3,383) = 3.67$, $p = .01$.

169. Defendants who settled ($M = 3.84$) were also viewed as marginally less negative than defendants who were found liable ($M = 4.29$) ($p = .08$).

170. The effect of case posture on the perceived greediness of the plaintiff was statistically significant in the assigned condition analysis, $F(3,383) = 2.94$, $p = .03$. In the assigned condition analysis, the plaintiff was perceived as more greedy when a jury found that the defendant was not liable as compared to when the defendant settled or (marginally) when a jury determined the defendant was liable.

were seen as more greedy than individual defendants ($M = 3.88$).¹⁷¹ The identity of the defendant also influenced the perceived greediness of the plaintiff, such that the plaintiff was seen as greedier when he brought suit against an individual defendant ($M = 4.18$) than when he brought suit against an entity defendant ($M = 3.87$).¹⁷²

D. Discussion

Our results paint a picture of public perceptions of settlement that is in some ways simpler and in some ways more nuanced than the economic and legal literatures might suggest. In Study One, our broad initial survey, we found remarkable similarities in the inferences participants made—and the inferences they did *not* make—about settlement, even across a wide variety of cases, defendants, and plaintiffs. Overall, several reasons appeared in more than a quarter of participants' open-ended responses. Defendants, participants noted, likely settled because they were responsible for the harm and because they wanted to avoid the risk of harsher consequences associated with a trial. Plaintiffs, on the other hand, were thought to have settled because they got what they wanted from the settlement and wanted to avoid a protracted and potentially costly trial. In contrast, fewer than 4% of participants spontaneously suggested that either party settled on the advice of a lawyer or because such settlements are a routine part of doing business.

Study One gave us a valuable glimpse into the way lay people think about settlement with minimal prompting, but it did not allow us to differentiate between inferences drawn from settlement and those drawn from, for example, the filing of a complaint. It also did not allow us to differentiate among important case variables like whether the defendant was a company or an individual. Using experimental methods, however, we were able to test participants' views in a controlled experiment.

The results of Study Two back up those of the survey and show that news of a settlement leads observers to make particular inferences about the responsibility of the parties, their motivations, and even their broader moral character. The results also provide evidence that observers draw different conclusions on at least some of these metrics if the defendant is a company rather than an individual.

171. $F(1,383) = 3.43, p = .07$. This effect was not significant in the assigned condition analysis. $F(1,383) = 1.29, p = .26$.

172. $F(1,383) = 7.73, p = .01$.

1. *Defendant Responsibility*

As we predicted, our findings suggest that people tend to view settlement as a sign that the defendant is responsible for the alleged harm. While our experimental participants assigned less responsibility to the defendant when the defendant won at trial, they assigned similar levels of responsibility to the defendant when there was a settlement as they did when there was a verdict in favor of the plaintiff. Participants also did not distinguish between a settlement and an untried allegation when it came to evaluating the defendant's responsibility. These findings were consistent with our general observation from the survey that, across a variety of different case types, participants tended to attribute some responsibility to settling defendants.¹⁷³

These findings seem largely consistent with the literature on truth bias¹⁷⁴ and early findings in the criminal context—that criminal defendants who plead guilty tend to be thought guilty, potentially even more so than those who are found guilty by a jury.¹⁷⁵ Our participants were inclined to credit the plaintiff's allegations, even when the case consisted only of an allegation. This presents a troubling choice to would-be settling defendants: settle and be thought responsible or go to trial and remove all doubt. To the extent that defendants might be induced to settle so that they can avoid the condemnation associated with a judgment of liability, our results suggest that the damage may already be done as early as the moment of the plaintiff's complaint.

For plaintiffs, the perception that settlement is as clear an indicator as a jury verdict that the defendant was responsible is consistent with other indications that settlements are viewed as a victory for the plaintiff. Indeed, settlements are often reported as plaintiff "wins."¹⁷⁶ When Colin Kaepernick and the National Football League

173. See *supra* note 129 (finding that participants tended to attribute responsibility to the defendant).

174. See *supra* notes 90–93.

175. See *supra* note 81.

176. The Associated Press, *Black Workers Win Settlement With U.S. Pipe*, N.Y. TIMES (July 5, 2004), <https://www.nytimes.com/2004/07/05/business/black-workers-win-settlement-with-us-pipe.html> [<https://perma.cc/MT57-C5H7>]; Mensah M. Dean, *Carpentry Foreman Wins \$10M Settlement of Lawsuit over Injuries at Old City Construction Site*, PHILA. INQUIRER (Dec. 3, 2019), <https://www.inquirer.com/news/michael-little-one-water-street-lawsuit-settlement-10-million-old-city-slip-fall-ice-20191202.html> [<https://perma.cc/552M-HGZS>]; Marc Ramirez, *Texas Home Care Worker Wins Settlement in Case Alleging Employer Failed to Act to Curb Harassment by Patient's Son*, DALL. MORNING NEWS (Mar. 8, 2019), <https://www.dallasnews.com/>

(“NFL”) settled their dispute, for example, one headline read: “Kaepernick Won. The NFL Lost.”¹⁷⁷ Follow-up commentary noted that “[i]t doesn’t matter how much [Kaepernick] made from the settlement announced on Friday; he bested the league.”¹⁷⁸ Similarly, one law firm that represents plaintiffs advertised its services on billboards declaring “Next stop big settlement!”¹⁷⁹

2. *Reasons to Settle*

Given that participants seemed to view allegations, settlements, and verdicts for the plaintiff as relatively equal signs of the defendant’s responsibility, it may be tempting to assume that lay perceptions of settlement are overly simplistic or un-nuanced. On the contrary, however, participants assign a variety of complex motives, to greater and lesser degrees, to parties who settle. Across both studies, participants deemed many reasons to be likely factors in prompting these settlements.

