

APA 2002 Ethics, Amphibology, and the Release of Psychological Test Records: A Counterperspective to Erard

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APA ethics have sought to uphold the practice of psychology and protect its invaluable contribution to psychological assessment, namely the development and validation of tests and other psychometric measures. Faced with formidable challenges from the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, the 2002 revision of the American Psychological Association (APA) ethical standards abandoned its protective stance. It makes previously protected material (i.e., answers, notes about testing, other forms of raw data, scoring, and test items included on protocols with answers) almost completely accessible to clients and others. Without any professional protections, the worldwide dissemination of these materials via the Internet is virtually assured. In this article, I examine the confused language of Ethical Standard 9.04 (a) with its permissive language and concatenated use of the *or* conjunction. I evaluate the release of test materials in light of nonmaleficence as both an aspirational principle and an enforceable standard (3.04). Relying on official statements from APA and other prestigious organizations, I document the substantial harm to clients, the community, and the profession of psychology in eroding test security.

Erard (this issue) writes with scholarship and passion regarding the perennial problems inherent in the attempts of the American Psychological Association (APA; 1992) to maintain test security. Faced with formidable challenges from the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the courts, Erard concludes that APA's (2002) reluctant relinquishment of test security was a sensible, if somewhat forced, solution. In this article, I offer a counterperspective to Erard. Erard focuses on psychologists' liberation from cumbersome and potentially unworkable strictures of maintaining test security. In contrast, in this article, I find no liberation in the 2002 revision but only a tangle of confusing and conflicting ethical ideas that are inconsonant with psychologists' ethical principles.

A fundamental tenet of APA's 1992 ethics was the protection of psychological test integrity, serving both the interests of professional psychology and future client populations. As mandated by APA Ethical Standard 2.10, Maintaining Test Security, "Psychologists must make reasonable efforts to maintain the integrity and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with the requirements of this Ethical code" (APA, 1992, p. 1604). The APA

Committee on Psychological Tests and Assessments (1996) explicated the reasons for test security: (a) protection of the public from the use of tests whose validity is compromised, (b) protection of test developers from devastating damages to the integrity of their measures, and (c) protection of professional psychologists from breach of contract claims if terms of the test purchase agreements are violated.

The new APA ethical standards (APA, 2002) embraced the HIPAA requirements even though not all psychologists are even affected by these regulations. For example, thousands of school psychologists are now mandated to disclose test data even though they practice mostly outside the domain of health care.¹ While obviously buckling under pressures from HIPAA, the Ethics Code Task Force ironically graced their capitulation in the lofty principle of autonomy (Smith, 2003).

¹My example of school psychologists is especially illustrative. These professionals have met their own challenge to test security (i.e., Family Education Rights and Privacy Act of 1974) but appear to have found reasonable means of protecting the integrity of psychological tests (Canter, 2001).

ETHICAL STANDARD 9.04 (a)

The poorly crafted language of APA's (2002) Ethical Standard 9.04 (a) is an exemplar of syntactical amphibology. Regarding test security, the standard holds

Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists *may refrain* from releasing test data to protect a client/patient *or* others from substantial harm *or* misuse *or* misrepresentation of the data *or* the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law [italics added]. (APA, 2002, pp. 1071–1072).

Amphibology, well recognized in logic, refers to grammatical misconstructions that are open to multiple interpretations. I submit that any single sentence containing four nonhierarchical uses of the coordinating conjunction *or* is simply uninterpretable. Does any single alternative, demarcated by *or* stand on its own? Or (excuse me), does it require a combination of alternatives (i.e., multiple uses of *or*)? If so, which combinations? These amphibological problems are further exacerbated by the use of the permissive term *may refrain* that adds confusion rather than clarity.

Based on General Principle A, Beneficence and Nonmaleficence, Table 1 provides an illustrative example of the *or* conjunctions in Standard 9.04 (a) (APA, 2002) that prioritizes the avoidance of harm. In doing so, it subordinates object of harm (client or others), the type of harm (misuse or misrepresentation), and the bases of the harm (e.g., misuse of test or the client's data). Other models are equally plausible. Even if the amphibological issues were resolved, Table 1 amply illustrates the mind-numbing complexity of 9.04 (a) that militates against any thoughtful application of professional practice.

