COUNCIL OF REPRESENTATIVES
February 21-23, 2014

APPROVED MINUTES

I. MINUTES OF MEETING

A.(1) Council voted to approve the minutes of the July 31 & August 2, 2013, Council of Representatives meeting.

II. ELECTIONS, AWARDS, MEMBERSHIP AND HUMAN RESOURCES

A.(2) Council voted to approve that APA defines early career psychologists as being within ten years of the receipt of the doctoral degree.

Council also voted to approve the following amendments to Association Rule 90-8 (bracketed material to be deleted; underlined material to be added):

90-8. Committee on Early Career Psychologists

90-8.1 There shall be a Committee on Early Career Psychologists that shall seek to (1) research, organize and institute initiatives to increase the number of student affiliates who transition to full member status, as well as the number of early career psychologists (defined as being within ten years of the doctoral degree) joining the association for the first time; (2) collaborate in the development and implementation of the recruitment and retention initiatives of the Membership Board; (3) support the development of new mechanisms and the enhancement of existing mechanisms to increase participation in APA Divisions and State, Provincial and Territorial Psychological Associations among early career psychologists; (4) promote greater awareness of the benefits of APA membership for early career psychologists and work to expand those benefits; and (5) represent the interests and concerns of early career psychologists throughout APA governance and the central office.

The Committee shall consist of seven Members of the Association within [seven] ten years of the receipt of the doctorate representing Education, Practice, Public Interest and Science focuses and experience in Division and State/Provincial/Territorial Association Early Career Psychologist programs, and Governance and Membership Outreach. Committee members will be appointed by the Board of Directors for staggered terms of three years. The Committee shall report to the Board of Directors.

B.(3) Council voted to request that the item “Engaging New Talent in APA Governance” be placed on the March 2014 Cross Cutting Agenda. A working group met during the Council meeting and developed revisions to Substitute Main Motion I and Substitute Main Motion II of the item. Council was informed the revised motions would be included as two separate items on the March 2014 Cross Cutting Agenda.
III. ETHICS

A.(23A) A new business item “Resolution in Favor of APA Providing Support and Assistance to Military and National Security Psychologists Striving to Abide by the APA Ethics Code and APA Policy” was referred to the Ethics Committee, Board of Professional Affairs (BPA), Committee on Legal Issues (COLI), and the Policy and Planning Board (P&P).

IV. BOARD OF DIRECTORS

A.(4) Council voted to 1) delegate to the Board of Directors the authority to approve changes to Council’s reimbursement policy; and 2) ask the Board to take into account the feedback received from Council during its February 2013 and 2014 discussions and the recommendation from CSFC that all Council members be fully funded for their attendance at both the February and August meetings beginning in 2014.

B.(23B) A new business item “Implementation of the 2008 Membership Vote to Remove Psychologists from All Settings that Operate Outside of International Law” was referred to COLI, P&P, BPA and the Ethics Committee.

C.(24) Council received an update on the business pending item “Proposed Resolution on Interrogations of Criminal Suspects.”

D. Council received an update on the new-business-in-progress report “The National Violence Project.”

E. In accordance with Association Rule 30-6.6, Council received as information the Litigation Report, from Nathalie F.P. Gilfoyle, APA General Counsel (attached).

V. DIVISIONS AND STATE AND PROVINCIAL AND TERRITORIAL ASSOCIATIONS

A.(5) Council voted to reject the motion requesting candidacy status for a period of two years for the Society for Technology and Psychology, Division 57 of the American Psychological Association.

VI. ORGANIZATION OF THE APA

A.(6) Council voted to authorize the use of designated funds of $285,900, of which $72,000 was previously approved by Council, to cover the costs of the implementation of the Good Governance plans in 2013 and 2014.

B.(7) The item “Making APA Into a Data-Driven Organization” was postponed to Council’s August 2014 meeting.

C.(7A) Council voted to adopt the following Resolution Delegating Authority for Specific Duties to the Board on a Trial Basis:

WHEREAS the American Psychological Association has embarked on a project of good governance (the “Good Governance Project” or “GGP”) in order to enhance and improve the efficiency, nimbleness and effectiveness of APA’s governance infrastructure;
WHEREAS the Good Governance Project Team brought forth to Council the Good Governance Project Report detailing ways that the governance infrastructure of APA can be more effective, more nimble and more efficient;

WHEREAS the GGP Report was received by Council at its July/August 2013 meeting;

WHEREAS the GGP Team brought forward for a vote to Council in July/August 2013 eight (8) motions relating to the implementation of the GGP Report including:

- Technology
- Leadership Development
- Triage
- Council Purpose
- Fiduciary Roles
- Board Composition
- Council Structure
- Implementation

WHEREAS among these motions, Council adopted Motion #5 at its July 31 & August 2, 2013 meeting which provides, as follows:

**Motion #5 Fiduciary Roles (108/50/1)**

_Council supports delegating the authority for the following areas of fiduciary responsibility to the Board of Directors on a trial basis for a three-year period following implementation:_

- Financial/budget matters
- Hiring, evaluation and support for the Chief Executive Office
- Assuring alignment of the budget with the APA strategic plan
- Internally focused policy development

_In addition, Council will receive regular reports from the Board on the delegated areas during the trial period and retains its responsibility as set forth in the Bylaws. In the interest of transparency, such reports to Council will also be made available to the entire membership._

_Council directs the President to instruct the IWG to develop an implementation plan that includes an evaluation process for the end of the three-year trial period and to present these to Council for approval beginning in February 2014._

WHEREAS Council has determined that it is in the best interests of the Association, and will facilitate APA fulfilling its mission, to allow Council to focus its work more fully on developing and adopting policy and ensuring APA policies are aligned with APA’s plans.

WHEREAS Council has determined that it can best meet its fiduciary duty to the Association as a whole, and in particular in the areas of financial and budget matters, alignment of the budget
with the strategic plan, management of chief Executive Officer, and internally focused policy development, by delegating evaluation, oversight, management and decision making authority for these areas to the Board of Directors.

WHEREAS pursuant to Motion #5, in order to allow Council to fulfill its fiduciary responsibility more fully so that it may focus its work on policy issues and alignment of policy with APA’s mission and strategic plan, the Council of Representatives wishes to evaluate on a trial basis the effectiveness of delegating authority for that part of its fiduciary responsibility to certain financial and administrative tasks to the Board to discharge for a trial period of three years beginning on March 1, 2014;

WHEREAS Council will have the responsibility for approving the 2014 operating budget at the February 2014 Council meeting.

THEREFORE BE IT RESOLVED pursuant to its authority as set forth in Article IV Sections 1 and 7 of the Bylaws, and pursuant to a suspension of Association Rules to the extent necessary, the Council of Representatives hereby delegates to the Board of Directors, for a period of three years beginning March 1, 2014 and ending February 28, 2017, authority for the following areas:

- Financial and budget matters,
- Hiring, evaluation and support of the CEO,
- Assuring alignment of the budget with the APA Strategic Plan, and
- Internally focused policy development

The Board shall prepare and provide to Council semi-annual reports on these delegated areas during this period, which shall also be available to the membership.

During the three year period:

1) Council will rely on the Board of Directors to carry out its responsibilities in these four areas, subject to Council’s overall power and authority as set forth in the Bylaws and;

2) Those portions of the Association Rules requiring a vote of approval by Council for action in these four areas shall be suspended until further action by Council, such as:

- Rule 110-11 (Chief Staff Officer evaluation)
- Rule 210-2.3/210-4 (approval by Council of long term goals for investing recommended by the APA Finance Committee);
- Rule 210-2.5 (approval by Council of Presidential Discretionary Fund);
- Rule 210-5 (approval of dues);
- Rule 10-12 (Life Membership Status dues exemption);
- Rule 50-3 (approve new ad hoc group if new funding is needed);
- Rule 210-2.2 (approval of budget by Council)
3) For the evaluation process:

- The Chief Financial Officer, on behalf of the Board of Directors, Finance Committee and APA staff, will provide a semi-annual report to Council. This report will provide Council detail on how APA is meeting the organizational financial goals as set forth in the Association Rules.

- Two evaluations will be conducted under the direction of the Finance Committee which will solicit input from Council, Board of Directors, Finance Committee and appropriate APA staff.

- The first evaluation will be conducted in the spring of 2015. The Treasurer will report the findings of the evaluation to Council at its August 2015 meeting. Data collected will be used to modify the on-going trial.

- The second evaluation will be conducted in the spring of 2016. The Treasurer will report the findings of the evaluation to Council at its August 2016 meeting. Data provided will be used to improve the on-going trial period.

- At the end of the trial period during the February 2016 meeting, Council will decide how to proceed.

D.(7B) Council voted to ask that staff bring to Council at its August 2014 meeting relevant Bylaws and Association Rule changes to reconfigure the Board of Directors so as to be consistent with Council's vote at its July 31 & August 2, 2013 meeting.

Council also approved that the public member is a voting member of the Board and that the Chair and Chair-elect of the Council Leadership Team (CLT) are the two members on the Board from the Council.

The Composition of the Board of Directors will be as follows:

- The President, President-elect and Past President, elected by and from the general membership
- The Recording Secretary and Treasurer, elected by the Council
- The Chair and Chair-elect from the Council Leadership Team, elected by the Council
- Six members-at-large elected by and from the general membership
- The APAGS Past Chair (elected directly by and from the APAGS membership)
- One public member appointed by the Board
- The Chief Executive Officer (ex officio; non-voting)

All members except for the Chief Executive Officer are voting members. All voting members serve three-year terms except as follows: The APAGS Past Chair serves a one-year term; the Presidential cycle is a three-year term in total; and the members from the CLT (Chair and Chair-elect) each serve a two-year term. A member cannot serve consecutive terms on the Board of Directors (including moving from one position to another) with the following exceptions: The Treasurer is eligible to serve two terms, but
may not serve more than six consecutive years. A Board member is eligible to run for and serve as President. After at least one full year off the Board, members are eligible to run for election for a Board position.