Notably, participants in both studies viewed defendant responsibility as a potential cause of settlement, not just an implication of settlement. In the survey, when asked to articulate their assumptions about a defendant’s reasons for settling, many participants, though not all, referenced the defendant’s underlying guilt or responsibility as a motivation for settlement.¹⁸⁰ Thus, the extent to which the defendant is or feels responsible for the wrongdoing is thought to be both an antecedent and an implication of settlement. Of course, judgments of responsibility may underpin other instrumental reasons as well, at least for some respondents. For example, survey participants’ comments on the weight of the evidence, the risks of losing

news/texas/2019/03/09/texas-home-care-worker-wins-settlement-in-case-alleging-employer-failed-to-act-to-curb-harassment-by-patient-s-son/ [https://perma.cc/TN67-4YYK]; Thomas Gnau, *400+ Pizza Delivery Drivers Win \$850K Settlement*, DAYTON DAILY NEWS (Oct. 18, 2018), <https://www.daytondailynews.com/business/400-pizza-delivery-drivers-win-850k-settlement/62YLxxKEFrQZXJoSVetLVJ/> [https://perma.cc/4Y55-92E9].

177. Jemele Hill, *Kaepernick Won. The NFL Lost.*, THE ATLANTIC (Feb. 17, 2019), <https://www.theatlantic.com/ideas/archive/2019/02/colin-kaepernick-won-his-settlement-nfl/582994/> [https://perma.cc/UT2B-DZHV].

178. *Id.*

179. Photograph of Monge & Associates’ Billboard in *PRNews*, prweb.com (Feb. 4, 2020), https://www.prweb.com/releases/atlanta_headquartered_personal_injury_law_firm_monge_associates_announces_new_jury_trial_initiative/prweb16864878.htm [https://perma.cc/M2HQ-9X5S]; see also Photograph of Monge & Associates’ Train Advertisement in *Monge & Associates’ Glassdoor Profile*, GLASSDOOR.COM, <https://www.glassdoor.com/Monge-and-Associates-Office-Photos-IMG2672059.htm> (last visited Aug. 11, 2020) (showing a similar advertisement on a train).

180. See *supra* note 129 (survey).

at trial, or the potential for more favorable consequences through settlement may have been tied to a sense that the defendant was at fault. Some participant responses even make this connection explicitly: “The evidence shows his guilt. If he actually was innocent then he probably didn’t want to deal with the gamble that is court.”

As we have already described, these concerns do not necessarily need to be linked to the truth of the underlying allegations, but they may have been for some participants.¹⁸¹ Future work could do more to examine the role that inferences of responsibility play in observers’ beliefs about the motives for settlement.

We also observed differences in the degree to which participants imputed some motivations for settlement to either the defendant or the plaintiff. Defendants were thought to be motivated by the risks and costs of trial, a desire to avoid negative publicity, and a desire to put the case behind them rather than engaging in prolonged litigation. Plaintiffs, too, are thought to be concerned about these factors, but to a lesser extent. This makes some intuitive sense; observers may infer that, as the party that chose to bring the case, the plaintiff has chosen to litigate, in spite of the relevant costs and risks. Under this logic, plaintiffs should be somewhat less driven to settle and avoid trial by these comparatively predictable factors. Defendants, on the other hand, have not chosen litigation. They may, therefore, be thought particularly sensitive to costs of litigation and the risks of being found liable by a jury.

Although we did not intend our survey and experimental results to be directly comparable, there were some interesting differences in the responses that we collected. In the survey, for example, very few participants (3% in responses about defendants and 2% in responses about plaintiffs) mentioned the advice of lawyers when relaying their intuitions about the reasons for settlement in an open-ended way.¹⁸² In contrast, when prompted to specifically consider the influence of a lawyer’s advice on the settlement decision, participants rated such advice as a likely motivation. Indeed, the advice of a lawyer was rated as the most likely motivation for settlement for the both the defendant¹⁸³ and the plaintiff¹⁸⁴ by our experimental participants.

This discrepancy is striking. Why is it that, even in the context of reading and speculating about a legal settlement, participants do not

181. See *supra* notes 71–72 (noting that parties may settle for financial or reputational reasons, regardless of the truth of the underlying allegations).

182. See *supra* Table 1.

183. See *supra* Table 3.

184. See *supra* Table 4.

seem to consider the potential role of legal advice? Lawyers do, of course, play an important role in client decision making, including decisions about settlement, in both criminal¹⁸⁵ and civil¹⁸⁶ cases, and experimental participants' likelihood ratings reflect this reality. The disconnect between these ratings and the open-ended responses could have many sources. It is possible, for example, that our lay survey participants did not draw a meaningful distinction between a party and its lawyer; in other words, they may have taken for granted the lawyers' role in settlement until prompted specifically to think about it. This seems especially likely in the cases where one or both parties is an entity that likely includes lawyers by default, such as the governmental plaintiff in the SEC scenario.¹⁸⁷ Lawyers are trained to draw clear mental boundaries between themselves and their clients, even in a corporate or in-house counsel context,¹⁸⁸ but lay people may not do so naturally.

