

IV. BOARD OF DIRECTORS

RESOLUTION ON INTERROGATIONS OF CRIMINAL SUSPECTS (NBI #27A)

SUMMARY

The Council is asked to adopt as APA policy the Resolution on Interrogations of Criminal Suspects as provided in the substitute main motion.

STRATEGIC GOALS/OBJECTIVES

Increase Recognition of Psychology as a Science (3 b and c).

FUNDING

None needed. Dissemination will be done electronically.

IMPLEMENTATION

If approved by Council, the Resolution will be included in APA Policy Manual. It will also be posted on the APA web site and disseminated to APA boards and committees, APA division and state, provincial and territorial psychological associations.

RECOMMENDATION

The Board of Directors, Committee on Legal Issues (COLI), along with the movers of the main motion (APA Division 41), recommend approval of the substitute main motion.

Additional recommendations from APA governance groups may be found in the Comments Chart (Exhibit 2).

MAIN MOTION

(as originated in NBI #27A)

- 1 That the Board of Directors recommends that Council adopts the following resolution that draws
- 2 attention to the problem of false confessions and wrongful convictions, and includes
- 3 recommendations for practices that can be employed to reduce the frequency of false confessions
- 4 and wrongful convictions.

5

6

Resolution on Interrogations of Criminal Suspects

7

- 8 WHEREAS law enforcement officers, upon gaining a confession from a criminal suspect, often
- 9 close their investigation, deem the crime solved, and sometimes overlook exculpatory evidence or
- 10 other possible leads—even in cases in which the confession is internally inconsistent, contradicted

11 by external evidence, or the product of coercive interrogation (Leo & Ofshe, 1998; Drizin & Leo,
12 2004; Findley & Scott, 2006; Hirsch, 2007; Kassin & Gudjonsson, 2004);

13

14 WHEREAS prosecutors, upon learning of a suspect's confession, tend to charge suspects with the
15 highest number and types of offenses, set bail higher, and are far less likely to initiate or accept a
16 plea bargain to a reduced charge (Leo & Ofshe, 1998; Drizin & Leo, 2004; but see Redlich, in
17 press);

18

19 WHEREAS many adults with mental disabilities and younger adolescents are limited in their
20 understanding of the Constitutional rights to silence and to counsel, lack the capacity to weigh the
21 consequences of a rights waiver, and are more likely to waive their rights (Cooper & Zapf, 2008;
22 Rogers et al., 2007a; Clare & Gudjonsson, 1991; Everington & Fulero, 1999; Fulero & Everington,
23 1995; O'Connell, Garmoe & Goldstein, 2005; Abramovitch, Higgins-Biss & Biss, 1993; Abramovitch,
24 Peterson-Badali & Rohan, 1995; Colwell, Cruise, Guy et al., 2005; Goldstein, Condie, Kalbeitzler et
25 al., 2003; Grisso, 1980, 1981; Redlich, Silverman & Steiner, 2003; Viljoen, Klaver & Roesch, 2005;
26 Viljoen & Roesch, 2005; Wall & Furlong, 1985; Clare & Gudjonsson, 1995; Everington & Fulero,
27 1999; O'Connell, Garmoe & Goldstein, 2005; Goldstein, Condie, Kalbeitzler et al., 2005; Redlich,
28 Silverman & Steiner, 2003; Singh & Gudjonsson, 1992);

29

30 WHEREAS interrogations that are excessive in length, include the presentation of false evidence,
31 or include implicit or explicit promises of leniency increase the risk of false confessions (Drizin &
32 Leo, 2004; Horselenberg, Merkelbach, & Josephs, 2003; Kassin & Kiechel, 1996; Kassin & McNall,
33 1991; Klaver et al., 2008; Leo & Ofshe, 1998; Ofshe & Leo, 1997a, 1997b; Nash & Wade, 2009;
34 Perillo & Kassin, 2011; Redlich & Goodman, 2003; Russano et al., 2005; Swanner, Beike, & Cole,
35 2010; White, 2001);

36

37 WHEREAS innocent persons have falsely confessed to committing offenses of which they have
38 been accused only later to be exonerated (Drizin & Leo, 2004; Gudjonsson, 1992, 2003; Kassin,
39 1997; Kassin & Gudjonsson, 2004; Lassiter, 2004; Lassiter & Meissner, 2010; Leo & Ofshe, 1998;
40 Garrett, 2008; Scheck, Neufeld, & Dwyer, 2000; <http://www.innocenceproject.org/>);

41

42 WHEREAS confessions are particularly potent forms of evidence that jurors and others do not fully
43 discount—even when they are judged to be coerced (Kassin & Neumann, 1997; Kassin & Sukel,
44 1997; Lassiter & Geers, 2004; Leo & Ofshe, 1998; Drizin & Leo, 2004; Kassin & Wrightsman, 1980;
45 Neuschatz et al., 2008; Redlich, Ghetti, & Quas, 2008; Redlich, Quas, & Ghetti, 2008);

