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What We Overlook: Background Checks and Their Implications for Discrimination

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Given the strong psychometric tradition in I/O psychology, it is not surprising that Lindsey, King, Dunleavy, McCausland, and Jones' (forthcoming) strategies for reducing discrimination in the selection phase are primarily test-focused, including recommendations for the use of predictor scores, alternative modes of test stimuli presentation, and the removal of biased test items. Background check practices are not readily conceptualized as "tests," but they can lead to both disparate impact and disparate treatment. This commentary focuses on the use of criminal background histories and credit reports in personnel selection and the subjectivity of their evaluation. These are widespread practices that have generated considerable public controversy over the past several years due partly to their discriminatory effects, yet they receive little attention from academic researchers in I/O psychology.

Surveys of human resource professionals indicate that about 90% of U.S. employers conduct criminal background checks, and over two-thirds check all job candidates (Society for Human Resource Management, 2010, 2012b); many are legally required to do so. As there are substantial racial and ethnic disparities in the criminal justice system, the exclusion of applicants with criminal records often leads to disparate impact. In 2012 the Equal Employment Opportunity Commission issued new enforcement guidelines clarifying that criminal background checks should be very narrowly tailored and consistent with business necessity. This announcement generated widespread protest and derision, with critics arguing that employers face a Catch-22 between negligent hiring liability and the risk of discrimination lawsuits (e.g., Bovard, 2013; Mandelbaum, 2012).

Over the past two decades the use of credit reports in hiring people for a wide array of jobs has become quite common as well, a trend that occurred in the absence of any published evidence of their validity for selection purposes (Nielsen & Kuhn, 2009). Significant backlash has resulted in nine states to date passing legislation to limit employment-purpose credit checks, but recent survey data finds that 47% of employers continue to check credit reports for some or

all candidates (Society for Human Resource Management, 2012a; this is a decrease from the 60% figure reported in 2009). Much of the criticism leveled by the public and politicians against this practice has been based on concerns other than racial discrimination (Kuhn, 2012). But with large and growing racial gaps in household wealth and predatory lending practices often targeted at communities of color, disparate impact appears likely if credit reports are used; in one recent lawsuit, the proportion of African-American applicants rejected due to a credit check was almost twice as large as that of white applicants (Traub, 2013).

Both credit reports and criminal records are judged on a pass/fail basis, providing an essentially dichotomous judgment on the presumed general character of the applicant. Conversely, the more commonly researched and discussed selection tests measure an ability or trait on a continuous, comparative scale, and are more limited in their use and impact. For example, an applicant's score on an aptitude test may influence whether or not she is hired for a particular job, but a somewhat low score may be offset by other criteria and it is unlikely she will apply to many different employers who use the same test. Although almost all organizations use interviews to hire employees, they do not ask the same questions or interpret responses identically, and an applicant can attempt to improve her interview performance. Someone who carries the broad reputational taint of a bad credit history or criminal record, however, may find it difficult to obtain work at many different firms and for many different types of jobs, and there may be little she can do to compensate.

Credit and criminal histories are seemingly objective records of an applicant's past behavior. Both types of databases contain errors, however, and background checks can often yield unreliable information (Federal Trade Commission, 2012; Harris & Keller, 2005). Moreover, the complex information presented on credit and criminal history reports is generally interpreted subjectively. Although it is widely assumed that credit checks for job applicants are based on the familiar three-digit credit scores, reports prepared for employment purposes are *not* supposed to contain that number. Thus employers typically use subjective judgment in evaluating the information contained in a credit report, including how much money is owed and

to whom, payment histories, collection actions, tax liens, and bankruptcy filings. When evaluating an applicant's criminal record, managers and HR professionals may consider the severity of an offense, its relevance to the job, its recency, the age of the applicant at the time, and whether or not a conviction was secured (SHRM, 2010).

Subjective evaluations of background check information may compound their discriminatory effects. While a criminal record negatively impacts job prospects for everyone, audit experiments conducted by sociologists have found that employers are much more likely to hire a white ex-offender than a black one (Pager & Quillian, 2005; Pager, Western, & Sugie, 2009). Although we know very little about how various types of credit report information actually influence hiring decisions, it may well be the case that a poor financial history is also more of a barrier for minority applicants. In their review of state-level discrimination complaints, sociologists Roscigno, Garcia, and Bobbitt-Zeher (2007, p. 31-32) cite one case where an African-American applicant was removed from a police force eligibility list due to his financial history while a white applicant was retained despite having a similarly bad credit report (again, there are no numerical credit scores to compare, so the authors rely on written summaries and comments about the two candidates).

