

# Contemplating the Presence of Third Party Observers and Facilitators in Psychological Evaluations

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Significant controversy surrounds how psychologists should balance competing interests when considering whether and under what conditions third parties should be permitted to be present during psychological evaluations. This is especially true in forensic contexts where much is often at stake for those being assessed. Unfortunately, existing professional statements on this issue provide limited guidance to practitioners on how to think about this issue. In this article, the authors (a) distinguish between different types of third party participants, (b) highlight the competing interests that underlie third party presence decisions, and (c) offer a framework for psychologists to employ when considering third party presence.

**Keywords:** *psychological evaluations; third party observers; forensic assessment; decision making on third party presence; professional guidelines on third party presence*

It is not uncommon to receive requests for third parties to be present during evaluations, and psychologists conducting examinations sometimes invite third parties to serve as observers or facilitators as well.<sup>1</sup> Although requests made by others may occur when the psychologist is conducting therapeutic evaluations (which we define, for purposes of this article, as evaluations that inform decision making regarding treatment and other types of interventions), they are more likely to occur in the context of forensic psychological evaluations (which we define, for purposes of this article, as evaluations conducted during or in anticipation of litigation that are intended to provide legal decision makers or others with information about the examinee's psychological functioning that is relevant to an issue in dispute).

Requests for third party presence during therapeutic evaluations can be initiated by (a) persons who are interested in observing the examinee's functioning (e.g., parents who want to learn about their child's disability, another health care professional who is treating the examinee), (b) an examining psychologist who requests the third party's presence to facilitate the evaluation (e.g., a psychologist who requests

the assistance of an interpreter to facilitate evaluation of someone who is not fluent in the psychologist's language, a psychologist who believes that the presence of a significant other is necessary to calm or assure a distressed examinee), (c) an examining psychologist who wants to observe a psychometrist administer tests to the subject of the evaluation, or (d) an examining psychologist who invites observation by a trainee for educational purposes. When psychological evaluations are conducted in the context of litigation, requests for third party participation are typically initiated by an attorney representing the examinee or another party to the litigation, typically for purposes of independently documenting what transpired.

Contemplating third party presence in psychological evaluations is challenging because psychologists must consider the potential impact of the third party's presence on the examinee's participation and, in cases in which psychological testing is administered,

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issues related to test standardization, norms, and security. Decision making regarding third party observation of psychological evaluations conducted in the context of litigation is even more complicated by state and federal laws, rules, and court decisions that may control the parties' access to evidence and, consequently, the psychologists' actions. For example, many states allow defense counsel to be present during psychological evaluations of criminal defendants, and Melton et al. (2007) argue that at least some form of evaluation documentation (i.e., third party presence or recording via videotape or audiotape) might be constitutionally required whenever requested by the defense in criminal proceedings. In contrast, some courts have suggested that the presence of attorney observers "could contribute little and may seriously disrupt the evaluation process" (*Estelle v. Smith*, 1981, p. 470).

With respect to the presence of counsel during evaluations that occur in the context of civil proceedings, states have adopted one of four approaches. Some states offer an absolute right to have an observer present during an examination (e.g., *Acosta v. Tenneco Oil Company*, 1990; *Langfeldt-Haaland v. Saupe Enterprises*, 1989; *Tietjen v. Department of Labor & Industry*, 1975), some direct that there is a presumptive right to have counsel present (e.g., *US Security Insurance Company v. Cimino*, 2000), some hold that there is no presumptive right to have counsel present (*Dziwanoski v. Ocean Carriers Corporation*, 1960; *McDaniel v. Toledo, Peoria & Western R.R.*, 1983), and some grant the trial court discretion to make this decision based on consideration of case specific factors (e.g., *Hayes v. District Court*, 1993; *Wood v. Chicago, Milwaukee, St. Paul & Pacific Railroad*, 1984).

