5-19-2014

Evolution of a Background Check Policy in Higher Education

Gregory T. Owen
Georgia Institute of Technology, gowen@gatech.edu

Follow this and additional works at: https://nsuworks.nova.edu/tqr

Part of the Quantitative, Qualitative, Comparative, and Historical Methodologies Commons, and the Social Statistics Commons

Recommended APA Citation

Owen, G. T. (2014). Evolution of a Background Check Policy in Higher Education. *The Qualitative Report*, *19*(20), 1-17. https://doi.org/10.46743/2160-3715/2014.1228

Evolution of a Background Check Policy in Higher Education

Abstract

This article is the first of a short series of works designed to articulate the results and research approach I utilized in my dissertation Analysis of Background Check Policy in Higher Education. Results of my literature review on this topic demonstrated that in the higher education environment, lack of agreement about background checks between campus community members, fueled by unresolved tensions between security and privacy, has led many universities to adopt a patchwork of fragmented background check policies. In response to these unresolved tensions, fragmented policies, and an overall lack of systematic studies of background check policy in higher education, my dissertation broadly addressed the following: within Georgia Institute of Technology, what important documented campus events influenced and challenged the campus to consider, adopt, modify, and improve a formal background check policy? This was achieved through interviewing relevant constituents and analyzing all available/related official policy documents associated with Georgia Tech's Pre-employment Background Check Policy and Program and presenting a chronological account of the events and influences associated with its adoption and revision. Results of this study offer valuable insights about background check policy development in order to assist higher education policy makers and HR professionals at other universities in making more informed decisions regarding same, or similar, policy.

Keywords

Background Check, Higher Education Policy, CriminalHistory, Qualitative Policy Analysis, Campus Security, Research, Privacy v.Security Debate, Risk Management, Employment Liability

Creative Commons License

Evolution of a Background Check Policy in Higher Education

Gregory T. Owen

Georgia Institute of Technology, Atlanta, Georgia, USA

This article is the first of a short series of works designed to articulate the results and research approach I utilized in my dissertation Analysis of Background Check Policy in Higher Education. Results of my literature review on this topic demonstrated that in the higher education environment, lack of agreement about background checks between campus community members, fueled by unresolved tensions between security and privacy, has led many universities to adopt a patchwork of fragmented background check policies. In response to these unresolved tensions, fragmented policies, and an overall lack of systematic studies of background check policy in higher education, my dissertation broadly addressed the following: within Georgia Institute of Technology, what important documented campus events influenced and challenged the campus to consider, adopt, modify, and improve a formal background check policy? This was achieved through interviewing relevant constituents and analyzing all available/related official policy documents associated with Georgia Tech's Pre-employment Background Check Policy and Program and presenting a chronological account of the events and influences associated with its adoption and revision. Results of this study offer valuable insights about background check policy development in order to assist higher education policy makers and HR professionals at other universities in making more informed decisions regarding same, or similar, policy. Keywords: Background Check, Higher Education Policy, Criminal History, Qualitative Policy Analysis, Campus Security, Research, Privacy v. Security Debate, Risk Management, Employment Liability

Introduction

In the current higher education environment controversies exist over campus safety and security policy. Policy debates often emerge regarding what (and how much) security is needed to keep campuses safe while at the same time respecting, as much as possible, the privacy of staff and students. Fueling these debates are recent violent campus incidents involving students and/or staff. As a direct consequence of the April 2007 Virginia Tech campus shootings, the Department of Education revised the Federal Educational Rights and Privacy Act (FERPA). Effective as of February 2009, "the new rules try to strike a better balance between privacy and safety" (Lake, 2009, p. A27). These new FERPA rules may help moving forward; however, unresolved campus tensions between privacy and security still exist. These tensions have led some campus communities toward adopting a patchwork of fragmented background check policies that do not include careful consideration of the wide array of risks and complexities involved with background checks.

For many years, the use of extensive background checks in the business-corporate sector has included pre-employment investigations of private information such as criminal histories, driving records, and personal credit. According to a Society for Human Resource Management (SHRM) report (2004), from 1996 to 2004, the frequency of these investigations has increased. SHRM (2010) followed-up with similar surveys that reported similar results compared to 2004, indicating that 80% of organizations conducted criminal

history searches, 76% of organizations conducted reference checks, and 79% conducted drug testing for either all job candidates offered positions, selected candidates for safety sensitive positions, or when testing was required by law. Credit histories are used more infrequently than the above mentioned background checks. According to the 2010 SHRM report on credit histories, only 13% of organizations surveyed conducted credit histories on all job candidates. Of the organizations surveyed, 91% reported only using credit histories primarily for positions with a fiduciary duty.