Another possible explanation for the difference could be that participants simply do not think about the involvement of lawyers in the cases until they are prompted to do so, because they do not intuitively associate lawyers with settlements. This explanation is consistent with prior work showing that people tend not to view their own problems as candidates for legal advice, even in situations in which

185. See, e.g., Kenneth S. Bordens & John Bassett, *The Plea Bargaining Process From the Defendant's Perspective: A Field Investigation*, 6 BASIC & APP. SOC. PSYCH. 93, 107 (1985); Jodi L. Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 LAW & HUM. BEHAV. 253, 274 (2005). See generally William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213 (1991).

186. See, e.g., Russell Korobkin & Chris Guthrie, *Psychology, Economics, and Settlement: A New Look at the Role of the Lawyer*, 76 TEX. L. REV. 77 (1997). See also Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509 (1994); Herbert M. Kritzer, *Contingent-Fee Lawyers and their Clients: Settlement Expectations, Settlement Realities, and Issues of Control in the Lawyer-Client Relationship*, 23 LAW & SOC. INQUIRY 795 (1998); Jean R. Sternlight, *Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non-Adversarial Setting*, 14 OHIO ST. J. ON DISP. RESOL. 269, 318 (1999).

187. However, as we discuss above, the results of the tort settlement experiment show that, when prompted, participants thought a company was more likely than an individual defendant to have settled because of a lawyer's advice.

188. See, e.g., Suzanne Le Mire & Christine Parker, *Keeping It In-House: Ethics in the Relationship between Large Law Firm Lawyers and Their Corporate Clients through the Eyes of In-House Counsel*, 11 LEGAL ETHICS 201 (2008).

lawyers would characterize the problems as legal in nature.¹⁸⁹ Although the stories we used in the survey were explicitly about legal cases, participants may have been more focused on whether the parties had reached a just outcome than whether they resolved the attending legal formalities.¹⁹⁰ Only when participants were focused specifically on the role of lawyers—as they were in the experiment—did they consider the importance of legal advice in motivating the settlements.

3. *Individual Defendants versus Entities*

Consistent with our predictions, we also found several instances in our experiment in which participants' inferences differed between cases with individual defendants and those with corporate entity defendants. This was particularly true in the degree to which certain reasons for settling were attributed to the defendants. Companies were thought to be more motivated to settle by the desire to avoid publicity than were individuals, and they were also thought to be more motivated by insurance coverage, and by the advice of a lawyer.¹⁹¹ These results make intuitive sense, and they are consistent with the notion that a company is more likely than an individual to have a public reputation, significant liability insurance, or the advice of a lawyer in the first place; the company is therefore more likely to have been motivated by these factors.

Interestingly, companies were also thought to be more motivated to settle by the fact of their underlying responsibility than were individual defendants. This seems generally consistent with prior research that finds that jurors find companies more responsible for the same conduct than they do individuals.¹⁹² In this case, that attributed responsibility is seen as a reason for a company to settle a tort lawsuit.

Changing whether the defendant was a company or an individual also had some effects on participants' views of the plaintiffs, especially in comparison to their equivalent views of the defendant. Notably, plaintiffs who sued a company were seen as less greedy than

189. See, e.g., Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51, 80 (2010) (noting that “law often does not even enter [Americans'] thinking about [justice] problems”).

190. *Id.* at 80–83; See Rebecca L. Sandefur, *Access to What?*, 148 DAEDALUS 49, 51 (2019).

191. See *supra* note 157; See *supra* Figure 3.

192. See *supra* note 111.

plaintiffs who sued an individual defendant.¹⁹³ While at first blush this may seem to contravene popular narratives of greedy plaintiffs suing big corporations for a quick payday,¹⁹⁴ it may be precisely because companies are thought to have deeper pockets or insurance that the plaintiffs who sue them are thought to be less greedy. In other words, our participants may have felt that a company was more likely to be able to afford to compensate the plaintiff than was an individual defendant. In that case, it may indeed seem greedier to go after the individual.

As noted above, defendants were, broadly speaking, thought to be more moved to settle by the risks and costs of trial than plaintiffs. However, these differences were even more pronounced when comparing a defendant company to a plaintiff than when the defendant was an individual. This too makes some intuitive sense, especially the potential for bad publicity and drawn-out litigation. Participants may have believed that these risks were objectively greater in a case with a company defendant, and therefore they were more likely to have motivated the settlement in that case.

Finally, our results also allow us to make some compelling comparisons that, though they are not directly relevant to the settlement question, allow us to be even more confident in the validity of our findings. For example, the defendant was seen as more responsible for the alleged conduct¹⁹⁵ and was viewed more negatively overall¹⁹⁶ when a jury found him liable than when a jury found him not liable. These findings are consistent with what one would hope for in a functioning system: that observers would attribute more responsibility to and assess more negatively defendants who have been legally judged to have acted wrongfully. Similarly, plaintiffs were perceived more

193. In contrast, company defendants were rated as slightly greedier than the individual defendants.

194. See, e.g., Zlati Meyer, *McDonald's Quarter Pounder Lawsuit Alleges Customers Charged for Unwanted Cheese*, USA TODAY (May 22, 2018), <https://www.usatoday.com/story/money/2018/05/22/mcdonalds-quarter-pounder-suit-diners-charged-unwanted-cheese/631948002/> [<https://perma.cc/SWR7-EYRB>]; Malcolm Brabant, *McDonald's pays over pickle*, BBC NEWS (Apr. 14, 2001), <http://news.bbc.co.uk/2/hi/americas/1276819.stm#> [<https://perma.cc/6YS5-DP7R>] (reporting that McDonald's "settled a lawsuit brought by an American woman who claimed she was disfigured by an extremely hot pickle"). Recall, however, that empirical work does not support the notion that jurors are influenced by the "deep pockets" of the defendant. See, e.g., MacCoun *supra* note 111, at 377.