46

47 WHEREAS jurors and other triers of fact have difficulty distinguishing true and false confessions
48 (Kassin, Norwick, & Meissner, 2005)—in part because false confessions are highly counterintuitive
49 (Leo & Liu, 2009; Levine, Kim, & Blair, 2010) and in part because these statements, as seen in the
50 confessions of defendants who were ultimately exonerated, typically contain vivid and accurate
51 details about the offense and victim, facts that were not in the public domain, as well as other
52 indicia of credibility (e.g., statements of motivation, apologies and remorse, corrected errors),
53 indicating that the innocent confessor obtained the information from leading questions or other
54 secondary sources of information (Garrett, 2010; Appleby, Hasel, & Kassin, 2011; Kassin, 2006;
55 Leo, 2008; Leo & Ofshe, 1998, Ofshe & Leo 1997a, 1997b);

56

57 WHEREAS videotaping of interrogations in their entirety provides an objective and accurate audio-
58 visual record of the interrogation, provides a vehicle by which to resolve disputes about the
59 source of non-public details in a suspect's confession, and has the potential to deter interrogators
60 from using inappropriate tactics and deter defense attorneys from making frivolous claims of

61 police coercion (American Bar Association, 2004; Boetig, Vinson, & Weidel, 2006; Cassell, 1996a,
62 1996b; Drizin & Colgan, 2004; Geller, 1994; Gudjonsson, 2003; Kassin et al., 2010; Leo, 1996c;
63 Slobogin, 2003; Sullivan, 2004; The Justice Project, 2007);

64
65 WHEREAS interrogations video recorded from a “neutral” camera perspective—one focusing
66 attention equally on suspects and interrogators—produce less prejudiced judgments or
67 interpretations of suspects’ statements and behaviors than the more typical “suspect-focus”
68 camera perspective that directs greater attention onto suspects than interrogators (Landström,
69 Roos af Hjelmsäter, Granhag, 2007; Lassiter, 2002, 2010; Lassiter, Diamond, Schmidt, & Elek, 2007;
70 Lassiter, Geers, Handley, Weiland, & Munhall, 2002; Lassiter, Geers, Munhall, Handley, & Beers,
71 2001; Lassiter, Ware, Lindberg, & Ratcliff, 2010; note that Ratcliff, Lassiter, Jager, Lindberg, Elek, &
72 Hasinski, 2010, report preliminary evidence that the prophylactic effect of a neutral camera
73 perspective may be less when the suspect is a racial minority and the interrogator is not);

74
75 WHEREAS, the findings set forth in this resolution regarding the phenomenon of false confessions
76 are the product of established research methods that are widely accepted in the field of
77 psychology, as evidenced by publication in the peer reviewed journals and books that are cited in
78 the resolution and its supporting references; and

79
80 WHEREAS, as a scientific and educational organization, the American Psychological Association’s
81 mission is in part to promote the application of sound research findings to advance the public
82 welfare;

83
84 THEREFORE, BE IT RESOLVED that the American Psychological Association recommends that all
85 custodial interviews and interrogations of felony suspects be video recorded in their entirety and
86 with a “neutral” camera angle that focuses equally on the suspect and interrogator;

87
88 BE IT FURTHER RESOLVED that APA recommends, recognizing that the risk of false confession is
89 increased with extended interrogation times, that law enforcement agencies consider placing
90 limits on the length of time that suspects are interrogated, with these limits only being exceeded
91 with special authorization;

92
93 BE IT FURTHER RESOLVED that APA recommends that law enforcement agencies, prosecutors, and
94 the courts recognize the risks posed to innocent suspects by interrogations that involve the
95 presentation of false evidence;

96
97 BE IT FURTHER RESOLVED that APA recommends that police, prosecutors, and the courts
98 recognize the risks posed to innocent suspects by interrogations that involve minimization
99 “themes” that communicate promises of leniency;

100
101 BE IT FURTHER RESOLVED that APA recommends that particularly vulnerable suspect populations
102 be provided special protection during interrogations in the form of the mandatory presence of
103 either an attorney or professional advocate, and

104
105 BE IT FURTHER RESOLVED that APA recommends that those who conduct interrogations receive
106 special training regarding the risk of eliciting false confessions from individuals who are young,
107 cognitively impaired, psychologically disordered, or in other ways are vulnerable to manipulation.

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References

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291

SUBSTITUTE MOTION

(as originated by COLI and the movers of NBI #27A)

1 That the Board of Directors recommends that Council adopts as APA policy the following
 2 Resolution on Interrogations of Criminal Suspects that draws attention to the problem of false
 3 confessions and wrongful convictions, and includes recommendations for the practices that can be
 4 employed to reduce the frequency of false confessions and wrongful conviction.