The American Association of University Professors (AAUP) released a public statement by Finkin, Post, and Thomson (2004) on background checks, which addressed several significant questions and problems surrounding the perceived need for, and use of, extensive pre-employment background checks in higher education. The release of this 2004 statement was strong evidence that the topic had entered the mainstream of higher education policy issues. In a more formal follow-up regarding its stance on the topic, the AAUP included the 2004 statement regarding background investigations in its tenth edition of *Policy Documents and Reports* (2006) making it a permanent addition to its governing guidelines.

Literature Review Summary

Frank Vinik (2005) highlighted three main factors contributing to the growing support for extensive pre-employment background checking in higher education. Factor one is improved use and availability of electronic data-collection techniques, making it quicker and easier to obtain personal information on applicants. Factor two is a change in the legal atmosphere due to high-dollar judicial verdicts against organizations and institutions for negligent hiring. These verdicts have forced employers to become more conscious of potential liability. For a comprehensive review of the legal concerns surrounding negligent hiring see the work of Rodolfo A. Camacho (1993). Factor three is a major social shift triggered by the terrorist attacks in New York City on September 11th, 2001. After this event "people are accepting greater intrusions into their privacy if it helps protect their communities" (Vinik, 2005, p. B13). These technological improvements, judicial decisions, and social changes have strengthened support for extensive pre-employment background check policy in higher education, but the AAUP has warned of several concerns that warrant attention. First, these types of searches can be "highly invasive of an applicant's privacy and potentially very damaging." Second, "the probative value of criminal records is often small because such records are notoriously imprecise." Third, the AAUP does recognize that incidents of faculty credential misrepresentation are "not totally foreign in higher education," but "such sensational incidents are fortunately few." And, most important, the AAUP states that "this interest in background checks has arisen despite the absence of any systematic study of the need for the information such checks might produce" (AAUP, 2006, p. 51).

My searches within the literature support the AAUP's claim regarding an overall lack of sufficient systematic studies about background check policy in higher education. Literature exists regarding background check policy and practice; however, there is a very limited amount written about background check policy specifically in higher education. Much of this general literature on background checks are publications that are not peer-reviewed or scholarly in format. Some of these publications are written by leaders in the business of providing background check services, who are promoting their own agenda, therefore producing a biased point of view. There is also literature that attempts to provide advice on the subject, but it is often fragmented and incomplete, providing only a piece of the subject, unsubstantiated claims, and/or warnings of legal pitfalls. Much of this literature (e.g., Clabault, 2005; Keller, 2004; Lashier, 2005) poses important questions, but most

authors fail to answer them, leaving open the assumption that merely contemplating the issues and questions surrounding higher education background check policy is sufficient.

Due to such a shortfall of peer-reviewed literature on background checks in higher education, I have relied to a large degree on reports that highlight important triggering events that have potentially shaped, influenced, and changed background policy in higher education. Some of the most significant triggering events include first, the 2001 terrorist attacks on the New York City twin towers. This event had a strong influence on our United States culture toward accepting greater intrusions of privacy for increased security measures. Second, are the circumstances of Paul Krueger reported by Scott Smallwood (2003). Dr. Krueger was a faculty member who had multiple academic positions at several higher education institutions while at the same time having multiple murder convictions in his criminal history unbeknownst to any of his employers. A direct effect of the Paul Krueger incident was Pennsylvania State University's adoption of formal pre-employment background check policies in 2004. The events surrounding Krueger served as one of the major catalysts sparking debates about whether criminal history searches are appropriate in higher education. Third, as discussed previously, is the AAUP (2004) release of its public statement which addressed several significant questions and problems surrounding the perceived need for, and use of, extensive pre-employment background checks in higher education. Finally, are the significant incidents of campus violence including the shootings at the University of Texas (1966), Virginia Tech (2007), Northern Illinois (2008), and most recently the University of Alabama (2010).