195. See *supra* note 150; Figure 1.

196. See *supra* note 167.

negatively when a jury found the defendant not liable than in any of the other conditions.¹⁹⁷

VI. IMPLICATIONS AND FUTURE DIRECTIONS

The survey results demonstrate that exploring public perceptions of settlement is practicable and worthwhile. This simple and broad examination provides a roadmap for future research into public perceptions of settlement. The importance of this work is also clear; whatever else may be true about settlement, it is the predominant method by which legal disputes are resolved. To continue to omit it from the study of public views of the legal system would be to overlook a large piece—perhaps the largest piece—of that view.

The ubiquity of settlement as a case resolution mechanism means that views of settlement are relevant to almost any question about legal systems, processes, or policies. The possibilities for this research are wide-ranging, but our data highlight some specific areas that deserve closer attention. We also outline a few directions that we find particularly intriguing.

One finding that jumps out as ripe for additional study is that participants had trouble clearly distinguishing among case postures in the tort experiment. While some of this trouble may be attributed to confusion about the case stimulus itself or to an overall lack of attention¹⁹⁸ to the details of the news story—and some of the errors are doubtless attributable to each of these reasons¹⁹⁹—we think it likely that a more substantive explanation is also at play.

Participants especially struggled to distinguish between the two different settlement conditions—i.e., settlement with and without an accompanying denial of responsibility by the defendant. The confusion manifested almost immediately in participants' responses, when

197. See *supra* note 168.

198. Note, however, that the rates of error we report for the comprehension question about case posture were calculated after we had already removed all participants who failed a simple attention check.

199. Our data for the tort settlement experiment was collected in late spring of 2020, just after many places in the United States had gone into varying stages of lockdown due to COVID-19. The general rate of error among MTurk respondents struck us as unusually high, especially compared to a sample gathered in late 2019 that used the same mock news stories; we were also able to gather the data much more quickly than is typical, in our experience, for comparable studies. We suspect that, given the social and economic strains that lockdown put on many people, there may have been an unusually high number of people trying to complete as many MTurk tasks as possible (and therefore earn as much money as possible) in a relatively short amount of time. However, as we have noted, we took care to include only reliable responses in the final analyses.

participants were explicitly asked what the status of the case was, according to the news story they had just read. The most common error, by a large margin, was for participants to respond that the case had been settled and that the defendant had denied responsibility when, in fact, the story had said only that there had been a settlement (and that no additional information was available).

This pattern suggests that in the absence of other information, participants may have assumed that any settlement would be accompanied by a denial of responsibility from the settling defendant. This suggestion is further borne out by the persistent tendency of participants to answer questions similarly in those two conditions. Even when we analyzed the responses only for those participants who had correctly identified whether or not there had been a denial, we found no reliable differences between these two settlement conditions. Participants did not distinguish between settlements accompanied or not accompanied by a denial by the defendant in their attributions of responsibility, their assessments of the parties' reasons for settlement, or their impressions of the parties.

However suggestive these data are on this point, additional work should include direct manipulation and measurement to determine whether people in fact assume that any settlement includes a denial of responsibility. There are some compelling reasons to think that they may; for example, observers may have a schema for a legal culture of "deny and defend" that inclines them to this inference.²⁰⁰ Of course, it also seems likely that this inference—if it exists—is not universal; as we have already noted, defendants who "settle" a criminal case by pleading guilty may be viewed as more at fault than even defendants who are convicted of the crime in question. Indeed, the context of a guilty plea, in which a defendant stands before a judge and apparently admits her guilt, would likely override any default assumptions of denial that participants might have attached to other kinds of settlement.

The likely differences between tort and criminal cases highlights another key opportunity to expand and build on the present work: direct comparison of settlement inferences among different types of cases. Such work is important in light of the core similarities, but also very real differences, in the settlement contexts across domains.²⁰¹ Our initial survey was designed only to illustrate the breadth of possible inferences across different legal domains, not to

200. See generally Cohen, *The Culture of Legal Denial*, *supra* note 12, at 257–58.

201. See, e.g., Jolly & Prescott, *supra* note 16, at 1049.

directly compare case types. The cases were based closely on actual stories that participants are likely to see in the news, and with that verisimilitude comes a lack of precise experimental control that future work can build on and address.

Indeed, despite the lack of comparability, we observed some interesting patterns in participants' responses across case types. For example, although only about 1% of participants suggested that a defendant might settle a case as a matter of routine practice, those participants were exclusively in the Police and #MeToo case conditions. Notably, these two conditions were also the only ones in which the defendant was an entity rather than an individual, suggesting that it could be the nature of the defendant, rather than the nature of the complaint, that led to these inferences. Participants in these two "entity defendant" conditions were also substantially more likely than average to list publicity or reputation concerns as the defendant's reasons for settling. Similarly, participants listed routine practice as a reason that the plaintiff may have settled the case only in the SEC and Criminal case contexts—that is, the cases in which the plaintiff is a governmental body or agency. Finally, we note that participants cited concern about mitigating unfavorable consequences in particular for defendants who were the targets of criminal or agency prosecution.