There are at least some types of psychological evaluations, however, for which there tends to be greater consensus about the importance of accurate documentation of the evaluation process. For example, some states require that all interviews of children conducted in the context of abuse or neglect investigations be audiotaped or videotaped unless there is good cause for not doing so (e.g., Texas Code 261.302), presumably in response to research demonstrating professionals' limited ability to document what occurred during the interview process (e.g., Ceci & Bruck, 2000; Jones, Cross, Walsh, & Simone, 2005). In addition, some professional organizations have encouraged taping of evaluations (e.g., American Academy of Child and Adolescent Psychiatry, 1990), and psychologist commentators have called for videotaping or

audiotaping in wide variety of forensic evaluations, including (a) mental state at the time of offense (Goldstein, Morse, & Shapiro, 2003), (b) competence to execute a will (Drogin & Barrett, 2003), and (c) competence to be executed (Zapf, Boccaccini, & Brodsky, 2003).

Although there is a developing body of research indicating that the presence of third parties can affect examinees' performance on psychological tests (see below for more discussion), there is little research that addresses the effects of third party presence on forensic examinees more specifically (Cramer & Brodsky, 2007). Psychologists also appear to be particularly perplexed about the appropriateness of allowing third parties to be present during psychological evaluations conducted in the context of legal proceedings. In a recent survey of 160 forensic practitioners, approximately 75% reported having conducted a criminal forensic psychological evaluation with a third party present, but the majority of respondents (59%) expressed concerns that a third party's presence might affect the evaluation process in a negative way (Shealy, Cramer, & Pirelli, 2008).

In this article, we offer a framework for psychologists making decisions about third party presence during psychological evaluations, with a special emphasis on handling these requests in forensic contexts. In doing so, we (a) describe different types of, and rationales for, third party presence during psychological evaluations; (b) review and critique professional commentary on this issue; and (c) offer a list of factors for psychologists to consider when contemplating the presence of third party participants.

## Understanding Third Party Participants and Their Roles

When considering the problems associated with the presence of a third party in psychological evaluations, it is first necessary to delineate the different roles that third parties might play. Although many types of individuals may be present during examinations (e.g., psychologists, psychology trainees, other health care professionals, attorneys, the examinee's parents or significant others, interpreters, court reporters), they all serve one of two primary roles—observer or facilitator.

### Third Party Observers

A third party observer is best described as an individual whose sole purpose is to observe (and perhaps

document)—*but not affect*—the psychological evaluation. Requests for third party observers are often made when persons are undergoing forensic examination in which, because of the adversarial nature of the proceedings and the significance of what transpires, there is a heightened interest in documenting all that occurs—including the psychological examination process. In the typical case, the examinee's attorney requests that an evaluation conducted by a psychologist retained by the opposing party be observed by an attorney, a paralegal, a court reporter, or another mental health professional. At least some support for attorneys' beliefs that forensic psychological evaluations need to be observed or otherwise memorialized via audio recording or video recording is suggested by a growing body of research, indicating the inaccuracy of examiners' notes and failure of examiners to recount accurately leading questions they employ (e.g., Berliner & Lieb, 2001; Ceci & Bruck, 2000; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000; Warren & Woodall, 1999).

Examining psychologists sometimes initiate third party observation so that they can view some portion of the examination that is conducted by a psychometrist or trainee (American Academy of Clinical Neuropsychology, 1999), or have their work observed by a trainee or other professional. Of course, audio recording or video recording a psychological evaluation, whether introduced by the examining psychologist or others, may be considered to be a form of third party observation as well. Interestingly, the audiotaping or videotaping of criminal forensic evaluations appears to be relatively uncommon. More than 75% of 160 forensic practitioners reported never having had their criminal forensic evaluations documented in such a manner (Shealy et al., 2008).

The simple presence of a third party can affect the psychological assessment process in a positive, negative, or negligible manner. For example, with the expectation that any errors will be documented for consideration at some later time, a psychologist whose work is observed or recorded may be more careful and more closely adhere to test instructions and protocols. Alternatively, the psychologist may be more nervous and make more mistakes. The presence of a third party observer who the examinee perceives as supportive (e.g., retained counsel, a family member) has the potential to reduce anxiety and increase openness and candor, whereas the presence of some other third party observers (e.g., some family members, a trainee) may heighten the examinee's anxiety or discomfort, with decreased candor and/or poorer performance on

standardized testing resulting (McCaffrey, Fisher, Gold, & Lynch, 1996).