The Needs Assessment, Slating, and Campaigns Committee (NASCC) will conduct an annual needs assessment and develop slates for the six seats on the Board elected by and from the general membership and shall ensure that at least one member of the Board is an Early Career Psychologist. NASCC will also develop the slate for the public member appointed by the Board.

Council voted to ask that staff prepare language for necessary Association Rule changes to create the new Needs Assessment, Slating and Campaigns Committee (NASCC). This committee is charged with conducting an annual needs assessment and developing slates for seats on the Board of Directors and Council that are elected from the general Association membership, soliciting and vetting candidates for the election slates, and helping support the dissemination of information about and conduct of elections to these seats. NASCC also develops the slate for the public member of the Board to be appointed by the Board.

The NASCC will consist of seven members, including one public member. Members will have three-year staggered terms and may only serve one 3-year term. The members are appointed as follows:

- One member each (for a total of four members) appointed by the following boards: Board for the Advancement of Psychology in the Public Interest, Board of Educational Affairs, Board of Professional Affairs, and Board of Scientific Affairs.
- Three members, including the public member, appointed by individuals in the Presidential cycle (President, President-elect and Past President) after broad consultation.

Individuals who serve on the NASCC should be free of conflicts of interest or appearances of conflicts of interest with other roles they have held or seek within APA and also within Divisions and State, Provincial, and Territorial Psychological Associations (SPTAs). The following eligibility rules apply to all NASCC members:

- Individuals are not permitted to serve on the NASCC if they have served on the Board of Directors, Council of Representatives, or APA boards and committees in the past year.
- Members of the NASCC are restricted from concurrent service on the Board of Directors, Council of Representatives, or APA boards and committees for at least two years following their service on the NASCC.
- Members of the NASCC are not permitted to serve concurrently in elected officer positions in any Divisions or SPTAs.

The Draft Operations and Procedures for the NASCC as developed by the Good Governance Project Implementation Work Group (IWG) will form the basis of how NASCC will perform its duties. NASCC will be charged with developing an Operations and Procedures Manual which shall be consistent with the core criteria as recommended by the IWG. The Manual will be returned for approval by Council.
E.(7C) Council voted to approve expanding its scope to focus on developing, directing and informing policy affecting the discipline and practice of psychology, identifying and prioritizing major efforts facing psychology and ensuring APA policies are aligned with APA’s mission and strategic plan.

Council voted to ask staff to develop the relevant Bylaw and Association Rule changes needed to establish the Council Leadership Team (CLT) as described below.

The CLT shall serve as the Executive Committee of Council and consist of a Chair, Chair-elect, Past Chair, the APA President, the APA President-elect, the APA Treasurer, the APAGS Chair, an Early Career Psychologist Representative, three members-at-large and the Chief Executive Officer (without vote). The Chair of CLT presides over CLT. The President presides over the Council.

The Chair cycle is a three-year term in total. Members-at-large and the ECP Representative serve a three-year term. The Chair-elect, Members-at-large and the ECP Representative shall be selected from the existing representatives on Council who have had at least one year of Council experience.

The members-at-large shall serve for staggered terms of three-years and may serve for a second-three year term but not consecutively.

An assessment of needs for the CLT will be provided to Council in advance of the nominations process. The 3 candidates for Chair, member-at-large, and ECP representative will be slated based on the highest number of nominations by Council. Election will be based on the highest number of votes by Council. The APAGS Representative shall be the APAGS chair. The APAGS Representative will rotate annually. The Presidential cycle is a two-year term in total on the CLT.

The CLT will a) manage a procedure to select and oversee Council’s mega issue discussions; b) prioritize and determine appropriate disposition of new items coming through the triage system; c) determine the priorities for Council and the order of business for meetings of Council; d) initiate and oversee the work of boards and committees reporting to Council; e) provide a recommendation to Council on all motions brought before Council for its consideration; f) regularly review the structure and function of Council (including orientation of new members) and handle complaints about Council functions and operations; and g) lead Council in reviewing and revising the strategic plan and ensure that APA policies are aligned with APA’s mission and strategic plan.

The CLT shall develop and adopt its own operating procedures and policies incorporating the use of technology.

F.(7D) Council voted to direct that the IWG return to Council with a model for structural change that takes into consideration the discussion held at its February 2014 meeting.

G.(26) Council received information on the Board of Directors approval of a proposal from P&P that establishes a process for review and funding of revisions to guidelines that have been approved by the Council of Representatives as APA policy.

VII. PUBLICATIONS AND COMMUNICATIONS

A.(25A) Council received an update on Publications and Communications (P&C) 2013 activities. The P&C Board met twice in 2013, April 19-21 and November 1-3. The P&C Board reported that total revenue for
APA's core scholarly and professional publishing program (APA Journals, APA Books, Publication Manual, PsycINFO, and PsycNET platform) was approximately $80 million in 2013. The Publication Manual of the American Psychological Association, Sixth Edition, exceeded $7 million in sales in 2013 and with approximately 300,000 units sold. Now in its seventh printing, the Publication Manual has spent more than 1,200 days on Amazon's “top 100” list since its release in 2009. The Reference division of APA Books released APA Handbook of Psychology, Religion, and Spirituality (3-volume set), APA Handbook of Testing and Assessment in Psychology (3-volume set), APA Dictionary of Lifespan Development Psychology, APA Handbook of Multicultural Psychology, Graduate Study in Psychology, 2014 Edition, APA Dictionary of Statistics and Research Methods, and APA Handbook of Sexuality and Psychology,(2-volume set). APA Books released 44 new titles and 12 new Magination Press titles. In 2013, awards were received for the following Magination Press titles: Sally Sore Loser: A Story About Winning and Losing—ForeWord; Gold Award, Children’s Picture Books: Developing Social Skills; Toodles and Teeny: A Story About Friendship—ForeWord, Gold Award, Children’s Picture Books: Developing Social Skills; Silence—ForeWord Magazine Book of the Year Bronze Medalist; Ben’s Flying Flowers—ForeWord Magazine Book of the Year Bronze Medalist and Silver Medal, Nautilus Awards; Emotions! Making Sense of Your Feelings—Family Choice Awards, Gold Medal; Understanding Myself: A Kid’s Guide to Intense Feelings and Strong Emotions—Family Choice Awards, Gold Medal; How Do You Doodle?—Gold Medal, Mom’s Choice Awards, Gold Award: Juvenile Level 1 (Ages 5 – 8) Books: Self-Improvement; Autism, the Invisible Cord—Silver Medal, Mom’s Choice Awards, Silver Award: Young Adult Books: Body, Mind & Spirit; Visiting Feelings—Gold Medal, Mom’s Choice Awards: Juvenile Level 1 (Ages 5 – 8) Books: Body, Mind, and Spirit; What to Do When It’s Not Fair: A Guide to Handling Envy and Jealousy—Gold Medal, Mom’s Choice Awards: Juvenile Level 2 (Ages 9-12) Books: Self-Improvement; The Magic Clothesline—National Parenting Publication Awards (NAPPA) Honor Title; Get Ready for Jetty: My Journal About ADHD and Me—Teacher’s Choice Award for Classroom Products; and Healing Days: A Guide for Kids Who Have Experienced Trauma—2013 Gelett Burgess Children’s Book Award, Gold Medal: Mind, Body, and Spirit. APA Books released 166 APA books in Kindle editions, expanding delivery of direct-to-consumer electronic content. APA Books Subsidiary Rights Office negotiated 89 licenses for the translation of APA books into Farsi, French, German, Hungarian, Italian, Japanese, Korean, Portuguese, Polish, Simplified Chinese, Spanish, and Turkish. The Video division of APA Books released 11 new titles. APA Journals published more than 46,450 pages in 72 journals more than 4,229 articles in 339 journal issues, and more than 50 special issues or sections of journals. The P&C Board made 8 editorial appointments, to begin in 2014 as the editor-elect year (and 2015 as the beginning masthead year). The following individuals were appointed to six-year terms: Behavioral Neuroscience—Rebecca Burwell, PhD; Journal of Applied Psychology—Gilad Chen, PhD; Journal of Educational Psychology—Steve Graham, EdD; JPSP: Interpersonal Relations and Group Processes—Kerry Kawakami, PhD; Psychological Bulletin—Dolores Albarracin, PhD; Psychology of Addictive Behaviors—Nancy M. Petry, PhD; Scholarship of Teaching and Learning in Psychology—Regan Gurung, PhD and R. Eric Landrum, PhD; and Translational Issues in Psychological Science—Mary Beth Kenkel, PhD. The APA PsycNET mobile app is now available for iPhone, iPad, and Android phone and tablets. The mobile version of APA PsycNET is a free, light version of the existing web platform, but acts similarly to the web version. Some of the features include basic search functionality, browse, citation finder, search results sorting and filtering, and the ability to save, email, and export search strategies and results. APA PsycNET introduced some new features in 2013. First, citations can now be exported to Mendeley, a popular web-based reference manager and PDF organizer used by researchers and students. Second, across all the journals in PsycARTICLES the 25 most frequently downloaded articles are identified; plus for the individual journals, the 5 most frequently downloaded items are identified. Finally, some new social media icons have been added so that users can readily share links to APA PsycNET content on Facebook, Twitter, Google+, and Delicious. PsycINFO added 192,756 new records to the overall database. At the end of the year, the database contained
3,572,296 records. The PsycINFO database now contains more than 66 million cited references. The number of journals covered by PsycINFO at the end of 2013 was 2,547. By the end of 2013, the number of tests to be found in the PsycTESTS database was 17,900, and the percentage of full text tests was 76%. The number of commercial tests listed is now more than 800. PsycARTICLES added twelve new titles and more than 14,500 articles. By the end of the year, the number of articles in the database was approximately 178,274. APA continued to add both classic and APA books to PsycBOOKS. There are now nearly 1,000 APA books plus 2,772 classic books on psychology, including 80 books from the 16th, 17th, and 18th centuries. At the end of the year, PsycBOOKS contained more than 3,700 books and 55,400 chapters. The PsycEXTRA database grew by approximately 38,400 records in 2013 and now contains 310,831 records. The database underwent a reload in April which enabled several new enhancements: (a) the addition of a Test and Measures field and a Grants/Sponsorship field to match PsycINFO; (b) DOIs for all records, which creates persistent linking for users; (c) enhanced abstracts with linkable "see cases"; (d) document identifiers for clinical trials, patents, technical reports, and legislation; (e) revised media types of video, audio, and interactive; and (f) the separation of Web Article and Blog document types.