Robert Birnbaum (2000) reminds us of the importance of recognizing management fads in higher education. His contribution to my literature review highlights the danger of uncritical acceptance of policy which can be troublesome if the practice is applied as formula and without the support of organizational participants. Stephanie Hughes, Rebecca White, Giles Hertz, and Eileen Keller are some of the leading (and very few) contributors of literature directly related to background check policy in higher education. Through their significant survey and policy review work (in general alignment with Birnbaum's management fad warning) they assert that implementation of more comprehensive criminal background check policies in U.S. higher education needs more careful consideration. For example, according to Hughes, Keller, and Hertz (2010) "the acceptance of CBCs [criminal background checks] in the hiring process of public and private sector entities has grown," however, "the application of this process is far from universal or consistent" (p. 61). Further, without closer attention to the wide array of risks and complexities involved with background check policy, standard procedures could lead to a "fragmented approach" (Hughes, White, & Giles, 2010, p. 24).

Background Check Policy at Georgia Tech

During the summer of 2005, the Georgia Institute of Technology (Georgia Tech) implemented the Georgia Tech Human Resources Background Check Policy 8.1 (referred to as "Policy 8.1" throughout the remainder of this article). Policy 8.1, at that time, required a mandatory pre-employment background check for a select group of part-time and full-time classified, non-faculty, positions. Two years later background check policy was on the agenda of the annual University System of Georgia Board of Regents (BOR) fiscal affairs meeting held June 17-20th, 2007. In the meeting summary, William Bowes (2007) reported that the BOR sanctioned a university system-wide initiative compelling every public higher education institute in Georgia to adopt a pre-employment background check policy (which included all faculty and staff hiring). These initiatives were strong examples that the use of extensive pre-employment background checking was taking a firm hold in higher education.

Purpose of the Study & Research Question

The current study was designed to attend to the concerns expressed by the AAUP with regard to a lack of systematic studies on extensive background check policy in higher education. This study also intended to provide knowledge in order to help address the assertion of Hughes, White, and Hertz's that universities have adopted a "patchwork" of background check policies that "lack consistency in application among the various constituencies on campus" (2008, p. 311). For example, in a survey study conducted by Hughes, White, and Hertz (2006), 132 out of 247 higher education human resource personnel responded to various questions about their campus background check practices. The survey data revealed that "many institutions that do use background checks processes do so in a less than comprehensive manner across campus" (p. 28). In response to this assertion I examined Georgia Tech's adoption and early influences of formal background check policy. Through my qualitative research, my efforts and perhaps other "vicarious experiences" can serve as "an important basis for refining action options and expectations" (Stake, 2005, p. 454) for same or similar policy.

Research Question: This study broadly addressed the following: What were the most important events and Policy 8.1 modifications, over approximately the past ten years, that influenced and challenged the Georgia Tech administration to consider, adopt, and revise a formal background check policy?

Research Approach

A more comprehensive discussion of my research approach is better left for a separate article more specifically devoted to this study's overall research method. In a subsequent article, *Qualitative Methods in Higher Education Policy Analysis: Using Interviews and Document Analysis* (accepted for publication as of the date of this writing) I explain, in detail, my overall research approach. The following is an introduction summarizing how I addressed my research question

Developed by Cooper, Fusarelli, and Randall (2004) my conceptual framework consisted of considering four important policy dimensions including the normative, structural, constituentive, and technical dimensions. This framework served as a basis and focus shaping my research process, informing the methodological design, and influencing the selection of data-collection instruments. The majority of my data collection and analysis aligned with Cooper, Fusarelli, and Randall's technical dimension of organizational policy which consists of understanding the "planning, practice, implementation, and evaluation" or what Cooper, Fusarelli, and Randall refer to as "the nuts and bolts of policymaking" (2004, p. 43-44). Within the technical dimension I was able to provide a recreation of Policy 8.1 as a formal written document through analyzing all the revisions and changes the Policy 8.1 experienced throughout all four of its releases (June 2005, October 2007, November 2009, & May 2010).

I utilized Michael Crotty's (1998) four basic research design questions as a basis for making crucial decisions in my research approach. I conducted my research through the lens of the social constructivist (epistemology) adopting an interpretivist approach (theoretical perspective) utilizing a qualitative policy analysis (methodology) which included the use of interviews and document analysis (methods) to address my research question. Due to my use of interviews and potentially sensitive documents, I obtained formal Institutional Review Board (IRB) permission to conduct this study from both my home academic institution (Georgia State University) and the Goergia Institute of Technology. During the course of all

my interviews I obtained informed written consent from all my interviewees using an IRB approved consent document.