### Third Party Facilitators

In contrast to third party *observers* whose presence is not intended to affect the evaluation process, third party *facilitators* are involved specifically because of their potential to affect the evaluation process. Examining psychologists seek the participation of third party facilitators upon concluding that their assistance will facilitate the evaluation and result in more valid data than would otherwise be obtained. Examples of third party facilitators include interpreters who translate in cases in which the psychologist and examinee do not use the same language<sup>2</sup> or a significant other or parent who can calm or reassure, and thereby facilitate the evaluation of, a particularly anxious examinee.

### Aspects of the Psychological Evaluation Process That May Involve Third Parties

When contemplating the potential impact of a third party observer or facilitator, it is important to consider the nature and scope of the evaluation. Essentially all psychological evaluations involve an interview with the examinee whereas many—but not all—also incorporate psychological testing. The presence of a third party may differentially affect the examinee's interview and test responses. Unless the interview is a semistructured one (e.g., Diagnostic Interview Schedule, Diagnostic Interview Schedule for Children, Psychiatric Diagnostic Interview, Structured Interview of Reported Symptoms), a third party observer cannot affect test security or normative comparisons with other individuals. In contrast, the presence of a third party observer during psychological test administration can affect normative comparisons and threaten test security (this latter concern, of course, is not an issue if the observer is a psychologist or if the test administration is recorded and only reviewed by a psychologist). Concerns regarding normative comparisons and test security are certainly important in cases in which the third party is present during administration of psychological testing and will be discussed in detail below.

As noted above, third party facilitators are employed during a psychological interview to facilitate the examinee's comfort, disclosure, participation, and/or performance or improve rapport or communication between the examiner and examinee. Because the

presence of third party facilitators during the administration of psychological testing will certainly affect normative comparisons, their participation should only be considered when necessary to proceed with test administration (e.g., when an interpreter is needed to administer a test or when a parent, family member, or significant other is needed to calm or reassure an anxious examinee).

### Professional Commentary on Presence of Third Party Observers and Participants

Although Section 9 of the *Ethical Principles of Psychologists and Code of Conduct* (EPPCC; American Psychological Association, 2002) references the general obligations of psychologists engaged in assessment activities, the code does not offer specific guidance to psychologists faced with the prospect of third party observers or facilitators. Similarly, treatment of third party presence during psychological evaluations in the *Standards for Educational Testing and Psychological Assessment* (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 1999) is primarily limited to a discussion of the use of interpreters. There are, however, three documents developed by professional organizations that address the issue of third party presence more directly.

Most recently, the American Psychological Association's Committee on Psychological Tests and Assessment (CPTA; 2007) published the *Statement on Third Party Observers (STPO) in Psychological Testing and Assessment: A Framework for Decision Making*, the purpose of which is to assist psychologists in

- (1) reaching a conclusion concerning the appropriateness of observation of psychological evaluations,
- (2) conveying the scientific and professional bases for such a conclusion, and
- (3) identifying options in light of such a conclusion, with sensitivity to the particular source and substance of a request for observation and the specific nature and circumstances of the assessment in question. (p. 1)

The CPTA recommends that psychologists contemplating the presence of third party observers consider the following options: (a) conduct the evaluation in the presence of a third party and minimize intrusion resulting from the observation or participation, (b) use assessment measures considered to be less affected

by third party participation, (c) recommend that the request for third party participation be withdrawn, or (d) decline to perform the assessment if third parties will be present.<sup>3</sup>

In 1999, the National Academy of Neuropsychology (NAN; 2000) approved an "official statement" titled "Presence of Third Party Observers During Neuropsychological Testing,"<sup>4</sup> and in 2001, the American Academy of Clinical Neuropsychology (AACN; 2001) promulgated the "Policy Statement on the Presence of Third Party Observers in Neuropsychological Assessments." Although both documents offer commentary that is relevant to neuropsychologists (and psychologists) who are faced with requests for third party observation, they are so different in approach that they require separate analysis and consideration.