VIII. CONVENTION AFFAIRS

No items.

IX. EDUCATIONAL AFFAIRS

A.(8) Council voted to approve the revised Principles for the Recognition of Proficiencies in Professional Psychology.

B.(9) Council voted to receive the report, Assessing and Evaluating Teacher Preparation Programs.

C.(10) Council voted to endorse and adopt as policy the document, Health Service Psychology: Preparing Competent Practitioners.

D.(11) Council voted to authorize the use of designated funds up to $325,000 over a three-year period to support the development of the APA centralized application service for graduate education in psychology.


X. PROFESSIONAL AFFAIRS

A.(13) Council voted to approve the withdrawal of Council New Business Item #26J: Strategies for Education and Training of Psychologists in the Use of ICD-10-CM.

B.(13A) Council voted to approve in principle sun-setting the C(3) responsibilities of CAPP effective December 31, 2014, and requested that the amendments to the APA Association Rules and APAPo Bylaws needed for implementing this change be brought to Council for action at its August 2014 meeting.
C.(27) Council received as information an update on the work of the Advisory Steering Committee for the Development of Clinical Practice Guidelines and APA Guideline Development Panels.

D. Council received an update on the new-business-in-progress report “Independence of Psychologists.”

E. Council received an update on the new-business-in-progress report “Guidelines for Psychologists Regarding the Assessment of Trauma for Adults.”

F. Council received an update on the new-business-in-progress report “Resolution on Need to Include Self-Help Support Groups as Part of Health Care Reform.”

G. Katherine C. Nordal, PhD, provided Council with an update on the APA Practice Organization.

XI. SCIENTIFIC AFFAIRS

A.(14) Council voted to reauthorize the continuation of support for the Archives of the History of American Psychology for 2014-2016 and approve the inclusion of $60,000 in the 2014 Budget. Ron Levant, EdD, recused from voting on this item.

B.(23C) A new business item “Helping International Colleagues with DORA (scientists “Declaration on Research Assessment”) was referred to the Board of Scientific Affairs, the Committee on International Relations in Psychology and the Publications and Communications Board.

XII. PUBLIC INTEREST

A.(15) Council voted to endorse the Multidisciplinary Competencies in the Care of Older Adults at the Completion of the Entry-level Health Professional Degree.

B.(16) 1) Council voted to archive the 1994 APA policy, Firearm Safety and Youth;

2) Council voted to adopt as APA policy the following Resolution on Firearm Violence Research and Prevention:

Resolution on Firearm Violence Research and Prevention

Research Summary

Firearms have been the subject of longstanding controversies in American society, culture and law. There are many firearms in the United States – more than 300 million (Hepburn, Miller, Azrael, & Hemenway, 2007) – about as many guns as people. The United States has the highest rate of civilian firearm ownership in the world (Small Arms Survey, 2007). Most firearm owners own multiple firearms, with perhaps as few as 4% of the population owning 65% of the guns (Hepburn et al., 2007). Thus, in one recent survey, a minority of households (37%) included gun owners, with 24% of respondents reporting that they owned a gun and 13% reporting that another member of their household owned a gun (DeSilver, 2013).

Firearm violence takes a number of different forms, including, but not limited to, suicide and suicide attempts, violent conflicts and disputes, intimate partner violence, unintentional deaths
and injuries, violent criminal activity, and violent acts while intensely distressed, intoxicated, or acutely psychotic. Firearms contribute significantly to homicide and suicide as causes of death in the United States, causing 11,078 homicides and 19,392 suicides in 2010, 11,101 homicides and 19,766 suicides in 2011 (Hoyert & Xu, 2012). Mass shootings receive intense media coverage, generate understandable public alarm, and appear to fuel the purchase of firearms. However, the Congressional Research Service estimates that over the last 30 years (1983-2013) public mass shootings took 547 lives and left 476 victims injured, concluding that “while tragic and shocking, public mass shootings account for few of the murders or non-negligent homicides related to firearms that occur annually in the United States” (Bjelopera, Bagalman, Caldwell, Finklea, & McCallion, 2013, Summary section, para. 5). Thus, in order to be effective in reducing firearm violence, the national response must comprehensively address the phenomenon in its many forms.

The public health burden arising from firearms: Deaths, injuries, and other associated harms

Firearms are inherently dangerous and pose a substantial risk to the health of the public. Preliminary data for 2011, the most recent available, document that daily deaths from firearms averaged 54 suicides, 30 homicides, and more than 2 unintentional deaths, with totals of firearm-related deaths for the year equaling 19,766 of 38,285 suicides (52%), 11,101 of 15,953 homicides (70%), and 851 of 122,277 unintentional deaths (1%) (Hoyert & Xu, 2012). Additionally, for every firearm fatality, an estimated 2.25 persons suffer non-fatal injuries requiring emergency medical care or hospitalization (Gotsch, Annest, Mercy & Ryan, 2001). In 2012, there were 80,525 non-fatal firearm injuries: 4,068 self-inflicted injuries, 59,077 injuries from firearm assaults, and 17,362 unintentionally inflicted injuries (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2014). The number of unintentional injuries and deaths may be underreported, especially among children (Luo & McIntire, 2013). One analysis estimated that gun violence imposed total costs of $174 billion on the United States in 2010, an average of $645 per gun in the United States, $5.1 million for each fatality, $433,000 for each gun injury requiring hospital admission, and $116,372 for each firearm injury requiring emergency department admission only (Miller, 2012). These estimates do not include the impact on those who endure consequences from witnessing or fearing firearm violence in their homes or communities when firearms are used to intimidate and coerce (Sorenson & Wiebe, 2004; Truman, 2011).

In a survey conducted in February 2013, 48% of firearm owners reported that they own guns for protection. This reflects a substantial change since 1999, when only 26% of gun owners reported that they own guns for protection and 49% of gun owners identified hunting/sport shooting as the primary reason they have a gun (Pew Research Center, 2013). Paradoxically, firearms owners have increasingly identified protection as their reason for acquiring a firearm even as rates of violent crime have dropped substantially. Violent crime rates have dropped by half since 1993 (U.S. Department of Justice, Federal Bureau of Investigation, 2013) and the 2012 murder rate of 4.7 per 100,000 persons compares to rates of 10.2 in 1980, 9.8 in 1991 and represents a decline of almost 17% since 2003 (U.S. Department of Justice, Federal Bureau of Investigation, 2013).

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1 On December 14, 2012, a gunman killed 20 first grade students and 6 school personnel at Sandy Hook Elementary School in Connecticut and wounded two others. In the next week, December 17-23, 2012, the most requests for background checks (a proxy for gun sales) in a week since 1998 were submitted to the National Instant Criminal Background Check System, 953,613 requests, nearly 50% larger than the next highest week (U.S. Department of Justice, Federal Bureau of Investigation, 2013).
In addition, firearms are associated with increased risk. Purchase of a handgun is strongly associated with increased risk of suicide (Wintemute, Parham, Beaumont, Wright & Drake, 1999). Having a firearm in the home increases the likelihood of homicide or suicide of a family member (Dahlberg, Ikeda & Kreznow, 2004; Kellermann, et al. 1992; Kellermann, et al. 1998), including fatal shootings of women associated with intimate partner violence (Campbell, et al. 2003). Compared to other high-income countries, the United States by a substantial margin has the highest rates of firearm-related homicide, suicide and unintentional death and unintended injury among children and adolescents, leading the American Academy of Pediatrics to conclude that the “absence of guns from children’s homes and communities is the most reliable and effective measure to prevent firearm-related injuries in children and adolescents” (American Academy of Pediatrics, 2012, e14160).

**A public health approach to preventing deaths and injuries from firearms**

A public health approach to the prevention of public health problems is a scientific approach. Scientists define a problem, conduct research to identify risk and protective factors, and use the knowledge about risk and protective factors to develop preventive interventions. The interventions are implemented and evaluated for effectiveness. The evaluation results then guide efforts to ensure the widespread adoption of effective programs and policies to mitigate risks or support protective factors. Public health approaches commonly utilize multidisciplinary collaborations among a range of stakeholders to identify and achieve goals for community and individual health and safety. Sound science generally does not provide definitive answers in one study or at a single point in time. Instead, scientific knowledge develops over time as new research clarifies and expands upon past understandings. Accordingly, in applying a science-based approach, one begins with the best available evidence and subjects it to ongoing, systematic scientific scrutiny.

The American Psychological Association published a report by an expert panel in December 2013 (American Psychological Association, 2013) in an effort to inform the public regarding the current science on firearm violence and contribute to national efforts to prevent firearm-related death and injury. The report reviews research on development, gender, and culture as antecedents to gun violence and what works to prevent gun violence at the individual, family, community, and societal levels.