Most significantly, our results open wide the doors for a number of interesting questions for future study. One such direction is to examine the terms and conditions of settlement in greater detail. In the present work, we deliberately avoided providing any details about the substance of the settlement agreement in either of our studies. Participants were not told anything about the amount of money that was to change hands or of any other considerations involved, which meant that they could not easily evaluate whether the terms were fair or just or use the terms of the settlement as a signal. Similarly, there was no mention of any kind of waiver of future claims or nondisclosure agreements, both of which are extremely common in real settlements.

How might the terms of settlement change the inferences that people make about the plaintiff, the defendant, or their reasons for settling? A \$5,000,000 settlement might be viewed very differently than a \$50,000,000 settlement or a \$50,000 settlement, particularly in terms of whether the settlement itself is viewed as an admission of responsibility. Likewise, a request from the settling defendant that the plaintiff not discuss the terms of the settlement or the underlying allegations might well change the attributions that people make

about the underlying facts of the case. If the defendant is an institution, rather than a private individual, it is likely that the terms of the settlement may be perceived differently still.

Another potentially fruitful direction for future work would examine more closely the explicit messaging that accompanies settlement announcements. While our participants did not seem to register the difference between a settlement with a denial of responsibility and one without, it seems unlikely that this is true in all contexts. Different kinds of denials—e.g., those done in writing, such as the one included in the signed agreement in the Teshome Campbell case,²⁰² versus public statements such as the one made by the city council member in the same case—might well lead to different inferences. Outright denials of the plaintiff's allegations might also lead to different inferences than so-called “neither admit nor deny” statements.²⁰³

Finally, future research could further explore the perceived role of lawyers in the settlement process. Our participants did not spontaneously identify lawyers and legal advice as part of the settlement process. When posed with a list of potential reasons for settlement, however, they identified legal advice as the most likely motivation for settlement.²⁰⁴ This discrepancy leads to a series of questions. Do outsiders distinguish between a party and its lawyer? Do they view settlement as the kind of legal situation that involves lawyers? Do these intuitions depend on whether the party is an individual or an institution? Do they think of settlement as “legal” at all? Outsiders may even be concerned that lawyers pressure their clients to settle quickly.²⁰⁵ Whether and to what extent they do so may, again, depend on the nature of dispute or of the parties.

VII. CONCLUSION

Do lay people view settling defendants as responsible for the alleged conduct? Do they see settlement as a convenient resolution that avoids costly trial? Although most legal disputes settle, these questions have received little prior examination. Our survey and experimental study begin an exploration of what people infer from the fact that parties settled a legal dispute and how the context of the settlement influences those inferences.

202. See *supra*, notes 4–9.

203. See Winship & Robbennolt, *supra* note 41, at 1127–30.

204. See *supra* Figures 2 & 4.

205. See Diamond & Salerno, *supra* note 70, at 152 (exploring legal insiders' perceptions of reasons for settlement).

The intuitions of the lay observers in our initial survey provide a rich account of how people view settlement in their own words. Defendants were sometimes seen as responsible (“I think he settled the case because he was guilty, and he knew it.”). But lay observers also viewed settlement as an efficient means of resolving a case that avoids the financial and personal costs of litigation (“Economically speaking, it’s often cheaper to settle, than engage in a long, protracted jury trial.”).

Our controlled experiment shows that lay people made inferences about defendants’ responsibility, parties’ motivations, and even their moral character. These results both confirmed some predictions and opened up intriguing new questions about the influence of factors such as the substance of the agreement and the involvement of lawyers.

Together, these studies provide a new window into perceptions of the U.S. legal system as a whole. How people perceive the legal system ultimately matters to their understanding of its legitimacy and to the related effects on behavior, including whether people follow legal rules. This work on perceptions of settlement lays a foundation for understanding a legal system in which settlement is the predominant method by which legal disputes are resolved.

APPENDIX

TABLE A1. ATTRIBUTIONS OF RESPONSIBILITY TO DEFENDANT BY SURVEY PARTICIPANTS

		Overall	Tort	Crime	SEC	Police	#MeToo
Defendant Responsibility	mean	5.02	4.34	5.84	5.10	4.85	5.02
	median	5.25	4.25	6.13	5.13	4.75	5.25

Note. Responses measured on a 1 to 7 scale. Higher numbers indicate more defendant responsibility.

TABLE A2. CASE POSTURE COMPREHENSION CHECK

		Perceived Case Condition					TOTAL
		Defendant Wins	Plaintiff Wins	Settlement with Denial	Settlement without Denial	Case Filed	
Assigned Case Condition	Defendant Wins	48	15	4	2	4	73
	Plaintiff Wins	4	66	3	3	6	82
	Settlement with Denial	5	12	43	7	16	83
	Settlement without Denial	–	9	19	23	19	70
	Case Filed	2	13	9	2	57	83
	TOTAL	59	115	78	37	102	

Note: Count of participants assigned to each case posture condition (rows) and their perceived case condition (columns), as reported in their answers to the comprehension check question. Bold counts along the diagonal represent those who correctly perceived their assigned condition.