The NAN statement, after offering that third party observation may be initiated by attorneys motivated to ensure that their clients are appropriately assessed and fairly treated, notes that such observation is problematic because it (a) is inconsistent with standardized test administration, (b) can affect the examinee's test performance, (c) creates the potential for distraction or interruption, and (d) can pose a threat to test security—all of which are valid points. Immediately thereafter, however, the NAN document notes that presence of a "neutral, noninvolved party" (a term that goes undefined) in nonforensic contexts is appropriate when such occurs for purposes of education/training or to facilitate assessment of the examinee (such as in the case of a parent who is allowed to be present during an examination to reassure an anxious child). Noteworthy is that this document cites concerns regarding violating standardized test administration, affecting test performance, distracting and interrupting the assessment process, and threatening test security to support the exclusion of one type of third party observers (i.e., attorneys) yet not others (i.e., parents and significant others, interpreters, trainees). Such a distinction, in the absence of empirical support for differential effects of these different types of observers, appears to be without merit.<sup>5</sup>

The stated purpose of the AACN document, which is considerably more detailed than the NAN statement, is to "clarify what is the appropriate response of a clinical neuropsychologist when a request is received for the presence of a third party during medicolegal consultation and patient examination" *in civil litigation contexts only* (AACN, 2001, p. 433). It is important to understand that this AACN policy—despite its broad title—is apparently not intended to

apply to neuropsychological evaluations conducted for *therapeutic* purposes or neuropsychological evaluations of criminal defendants.<sup>6</sup>

The AACN policy begins by making a distinction between “involved third parties” and “uninvolved third parties.” Involved third parties are defined as persons who “directly or indirectly, have some stake in the outcome of a particular plaintiff in civil litigation . . . [stemming from] . . . a legal, financial, family, social or other relationship, or benefit (AACN, 2001, p. 433). In contrast, “uninvolved third parties” are described as typically present to learn about neuropsychological assessment and patients, and having “no stake in the outcome of a plaintiff patient’s [*sic*] examination, directly or indirectly . . . [but rather] . . . have an interest in the behavior of the examiner or in the examination process or in the behavior of the patient [*sic*] during the assessment as an exemplar” (AACN, 2001, p. 433).<sup>7</sup> The AACN policy, like the statement published by NAN, uses the distinction between “involved” and “uninvolved” third parties to justify exclusion of some third parties (e.g., attorneys or professionals retained by attorneys [presumably including psychologists]) while permitting the presence of others (e.g., caretakers, students/trainees, examining psychologists observing the work of psychometrists, interpreters), “It is not permissible for involved third parties to be physically or electronically present during the course of an evaluation assessment [*sic*] of a plaintiff patient [*sic*] with the exception of those situations specified below” (AACN, 2001, p. 434). The document anchors this general prohibition in concerns that the presence of a third party (a) constitutes a deviation from normal clinical practice, (b) “potentially introduces a distortion of the patient’s [*sic*] motivation,” (c) creates distractions, (d) is inconsistent with directions included in some test manuals, (e) threatens test security, and (f) constitutes a derivation from standardized test administration that “may jeopardize the validity and reliability of the test’s findings” (AACN, 2001, pp. 434, 436).

Like the rationales offered in the NAN document for exclusion of third parties, the concerns listed above all are sound (at least when applied to the presence of some third parties during assessments involving standardized tests—as opposed to other assessment techniques). Yet, the fact that these caveats and concerns are used to selectively support the exclusion of one type of third party observer (i.e., “involved third parties” such as attorneys or their representatives)

and not others (i.e., parents and significant others, interpreters, psychometrists, trainees) is without foundation. More specifically, the presence of *both* “involved” and “uninvolved” third parties (a) can constitute a deviation from normal clinical practice, (b) can introduce a distortion of the examinee’s response style, (c) is inconsistent with directions included in some test manuals, (d) can pose a significant threat to test security, and (e) still constitutes a significant departure from standardized test administration that may jeopardize the validity and reliability of test findings.<sup>8</sup> Also problematic, of course, is the AACN document’s silence on the issue of third party observation of psychological evaluations that occur in the context of criminal proceedings. If this silence indicates that the presence of third parties is acceptable during criminal proceedings, but unacceptable in civil proceedings (because the data they gather in these circumstances is somehow differentially invalid), then this distinction appears to be without empirical support. If, on the other hand, observation of criminal forensic evaluations is not prohibited on the simple grounds that it may be guaranteed by law (which the document does appear to indicate—see p. 434), then the question remains whether third party presence should be prohibited in jurisdictions that do not offer such a guarantee in criminal proceedings. Regardless, the AACN’s guidelines do not provide a sufficient empirical, ethical, or legal rationale for making a distinction between third party presence in civil versus criminal proceedings.