Because access to a firearm is the common denominator in firearm violence, reducing access to firearms has been an important focus in prevention. *Child access prevention laws*, which hold adults criminally liable for unsafe storage of firearms around children, have reduced adolescent suicides and unintentional shootings of children (Webster & Starnes, 2000; Webster, Vernick, Zeoli, & Manganello, 2004). Undercover operations and lawsuits against dealers have reduced the diversion of firearms to criminals (Webster, Bulzacchelli, Zeoli, & Vernick, 2006; Webster & Vernick, 2013). Other prevention efforts focused on access to firearms include design and manufacture of firearms such as “smart guns” that can be fired only by an authorized user, limitations on access to certain firearms such as assault rifles or products such as high-capacity magazines, and systems of distribution and sales that help prevent illegal diversion of firearms and “straw purchases” of firearms (Sorenson & Webster, 2013).
Access strategies also include regulating access to firearms for particular classes of persons. For example, U. S. law prohibits firearm purchase and possession by, among others, felons and persons dishonorably discharged from the military, subject to a domestic violence restraining order, or “adjudicated as a mental defective” or “committed to a mental institution” (Firearms, 2014). These access restrictions are implemented by requiring federally licensed firearm dealers to request background checks on potential purchasers from the National Instant Criminal Background Check System (U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 2005). One study has found that, if properly implemented, such prohibitions can significantly reduce violent offending among persons with histories of involuntary psychiatric commitment (Swanson, et al. 2013), but multiple impediments to their implementation have hampered their potential contribution to reducing firearm violence (Kinscherff, Evans, Randazzo, & Cornell, 2013).

Some, but not all, educational interventions to reduce firearm violence have shown promise. Promising interventions include counseling by health care providers (especially when combined with distribution of cable locks to secure firearms) (Barkin, et al. 2008), police training for de-escalation of persons in crisis in high-risk situations (Teller, Munetz, Gil, & Ritter, 2006), and community, family, and individual interventions to promote healthy social development and reduce aggressive behavior among children and adolescents (Cornell & Guerra, 2013). On the other hand, efforts to educate children about guns (largely to stay away from them), when tested with field experiments, indicate they are generally ineffective (e.g., Hardy, 2002). A “substantial body of scientific evidence [that] identifies important developmental, familial, and social risk factors for violence” (Cornell & Guerra, p. 5) can guide the development of additional interventions.

The research on firearm violence indicates that while empirically-derived structured clinical judgment and actuarial tools have been shown to distinguish relative violence risk among researched populations (e.g., male domestic violence offenders, offenders with violence histories and mental disorders), no methods currently exist for reliably predicting whether or not specific individuals will behave violently, nor the specific time, place or manner (including firearm use) in which they will behave violently (Lidz, Mulvey, & Gardner, 1993; Meehl & Rosen, 1955; Monahan, et al. 2005; Nielssen, et al. 2009). On the other hand, science-based risk assessment and management strategies using empirically-derived assessment tools for individuals with histories of violence have developed as the standard for preventing targeted violence in many settings (Kinscherff, Evans, Randazzo, & Cornell, 2013). In the behavioral threat assessment model, teams use highly individualized and situation-specific methods to prevent violence by specific persons identified as making or posing a threat of violence, including risk of using a firearm.

More research is required to guide policy and practice since some promising measures have not yet been shown to be effective or may have unintended consequences (National Research Council, 2005; Institute of Medicine and National Research Council, 2013). Research can also help determine which initiatives are ineffective in reducing harm from firearm violence. For example, “buy-back” programs might raise public awareness of gun violence, but have been ineffective in reducing firearm deaths (Institute of Medicine and National Research Council, 2013; Makarios & Pratt, 2012). Additionally, controversies persist as to whether various legal requirements for mental health professionals to “warn or protect” when providing services to
potentially violent persons are more likely to reduce violence or deter persons from seeking mental health care (Kinscherff et al, 2013).

Some research suggests that more rigorous reporting and background checks of persons whose mental health history disqualifies them from firearms ownership lowers risk of violent criminal offending (Swanson, et al. 2013). Yet, concerns persist about the risks of stigmatizing persons with mental illness while also potentially fostering public perceptions that firearm violence can be readily reduced to a “mental illness” problem (e.g., Appelbaum, 2013). Research could also help determine the effects of recent legislative efforts to bar medical care providers from asking patients about firearm possession and access (Medical privacy concerning firearms; prohibitions; penalties; exceptions, 2014; The Patient Protection and Affordable Care Act, 2010). Program developers and sponsors are encouraged to articulate clear rationales for policies, programs, and practices and to evaluate them.

There are some important barriers to the scientific research needed for a comprehensive public approach to the prevention of firearm violence. First, a universal system for collecting data on incidents of firearm violence does not exist. Several Institute of Medicine and National Research Council reports have identified the National Violent Death Reporting System as a promising approach for gathering essential data on firearm violence (National Research Council, 2002; National Research Council, 2005; Institute of Medicine and National Research Council, 2013), yet this system currently includes data from only 16 states (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2013).

Second, state and federal restrictions, including restrictions on the Centers for Disease Control and Prevention (Omnibus Consolidated Appropriations Act, 1996) and the National Institutes of Health (Consolidated Appropriations Act, 2012), limit or discourage firearm violence research and preclude or discourage the collection and use of firearm violence information (Institute of Medicine and National Research Council, 2013; Kellermann & Rivara, 2013). These restrictions exist despite widely-accepted and widely-implemented research practices that safeguard the privacy of individuals (e.g., medical records research) in order to gather information on the occurrence of other public health problems (e.g., certain infectious diseases). If federal and state restrictions on such data are removed, research by psychologists and others can be used to devise, implement, and evaluate research-based public health approaches to firearms-related death and injury.

Firearm violence and diversity

As noted above, access to a firearm is the common denominator in every firearm-related death or injury. Beyond this obvious fact, achieving a greater understanding of the different forms of firearm violence, the populations disproportionately harmed, and the factors relevant to preventive interventions will involve addressing considerable complexity. Firearm violence disproportionately affects specific groups within the United States. Patterns of injury and death from firearms (attempted and completed homicides and suicides, and unintentional injuries) differ according to factors including age, gender, gender identity and expression, sexual orientation, race and ethnicity, geographic region and locality, educational level, employment status, job and working conditions, income level, and social class (Hepburn & Hemenway, 2004; Institute of Medicine and National Research Council, 2013; Jenkins, 1996; Kegler & Mercy, 2013; Kennedy, Kawachi, Prothrow-Stith, Lochner, & Gupta, 1998; Loomis, Marshall & Ta, 2005; Nock,
Borges, Bromet, Cha, Kessler, & Lee, 2008; Peek-Asa, Erickson, & Kraus, 1999). These disparities reflect a complex interaction of multiple risk, protective, and contextual factors at individual, community, and societal levels, including differential access to resources that promote health and safety (Krug, Dahlberg, Mercy, Zwi, & Lozano-Ascencio, 2002).

For example, firearms are the most frequent means of suicide among older adult white men and contribute to them having a very high suicide rate (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2013). White adolescent males also have elevated rates of suicide by firearms (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2013). Young Black males living in impoverished urban communities bear the greatest risk of homicide by firearms (Hammond & Prothrow-Stith, 2001). Women are disproportionately more likely to be the victims of firearm violence by an intimate partner (Sorenson, 2006). In order to be developmentally and culturally appropriate and attentive to relevant aspects of diversity, public policy and prevention strategies must attend to the different relative risks, occurrence, and contexts across groups.

**Firearm violence and mental illness**

There is little research specifically on firearm violence among persons with severe mental illness, but there is a relatively large literature on the relationship between severe mental illness and violence in general. As one commentator has put it, “[t]he vast majority of people with mental disorders do not engage in violence and the proportion of overall risk of violence attributable to mental disorders is small...The best U.S. data put the population attributable risk for violence due to mental disorder between 3% and 5%” (Appelbaum, 2013, p. 565, citing Swanson, 1994). Research has demonstrated a modest association of mental disorders with increased violence, with greatest risk for those who have additional risk factors such as substance abuse, histories of being violently victimized, continued exposures to violence, antisocial personality traits, and histories of involuntary commitment (Appelbaum, 2013; Swanson, et al. 2002; Swanson, et al. 2013). Some recent research points to substance abuse as the primary factor in violence risk among persons with severe mental illnesses (Fazel, Gulati, Linsell, Geddes, & Grann, 2009; Fazel, Langstrom, Hjern, Grann, & Lichtenstein, 2009). One recent large longitudinal study found no significant independent association between severe mental illness and subsequent violent behavior, rather that people with severe mental illness had a greater likelihood of having other risk factors associated with violence, for example, a history of violent victimization and substance abuse (Elbogen & Johnson, 2009). Research has found that access to adequate mental health treatment in the community following psychiatric hospitalization reduced subsequent violent acts, most of which were minor assaults unlikely to significantly injure and were directed at known persons rather than strangers (Monahan, et al. 2001). In contrast to the small association between mental illness and violence directed at others, there is a significantly elevated risk of suicide among persons with mental disorders with some 90% of persons who commit suicide having some combination of symptoms of depression, other mental disorder, and substance abuse (Moscicki, 2001).

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2 The terms “serious mental illness” and “severe mental illness” are both commonly found in research literature. The term “severe mental illness” is used here for the sake of consistency.
Aggressive acts often are distinguished by whether they are planned to achieve anticipated goals (variously termed instrumental, targeted or predatory aggression) or whether they are driven by intense emotions at a time of crisis (variously termed affective, impulsive, reactive, or hostile aggression). Persons engaging in impulsive violence are sometimes described as acting “in the heat of the moment” or “without considering the consequences.” Predatory and impulsive aggression implicate different neurological systems with impulsive aggression characterized by high levels of autonomic arousal and negative emotions such as fear or anger, usually in response to a perceived provocation or stressor (Siever, 2008). Whether or not they suffer from a mental disorder, persons in intense emotional crisis are at higher risk of impulsive aggression and harming themselves (Wyder & De Leo, 2007; Zouk, Tousignant, Seguin, Lesage, & Turecki, 2006) or others (Meloy, 2006), including spouses (Edwards, Scott, Yarvis, Paizis, & Panizzon, 2003) and children (Fujiwara, Barber, Schaechter, & Hemenway, 2009; Rodriguez & Richardson, 2007). Persons in crisis include those experiencing desperation, despair, panic, rage or other intense emotions that may result in acts of impulsive violence involving a firearm, if one is accessible. Some participants in contemporary policy debates about firearm violence seem to assume that “bad guys” cause violence and the appropriate way to deal with violence is to arm “good guys” to deal with “bad guys.” Unfortunately, this approach will not be effective in preventing violence, because “an armed ‘good guy’ can become a ‘bad guy’ [who uses] a gun in a moment of temporary despondence or rage (Bandeira, 2013; Wintemute, 2013)” (Sorenson & Webster, 2013, p. 32).