Data Inventory

Policy 8.1 Releases

Policy 8.1 releases were comprised of the formal policy statements that the Georgia Tech Office of Human Resources published to the campus on four separate occasions. These included the first release in June 2005 and each subsequent revision released in October 2007, November 2009, and May 2010. Analysis of each of these policy statements offered evidence of changes implemented in response to what was learned from each previous release.

Interview Transcripts

My data collection through interviewing relevant constituents associated with Georgia Tech's Pre-Employment Background Check Policy and Program produced five robust interview transcripts. Participants I successfully recruited for interviews included (all of whom consented to using their real names and titles):

1) Russ Cappello, former (retired as of 2004) Director of Employment and Employee Relations for Georgia Tech's Office of Human Resources;
2) Dr. Jean Fuller, former (retired as of 2006) Director of Employment and HR Policy for Georgia Tech's Office of Human Resources;
3) Scott Morris, current (hired in January, 2011) Associate Vice President of Human Resources for Georgia Tech's Office of Human Resources;
4) Rick Clark, current Director of Admissions for Georgia Tech's Office of Undergraduate Admissions (2009-Present); and
5) Erroll Davis, former Chancellor of the University System of Georgia (2006-2011).

InfoMart Reports

When Policy 8.1 was being created, the Georgia Tech Office of Human Resources contracted the process of obtaining and reporting applicant background information to the Atlanta-based company InfoMart Inc. Upon my request, InfoMart provided me with several monthly and annual background check activity reports, as well as financial data that detailed the costs associated with their services. These records provided valuable historical program statistics and cost documentation of Georgia Tech's OHR Background Check Program.

Supplementary Documents

Supplementary documents were discovered through following leads produced from my interviews and literature review. Although they were not specific to Policy 8.1, these documents provided additional context to each of the four dimensions of my conceptual framework. These documents include:

1) A January 18th, 2007 letter to USG Chancellor Erroll Davis from Hugh Hudson (former Executive Secretary of the AAUP, Georgia Chapter)

expressing concerns regarding the 2007 USG mandate for a system-wide pre-employment background check policy;

2) A September 11th, 2007 memorandum from Rob Watts of the USG to all USG Presidents and Chief Business Officers articulating recent revisions to the USG Background Check Policy (which includes a copy of the 2007 USG Policy);

3) May 23rd, 2011 version of USG Background Investigation Policy;

4) The 2010 Georgia Tech Fact Book, available online and published annually by the Office of Institutional Research and Planning.

5) The 2010 Georgia Tech Mini Fact Book, available online and published annually by the Office of Institutional Research and Planning.

6) Various official online governmental documents used to analyze important federal laws and regulations that directly impact Policy 8.1;

7) Various personal analytical documents including my field notes, important annotations from related readings, written and electronic (using NVivo qualitative data analysis software) journal entries, analytic memos, etc. created throughout my study to guide and steer my reflections.

Summary of Data Analysis Technique

The following is a summary of my data analysis technique. Using my conceptual framework as an initial starting point, my hybrid data analysis approach utilized NVivo qualitative data software to organize my data as well as a paper and pencil coding method of analysis. I organized and coded my data as it related to the four major dimensions of my conceptual framework (i.e., Cooper eat al., 2004). In alignment with Johnny Saldaña's (2009) streamline codes-to-theory model for qualitative inquiry, my analysis involved using descriptive and evaluative coding of all obtainable documents (which included my interview transcripts) associated with Policy 8.1. As my coding progressed, I categorized codes that shared similarities, threading them into groups that logically and intuitively fit together. Working with these categories/groups, I searched for emerging patterns and themes through analytic memo writing. This allowed me to structure a re-creation of the experiences and challenges that influenced related constituents of Policy 8.1 to consider, adopt, modify, and improve formal background check policy at Georgia Tech.

Responsive Interviewing Method

I utilized the "responsive interviewing" approach advocated by Rubin and Rubin (1995). Serving as a "compass" and not a rule this approach "remains flexible throughout the project" and the goal is not to reach definitive answers or truth, but rather to seek out how the interviewee "understands what they have seen, heard, or experienced" (Rubin & Rubin, 1995, p. 37). My interview technique included three types of questions; main questions, follow-up questions, and probes as described by Rubin and Rubin. I purposely had very few main questions with the intention of allowing each interviewee to guide his/her interview as much as possible as long as he/she stayed on topic. I utilized many follow-up and probe questions to seek depth, detail, vividness, richness, and nuance (as described by Rubin and Rubin). My follow-up and probe questions also helped each interviewee stay on target with the focus of my study.