### **Managing Concerns and Making Decisions About Third Party Observers and Participants**

Generally, concerns about the presence of third parties during psychological evaluations fall into one of four categories: (a) negative effects on the examinee’s responses and participation, (b) interruption of the flow of information from the examinee to the examiner, (c) threats to the validity of conclusions that can be drawn from the evaluation, and (d) threats to the security (and future utility) of psychological assessment techniques and tests. All these concerns are legitimate and should lead examining psychologists to make decisions about the presence of third parties only after serious deliberation. Yet, none of these issues—alone or in combination—necessarily outweigh the legal, practical, and clinical reasons for

allowing third parties to be present in some cases, nor do they offer a sufficient rationale for a general prohibition on third party presence.

### **Negative Effects on the Examinee's Responses and Presentation**

Although only a handful of research studies exists examining this issue in forensic contexts (Cramer & Brodsky, 2007), results of several analogue studies indicate that a third party's presence, as well as audio recording and video recording, can influence examinees' performance on some learning and memory tasks (Constantinou, Ashendorf, & McCaffrey, 2002; Constantinou, Ashendorf, & McCaffrey, 2005; Gavett, Lynch, & McCaffrey, 2005; Kehrer, Sanchez, Habif, Rosenbaum, & Townes, 2000; Lynch, 2005). Clearly, more research is needed in this area. Yet, as mentioned above, some third parties—such as interpreters or persons who otherwise facilitate the evaluation—may need to be present for any assessment to occur and, in other cases, a third party's presence may positively—rather than negatively—affect the examinee's interview responses or test performance. Crucial to acknowledge is that any and all third parties—including those whose presence is invited by the examining psychologist (e.g., trainees)—may alter, distort, or influence the evaluation process. This acknowledgement, of course, indicates that differential consideration of third party's presence—at least based on concerns regarding the potential impact on the examinee's responses—is questionable.

Furthermore, although the presence of a third party can affect an examinee's presentation or performance, there are myriad factors that can have greater or similar effects on the psychological evaluation process. These include examiner and examinee demographic variables (e.g., race, socioeconomic status, sex), the examiner's style (e.g., warm vs. aloof), the examiner's expectations of the examinee's performance, the examinee's anxiety level, and—what is likely the most significant variable—the nature and purpose of the evaluation (Anastasi & Urbina, 1997).

The context of the psychological evaluation can affect an examinee's responses, and nowhere is this more apparent than when the evaluation is conducted in the context of litigation (see Rogers, 2008, for comprehensive review of the relevant literatures; the importance of this issue for normative comparisons cannot be overemphasized and that is why we address it at several different points in this article [also see the section "Threats to the Validity of Conclusions Drawn

from Psychological Evaluations"]). Accordingly, it seems odd to single out third party presence as a prohibitive threat to psychological assessment when more serious threats to the examinee's responses are tolerated. Of course, given reasonable concerns that a third party's presence can affect an examinee's presentation, psychologists who conduct evaluations under such conditions are obligated to note any impact the third party's presence may have on examinee performance (see Section 9.06 of the EPPCC, which directs that psychologists take into account the conditions under which their assessments take place and the potential impact on their opinions, and indicate any "significant limitations," American Psychological Association, 2002, p. 13).

### **Interrupting the Flow of the Examination**

In addition to affecting the examinee's responses, a third party may affect the flow of information during an assessment. For example, an examinee may be distracted by or defer to the third party; the third party might interrupt the examiner or direct the examinee to refuse to answer certain questions; or the third party may otherwise interfere with the examination. Although such interference might occur, there is at least a subset of potential third party observers whose ethical and professional obligations make it such that they do not pose such challenges (i.e., psychologists). In the case of other third party observers, the potential for such interference can be minimized by establishing ground rules before the evaluation begins. For example, as a condition of participation, the examining psychologist can require that the third party observer sit outside of the examinee's line of vision and not speak, signal, or otherwise affect the evaluation, or observe in a less obtrusive way (e.g., behind a one-way mirror). Alternatively, the examiner can suggest a less intrusive form of observation (e.g., by agreeing to audio record or video record the evaluation).