One priority of the public sector mental health system is to meet the needs of people with severe mental illnesses. However, the public mental health system also has a second priority: to respond to serious emotional crises that can happen to anyone at any time, and especially to respond at times when these crises produce elevated risks of harm to self or others. Yet, the steady loss of $4 billion from state mental health budgets since 2008 (Appelbaum, 2013) has eroded the capacity to respond in a reliable, timely, and competent manner to those in intense emotional crisis. The broader system of mental health services beyond the public sector also has a crucial role to play in responding both to persons with severe mental illness and to persons in serious emotional crisis.

For the mental health system to play an optimal role in preventing firearm violence, policy makers will need to increase mental health care resources. However, in promoting such increases, policy-makers and advocates should take care to address both priorities of the mental health care system, to encourage help-seeking behavior by persons in crisis and by persons with mental illness, and to avoid reinforcing the stigma that both groups experience. Policymakers and advocates should go beyond the concern regarding mass shootings to focus upon the contribution of depression to the higher rates of suicide and the contribution of emotional crisis to incidents of gun violence.

The American Psychological Association Panel of Experts Report on Gun Violence (American Psychological Association, 2013) discusses various policies seeking to restrict access to firearms by persons with mental disorders. Many of these policies have been criticized for using broad criteria that bear little relationship to actual risk and for failing to identify persons who may pose significant or imminent threat of violence (Fisher & Lieberman, 2013). However, some research indicates such policies, if properly implemented, can significantly reduce violent offending among persons with histories of involuntary psychiatric commitment (Swanson, et al. 2013). Policy interventions such as these warrant ongoing evaluation given their potential for
both reducing firearm violence and inadvertently deterring persons from seeking mental health care or being frank with their clinical care providers about risk factors for firearm violence.

Resolution

Consistent with the American Psychological Association’s mission to advance the development, communication and application of psychological knowledge to benefit society and improve people’s lives, this Resolution on Firearm Violence Research and Prevention has two primary goals: (1) to encourage the scientific study of firearm violence and its prevention, and (2) to encourage psychologists to respond to the problem of firearm violence as scientists, practitioners, and educators.

WHEREAS death and injury arising from firearms violence by suicide, homicide and unintentional shootings constitute a tragic and substantial burden upon public health in the United States;

WHEREAS mass shootings draw widespread attention to firearm violence from the media, the public, and policy-makers, but comprise a very small percentage of the U.S. firearm-related deaths and injuries that occur each year (Bjelopera, Bagalman, Caldwell, Finklea, & McCallion, 2013);

WHEREAS like motor vehicles, toxic household products, tobacco, and other products with inherent risks whose harms to the public health have been significantly reduced (Hemenway, 2007), firearms pose inherent risks that have been identified and can be addressed through a public health approach;

WHEREAS current federal and state policies that restrict or discourage firearms research, prevent access to routinely-collected firearms data, and create other impediments to science hinder the contribution of research, evaluation, and multidisciplinary practice to public policy and public health (Kellermann & Rivara, 2013; Institute of Medicine and National Research Council, 2013);

WHEREAS steps can be taken to safeguard the confidentiality of information and the privacy interests of individuals in research about firearms, just as these safeguards are widely used in other areas of public health (Institute of Medicine and National Research Council, 2013);

WHEREAS many policies, programs, and practices intended to reduce harms associated with firearms currently lack evidence of efficacy and may contribute to unintended consequences (National Research Council, 2005; Institute of Medicine and National Research Council, 2013);

WHEREAS a variety of useful and rigorous methods have been developed to assess the efficacy of policies, programs, and practices (Shadish, Cook, & Campbell, 2002), but are not consistently utilized;
WHEREAS more psychologists are needed with training to conduct basic and applied research and evaluate programs and practices for prevention and intervention in firearm violence (Aiken, West, & Millsap, 2008);

WHEREAS there are multiple, complex conditions and circumstances that give rise to firearm-related death and injury and the forms, risks, and consequences of firearm violence are not spread uniformly throughout the United States (Institute of Medicine and National Research Council, 2013);

WHEREAS there are currently no reliable methods to accurately predict which individuals will or will not engage in firearms violence at a particular time or under specific circumstances, although there are methods for behavioral threat assessment and person-specific violence risk management planning once an individual has been identified as making or posing a threat of violence, including firearm violence;

WHEREAS mass shooting incidents have contributed to public apprehension that persons with--as compared to persons without--severe mental illness are at substantially greater risk of committing firearm violence;

WHEREAS policy makers have responded to public apprehension about the role of severe mental illness in mass violence towards others in ways that result in policies and practices that further stigmatize persons with serious mental illness and may deter them from engaging in needed psychological or other services (Appelbaum, 2013);

BE IT RESOLVED that the following principles will guide APA in public education and policy advocacy regarding firearms violence research and prevention:

**Principle 1: Comprehensive science-based public health approaches that reflect psychological knowledge and involve psychologists should guide policy and practice regarding firearms violence research and prevention.**

BE IT RESOLVED that the American Psychological Association advocates a scientific public health approach to firearm violence research, prevention, risk identification and management, treatment, and evaluation at the individual, family, community, and societal levels in order to guide the achievement of intended goals while avoiding unintended consequences.

BE IT RESOLVED that the American Psychological Association promotes the application of psychological knowledge and the involvement of psychologists in firearms violence research, prevention, risk identification and management, treatment, and evaluation in collaboration with multiple stakeholders and disciplines.

BE IT RESOLVED that the American Psychological Association calls for the expansion of the U.S. National Violent Death Reporting System to all states and for the repeal of legislative and administrative barriers to public health research on firearm violence, provided the research methods safeguard the privacy interests of individuals.
BE IT RESOLVED that the American Psychological Association promotes firearm violence policies, programs, and practices that are evidence-based, reflect sound models of best practices, or have been rigorously evaluated for effectiveness and opposes broad implementation or institutionalization of novel policies and practices until shown to be efficacious in pilot studies or trial implementation.

BE IT RESOLVED that the American Psychological Association encourages graduate psychology programs to rigorously train students in evidence-based program development, implementation, and evaluation methods so as to support the ability of psychologists to help reduce firearms violence across multiple levels (e.g., individual, family, community, and societal) and populations and to enhance their ability to effectively interpret and communicate the results of such efforts to the public and to policy makers.

**Principle 2: Increasing and applying knowledge about the disparate occurrence and types of firearm violence across different populations and at different levels (e.g., individual, family, community, societal) is fundamental to firearms violence research, prevention, risk identification and management, treatment, and evaluation.**

BE IT RESOLVED that the American Psychological Association encourages research, public health programs, and public policy to address the full breadth of firearm fatalities and injuries.

BE IT RESOLVED that the American Psychological Association promotes greater awareness that harms arising from firearms vary across diverse groups, situations, settings, and communities and encourages research that identifies firearm violence risk and protective factors reflecting the full range of this diversity, in order to inform the development and implementation of empirically-based prevention strategies, threat assessment and risk management practices, treatments and other interventions, and outcome evaluations that effectively address the disproportionate effects of gun violence on different groups and communities in developmentally and culturally appropriate ways.

BE IT RESOLVED that the American Psychological Association opposes the stigmatization of persons with mental illness and others who are the target of prejudice and discrimination and supports further evaluation of public policies and practices addressing firearms violence to assess their effectiveness and potential for unintended consequences, including deterring them from seeking appropriate mental health care or being candid with clinical care providers.

BE IT RESOLVED that the American Psychological Association encourages psychologists to join with multiple stakeholders and disciplines to identify, evaluate, and implement effective primary prevention: (a) *universal* preventive interventions for entire populations (e.g., school-based programs facilitating healthy social development and reducing aggressive behavior among children and adolescents); (b) *selective* preventive interventions for specific higher risk groups (e.g., suicide prevention interventions for older males); and (c) *indicated* preventive interventions for specific individuals showing signs of risk of firearm violence (e.g., conflict resolution interventions for young men who are involved in gangs).

BE IT RESOLVED that the American Psychological Association endorses the implementation of rigorously tested psychological and educational interventions that facilitate healthy family and
social development and reduce aggressive behavior generally and gun violence specifically across the lifespan and multiple domains.

BE IT RESOLVED that the American Psychological Association encourages further development of approaches and interventions that specifically address the contribution of gender, gender roles, and gender norms to disproportionate risks of perpetrating and being victims of violence—including firearm violence and interpersonal violence.

BE IT RESOLVED that the American Psychological Association encourages community-based problem-solving approaches seeking to prevent firearms violence or to address the consequences of firearm violence when it has occurred in a community.

BE IT RESOLVED that the American Psychological Association encourages the further development and evaluation of policy interventions for firearms violence across the full lifespan of firearms from design and manufacture to use.

Principle 3: A continuum of mental health services to meet the needs both of persons with severe mental illness and of persons in emotional crisis is essential to firearm violence prevention.

BE IT RESOLVED that the American Psychological Association promotes greater awareness among the public and policy-makers that most persons who display risk factors for violence will not actually act violently or use firearms if they do and no methods currently exist for reliably predicting whether or not specific individuals will behave violently, nor the specific time, place or manner of a violent act.

BE IT RESOLVED that the American Psychological Association encourages use of evidence-based structured clinical judgment and actuarial tools in risk assessment and management with appropriate populations, and further evaluation and subsequent dissemination of behavioral threat assessment models for use when a specific individual has been identified as making or posing a threat of violence.

BE IT RESOLVED that the American Psychological Association encourages further evaluation of the effectiveness and consequences of restrictions on access to firearms by some individuals who are identified as at elevated risk of violence, including firearm violence.