Many professional psychologists, overwhelmed by these amphibological incertitudes, may wish to take refuge in the permissive language of "may refrain" as simply an excuse never to refrain. Regrettably, any illusory thoughts of an uncomplicated refuge are scuttled by the harsh and conflicting realities of our ethical code. On its own, Ethical Standard 9.04 (a) (APA, 2002) seemingly absolves psychologists' releases

of test data from any harm, however severe or irreparable, that is caused to the clients under their care. As a hypothetical, assume that Dr. Credulous provides full documentation of her professional services and decisions, consistent with Ethical Standard 6.01 (APA, YEAR). Further assume that this conscientious doctor diligently documents her decision to release highly damaging information. In the resulting malpractice suit, can Dr. Credulous shield herself from public condemnation or legal liability via 9.04 (a)? A few psychologists might chastise Dr. Credulous for her diligence in documenting this decision. Should we follow a "release-but-don't-document-the-harm" strategy? On the contrary, I suggest that truly ethical behavior should not only survive but also invite public scrutiny. Appropriate ethical conduct should not need to be hidden from those clients it is intended to serve. I submit that the very need for concealment of psychologists' professional actions (e.g., not documenting the potential harm from test release) should serve as compelling evidence regarding the ethical impropriety of our actions. Our moral imperative for ethical practice is embodied within the first general principle, namely, Beneficence and Nonmaleficence. This first principle emphasizes the unrivaled importance of avoiding, or at least minimizing, harm.

HARM ARISING FROM VIOLATIONS
OF TEST SECURITY

Psychologists' hopes for a Standard 9.04 (a) (APA, 2002) refuge are dissolved by a careful review of the APA 2002 ethical standards. General Principle A begins with the statement, "Psychologists strive to benefit those with whom they work and take care to do no harm" (APA, 2002, p. 1062). Moreover, this aspirational principle is embraced in an enforceable ethical standard. As articulated in Ethical Standard 3.04, Avoiding Harm, "Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable" (p. 1065). Psychologists should not take false comfort in Ethical Standard 9.04 (a) and its uncertain language. All professional conduct is explicitly embraced by Ethical Standard 3.04. Psychologists must actively

TABLE 1
The Complexities of Ethical Standard 9.04 (a) for Decisions to Refrain
or to Release Potentially Harmful Test Data

Decision to Refrain								Decision to Release							
Harm to Client				Harm to Others				Harm to Client				Harm to Others			
Misuse		Misrepresent		Misuse		Misrepresent		Misuse		Misrepresent		Misuse		Misrepresent	
Data	Test	Data	Test	Data	Test	Data	Test	Data	Test	Data	Test	Data	Test	Data	Test

Note. This table is a simplification of ethical responsibilities; release of potentially harmful test data must also take into account Ethical Standard 3.04, Avoiding Harm. For each case, psychologists must weigh the potential for substantial harm against the Health Insurance Probability and Accountability Act of 1996 regulated rights of clients (Keith-Spiegel & Koocher, 1985), taking into account the relevant cells in this table and balancing them against the clients' rights and possible benefits.

avoid harm and minimize harm when it is unavoidable. Please note this ethical standard is written plainly, free from conditional clauses and excessive verbiage.

Psychologists also bear some responsibility to prevent the misuse and misinterpretation of their work that extends beyond 9.04 (a). Ethical Standard 1.01 (APA, 2002), Misuse of Psychologists' Work, is placed first among the enforceable standards. It requires the following: "If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation" (APA, 2002, p. 1063). With its attention on redressing past abuses, Ethical Standard 1.01 does not address explicitly the basic prevention of future misuse or misrepresentation. However, I submit that the significance of 1.01 applies logically to foreseeable harm. Otherwise, as psychologists, we must ask ourselves the probing question, "Does our ethical practice truly rest on such carefully nuanced distinctions?"

Without a safe refuge, psychologists must consider when the potential harm of the clients and others supersedes specific client requests. An extreme position, tempting in its simplicity, would be the categorical denial of any substantial harm from releasing test data. Is this position viable? I outline a brief review of key issues with representative examples of substantial harm.