### **Threats to the Validity of Conclusions Drawn From Psychological Evaluations**

The presence of a third party during administration of standardized testing may affect the validity of conclusions that are based on test norms. This truism, of course, applies just as well to third parties whose presence is precipitated by the examining psychologist (such as when administration of psychological testing is observed by a trainee or when the examining psychologist observes a trainee or psychometrist administer psychological testing) as it does to third

parties whose presence is requested by someone other than the examining psychologist (e.g., an attorney who wishes to observe, or designates another psychologist to observe, the evaluation). Clearly, differences between the circumstances under which a test was normed and administered may limit the utility of test norms and the validity of the examinee's test performance and scores. As a result, a number of test manuals direct that a third party should not be present during testing (McCaffrey, Lynch, & Yantz, 2005). And, as mentioned above, results of some research indicate that the presence of third parties as well as the use of audio recording (Constantinou et al., 2002) or video recording (Constantinou et al., 2005) devices can negatively affect performance on some neuropsychological tests.

However, as noted above, many variables affect the examinee's test performance and the validity of comparisons based on a test's normative sample. And, in forensic evaluation contexts, threats to validity stemming from the presence of a third party during the assessment are likely to be overshadowed by these other factors—the most important of which being that almost all psychological and neuropsychological instruments have not been normed on individuals involved in legal proceedings.

Compared with persons undergoing psychological evaluation for the purposes of test norming or treatment planning and decision making, persons completing psychological testing in forensic contexts are much more likely to adopt a response style that, broadly conceived, can be characterized as “less than candid and forthcoming” (Otto, 2008). Rogers (2008), for example, in his summary of the literature regarding symptom feigning, estimated that criminal defendants undergoing psychological evaluations may feign psychiatric symptoms at a rate twice that of persons undergoing evaluations in nonforensic contexts. Furthermore, based on his survey of practicing neuropsychologists, Mittenberg (2002) provided base rate estimates of symptom feigning ranging from 33% (personal injury litigation), 30% (personal injury cases), 23% (criminal cases), to 8% (nonforensic cases). These examples simply highlight that the presence of a third party—insofar as it constitutes a deviation from standard test administration—is not nearly as well documented, and is likely a lesser threat to the validity of conclusions drawn from psychological test data, than the effects of the litigation context itself on examinee test performance. To presuppose that psychologists and neuropsychologists can somehow account for the impact of the evaluation

context (as evidenced by their regular use of and reliance on psychologists tests that were not developed in forensic evaluation contexts when they conduct forensic evaluations) yet that they cannot do the same when it comes to the presence of a third party is puzzling. In other words, we think it inconsistent that psychologists who conduct forensic evaluations can argue that almost all of the tests they use—which were normed under conditions very different from those under which a forensic examinee completes them—provide valid data, but if psychologists administer these same tests in the presence of third parties not nominated by themselves, then the test data somehow become invalid.

### Threats to Test Security

Section 9.11 of the EPPCC, Maintaining Test Security, directs that “Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques” (American Psychological Association, 2002, p. 13) and Standards 5.7 and 11.7 of the *Standards for Educational Testing and Psychological Assessment* direct that “Test users have the responsibility of protecting the security of test materials at all times” and “Test users have the responsibility to protect the security of tests, to the extent that developers enjoin users to do so” (American Educational Research Association et al., 1999, pp. 64, 115).<sup>9</sup>

In those psychological evaluations in which secure test stimuli are used, the presence of a third party or recording of the examination can threaten the security (and future utility) of any tests that are administered. Third party observers or facilitators who are not obligated to honor legal or ethical mandates to ensure test security might make public test stimuli and thereby invalidate the materials, or use their newly found knowledge of test stimuli to “coach” other examinees. And surveys indicating that some attorneys may coach litigants who complete psychological testing in the context of a forensic evaluation reinforce this concern (e.g., Wetter & Corrigan, 1995; Youngjohn, 1995).