BE IT RESOLVED that the American Psychological Association promotes a continuum of mental health services sufficient to reliably meet both the chronic needs of persons with serious mental illness and the immediate needs of persons in emotional crisis as one element of comprehensive and integrated violence prevention, behavioral health, and public health systems at the local, state, and federal levels.

BE IT RESOLVED that the American Psychological Association encourages psychologists to seek post-doctoral and continuing professional education in order to increase the contribution of the profession of psychology to firearm violence prevention.
References


D.(25) Council received an update on the business pending item “Resolution on Aid in Dying.”

**XIII. ETHNIC MINORITY AFFAIRS**

No items.

**XIV. INTERNATIONAL AFFAIRS**

A.(28) Council received as information the 2013 Annual Report from APA’s Non-Governmental Organization representative team at the United Nations.

B.(29) Council received as information the 2013 Annual Report from the International Union of Psychological Science (IUPsyS) to the APA on APA’s support to the World Health Organization’s revision of the chapter on Mental Health and Behavioural Disorders and Related Health Problems for the forthcoming ICD-11.

**XV. CENTRAL OFFICE**

No Items.
XVI. FINANCIAL AFFAIRS

A.(18) Council voted to approve the 2014 Budget with total operational revenues of $110,542,911 and operational expenses of $109,092,967 with an operating margin of $1,449,945.

Council also voted to approve the third year of funding for the Strategic Plan Initiatives in the amount of $2,100,000.

B.(19) Based on the 2014 Budget and the 2015-2016 projections, Council voted to adopt the following Financial Forecast:

- Restrict capital expenditures to no more than $10M over the three year forecast period;
- Continue to reinvest net realized gains/losses from the long-term portfolio;
- Continue to reinvest all long-term interest/dividends into the long-term portfolio;
- Continue to pay down the long-term debt per our current amortization schedule;
- Continue to reflect the real estate tax abatement per 2006 Council action;
- Consistent with generally accepted accounting principles (GAAP), the Association does not count any portion of estimated building equity in net assets.
- The Association enthusiastically supports consideration of proposals (in the form of a business plan) for new revenue generating ideas.

FORECAST AND ASSUMPTIONS FOR 2015 and 2016:
This forecast is a statement of the anticipated financial realities facing the Association over the two forecast years to the extent that the relevant variables and conditions can be reasonably discerned at this time.

The following conditions and assumptions are incorporated in this forecast:

- Membership dues reflect a continuing historical trend of a 3% decline year over year.
- Journal subscription sales are estimated to decrease by 3% each year, also reflecting the historical trend.
- Revenue from Database Access Fees/Licensing reflects normal annual growth and the estimated realization of revenue generated from the “Investment in APA” plan. This is estimated as 7% growth year over year.
- As proposed at the August 2013 Council meeting, the 2014 revenue budget includes $1.2m of licensing revenues that in prior years had been transferred to the Journal Incubation Fund. For 2015 and 2016, the forecast assumes that the revenue will be transferred to the fund.
- $3.5M cash flow from the LLC building operations is included in revenue as approved by the Council of Representatives.
- Salary expense for 2014 reflects a 2% merit, a 2.5% standard allowance for staff position vacancies and an additional allowance for the savings estimated for a rolling 90 day hold on vacant positions. Salary expense for 2015 & 2016 reflects a 3% merit pool for staff and a 2.5% standard allowance for staff position vacancies, i.e. no 90 day hold on vacant positions.
- Benefits have been increased by 3% for the annual increase in salaries.
- All other expenses are estimated to increase by 2% each year.

Each year, based on actual results and an analysis of our net assets, future financial forecasts will be adjusted accordingly.
C.(20) Council voted to approve the following revisions to the Asset Allocation Guidelines section of the Long-Term Investment Policy statement (bracketed material to be deleted; underlined material to be added):

**Asset Allocation Philosophy and Guidelines**

**Philosophy**

APA’s current policy to not draw from the long-term portfolio to support operations allows the APA long-term portfolio to withstand normal market volatility. Further, APA recognizes that tactical asset allocation* adjustments involve an element of market timing that can be difficult to judge and can cause meaningful deviation from targeted returns. As a result, APA has adopted a strategic asset allocation** philosophy.

* Tactical asset allocation is defined as establishing long-term asset allocation guidelines and then using frequent allocation adjustments to take advantage of expected short-term or intermediate-term moves in the market or changes in economic conditions.

** Strategic asset allocation is defined as the establishment of long-term asset allocation guidelines with allocation adjustments being made only periodically to bring the investment portfolio back to the target asset allocation percentages.

Given the strategic asset allocation philosophy, the APA considers asset allocation/portfolio change recommendations based on the following categories/frequency:

- emergent actions – require immediate attention by the IC/FC; and,
- strategic decisions – require consideration by the IC/FC annually.

**Guidelines**

Investment management of the assets of the Long Term Portfolio shall be in accordance with the following asset allocation guidelines:

1. **Aggregate Long Term Portfolio Allocation Guidelines (at market).**

<table>
<thead>
<tr>
<th>Asset Class</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Securities/Mutual Funds</td>
<td>50%</td>
<td>[ 85%] 100</td>
</tr>
<tr>
<td>US Large Cap Equities</td>
<td>10%</td>
<td>50%</td>
</tr>
<tr>
<td>US Small/Mid Cap Equities</td>
<td>5%</td>
<td>25%</td>
</tr>
<tr>
<td>Developed International Equities</td>
<td>0%</td>
<td>25%</td>
</tr>
<tr>
<td>Emerging Markets Equities</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Fixed Income Securities</td>
<td>[10] 0%</td>
<td>50%</td>
</tr>
<tr>
<td>Core Fixed Income</td>
<td>[5] 0%</td>
<td>35%</td>
</tr>
<tr>
<td>Non-Core Fixed Income</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Commodities</td>
<td>0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

3 APA’s target allocation for international equities need not be achieved through the use of international equity specialists, but may instead be achieved by allowing the purchase of international equity holdings by APA’s domestic equity managers at their discretion (not to exceed the maximum allocation of 45%).
Under the current asset allocation model, and the current investment policy, APA places mid cap stocks under the large cap asset category since mid-cap stocks are considered part of the large cap stock universe.

The Association’s real estate holding (namely the 10 G Street LLC) can be viewed as the equivalent of a fixed income investment. When viewed as such, the 10 G Street LLC property represents a diversifying asset when evaluating the relative amounts of equity and fixed income holdings within the Long Term Portfolio.

[2] 3. The Finance Committee may employ investment managers whose investment disciplines require investment outside the specific asset allocation for which they were initially retained. However, taken as a component of the aggregate Long Term Portfolio, such disciplines must fit within the overall asset allocation guidelines established in this statement. Such investment managers in addition to receiving these policies will receive written direction from the Finance Committee through the Investment Consultant regarding specific objectives and guidelines.

[3] 4. The Finance Committee will periodically review these guidelines to determine if the Long Term Portfolio is in compliance. When guidelines are exceeded for an extended period of time, the Finance Committee will work with the Investment Consultant to rebalance the portfolio in accordance with the Long Term Portfolio’s investment policy.

D.(21) Council voted to approve 1) increasing the 2014 Board honoraria by 3% based on Quatt’s recommendation and market analysis report resulting in a $6,000 increase in the 2014 Budget and 2) amending the Selected Spending Policy Guidelines as follows:

- President $[38,300] 39,400
- President-elect [17,500] 18,000
- Past President [17,500] 18,000
- Secretary [17,500] 18,000
- Treasurer [21,800] 22,400
- Members-at-Large (7) [13,700] 14,100

Members of the Board of Directors recused themselves from voting on this item.

E.(22) Council voted to approve setting aside in a designated fund the $6,250,000 that APA received as a result of an agreement reached with the APA Insurance Trust in 2013.

F.(30) Council received as information the 2013 Report on Environmental Issues.

G.(31) Council received as information the sixteenth annual Real Estate Report.

H.(32) Council received as information the 2012 IRS Tax Form 990 Amendment.

I.(33) Council received as information the draft minutes of the December 6 & 7, 2013, Finance Committee meeting.
On Friday morning, Council participated in a Good Governance Project Implementation Work Group dialogue.

On Saturday morning, Council participated in a mega issue discussion on psychology’s role in health care reform.

On Saturday afternoon, Lore M. Dickey, PhD, and Anneliese A. Singh, PhD, conducted diversity training on “Transgender and Gender Nonconforming Clients.” President Nadine Kaslow presented presidential citations to Drs. Dickey and Singh.

On Sunday morning, President Nadine Kaslow presented presidential citations to Lorraine Greene, PhD, ABPP and Jeanne LeBlanc, PhD, ABPP.
MEMORANDUM

TO: American Psychological Association Council of Representatives
FROM: Nathalie F.P. Gilfoyle, General Counsel
DATE: February 2014
SUBJECT: Litigation Report

The following describes the nature and status of current litigation in which APA has been engaged, either as a party or as amicus curiae, since the August 2013 meeting of Council. This is not a privileged communication.

I. APA AS A PARTY

NEW DEVELOPMENTS SINCE AUGUST 2013

In re APA Assessment Fee Litigation – (U.S. District Court for the District of Columbia)

Beginning in late 2010 several class action lawsuits were filed in federal court in Washington, D.C. alleging that the manner in which the practice assessment had been billed was actionable under a variety of legal theories. These actions were consolidated in February, 2011 and a single putative class action complaint against APA and APAPO was then filed. As a general matter, the consolidated complaint alleged that APA and APAPO deceptively stated that the practice assessment was a "mandatory" payment. The complaint asserted that APA and APAPO were unjustly enriched and violated California’s consumer protection statute. Among other things, the complaint sought disgorgement of all practice assessment monies paid since 2001.