Harm to Clients

Newman (2002), in his official capacity as APA Executive Director for Practice, provided compelling arguments regarding how clients can be injured by releasing confidential test data. Newman (2002) presented several examples from the Minnesota Multiphasic Personality Inventory-2 (MMPI-2; Butcher, Dahlstrom, Graham, Tellegen, & Kaemmer, 1989) such as "indulged in unusual sex practices" (Newman, 2002, p. 4) and acknowledgment of substance abuse that may have very negative consequences to clients depending on the authorized disclosures. Speaking of the MMPI-2, clients could easily misinterpret clinical profiles, causing themselves marked distress. Consider for the moment how a client is likely to "interpret" any elevations on scales labeled "schizophrenia," "paranoia," and "psychopathic deviate." Clearly, many psychological tests can be misused and misinterpreted to the detriment of the client (Newman, 2001).

I submit that clients cannot make an informed decision about the release of psychological test data due to its complexity and their limited understanding. Months to years later, will a client really remember his or her Wechsler Adult Intelligence Scale-III (WAIS-III; Weschler, 1997) scores and the concomitant percentages? Although scoring in the "average range" with an IQ of 90, would he or she want others to know from the released WAIS-III protocol that his or her IQ falls in the lowest quartile at the 25th percentile? What effect will this information have on him or her?

Harm to Others

The APA has issued several official statements documenting the harm to others caused by the disclosure of protected test data. The APA Committee on Psychological Tests and Assessment (1996; see also APA, 1999) declared

Availability of test items to an unqualified person can not only render the test invalid with that individual, but also jeopardizes the security and integrity of the test for other persons who may be exposed to test items or responses. *Such release imposes very concrete harm to the general public* [italics added]. (APA Committee on Psychological Tests and Assessment, 1996, p. 646) In the last several years, the APA Committee on Psychological Tests and Assessment (n.d.) cautioned about the dangers that tests "may suffer irreparable harm" [italics added] to their validity if their items, scoring keys or protocols, and other materials are publicly disclosed" (p. 1). Clearly, the APA is poignantly aware of the harm to others in disclosing test data. The harm is greatly exacerbated by widespread Internet access to test data (see, e.g., Ruiz, Drake, Glass, Marcotte, & van Gorp, 2002).

Axelrod et al. (2000) publicized the National Academy of Neuropsychology's official position on test security. It clearly articulates dangers of releasing test data to nonprofessionals, asserting, "individuals who gain access to test content can and do manipulate tests and coach others to manipulate results, and they are more likely to circumvent methods for detecting test manipulation" (Axelrod et al., 2000, p. 384). Axelrod et al.'s subsequent reference to airline pilots deserves amplification. In preemployment testing, pilots commonly attempt to appear well adjusted with such frequency that Butcher and Han (1995) developed a measure of defensiveness based on their MMPI-2 responses. Imagine for the moment that the unspeakable happens. A seriously disturbed male pilot avoids detection on the MMPI-2 via Internet training and individualized feedback (e.g., his previous MMPI-2 results) and later crashes his passenger jet into an urban center. In its tragic aftermath, I am convinced that both APA and Health and Human Services (i.e., the administrator of HIPAA) would frantically retreat from their precarious positions on test security. I am saddened by the possibility, however remote, that only human tragedy could return sanity to psychologists' ethical standards and governmental regulations regarding obvious breaches in test security.

CONCLUDING THOUGHTS

APA's capitulation to the HIPAA regulations may have been unnecessary² or at least premature. At the time of this writing, attorneys for the Psychological Corporation were expecting a ruling from Health and Human Services regarding whether

²The APA 1992 ethics included the proviso, "consistent with law," which clearly encompasses HIPAA regulatory law.

certain psychological test data must be released under HIPAA (R. B. Smith, III, personal communication, May 14, 2003). As an unintended consequence, APA's tactical retreat on test security may undermine efforts of other psychologists by demonstrating the discipline's apparent lack of resolve.

APA's capitulation also leaves unsettled the fundamental conflict between professional ethics and professional standards. Regarding the latter, the APA has coauthored and fully endorsed³ professional standards for psychologists as test users (American Educational Research Association [AERA], American Psychological Association, & National Council on Measurement in Education, 1999). In particular, Standards 5.6, 5.7, and 11.7 in the *Standards for Educational and Psychological Testing* (AERA et al., 1999) are specifically designed to protect test integrity. For example, Standard 5.6 requires that all psychologists using tests comply with the following: "Reasonable efforts should be made to assure the integrity of test scores by eliminating opportunities for test takers to attain scores by fraudulent means" (AERA et al., 1999, p. 64).