Although it would appear to go without saying, given the discussions in the APA, CPTA, NAN, and AACN statements on third party presence, we believe it important to highlight that test security issues are not relevant if the evaluation does not involve administration of secure/standardized test stimuli or materials or if the third party who observes the test administration or reviews recording of it is ethically or legally obligated to ensure test security (e.g., a psychologist retained by the

**Table 1**  
**Factors to Consider When Contemplating the Presence**  
**of a Third Party During a Psychological Examination**

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1. For third party facilitators
    - a. Consider whether the facilitator's presence is necessary or preferred (e.g., does the evaluation necessitate an interpreter because of language differences between the examiner and examinee?).
    - b. Consider the impact of the third party facilitator's presence on the behavior and performance of the examiner and examinee.
    - c. Identify steps that can be taken to ensure that the third party facilitates the evaluation maximally and impedes the evaluation minimally.
    - d. If standardized psychological testing is to be administered during the evaluation.
      - i. Take steps to protect test security.
        1. Educate facilitator about need for test security
        2. Enlist agreement of facilitator to honor test security
      - ii. Consider using tests, the security of which are less vulnerable (e.g., self-report measures).
      - iii. Consider how the third party facilitator's participation affects test performance.
    - e. If reasonable accommodations cannot be made, consider not performing the evaluation.
  2. For third party observers
    - a. Determine the purpose of the third party observer's presence and whether such presence is necessary or preferred (e.g., is the presence of the third party legally mandated in this type of evaluation?).
    - b. Consider the impact of the third party observer's presence on the behavior and performance of the examiner and examinee.
    - c. Identify alternatives that meet the goals of a third party observer and which may have less of an impact on the examiner and examinee (e.g., audio recording or video recording).
    - d. Take steps to minimize the effect that the third party observer's presence may have on the behavior and performance of the examiner and examinee; for example,
      - i. Place observer out of the line of vision of the examiner and/or examinee.
      - ii. Before beginning the evaluation, identify ground rules and the need for the third party not to interfere.
      - iii. Select an observer who is sensitive to the need for an uninterrupted examination (such as a psychologist).
    - e. If standardized psychological testing is to be administered during the evaluation.
      - i. Take steps to protect test security.
        1. Select an observer who is obligated to protect test security (such as a psychologist), or
        - ii. Educate observer about need for test security and enlist agreement to honor test security; consider using tests that are less vulnerable (e.g., self-report measures).
        - iii. Consider how the third party observer's participation affects test performance.
    - f. If reasonable accommodations cannot be made, consider not performing the evaluation.
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attorney representing the examinee-litigant or a psychology intern observing the work of a supervisor). Test security is only an issue if the third party does not appreciate the significance of the test security issue or shares test information inappropriately despite such an appreciation.

Although some attorneys might request to observe administration of psychological testing for an illegitimate goal, these actions are likely ethical violations for them as well (see, e.g., Arizona St S CT Rule 42 RPC ER 1.2 (d), 2004, which prohibits attorneys from counseling or assisting clients to engage in fraud). Further courts are not likely to be receptive to attorneys' attempts to couch such activity as appropriate preparation and advocacy (Youngjohn, 1995). Nonetheless, preventing an attorney from being present during psychological testing will not necessarily ameliorate the problems of test security, as overzealous attorneys can certainly gain knowledge of

psychological tests through other means (see, e.g., Ruiz, Drake, Glass, Marcotte, & Van Gorp, 2002; Pope, Butcher, & Seelen, 2000).

Psychologists concerned about test security can consider requesting that the observer be someone who is bound to protect test security or request that test administration be recorded and only made available to persons obligated to protect test security (i.e., a psychologist). Or the psychologist, if conducting the evaluation with the assistance of an interpreter or being observed by a third party who is guaranteed access to the evaluation (e.g., an attorney representing a criminal defendant in some jurisdictions), can condition observation of the evaluation on the third party's assurance that he or she will not act in a way that threatens the test's security and utility. For example, Standard 11.7 of the *Standards for Educational Testing and Psychological Assessment* states that



test users should remind test takers and others who have access to test materials that the legal rights of test publishers, including copyrights, and the legal obligations of other participants in the testing process may prohibit disclosure of test items without specific authorization. (American Educational Research Association et al., 1999, p. 115)

Finally, the psychologist could choose to use assessment tools in which test stimuli are more protected during the testing process (e.g., use of self-report measures vs. examiner-administered measures), or the psychologist could simply choose not to conduct the evaluation.