My main questions asked of all interviewees (designed to provide an overall structure and illicit follow-up questions) included:

1. What is your affiliation (if any) with Georgia Tech, the University System of Georgia, or the field of human resources?
2. Can you describe the structure and culture of Georgia Tech?
3. Within this culture/structure who stands (or stood) to benefit from Policy 8.1?
4. What do you think are the main reasons why extensive pre-employment background checking (which includes the collection of sensitive information such as criminal records and credit histories) has become more accepted in general (meaning not just in the higher education environment)?
5. The American Association of University Professors, in 2004, called for "a renewed sense of proportion" regarding obtainment of highly sensitive information (such as criminal records) in determining employment eligibility. What are your thoughts about this statement?
   a. The AAUP also claimed, in 2004, that not enough formal studies have been conducted to warrant making policy decisions that revolve around use (or misuse) of such sensitive information in employment decisions. Do you think there have been significant policy improvements since 2004 that would help ease the AAUP's concerns?
6. Assuming that the University of Chicago had no formal pre-employment background check policy/program in place, what advice would you give to the vice president of human resources if he/she asked for your counsel?
   a. When a university considers adopting same or similar policies and programs what are the most challenging considerations to take into account and what are some strategies to manage those challenges?
7. Use of background checks has begun to extend beyond employment and into higher education matriculation, what kinds of implications do you think this can or will have for higher education? (Access, Privacy, etc.)
8. Was there any particular question you feel I should have asked or that you feel would be important for me to consider?

Researcher Connection with Georgia Tech

As an employee of Georgia Tech Dewalt and Dewalt's (2002) continuum of participation levels served as a viable tool for me to gauge where I have been situated in connection with Policy 8.1 at different times during my study. My career at Georgia Tech (and in the field of human resources management) formally began in April, 2001. Early in my involvement with Policy 8.1, I worked in Georgia Tech's Office of Human Resources (around January 2005) where I was assigned to draft the first Georgia Tech policy devoted to assigning a campus code of conduct for pre-employment background investigations. This heavily immersed me in the creation, implementation, and campus enforcement of Policy 8.1. In this assignment I was held accountable for comparing other higher education pre-employment background check policies; researching all the applicable laws, regulations, and risks involved with adopting such policy; and recruiting a reputable third-party company to contract with and conduct Georgia Tech's pre-employment background check investigations. During this time (for approximately a two and a half year period), this placed my level of participation at Dewalt and Dewalt's complete participation (as an active member of the culture being studied).

My level of participation with Georgia Tech's Policy 8.1 changed in May, 2007. At that time I was promoted to a new employment position in the Georgia Tech Enterprise Innovation Institute (EI^2). This was an important personal and professional change for me and my study, because it shifted my level of involvement/participation (more in alignment with Dewalt and Dewalt's description of moderate participation) with Georgia Tech's Office of Human Resources and Policy 8.1. After my employment change, I was no longer responsible for managing the administration of Policy 8.1, and I lost much of my insider status with the Georgia Tech Office of Human Resources. However, one of the benefits of leaving the Georgia Tech Office of Human Resources came in the form of an increased separation from my personal attachment to Policy 8.1. This increased separation allowed me to research and digest the competing arguments for and against background check policy more effectively, because my livelihood no longer depended on the success of the program. Robert Bogdan and Sari Biklen (2007) explain that "exactly what and how much participation varies during the course of a study." In the beginning, researchers usually spend time teaching the community they are involved with and gradually gain acceptance and often a level of membership. "As relationships develop, he or she participates more," which was the case in my six years (from April, 2001 to May, 2007) of employment with Georgia Tech's Office of Human Resources. At later stages of the research, "it may be important once again to hold back from participating," because too much participation can lead to "the researcher getting so involved and active with subjects that their original intentions get lost" (2007, p. 92).

Results

Policy 8.1 Early Influences

June 1st, 2005 is an important date for understanding Policy 8.1 because that is when the policy was formally adopted as a written publication in Georgia Tech's human resources policy manual. Before the creation of the written policy, there were earlier influences and events that contributed to its inception, including the 1996 Olympics and an informal practice of conducting background checks on temporary staff, both of which I discuss below.