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Resolution on Interrogations of Criminal Suspects

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15 highest number and types of offenses, set bail higher, and are far less likely to initiate or accept a
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25 1999; O'Connell, Garmoe & Goldstein, 2005; Goldstein, Condie, Kalbeitzer et al., 2005; Redlich,
26 Silverman & Steiner, 2003; Singh & Gudjonsson, 1992); a pattern that also afflicts ordinary adults
27 who are under stress (Rogers, Gillard, Wooley, & Fiduccia, 2011; Scherr & Madon, 2013);
28

29 WHEREAS interrogations that are excessive in length, include the presentation of false evidence,
30 or include implicit or explicit promises of leniency increase anxiety, create an incentive to escape
31 the situation, mislead the suspect into believing that a confession is in one's best interests, and
32 thereby increase the risk of false confessions (Drizin & Leo, 2004; Horselenberg, Merkelbach, &
33 Josephs, 2003; Kassin & Kiechel, 1996; Kassin & McNall, 1991; Klaver et al., 2008; Leo & Ofshe,
34 1998; Ofshe & Leo, 1997a, 1997b; Nash & Wade, 2009; Perillo & Kassin, 2011; Redlich &
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45 Neuschatz et al., 2008; Redlich, Ghetti, & Quas, 2008; Redlich, Quas, & Ghetti, 2008); Wallace &
46 Kassin, 2012);
47

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49 (Kassin, Norwick, & Meissner, 2005; Honts, Kassin, & Craig, in press) and whereas false confessions
50 are highly counterintuitive (Leo & Liu, 2009; Levine, Kim, & Blair, 2010) and in part because these
51 statements, & Blair, 2010) and in part because these statements, as seen in the confessions of
52 defendants who were ultimately exonerated, typically contain vivid and accurate details about the
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65 Slobogin, 2003; Sullivan, 2004; The Justice Project, 2007);

66
67 WHEREAS interrogations video recorded from a “neutral” camera perspective—one focusing
68 attention equally on suspects and interrogators—produce less prejudiced judgments or
69 interpretations of suspects’ statements and behaviors than the more typical “suspect-focus”
70 camera perspective that directs greater attention onto suspects than interrogators (Landström,
71 Roos af Hjelmsäter, Granhag, 2007; Lassiter, 2002, 2010; Lassiter, Diamond, Schmidt, & Elek, 2007;
72 Lassiter, Geers, Handley, Weiland, & Munhall, 2002; Lassiter, Geers, Munhall, Handley, & Beers,
73 2001; Lassiter, Ware, Lindberg, & Ratcliff, 2010;

74
75 WHEREAS, the findings set forth in this resolution regarding the phenomenon of false confessions
76 are the product of established research methods that are widely accepted in the field of
77 psychology, as evidenced by the AP-LS scientific review paper (Kassin et al., 2010) peer reviewed
78 journals, and books that are cited in the resolution and its supporting references; and

79
80 WHEREAS, as a scientific and educational organization, the American Psychological Association’s
81 mission is in part to promote the application of sound research findings to advance the public
82 welfare;

83
84 THEREFORE, BE IT RESOLVED that the American Psychological Association recommends that all
85 custodial interviews and interrogations of felony suspects be video recorded in their entirety and
86 with a “neutral” camera angle that focuses equally on the suspect and interrogator;

87
88 BE IT FURTHER RESOLVED that APA recommends, recognizing that the risk of false confession is
89 increased with extended interrogation times, that law enforcement agencies consider placing
90 limits on the length of time that suspects are interrogated;

91
92 BE IT FURTHER RESOLVED that APA recommends that law enforcement agencies, prosecutors, and
93 the courts recognize the risks of eliciting a false confession by interrogations that involve the
94 presentation of false evidence;

95
96 BE IT FURTHER RESOLVED that APA recommends that police, prosecutors, and the courts
97 recognize the risks of eliciting a false confession that involve minimization “themes” that
98 communicate promises of leniency;

99
100 BE IT FURTHER RESOLVED that APA recommends that those who interrogate individuals who are
101 young (with particular attention paid to developmental level and trauma history), cognitively
102 impaired, those with impaired mental health functioning, or in other ways are vulnerable to
103 manipulation receive special training regarding the risk of eliciting false confessions; and

104
105 BE IT FURTHER RESOLVED that APA recommends that particularly vulnerable suspect populations,
106 including youth, persons with developmental disabilities, and persons with mental illness, be
107 provided special and professional protection during interrogations such as being accompanied and
108 advised by an attorney or professional advocate.