## Summary and Conclusion

Third party participation in psychological evaluations is sometimes necessary, sometimes helpful, and sometimes required by law. Psychologists' deliberations about the presence of third parties should be logical and consistent, protect the security and future utility of psychological assessment instruments, and not unnecessarily compromise the rights of litigants who are undergoing evaluation. Psychologists contemplating a third party's presence during an evaluation should consider a number of factors including (a) the nature of and basis for the third party's presence, (b) how this presence might facilitate or impede the evaluation, (c) whether the third party's presence threatens test security and normative comparisons, and (d) how a response can be crafted that meets the needs of a particular assessment with minimal disruption. Table 1 offers a helpful series of issues for psychologists to consider when contemplating such presences during psychological evaluations and summarizes the different interests psychologists must balance based on the nature, context, and purpose of the evaluation.

## Notes

1. We refer to psychologists and psychological examinations throughout this article, but many of these issues apply to allied health care professionals who engage in similar activities (e.g., psychiatrists). Of course, other professionals are controlled by different ethical and practice standards and guidelines.

2. Although use of interpreters to facilitate administration of psychologist tests presents its own challenges, its potential appropriateness is reflected in Standard 9.11 of the Standards for

Psychological and Educational Testing (American Educational Research Association et al., 1999).

3. Problematic and potentially confusing is that the STPO initially suggests that the presence of third party observers or participants could be initiated by a number of different persons—including psychologists themselves—but the later section of the document only provides options for psychologists who are faced with requests for third party observers or participants.

4. The title of the NAN document references neuropsychological testing (as distinguished from neuropsychological evaluation), and the concerns included in the document regarding third party presence all involve issues related to negative impacts on testing. However, the document opens with the phrase, "Forensic neuropsychological evaluations are often constrained by the demand that a third party observer be present during the course of *interview* and formal testing" (NAN, 2000, p. 379, italics added), which raises the possibility that the document may be used to justify exclusion of third parties during both interviews and testing, despite its narrow title.

5. We do, of course, acknowledge that *some* of these concerns do apply differentially to different types of third party observers/participants (e.g., test security is a reasonable concern when the third party is an interpreter, parent, or attorney, but not when the third party is a psychologist-in-training).

6. The reasoning underlying AACN's notice that the use of the document is limited to psychologists evaluating persons involved in civil litigation is puzzling. The document does indicate that it is not intended for application in "criminal forensic consultations that involve issues of *criminal liability or culpability* because the right to legal representation and a third party observer is absolute in criminal proceedings" (AACN, 2001, p. 434, italics added). This statement is of considerable interest insofar it (a) could be interpreted as indicating that the document does apply to evaluations of criminal defendants when the psycholegal issue is something other than criminal responsibility (e.g., competence to proceed, sentencing) and (b) may not accurately describe the legal landscape in all jurisdictions. Moreover, why AACN determined that this document should not serve as a resource for psychologists faced with questions of third party presence when conducting treatment-related evaluations (as opposed to forensic evaluations) is unclear.

7. Although not addressed in this document, a psychologist retained by the examinee's counsel to observe the evaluation conducted by a psychologist retained by opposing counsel appear to us to qualify as a "noninterested third party" (or at least as "noninterested" as the examining psychologist).

8. The NAN and AACN arguments that third party observation of persons undergoing forensic evaluation is contraindicated because it diminishes the utility of normative data and jeopardizes the validity of findings is particularly perplexing when this statement is considered in light of the fact that the overwhelming majority of tests employed by neuropsychologists in these contexts were normed on persons who were not even involved in litigation in which their psychological functioning was at issue, nor are such norms even available. It is puzzling to reason that differences between the conditions of forensic examinations and the conditions under which almost all of their tests were standardized does not jeopardize the

validity of test findings to a degree that they should not be used, but that the presence of third parties when these test are administered precludes such presence.

9. A related concern but one we will not directly address in this article involves copyright issues. Test publishers claim (e.g., see Harcourt Assessment, 2008) that audio- or videotaping test administration is an infringement on copyright rules.

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