APA and APAPO filed a motion to dismiss the lawsuit on March 2, 2011 asserting that the complaint failed to set forth facts to support its conclusory assertions that the statements in the APA dues forms were false or misleading; that dismissal of the unjust enrichment count was appropriate because it is an established legal doctrine that disputes with members are governed by contract principles and equitable claims such as unjust enrichment are therefore not available; and that the California statutory claims were improper under established “choice of law” principles, which require application of District of Columbia law, which expressly exempts from consumer protection claims any action against a membership organization arising out of “membership services,” which includes disputes about dues statements.

On May 30, 2012, the court issued an order granting APA and APAPO’s motion to dismiss the complaint. Because leave to amend complaints is liberally given, the court allowed plaintiffs to file a motion for leave to amend the complaint but required the plaintiffs to demonstrate that any alternative claims would not be “futile.” On July 2, 2012, plaintiffs filed a motion seeking leave to amend their complaint to add claims of 1) fraudulent misrepresentation; 2) rescission; and 3) negligent misrepresentation. On August 2, 2012, APA and APAPO filed an opposition asserting that 1) the dues statements did not misrepresent the effect on APA membership of non-payment of the practice assessment and that, as a legal matter, the plaintiffs failed to meet the legal standard for fraudulent misrepresentation; 2) the contract relationship between APA and its members precludes these claims; and 3) rescission and negligent misrepresentation claims fail because the plaintiffs received services from APAPO in exchange for their assessment payments and there was no economic loss.
On February 4, 2013, the court issued an order granting APA and APAPO's opposition to the motion to amend and dismissing the complaint with prejudice. The court found that given the totality of information that was available to members on the dues form and in the bylaws, as a matter of law the plaintiffs could not show reasonable reliance on one sentence in the dues statement. Absent a showing of reasonable reliance the misrepresentation claims fail. The court also found that rescission of the member contracts and repayment of the practice assessment, which plaintiffs sought, was legally barred because the contracts with APAPO had been fully performed, making it legally impossible to equitably return the parties to the pre-contract status quo.

The plaintiffs have appealed the trial court rulings. On March 27, 2013, another plaintiff, Ira Grossman, filed a separate putative class action complaint in the U.S. District Court for the Southern District of California. Mr. Grossman is represented by the same counsel representing the plaintiffs in the consolidated D.C. action. Mr. Grossman purports to represent a putative class comprised of all individuals in California who paid the Practice Assessment in connection with their APA dues after 2000. The substantive allegations in the Grossman complaint are substantially similar to those contained in the consolidated D.C. action. The Grossman complaint seeks to assert claims for (1) unjust enrichment and constructive trust; (2) violation of California's Unfair Competition Law ("UCL") § 17200 (Unfair Business Act); (3) violation of California's UCL § 17200 (Unlawful Business Act); (4) violation of California's UCL § 17200 (Fraudulent Business Act); (5) violation of California's False Advertising Law § 17500; (6) fraud and deceit; and (7) negligent misrepresentation.

In September 2013, APA and APAPO moved to transfer the case to the U.S. District Court for the District of Columbia. This motion was granted on December 15, 2013 and the case has now been transferred and assigned to the judge who dismissed the national class action. The Plaintiffs did not appeal that decision.

The plaintiffs' appeal of the order dismissing the national class action was scheduled for February 14, 2014 but was postponed due to inclement weather. It has been rescheduled to April 7, 2014.

Because this case is in active litigation, any further discussion of the case would need to occur in an executive session. The court order that is under appeal is posted on the COR teamsite.

Public communications about the lawsuit are handled by Rhea Farberman (rfarberman@apa.org)

II. APA AS AMICUS CURIAE
NEW DEVELOPMENTS SINCE FEBRUARY 2013

A. Cases involving Right of Same-Sex Couples to Marry

1) Griego v. Oliver (New Mexico Supreme Court) - The issue in this case was whether the New Mexico Constitution compels the state to allow same-sex couples the freedom to marry.

Five same-sex couples filed a lawsuit against the State of New Mexico and the Santa Fe and Bernalillo County Clerks seeking the freedom to marry. The lawsuit argues that the New Mexico marriage statutes and the New Mexico Constitution do not bar same-sex couples from marrying, and that the New Mexico Constitution requires the state to allow same-sex couples the freedom to marry. The initial complaint, filed in March 2013, included two couples as plaintiffs and the Bernalillo County Clerk
as a defendant. An amended complaint, naming three additional same-sex couples as additional plaintiffs and the State of New Mexico as an additional defendant, was filed in June 2013.

On July 2, the plaintiffs filed a petition for a writ of mandamus with the state Supreme Court. The Supreme Court denied the petition. Another petition was filed with the state Supreme Court for a writ of superintending control, seeking to consolidate this case with *Hanna v. Salazar* and any future cases which might be filed. The Supreme Court dismissed that petition as moot. A third petition was filed with the state Supreme Court for a writ of superintending control after the clerks of the 31 counties not already defendants intervened in the case asking the New Mexico Supreme Court to take over the case and issue a final decision as to the constitutionality of denying same-sex couples the freedom to marry that would apply statewide. Oral arguments before the New Mexico Supreme Court were held on October 23, 2013.

APA was joined by the New Mexico Psychological Association, the National Association of Social Workers, the National Association of Social Workers in Mexico, and the New Mexico Pediatric Society as amici in support of the plaintiffs. Similar to previous briefs filed by APA, the amicus brief provided extensive psychological research on key points, including how sexual orientation is related to the gender of partners to whom one is attracted — meaning that prohibiting same-sex marriage discriminates on the basis of sexual orientation, rather than just imposing disparate burdens on gay people. The brief addressed how homosexuality is a normal expression of human sexuality and that sexual orientation is generally not chosen and is resistant to change. Also provided was current scientific research on the nature of same-sex relationships, the role of child-rearing and the stigma resulting from denying the label “marriage” to same-sex unions. For example, the brief cited psychological research showing that gay and lesbian parents are not any less fit or capable than heterosexual parents, and that their children are not less adjusted.

On December 19, 2013, the New Mexico Supreme Court ruled in a unanimous decision that the state constitution requires that same-sex couples must be treated equally under the law and have the same fundamental right to marry as other couples.

2) Sevcik v. Sandoval and Jackson v. Abercrombie (U.S. Court of Appeals for the Ninth Circuit) - This case challenges whether the Equal Protection Clause, part of the 14th Amendment to the U.S. Constitution, does not prohibit the state from limiting marriage to people of the opposite sex.

These two cases, arising in Hawaii and Nevada, respectively, had similar outcomes in that the District Courts each found there was no constitutional right to marriage for couples of the same sex. In both cases, the courts applying rational basis review, ruled that the Equal Protection Clause of the 14th Amendment does not prohibit the state from limiting marriage to people of the opposite sex. The Hawaii case, based on Hawaii's marriage statute, also upheld the legitimacy of state policy refusing to recognize same sex marriages performed in other states. The Nevada case involves the validity of an amendment to the state's constitution banning same sex marriage.

APA's brief relied on much of the scientific and professional literature sited in previous marriage briefs — that most gay men and lesbians do not experience their sexual orientation as resulting from a voluntary choice; that the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality; that they pose no inherent obstacle to leading a happy, healthy and productive life; and that there is no scientific basis for concluding that same-sex couples are any less fit or capable parents than heterosexual couples. APA's position, based on that science, is that the states' judgment that, in the realm of intimate relationships, legally united same-sex couples are inherently less deserving of society's full recognition than heterosexual couples is unconstitutional. APA's position is that by devaluing and delegitimizing the relationships that constitute the very core of homosexual orientation, the Nevada and Hawaii laws challenged by this brief compound
and perpetuate the stigma historically attached to homosexuality, and that the states' judgments should be reversed.

B. State of Connecticut v. Troy Artis – (U.S. Court of Appeals for the Ninth Circuit) – At issue is whether the appellate court majority properly determined that admission of the victim’s in-court and out-of-court identifications following a suggestive police display of defendant’s photograph was a reversible due process violation.

The case before the Ninth Circuit involves research as presented in Perry v. New Hampshire but involves a different legal issue. In this case, Mr. Artis was convicted as an accessory to the first-degree assault in connection with a club fight. The central issue is whether the trial court’s admission into evidence of the victim’s out-of-court identification of the defendant violated the defendant’s due process rights under Manson v. Brathwaite, 432 U.S. 98 (1977), and Neil v. Biggers, 409 U.S. 188 (1972). Here, all parties and the courts agree that the identification procedure was unnecessarily suggestive. The trial and appellate courts disagreed, however, in the application of the reliability factors. The State appealed the reversal of Artis’s conviction to the Connecticut Supreme Court, which agreed to hear the case.

APA filed an amicus brief providing the Court with an overview of the strong body of research showing the variables that affect accuracy of eyewitness identification, specifically addressing the point that suggestive circumstances that will affect eyewitness identification can occur without police action and that limiting due process protections to only those faulty eyewitness identification procedures that are caused by state actors is too narrow a band of protection. In this case, the state’s sweeping attacks on the appellate court’s ruling (and on psychological research and researchers) are addressed in detail in the APA brief as lacking merit. APA’s brief also notes that courts throughout the country have acknowledged that the relevant research is reliable and properly considered by the courts.

C. People of the State of New York v. Adrian P. Thomas – (Court of Appeals State of New York) – At issue in the appeal is whether the State of New York should allow expert testimony on the body of research addressing risk factors for false confessions.

Adrian Thomas was convicted of murdering his child based solely on his confession which was obtained in a lengthy interrogation over two days during which he was briefly admitted to a mental institution suffering emotional distress over his son's injuries. In fact, the autopsy revealed the child died of an infection, not any trauma, but the prosecutors pursued the case based on the confession that was obtained during the interrogation. Thomas's confession was videotaped, which has been cited as a reason why expert testimony was not needed. The police also engaged in minimization, and made false offers of leniency as well as factual misstatements, and the interrogation took place over many hours while Thomas was in emotional distress. New York uses the "Frye" standard (a test for determining the admissibility of scientific evidence) for determining whether expert testimony should be admitted and the trial court had excluded the defense expert's witness testimony applying that rule.

