



# American Academy of Forensic Psychology

## **Balancing Test Security and Discovery Rules in Forensic Psychological Practice**

Official Position of the American Academy of Forensic Psychology (AAFP)

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Psychological practice across many academic, clinical, occupational, and legal contexts relies on using standardized assessment instruments or psychological tests to measure a wide array of abilities, traits, and other constructs. Standards exist for psychological test development, validation, administration, scoring, interpretation, and security. The sustained validity of many of these psychological tests is predicated on maintaining the security of test items and scoring protocols. Accordingly, psychologists advocate for test security as a fundamental professional consideration.

When psychologists offer expert opinions in legal or administrative proceedings based in whole or in part on findings from psychological tests, test security concerns sometimes conflict with evidentiary rules and due process requirements. Such security concerns can arise when psychological testing is observed by non-psychologist third parties, when psychological evaluations with testing are recorded, or when sensitive and protected test information is requested as part of legal proceedings. In some instances, rules of discovery require disclosure of test data (i.e., raw and scale scores, examinee responses to test questions or stimuli, notes and recordings concerning examinee statements and behavior during testing) and test materials (i.e., manuals, instruments, protocols, and test questions or stimuli) to the attorneys, to the court, or to the jury. The requirements of the legal system to provide the evidence upon which opinions are offered can sometimes appear to conflict with psychologists' ethical and legal responsibilities to prevent public distribution of test materials.

Trial courts may require the presence of third-party observers, the recording of psychological testing, or disclosure of sensitive test data to non-psychologists. In such situations, psychologists should "make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations" (Ethical Principles of Psychologists and Code of Conduct, Standard 9.11). A judge's protective order is the legal system's standard method to prevent public distribution of evidence in litigation and prosecution and is recognized as a reasonable means of recourse by the American Psychological Association and major test publishers and distributors. As noted by the *Standards for Educational and Psychological Testing (SEPT)*:

*When sensitive test documents are at issue in court or in administrative agency challenges, it is important to identify security and privacy concerns and needed protections at the outset. Parties should ensure that the release or exposure of such documents (including specific sections of those documents that may warrant redaction) to third parties, experts, and the courts/agencies themselves are consistent with conditions (often reflected in protective orders) that do not result in inappropriate disclosure and that do not risk unwarranted release beyond the particular setting in which the challenge has occurred. (SEPT Standard 6.7)*

**It is the official position of the American Academy of Forensic Psychology that, when psychologists engaged in forensic practice are required by court rules or orders to allow the observation of psychological testing by non-psychologist third parties, are required to record psychological test administration when such tests are employed during forensic evaluations, or must disclose sensitive test data or materials to non-psychologists, it is ethical to engage in such actions subject to a judge's protective order or other negotiated remedy that prevents public distribution of sensitive test materials.**