SCENARIOS AND QUESTIONS, STUDY ONE²⁰⁶

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**Springfield accountant settles insider trading case**

Parker Armstrong-Willis, Staff Writer

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SPRINGFIELD—A Springfield accountant has reached a settlement agreement with the Securities and Exchange Commission (SEC) for allegedly engaging in insider trading.

On October 17, 2018, Savory Enterprises, Inc., a potato product manufacturer, announced plans to merge with Blake Quality Foods, a private company specializing in food distribution. According to the SEC, on the day before the merger was publicly announced, Douglas Armstrong, 49, purchased 2000 shares of Savory Enterprises stock. As soon as news of the merger broke, the value of the Savory stock increased dramatically. Armstrong immediately sold all of the shares he had purchased the previous day, earning a significant profit on the deal.

The SEC claimed that Armstrong learned of the pending merger before it was announced through his work providing tax advice to an unrelated company. That company, which is not charged in the complaint, is owned by a member of Savory's board of directors. If Armstrong had this advance knowledge, his purchase and sale of the stock would have been illegal.

"Federal law makes it illegal to use private information to game the market," explained Janet Park, a professor of law at Springfield University.

"If you get information that's not available to the general public, you can't turn around and use that secret information to make money.

206. Participants received one of the following five news stories.

You have to wait until the information is public, just like everyone else,” Park said.

The details of Armstrong’s agreement with the SEC are not being made public at this time.

Springfield man pleads guilty in tech support fraud

Parker Armstrong-Willis, Staff Writer

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SPRINGFIELD—The U.S. Attorney’s office in Springfield announced today that a local man has pled guilty on several counts of computer crime related to what they allege was an international “tech support fraud” scheme.

Douglas Armstrong, 49, is the owner and manager of Capitol Computing, a company headquartered in Springfield that purports to provide computer-related services to its customers. According to prosecutors, Armstrong bought large blocks of malicious “pop-up” ads from a variety of online sources. When the ads appeared on victims’ computers, they caused the computers to freeze up. The ads also provided the telephone number for Capitol Computing and prompted victims to call the company for help. Armstrong and his employees would then convince victims to pay Capitol Computing to identify and fix the problem.

“These kinds of crimes are becoming increasingly common,” said Janet Park, a professor of law at Springfield University. According to the Department of Justice, technical-support schemes generated over 142,000 consumer complaints to the Federal Trade Commission’s Consumer Sentinel Network in 2018.

“The tools that someone needs to set up a tech support fraud scheme have gotten cheaper, making them easier and easier to set up” Park explained. “While many consumers are becoming more savvy when it comes to cybercrime, the fact of the matter is that many people are still at risk.”

Details of Armstrong’s plea agreement are not being made public at this time.

Driver settles lawsuit in fatal Creek Road collision

Parker Armstrong-Willis, Staff Writer

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SPRINGFIELD—The driver who struck and killed a pedestrian on Creek Road last year has settled a wrongful death lawsuit brought by the family of a man who was killed.

John Clarkson, 56, was walking alone on Creek Road just after dark on May 15, 2018, when he was struck from behind by a minivan driven by Douglas Armstrong, 49, of Springfield. According to the accident report, Armstrong told police that he was driving along Creek Road at about 35 miles per hour (the posted speed limit) and did not see Clarkson until after the collision. Clarkson died of his injuries a short time later. After an investigation, police were unable to determine exactly where Clarkson had been walking when the accident occurred, whether on the shoulder or in the lane of traffic. Armstrong was not charged.

The lawsuit filed last fall by Clarkson's family, however, claimed that Armstrong was likely on his cell phone when the accident occurred. The family alleged that Armstrong's van drifted from the road and onto the shoulder where Clarkson was walking.

"In a case like this one, where the only witnesses to the crash were the driver and the deceased pedestrian, the judge or jury would probably have had to rely on experts in accident reconstruction," said Janet Park, a professor of law at Springfield University.

"Based on photographs of the scene and the testimony of the first responders, those experts would have recreated the accident," Park explained. "They would then have tried to determine exactly where the accident occurred—on the shoulder, as the plaintiffs claim, or on the roadway."

Details of the settlement have not been made public at this time.

City settles excessive force lawsuit against Springfield officer

Parker Armstrong-Willis, Staff Writer

Published April 16, 2019 09:54 a.m.

SPRINGFIELD—The city's legal and police departments have settled a lawsuit filed last year by a resident.

On May 15, 2018, John Clarkson, 56, was arrested after police responded to a report of battery on the 1500-block of Creek Road.

Clarkson was initially charged with battery and battery of a police officer, but those charges were dropped.

In October, attorneys for Clarkson filed a lawsuit against the city and police officer Douglas Armstrong, 49. Allegations in the lawsuit included excessive use of force, false arrest, malicious prosecution and intentional infliction of emotional distress.

Clarkson's attorneys claimed the 56-year old African-American was recovering at home from a heart procedure when Officer Armstrong came to his door, eventually forcing his way into Clarkson's home and causing injuries to Clarkson's face and shoulder.

Police reports of the incident were released by the city in response to Freedom of Information Act requests by the News Leader. According to his report, Officer Armstrong was attempting to subdue a belligerent Clarkson when Clarkson's head hit a door frame, causing a cut above his eye and visible bruising. Clarkson argues that the officer's use of force was disproportionate to the threat posed by Clarkson, and that the subsequent battery charges against him were filed in order to justify the force used and to discredit Clarkson.