My interviewee Russ Cappello, former (retired as of 2004) Director of Employment and Employee Relations for Georgia Tech's Office of Human Resources, recalled many of these early influences during the mid-1990s up to 2004. For example, the federal government utilized background checks on all Georgia Tech employees when Georgia Tech hosted the 1996 summer Olympics. "During the 1996 Olympics when background checks were done on everybody on campus, there were certain people that were not allowed into certain areas because of their background [records of criminal convictions]" (Cappello, 2011). Used as a precautionary measure, these background checks were intended to protect the athletes and dignitaries. "You know, the President [of the United States] came and there was so much security." Russ was granted access to all areas of the campus during the Olympic event; however, his position as Employment Director made him responsible for the employees who were restricted because of results of their background checks. Russ explained how temporary off-campus work areas were designated for these employees who were restricted. "I would go to one of the high schools off-campus to be there in the event that one of these people who were not allowed on campus could come and talk to me if they had a need." The criminal history results were available only to the federal security who conducted the background checks and this created an air of mistrust toward those who were not allowed on campus.

And so it was kind of interesting that we couldn't find out, because then supervisors and managers always looked at those people who couldn't get on the campus with suspicion because now you had somebody here that you didn't know what they did, and so there was a concern…. In fact, one supervisor found out something on somebody, but we couldn't use it, because he got it through subterfuge…. And it wasn't bad, what he did. It wasn't like he killed somebody or something. But nevertheless, he was a convicted felon. But we couldn't take action against him because of the grounds on which it was obtained. (Cappello, 2011)

A few years after the 1996 Olympics, Russ began conducting pre-employment background checks on temporary staff hires. This decision was in response to a specific incident which fueled Russ' growing concerns about how temporary hiring was being handled at the time.

It was probably about the year 2000.… It started out slow and it took a lot of work…. Because it was very lax, you came in, you filled out an application, and they put you on the job. I was asking them for a long time to start background investigations, but what really brought it to a head was a gentleman that was in housing as a custodian, which means he had access to dorms…. I got a call from one of the team leaders saying that the parole officer had called her wanting to know if in fact the person worked there. She called me and said, "Can I give him the information?" And I said, "Whoa, hold on. If this man is on parole, that means he did time." If he did time, he was convicted of a felony and that's against Board of Regent's policy. Pull his application and let's see what he said. Well that answer was negative. You know, "Were you ever convicted of a felony?" "No." The legal department checked his background and found that he did time for assault with a deadly weapon, kidnapping, and transporting a minor across state lines. (Cappello, 2011)

After Russ convinced the Georgia Tech senior leadership to conduct background checks on temporary hires, he also exerted efforts to encourage background checks on regular full-time staff and faculty as well. "But then I kept pushing for regular employees and indeed for faculty." Despite his efforts, Russ was unsuccessful in convincing his superiors to implement a formal campus-wide background check policy that included screenings for full-time faculty and staff. In the absence of a formal background check policy, Russ utilized other methods of identifying potential convicted felons "because that's the only way I could do it." As a standard document for any new hire within the university system the BOR security questionnaire, at the time, asked specifically, "have you ever been convicted of a felony" with check boxes for "yes" or "no." Russ instructed his staff to alert him of any new hire "who had anything other than a clear no. If there was any other verbiage on that form, then I took a look at it, called that person and I interviewed them personally" (Cappello, 2011).

After Russ Cappello retired in early 2004 as Director of Employment and Employee Relations, his responsibilities as Employment Director were inherited by his colleague, Dr. Jean Fuller, who had an extensive involvement with the overall Georgia Tech HR policies. "I'm retired director in the Office of Human Resources with over 22 years of experience…. I actually developed the policies and procedures manual. We didn't have one prior to my doing it" (Fuller, 2011). When I was hired in the Georgia Tech Office of Human Resources

in 2001, I worked for Russ Cappello until his retirement and Dr. Fuller was my supervisor for the last two years of her career at Georgia Tech (2004-2005) when she was the Director of Employment, Policies, and Staff Support Services. At the time I was manager of the temporary employment division of Georgia Tech's Office of Human Resources.