Lindsey et al. (forthcoming) recommend that employers reduce subjectivity in the selection process, and "evaluate selection scores blindly when possible." In stark contrast, advocates of credit and criminal background checks promote the subjectivity with which the information is evaluated as reason to believe they are implemented fairly and appropriately. The Society for Human Resource Management (2010, 2012b) publicizes that most of their survey respondents state they permit applicants to explain the results of criminal and credit background checks. So candidates who can provide persuasive reasons why their poor credit should be attributed to external factors may still be hired, while others with equivalently bad reports may be rejected if they are found less sympathetic. The EEOC guidelines mandate "individualized assessments" of criminal records based on a variety of factors. Over half of respondents in another recent survey of HR professionals claimed that they did so; the background check firm

that sponsored this survey contends that criminal records are therefore not deal-breakers in hiring (EmployeeScreenIQ, 2013).

Many employers, however, might prefer clearer guidelines or hard-and-fast criteria for evaluating criminal records (Mandelbaum, 2012). Similarly, I/O psychologists advocate for uniform procedures that allow less leeway for implicit and explicit racial bias to enter into hiring decisions (Lindsey et al., forthcoming). Most employers will continue to perform criminal background checks, and many want to review applicants' credit histories. Moreover, some economists have argued that racial discrimination is *more* likely in the absence of criminal background checks, as in one study firms who performed checks were more likely to hire black men than those who did not, even after adjusting for location and proportion of African-American applicants (Holzer, Raphael, & Stoll, 2006). To the extent that I/O psychology-based research can provide guidance on how best to implement background checks, our discipline has substantial opportunity to benefit employers, individuals, and society. But to do so effectively research must grapple with the realities of background checks, including the subjectivity with which information is judged.

Currently we know little about what determines whether or not someone fails a credit history check, or about the subjective decision weights associated with various factors in the individualized assessments of criminal histories. Given the controversy associated with these practices, self-report survey data showing that HR professionals rate skills and relevant work experience as more important factors than credit or criminal histories in hiring decisions (see EmployeeScreenIQ, 2013; SHRM, 2012a) are not sufficient. For complex multi-attribute decisions people may have limited insight into their judgment processes, and reported policies may differ from enacted ones. Pager and Quillian (2005) compared employers' telephone survey responses to data from an experimental audit of the same employers. Even though the survey was designed to control for social desirability bias, there was no correspondence between expressed attitude toward hiring an applicant with a criminal record and actual hiring behavior (Pager & Quillian, 2005). Although a majority of surveyed HR professionals report they allow

candidates to explain the results of their criminal history checks (SHRM, 2012b), Pager et al.'s (2009) tester applicants found employers were reluctant to discuss convictions. Field studies with a wide variety of employers and policy-capturing experiments that systematically vary a number of background check factors embedded in realistic candidate descriptions would be fruitful avenues for research.

Validation analyses of background check information will be somewhat more complicated than for tests scored on a continuous numerical scale, but they are necessary. Palmer and Koppes (2004) found no significant relation between various measures extracted from credit history data and employee performance and turnover. Other studies that have claimed correlations between financial problems and negative work-related outcomes have relied on self-reported measures of financial stress and of criteria (e.g., Kim & Garman, 2003; Kim, Sorhaindo, & Garman, 2006). In a sample of university employees and alumni, Bernerth, Taylor, Walker, and Whitman (2012) found correlations between credit scores and personality traits and performance (although not deviance or aggression), but such results cannot be safely extrapolated to hiring contexts. Employers do not see credit scores, and it is unlikely they process the detailed and complex information they do see in the same way or with the same consistency as credit bureau scoring algorithms (for the superiority of actuarial over clinical judgment, see Dawes, Faust, & Meehl, 1989).

Criminology researchers have analyzed the risk of recidivism as a function of time, age, and type of crime, and such data could be useful for determining when a job applicant should be considered redeemed (Blumstein & Nakamura, 2009; Bushway, Nieuwebeerta, & Blokland, 2011). Staffing data analysis firm Evolv recently reported the counterintuitive finding that call center employees with criminal records were *more* productive than those with clean histories (Giang, 2012). Although clearly not conclusive, this illustrates the need to rely on empirical data rather than assumptions in formulating hiring policies. Research results could potentially be used to formulate evaluation guidelines that reduce subjectivity while still avoiding overly simplistic bright-line rules.

I/O psychologists can also support education and advocacy efforts. For example, many employers report they consider arrest records (SHRM, 2010), although the EEOC guidelines specifically warn against doing so. A large proportion of initial job application forms continue to ask about criminal history (EmployeeScreenIQ, 2013), which also contravenes EEOC guidelines. “Ban the box” legislation that permits criminal checks only at later stages of the hiring process has been successful in several states and cities (National Employment Law Project, 2013). Advocacy efforts to increase the accountability that credit reporting bureaus and background checking services bear for the accuracy of the information they provide should also be encouraged. Given the substantial and increasing numbers of Americans with poor financial and/or criminal histories, and the collateral and interactive consequences of such records for exacerbating racial inequality (Wheelock, 2005; Traub, 2013), the contribution of background checking practices to hiring discrimination should not be overlooked by those whose disciplinary training and expertise are well-suited to improving employee selection.

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