The Springfield Police Department has been the subject of similar allegations by two other individuals in the last three years. Both of those cases were eventually dropped, and neither claim involved Officer Armstrong. Nonetheless, according to Janet Park, a professor of law at Springfield University, Clarkson's suit could point to those cases as part of a pattern.

"Mr. Clarkson could have used the earlier cases to try and prove that the City has bad or inadequate police procedures, and that those procedures led to the alleged misconduct of the officer in this case," Park said.

Details of the settlement agreement are not being made public at this time.

TV station settles sexual harassment suit brought by former employee

Parker Armstrong-Willis, Staff Writer

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SPRINGFIELD—A local television station has settled a lawsuit by a former employee who alleged that she was sexually harassed while working for the station.

Douglas Armstrong, 49, had been the station manager of local ABC affiliate WDMR for eight years. According to the lawsuit, Armstrong harassed and intimidated his employee, whose name has not been released, offering promotions and prime assignments in return for sexual favors and threatening her when she complained.

When the case was filed last October, Attorney John Clarkson, who represents Armstrong's accuser, called Armstrong a "serial predator of the lowest order," claiming evidence that other former employees of WDMR had been harassed and even fired by Armstrong. "My client is just the tip of the iceberg," said Clarkson, "and WDMR's owners have been covering for Douglas Armstrong for years."

According to the lawsuit, the plaintiff worked for WDMR between 2013 and 2018 as an assistant producer and editor. Clarkson told reporters last fall that she had been "systematically harassed" for a period of at least six months. The woman is no longer an employee of the station.

Public sexual harassment complaints, once rare, have become increasingly common in the last few years, says Janet Park, a professor of law at Springfield University. "Public support for victims of sexual harassment has really increased in the '#MeToo' era," Park said, "and as a result, more and more victims are coming forward with their stories."

Details of the settlement are not being made public at this time.

Why do you think [the defendant] settled this case? (There is no right or wrong answer to this question; we are interested in your best guess.)

For the next set of questions, please indicate how much you agree or disagree with each of the following statements:

[7-point scale from Strongly Agree to Strongly Disagree; statements presented in randomized order]

[The defendant] probably did engage in [the alleged wrongdoing].
[The defendant] is probably *not* at fault for what happened in this case.

I think [the defendant] is innocent.

Sometimes things like this just happen, and no one is really to blame.

[The defendant] probably agreed to the settlement because [he] wanted to avoid harsher consequences.

[The defendant] was probably pressured into agreeing to the settlement.

[The defendant]’s lawyers probably told [him] to agree to the settlement

[The defendant] probably thinks of this settlement as a way to move on from this situation.

[The defendant] probably believes that this settlement will be less costly than contesting the lawsuit at a trial.

[The defendant] probably agreed to the settlement because [he] was afraid [he] would lose at a trial.

Why do you think [the plaintiff] agreed to the settlement in this case? (Again, there is no right or wrong answer, just make your best guess)

The remaining questions will help us understand your responses better.

How old are you?

What is your gender?

SCENARIO AND QUESTIONS, STUDY TWO²⁰⁷

On the next page, you will see a news article about a legal case. Please read the story carefully! On the following pages, you will be asked to answer questions about the story and your opinions of it.

207. Here we present the scenario for the entity defendant where the parties settled and the defendant explicitly did not admit fault. As noted above, in other versions of the scenario the defendant was described as an individual driver or the posture of the case was varied such that the news article reported that the case had simply been filed; that it had settled, but no other details were available; that a jury had found for the plaintiff; or that a jury had found for the defendant. The wording of the questions was adapted accordingly (e.g., to refer to the individual defendant rather than the entity, Wheeler Trucking). The full set of materials are available from the authors.

SPRINGFIELD NEWS-LEADER

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Parties Settle Suit in Creek Road Collision

Parker Armstrong-Willis, Staff Writer

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SPRINGFIELD—Wheeler Trucking, whose driver struck a pedestrian last year, has settled a lawsuit stemming from the collision, although the company emphasized that it was not admitting any fault.

John Clarkson, 56, was walking alone on Creek Road just after dark on October 15, 2018, when he was struck from behind by a truck owned by Wheeler Trucking, a Springfield company. Clarkson suffered a severe concussion and multiple broken bones. As a result of his injuries, he spent four weeks in the hospital and required several surgeries. Clarkson told investigators that he had been walking on the shoulder when the truck left the road and hit him, but the truck driver disagreed. The driver, an employee of Wheeler Trucking who was making deliveries for the company when the accident occurred, was adamant that Clarkson stepped out of the shadows on the shoulder and into the roadway prior to the accident. The driver told police that by the time he could see Clarkson, it was too late to stop. After an investigation at the scene, police could not determine exactly where Clarkson was walking when the collision occurred.

The lawsuit filed last fall by Clarkson, however, alleged that the truck drifted from the road and onto the shoulder where Clarkson was walking. Under state law, Wheeler Trucking is legally responsible for any injuries negligently caused by its drivers. .

“In a case like this one, where the only witnesses to the crash were the driver and the injured pedestrian, the judge or jury would have to rely on experts in accident reconstruction,” said Janet Park, a professor of law at Springfield University.