As described earlier, Russ made it a practice to conduct background checks on temporary staff hires in the absence of a formal policy. During this time, the Georgia Tech police department provided the Office of Human Resources with these Georgia criminal histories searches as a courtesy and at no cost. I recall that toward the end of 2004 the police chief informed Dr. Fuller that they could no longer provide criminal history searches due to the increased volume of temporary hiring. Dr. Fuller saw this as an opportunity to bring change to the Office of Human Resources, as she, like Russ, believed that background checks should be conducted on all newly hired employees. Her efforts to convince the Georgia Tech senior administration to adopt a formal background check policy were successful.

Policy 8.1 June, 2005 Evolution Highlights

The inception of Policy 8.1 in June, 2005 was a turning point in the campus employment recruitment culture. After June, 2005 the Office of Human Resources could refer to a specific policy for background check administration. The campus gradually accepted the increased liability associated with obtaining very sensitive background check data and the additional costs associated with using a third-party vendor (InfoMart Inc.). The fact that no employment offer could be extended until completion of a background check added an additional level of bureaucracy to the hiring process. The creation of Policy 8.1 also increased Georgia Tech's attention to the associated (no exceptions at the time) University System of Georgia employment policy that did not allow the hiring of any applicant with a felony conviction. It is important to note that this first version of Policy 8.1 only applied to non-faculty staff hiring.

Policy 8.1 October, 2007 Evolution Highlights

This first revision of Policy 8.1 was a direct response to the summer 2007 University System of Georgia (USG) directive that all USG institutions adopt a background check policy that included faculty pre-employment screening. In a formal January 18th, 2007 letter from Dr. Hugh Hudson (Executive Secretary of the AAUP, Georgia Chapter) to USG Chancellor Dr. Erroll Davis, Dr. Hudson expressed concerns regarding the 2007 USG mandate for a system-wide pre-employment background check policy. Dr. Hudson did not respond to my requests to interview him for this study; however, in his letter to Dr. Davis he noted that he had been contacted by many faculty and administrators "with deep concerns regarding the potential for abuse in the recently announced policy of requiring a police background investigation for all new faculty hires." Dr. Hudson's letter specifically referenced the AAUP's Committee on Academic Freedom and Tenure 2004 statement "Verification of Trust" regarding background checks in higher education. He noted that the statement called for "a renewed sense of proportion," and "with due respect for the rights of privacy of all Americans" the report urged that the practice of conducting background checks "be limited to candidates for positions with significant security considerations." The letter continues by stating

> a general policy of searching the criminal records, if any, of an applicant – was
> rightly held to be egregiously disproportionate to reasonable institutional
> needs…. The Committee noted that criminal records are notoriously imprecise

as to criminal guilt, containing as they do information that ranges from arrest through dismissal of sentencing, and do not contain important contextual information…. A matter of equal concern is the lack of any suggested procedural safeguards. The AAUP recommended that at the least universities follow the model of the federal Fair Credit Reporting Act that governs the procedures that employers must use when they retain businesses to conduct background checks: informing the candidate of the proposed background check and obtaining authorization in writing; providing the candidate with a copy of the final report; and refraining from any adverse action on the basis of the report unless and until the prospective employee has had an opportunity to contest or clarify its accuracy…. I trust further that you share a desire to protect people's privacy to the extent possible. I would appreciate your thoughts on this matter as the Georgia Conference of the AAUP would like very much to work in harmony with you on this issue. (Hudson, 2007)

In my interview with Dr. Erroll Davis, he described the rationale for his decision to implement background check policy throughout the USG "from a risk management perspective." He stated

I moved forward and required background checks of all employees in the system, because I felt that again, if I were in a lawsuit, all the plaintiff's council had to do was say, "Didn't you have the opportunity to check the background of your employee and you didn't? So you were, therefore, negligent." And so I think you have to do it from a risk management perspective. (Davis, 2011)

Also in my interview with Dr. Davis he talked about how the University of Georgia experienced an incident that strongly supported his decision to implement system-wide background checking.