As in prior APA briefs addressing false confessions, this brief states that the scientific research on false confessions provides a strong empirical foundation for the admission of expert testimony on the subject and that it should be admitted as evidence. Admission of such evidence can 1) dispel the common misperception that a person would not confess to a crime he did not commit, and 2) explain the psychological and personality factors that may have made Thomas suggestible to police interrogation. The brief further addresses how lawful policy interrogation processes and tactics can sometimes produce false confessions, that dispositional factors can produce false confessions, and that most jurors do not understand the connection between false confessions and these interrogation and dispositional factors.
APA also states how allowing jurors to view an interrogation videotape is not an adequate substitute because such observations do not inform jurors about the fact of false confessions or the relevant risk factors. Finally, APA’s brief explains how expert testimony about false confessions is particularly critical where there is a lack of corroborating evidence.

On February 20, 2014, the New York Court of Appeals unanimously suppressed Adrian Thomas’s confession statements as coerced and involuntary, and ordered a new trial.

D. Hall v. Florida – (U.S. Supreme Court) – The central issue is whether a statutory definition of mental retardation that has a bright-line cutoff requiring an IQ score of 70 or below adequately captures the constitutional imperative that the mentally retarded not be executed.

The defendant in this case, Freddie Lee Hall, was convicted of a capital murder that occurred in 1978 and sentenced to death. After his original sentence was vacated, Hall was resentenced to death in 1991. At the time, the judge who sentenced Hall noted that he was “mentally retarded” but found that fact to have “unquantifiable” mitigating weight. Following Atkins, Hall filed a successive habeas petition and an evidentiary hearing was held. Although there was ample evidence supporting Hall’s claim – he had been repeatedly diagnosed as MR in the past - because Hall had scored 73 and 80 on the WAIS-R and 71 on the WAIS-III, the trial court held he could not establish the first element of a mental retardation claim. In the decision, the Florida Supreme Court affirmed, interpreting the statute to mean that a score above 70 on the WAIS-III precludes a showing of mental retardation, and rejecting Hall’s argument that the standard error of measurement should be taken into account: “The statute does not use the word approximate, nor does it reference the SEM. Thus, the language of the statute [is] clear.” The court also rejected the argument that a bright-line cutoff score of 70 was contrary to Atkins, reasoning that the Supreme Court had “left the determination” of who should be classified as mentally retarded “to the individual states.” The court claimed that the Florida statute is consistent with APA’s diagnostic criteria for mental retardation. Two justices dissented, arguing that Hall is plainly mentally retarded and that applying the bright-line cutoff to his case violates the constitutional principles articulated in Atkins.

APA’s brief advised the Court that 1) there is unanimous professional consensus that the diagnosis of intellectual disability requires comprehensive assessment and the application of clinical judgment; 2) the existence of concurrent deficits in intellectual adaptive functioning is central to the rationale of the Atkins decision and a system for identifying intellectual disability that does not include analysis of adaptive functioning is based on a fundamental misunderstanding of the diagnostic criteria; and 3) the use of a fixed IQ score as a cutoff to assess intellectual functioning ignores the fact that IQ test scores are subject to a standard error of measurement and the interpretation of IQ test scores must take the test’s reliability into account.

APA was joined on the brief by the American Psychiatric Association, American Academy of Psychiatry and the Law, Florida Psychological Association, National Association of Social Workers, and National Association of Social Workers Florida Chapter.

Oral argument is scheduled for March 3, 2014.

NO NEW DEVELOPMENTS SINCE AUGUST 2013

A. Golinski v. Office of Personnel Management – (U.S. Court of Appeals for the Ninth Circuit) – This lawsuit is a challenge to the constitutionality of section 3 of the Defense of Marriage Act
(DOMA), the section that defines the terms "marriage" as "a legal union between one man and one woman as husband and wife" and "spouse" as "a person of the opposite sex who is a husband or a wife." Section 3 prevents the federal government from recognizing the marriages of same-sex couples who are legally married in their own states and restricts the federal government from granting such couples any federal benefits it provides to opposite-sex married couples.

In this case, Karen Golinski was denied spousal health benefits by her employer, the U.S. Ninth Circuit Court of Appeals in San Francisco. She married her partner of 20 years in 2008 when such marriages were legal in California and attempted to obtain health insurance for her partner under the federal government’s health benefit plans. She was refused with DOMA being cited as the basis. In January 2009, Chief Judge Alex Kozinski ruled in an administrative action that it violates the Ninth Circuit’s employment policies prohibiting discrimination based on sexual orientation to deny the legally married Golinski the same benefits for her wife as heterosexual court employees receive for their lawful spouses. The federal Office of Personal Management (OPM)—an agency of the executive branch—responded that the law governing federal employees’ health insurance and the so-called Defense of Marriage Act (DOMA) prevent coverage for the spouses of lesbian and gay federal employees, and instructed Golinski’s insurer not to enroll her wife. Lambda Legal sued the federal government to compel it to stop interfering with the orders of the court's chief judge so that Golinski can be provided equal benefits for her wife, and subsequently raised a direct challenge to DOMA in federal court.

In February 2011, President Obama and Attorney General Eric Holder concluded that Section 3 of DOMA is unconstitutional and inappropriate to defend. Thereafter, the Bipartisan Legal Advisory Group (BLAG) intervened on behalf of the leadership in the U.S. House of Representatives to defend DOMA. Plaintiff moved for summary judgment in July of 2011, and on February 22, 2012, U.S. District Court Judge Jeffrey White issued a ruling declaring DOMA unconstitutional. BLAG appealed the district court decision to the U.S. Court of Appeals for the Ninth Circuit.

On July 10, 2012, APA filed a brief in support of Golinski, joined by the California Psychological Association, the American Psychiatric Association, the National Association of Social Workers, the American Medical Association, the American Academy of Pediatrics and the American Psychoanalytic Association. The brief is similar to the brief APA previously filed in the U.S. Court of Appeals in the First Circuit (Gill v. Office of Personnel Management). The brief applies social science research to rebut some of the justifications offered for the prohibition in Section 3 of DOMA of any federal recognition of the marriages of same-sex couples. Those justifications, involving procreation, the welfare of children and the like, are closely similar to those offered in cases defending states’ refusal to allow same-sex couples to marry. The amicus brief provides extensive psychological research on key points, including how homosexuality is a normal expression of human sexuality, is generally not chosen, and is highly resistant to change. Also provided is current scientific research on the nature of same-sex relationships, the role of child-rearing, and the stigma resulting from denying the label “marriage” to same-sex unions. For example, the brief cited psychological research showing that gay and lesbian parents are not any less fit or capable than heterosexual parents, and that their children are not less adjusted. The brief also addresses how denying federal recognition to legally married same-sex couples stigmatizes them.

The government filed a preemptive petition for certiorari to the U.S. Supreme Court and the 9th Circuit stayed oral argument in the case pending the Court’s action on the petition for Certiorari. No order has been issued to date.

B. Commonwealth v. Walker – (Pennsylvania Supreme Court, Eastern Division) – The Walker case involves a gunpoint robbery of two students in the early morning hours. One of the victims was hit with the gun and injured; the other was able to get away quickly. The victim who had been struck identified the Petitioner as the perpetrator from a photo array, and the other was not able to make certain
identification. At trial, only one victim was able to positively identify the Petitioner as the one who had committed the robbery. The crime occurred in poor lighting, was brief, involved a gun, and was committed by an individual of a different race than the victims. Motions raised pre-trial asked the court to allow for an expert to testify to those issues, for appropriate jury instructions, and for limiting instructions on argument. All motions were denied, and the Superior Court affirmed the decisions on appeal.

The PA Supreme Court has long held that expert testimony from social scientists in the fields related to eyewitness identification—human memory, perception, and recall—is improper as it intruded on the jury’s duty to judge the “credibility” of each witness. While the overwhelming majority of jurisdictions allow for the admission of such testimony at trial, PA has been lagging.

The Pennsylvania Supreme Court accepted the case for review on two grounds: “(1) whether the trial court should have had the discretion to allow the Petitioner to present expert testimony regarding human memory, perception, and recall, and (2) whether the Court permit expert scientific testimony, whether it be for the defense or prosecution, on how the mind works as long as the testimony has reached general acceptance”. In a nutshell, at the heart of the case is the issue of admissibility in PA courts of expert testimony on research regarding the reliability of eyewitness identification.

There is a large and growing body of scientific research directed specifically at issues relating to eyewitness reliability—a body of research that has mushroomed since 1980. There are a number of scholarly books by psychologists summarizing the research and related issues. Gary Wells et al. filed the first APA Division 41 White Paper on Eyewitness Identification Procedures (published in Law and Human Behavior in 1998).

The research base that forms the foundation for eyewitness memory is extensive (e.g., reliability of eyewitness identification, factors affecting the reliability of eyewitness identification, etc.). Given that the well-established expert testimony regarding human perception, memory, and recall in cases involving eyewitness identification is generally accepted in the field and that the overwhelming response of courts nationally is to allow such testimony, COLI recommended and the Board of Directors agreed that it was important to file a brief to educate the PA courts on this matter. Specifically, because many of the variables affecting eyewitness identification are counter-intuitive and simply unknown to the layperson, not admitting expert testimony in this regard could result in mistaken convictions (in many cases in which DNA evidence has revealed a wrongful conviction, the conviction was based primarily or exclusively on eyewitness identification).

On August 1, 2011, APA filed an amicus brief urging the court to follow the majority of other states and allow expert testimony on the strong body of psychological research regarding eyewitness testimony, including research regarding juror misunderstanding of the accuracy of eyewitness identification and the factors that can affect the accuracy of eyewitness identifications. The brief also explains that the means by which this research has been undertaken and the results have been widely accepted in the scientific community.

A decision is pending.

Reviewers on this brief included Steven Penrod, JD, PhD; Lori Butts, JD, PhD; David DeMatteo, PhD; and Marc Pearce, JD, PhD.