“Based on photographs of the scene and the testimony of the first responders, those experts recreate the accident,” Park explained. “They

use the recreation to try to determine exactly where the accident occurred—on the shoulder, as the plaintiff claims, or on the roadway, as maintained by the defendant.”

Details of the settlement have not been released. The company emphasized that it was not admitting any fault.

These first questions are to make sure you understood the most important parts of the news story.

Who brought the lawsuit (i.e., who is the plaintiff)? [response options presented in randomized order]

- John Clarkson, the pedestrian
- The driver of the truck
- A trucking company
- The City of Springfield

Who is being sued (i.e., who is the defendant)? [response options presented in randomized order]

- John Clarkson, the pedestrian
- The driver of the truck
- A trucking company
- The City of Springfield

What happened in the lawsuit? [response options presented in randomized order]

- The plaintiff filed a lawsuit, but nothing else has happened yet. The parties settled the lawsuit, and no other information is available.
- The parties settled the lawsuit, but the defendant denied any fault in the accident.
- A jury decided that the defendant was liable for the plaintiff's injuries.
- A jury decided that the defendant was NOT liable for the plaintiff's injuries.

For the next set of questions, please indicate how much you agree or disagree with each of the following statements.

[7-point scale from Strongly Agree to Strongly Disagree; statements presented in randomized order]

- The truck probably did drift off the road.
- Wheeler Trucking should NOT have to pay for this harm because it was John Clarkson's own fault.

Wheeler Trucking was probably NOT at fault for what happened in this case.

John Clarkson should accept responsibility for his own misfortune.

John Clarkson is just trying to profit from his injuries.

It is appropriate for Wheeler Trucking to be held responsible for the actions of its employee, the driver of the truck.

For the next set of questions, please think about *the plaintiff in this case, John Clarkson*. Please rate the extent you believe that the plaintiff, John Clarkson, is:

[7-point scales; attributes presented in randomized order]

Good === Bad

Moral === Immoral

Greedy === Generous

Deserving === Undeserving

Careful === Careless

Competent === Incompetent

Reasonable === Unreasonable

Responsible === Irresponsible

Think about *the defendant in this case, Wheeler Trucking* for the next few questions. Please rate the extent you believe that Wheeler Trucking is:

[7-point scales; attributes presented in randomized order]

Good === Bad

Moral === Immoral

Greedy === Generous

Deserving === Undeserving

Careful === Careless

Competent === Incompetent

Reasonable === Unreasonable

Responsible === Irresponsible

Please indicate how much you agree or disagree with each of the following statements about the reasons that **John Clarkson, the injured pedestrian**, might have had for settling this lawsuit:

[7-point scale from Strongly Agree to Strongly Disagree; statements presented in randomized order]

John Clarkson probably agreed to the settlement because he was satisfied with the amount of the settlement.

John Clarkson's lawyers probably advised him to agree to the settlement.

John Clarkson probably thinks of this settlement as a way to move on from this situation.

John Clarkson probably believes that this settlement will be less costly than pursuing the case at a trial.

John Clarkson probably agreed to the settlement because he was afraid he would lose at a trial.

John Clarkson probably agreed to the settlement because he wanted to minimize the publicity.

John Clarkson probably agreed to the settlement because he didn't want to have to experience the trauma of going to trial.

John Clarkson probably agreed to the settlement because he needs money sooner rather than later.

John Clarkson probably agreed to the settlement to avoid lengthy litigation.

Please indicate how much you agree or disagree with each of the following statements about the reasons that **the defendant, Wheeler Trucking**, might have had for settling this lawsuit:

[7-point scale from Strongly Agree to Strongly Disagree; statements presented in randomized order]

Wheeler Trucking probably agreed to the settlement because the company wanted to avoid harsher consequences.

Wheeler Trucking probably agreed to the settlement because its insurance would pay for it.

Wheeler Trucking's lawyer probably advised it to agree to a settlement.

Wheeler Trucking probably thinks of this settlement as a way to move on from this situation.

Wheeler Trucking probably believes that this settlement will be less costly than contesting the case at a trial.

Wheeler Trucking probably agreed to the settlement to avoid lengthy litigation.

Wheeler Trucking probably agreed to the settlement because the company was afraid it would lose at a trial.

Wheeler Trucking probably agreed to the settlement because the company wanted to minimize the publicity.

Wheeler Trucking probably agreed to the settlement because the company knew it was responsible for Clarkson's injuries.

Wheeler Trucking probably agreed to the settlement because the company felt bad for what happened to Clarkson.

Next, we are interested in your impressions of lawsuits more generally. Please indicate how much you agree or disagree with each of the following statements:

[7-point scale from Strongly Agree to Strongly Disagree; statements presented in randomized order]

Corporations should not be held liable for the acts of individual employees.

When employees act negligently, their employers should be held responsible for the harm done.

An employee who negligently causes harm should be held personally responsible rather than holding the employer responsible.

There are far too many frivolous lawsuits today.

People are too quick to sue, rather than trying to solve disputes in some way.

The large number of lawsuits show that our society is breaking down.

The money awards that juries are awarding in civil cases are too large.

Most people who sue others in court have legitimate grievances. By making it easier to sue, the courts have made this a safer society.

Juries do a good job determining the outcomes of lawsuits and assessing damages.

The remaining questions will help us understand your responses better.

How old are you?

What is your gender?