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BACKGROUND/HISTORY

APA Division 41 (American Psychology-Law Society) developed a comprehensive “white paper” on false confessions that was published in *Law and Human Behavior* (2010) 34:3-38. Much of the research cited in that white paper was cited in APA *amicus* briefs addressing issues regarding false confessions filed in five cases to date (i.e., *Floyd v. Cain*, *Michigan v. Kowalski*, *Rivera v. Illinois*, *Warney v. New York*, and *Wright v. Pennsylvania*). In light of the substantial research, APA General Counsel suggested that Division 41 develop a proposed resolution since an APA policy in this regard can have an impact in some legal venues. In response to General Counsel’s suggestion, New Business Item #27A: *Proposed Resolution on Interrogations of Criminal Suspects* (Exhibit 1) was introduced at Council’s August 2011 meeting. The movers of the item were Randy Otto and Bill Foote representing APA Division 41. The proposed resolution draws attention to the problem of false confessions and wrongful convictions and includes recommendations for practices that can be employed to reduce the frequency of false confessions and wrongful convictions. If adopted as APA policy, the resolution could be distributed to and cited by policy makers wishing to make changes in relevant processes and systems.

The Committee on Legal Issues (COLI) was assigned as the lead group and the Board for the Advancement of Psychology in the Public Interest (BAPPI) as a referral group for review of this item. During COLI’s fall 2011 meeting, the Committee noted that there is a well-established research base on

false confessions and wrongful convictions. COLI considered the proposed resolution to be well written, with the purpose and rationales for the proposed resolution clearly stated and addressing an issue of particular concern to psychology. COLI did, however, express some concern that the recommendations presented in the main motion (i.e., a few of the “therefore” clauses) did not naturally flow from the research and considered these clauses to be too prescriptive. As a result, COLI recommended a few minor changes to these clauses to make the statements less prescriptive while still providing the psychological science and guidance for practices that can be employed to reduce the frequency of false confessions and wrongful convictions.

COLI convened a joint meeting with BAPPI, to address the new business item during the fall 2011 APA Consolidated meetings, and COLI presented the main motion along with a COLI-proposed substitute motion to BAPPI for consideration. There was COLI/BAPPI consensus to approve a recommendation that Council adopt the COLI-proposed substitute motion as APA policy.

The COLI/BAPPI revised motion, with minor changes, was provided to the movers of the new business item for review. In mid-March 2012, the Division 41 Executive Committee, with the assistance of expert Saul Kassin, reviewed the changes proposed by COLI and BAPPI. The Division expressed just two concerns, as follows: 1. There was concern that the COLI/BAPPI recommendation, that the text be changed to suggest that interrogations of ALL suspects (including those accused of either misdemeanors or felonies) be recorded, might alienate law enforcement professionals and result in them discounting the document given the sheer number of misdemeanor arrests. Thus, they proposed returning the language to its previous form so that it is recommended that only interrogations of felony suspects be recorded. 2. The second concern was that existing language in one of the final sections (that was in the original main motion and not edited by COLI and BAPPI) could be read as suggesting that law enforcement officers get training about the risk of false confessions from persons who are at risk from falsely confessing. Therefore, the sentence was restructured for clarification. COLI agreed with the rationales presented for these two amendments.

The remaining referral group, BAPPI, and all other APA boards and committee received this item, along with the revised substitute motion (including rationales for amendment) for review and comment at the March 31-April 1, 2012 Consolidated meetings. Exhibit 2 presents a Comments Chart including all commentary received from governance groups after that meeting.

All comments from APA governance groups submitted subsequent to the spring 2012 meetings were provided to the movers of the new business item. The movers of the motion planned to work with the APA Division 41 Executive Committee to address the proposals for minor amendment submitted by a few governance groups. However, further review and revision on behalf of Division 41 was delayed. During summer 2013, David DeMatteo, JD, PhD, Division 41 Council Representative, took over the role of facilitating final Division 41 review and approval. Minor amendments were made to the proposed resolution to address the issue of disability with more specificity and also to identify other factors that might go towards making persons undergoing interrogation more vulnerable to false confessions which responded to issues raised by CDIP, CCYF, and COPA.

COLI, during its Spring 2014 meeting, revised the substitute motion as revised by Division 41 and agreed that issues raised by CDIP, CCYF, and COPA were adequately addressed. In this regard, there was COLI consensus that the substitute motion be approved and recommended for adoption as APA policy.

Additionally, the Board of Directors, during its June 2014 meeting, took action to recommend that Council adopt as APA policy the proposed Resolution on Interrogation of Criminal Suspects as provided in the substitute motion.

For reference, Exhibit 3 presents the substitute motion compared to the original main motion.

EXHIBITS

1. Council New Business Item #27A: *Proposed Resolution on Interrogations of Criminal Suspects* (August 2011)
2. Comments Chart with Responses to APA Governance Comments from the Spring 2012 Review
3. Substitute Motion compared to Main Motion

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