In closing, the APA 2002 Ethical Standard 9.04 (a) lacks a sound conceptual basis and provides more confusion than clarity. Its current language, a remarkable example of syntactical amphibology, is inconsistent with the basic foundation of professional ethics (i.e., nonmaleficence) and is at odds with Ethical Standard 3.04 (APA, 2002). Rather than clarity and coherence, 9.04 (a) acts as a prism that bends and distorts professional perceptions of psychologist's ethical duties. Regrettably, the results of these prismatic analyses are determined by context and perspective rather than by sound ethical principles. Regrettably, political expediency of 9.04 (a) in its ready acquiescence to HIPAA regulations compounds our ethical dilemmas and places us in direct conflict with our accepted standards for educational and psychological testing.

REFERENCES

- American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). *Standards for educational and psychological testing*. Washington, DC: American Educational Research Association.
- American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597-1611.
- American Psychological Association. (1999). Test security: Protecting the integrity of tests. *American Psychologist*, 54, 1078.
- American Psychological Association. (2002). Ethical standards and code of conduct. *American Psychologist*, 57, 1060-1073.
- Axelrod, B., Heilbronner, R., Barth, R., Larrabee, G., Faust, D., Pliskin, N., et al. (2000). Test security: Official position statement of the National Academy of Neuropsychology. *Archives of Clinical Neuropsychology*, 15, 383-386.
- Azar, B., & Martin, S. (1999, October). APA Council of Representatives endorses new standards for testing, high school psychology. *APA Monitor Online*, 30(9). Retrieved May 7, 2003, from <http://www.apa.org/monitor/oct99/in1.html>
- Butcher, J. N., Dahlstrom, W. G., Graham, J. R., Tellegen, A., & Kaemmer, B. (1989). *MMPI-2: Minnesota Multiphasic Personality Inventory-2: Manual for administration and scoring*. Minneapolis: University of Minnesota Press.
- Butcher, J. N., & Han, K. (1995). Development of an MMPI-2 scale to assess the presentation of self in a superlative manner: The S scale. In J. N. Butcher & C. D. Spielberger (Eds.), *Advances in personality assessment* (Vol. 10, pp. 25-50). Hillsdale, NJ: Lawrence Erlbaum Associates, Inc.
- Canter, A. (2001). Test protocols, Part I: Right to review and copy. *NASP Communiqué*, 29, 1-8. Retrieved May 7, 2003, from the National Association of School Psychologists Web site: <http://www.nasponline.org/publications/ecq297protocols1.html>
- Committee on Psychological Tests and Assessment. (1996). Statement on the disclosure of test data. *American Psychologist*, 51, 644-648.
- Committee on Psychological Tests and Assessment (n.d.). *Statement on the use of secure psychological tests in the education of graduate and undergraduate psychology students*. Retrieved May 7, 2003, from <http://apa.org/science/securetests.html>
- The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 34 CFR Part 99 (1974).
- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191 (1996).
- Keith-Spiegel, P., & Koocher, G. P. (1985). *Ethics in psychology: Professional standards and cases*. New York: Random House.
- Newman, R. (2001). *Letter to Tommy G. Thompson regarding the final rule on standards for privacy of individually identifiable health information*. Retrieved May 7, 2003, from <http://apa.org/practice/thompson.html>
- Newman, R. (2002). *APA comments: Proposed rule providing modifications to Standards for Privacy of Individually Identifiable Health Information*. Retrieved May 7, 2003, from http://apa.org/practice/privacy_302.html
- Ruiz, M. A., Drake, E. B., Glass, A., Marcotte, D., & van Gorp, W. G. (2002). Trying to beat the system: Misuse of the Internet to assist in avoiding the detection of psychological symptom dissimulation. *Professional Psychology: Research and Practice*, 33, 294-299.
- Smith, D. (2003). What you need to know about the new code. *American Psychological Association Monitor*, 34(1), 62-65.
- Weschler, D. (1997). *Weschler Adult Intelligence Scale* (3rd ed.). San Antonio, TX: Psychological Corporation.

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³APA's Council of Representatives unanimously approved the 1999 revisions of the *Standards for Educational and Psychological Testing* (Azar & Martin, 1999).

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