I should point out that the University of Georgia steadfastedly was against background checks until they had an incident involving a professor. I don't know whether he assaulted a young female or was in an illicit relationship or whatever, but it turned out that he had a criminal conviction or some indications of this behavior in his background which would have been surfaced by a background check. It was pretty high-profile when it came out, and I made the point, "Well, if you had the background checks, the guy wouldn't be on campus," and I haven't heard a peep since. (Davis, 2011)

In summary, this first revision of Policy 8.1 completely changed the approach regarding which positions required background checks. All employment offers, including faculty, now required at least a state and federal criminal history search spanning a minimum of 7 years, a nationwide sex offender search, a social security verification, Office of Foreign Asset Control (OFAC) check, and education verification for any position requiring a higher education degree. Any additional screenings had to be supported by a job related rationale. For example, positions requiring operation of state owned vehicle required a driving history check. This expansion of positions requiring background checks was accompanied by expanded flexibility (granted by the University System of Georgia) in making hiring decisions to applicants with felony convictions. Finally, the addition of an option to petition for a waiver of a background check also added additional flexibility and reduced costs in

recognition of potential redundancy. For example, the Georgia Tech Research Institute (GTRI) often requires a federal security clearance for some of its employees who are granted access to laboratories with highly sensitive government information or equipment. Requiring a Georgia Tech background check in addition to a security clearance was recognized as an unnecessary and costly business practice.

Policy 8.1 November, 2009 Evolution Highlights

One of the major November, 2009 changes was the requirement of a Background Investigation Committee (BIC). The BIC established a formal group of people assigned to work together in determining the suitability of applicants with criminal histories that do not automatically disqualify candidacy as outlined in the policy. Jean saw this change as a step in the right direction stating "as I said before, I have reviewed Georgia Tech's current background investigation policy. The policy has been evaluated and improved since 2005 to include an oversight committee; we didn't have that back then" (Fuller, 2011). In addition, the 2009 version made it a requirement to conduct background checks on international candidates and temporary employees hired through staffing agencies.

Adding clarification of moral turpitude also was a significant change in this version, stating "[In] Georgia, the test for whether a [crime] is one involving moral turpitude is 'does the [crime], disregarding its felony punishment, meet the test as being contrary to justice, honesty, modesty, good morals or man's duty to man?'" This revision demonstrated a further understanding and clarification of criminal histories and how each should be considered in making employment eligibility decisions; however, in my assessment the detail in describing the term and crimes associated with moral turpitude seemed excessive. Accompanying the definition of moral turpitude are 10 specific examples of offenses involving moral turpitude including murder, voluntary manslaughter, sale of narcotics, and larceny or a misdemeanor theft by taking. Also, 13 specific examples of "offenses which are not crimes involving moral turpitude" are listed, including public drunkenness, driving under the influence, fighting, & carrying a concealed weapon.

Overall, this revision of Policy 8.1 was what I refer to as the "overboard version." The creators, at the time, added so much detail that several of the 2009 additions were abandoned in the May, 2010 version. In my interviews with Jean and Russ, both warned of the dangers of polices with either too much detail or lack of continued evaluation. According to Russ, "sometimes when these policies are developed, people have a tendency to go overboard and that hurts the program. With all policies, I think there has to be a measure of common sense" (Cappello, 2011). And as Jean states,

> Oh this one was important, also share things that did or did not work over a period of time after the implementation of the policy. And also to consistently review policy for improvements and it looks like that's what has been done based on what I have read in the last couple days…. You have to evaluate your program, that's what gives it validity. (Fuller, 2011)

Policy 8.1 May 2010 Version

When I interviewed Dr. Jean Fuller it was five years after she had retired and her response to all the changes of Policy 8.1 was "I went online to look at the current policy, which was almost foreign compared to the original policy that was developed" (Fuller, 2011). The third revision of Policy 8.1, the current version, was released in May, 2010. This revision contains very few changes from its previous version in contrast to the November,

2009 version which had the most comprehensive changes in comparison to its predecessor. Most of the changes in May 2010 were due to deletions or abbreviation of content. If I were to describe this version of Policy 8.1 in just a few words, it would be "a step back to simplification." It appears that the authors of this version recognized that the previous 2009 version was too long and detailed. For example, deletions of content include removal of the policy website address; removal from the previous version the requirement of a background check for international candidates and temporary employees hired through staffing agencies; removal of the 2009 version list of crimes that do and do not constitute a crime of moral turpitude; removal of the extensive discussion on and definition of the term "moral turpitude" was changed (and significantly shortened) to "Georgia law defines crimes of moral turpitude."

Under the "Process/Procedures" heading additional verbiage was added for "Determining Eligibility" that specifies the criteria for criminal drug offenses. "The first conviction shall disqualify a person for not less than two (2) years" and "a second or subsequent criminal drug offense" shall disqualify any person "for a period of five (5) years from the most recent date of conviction." All other wording from the previous version remained the same except that under the "Responsibilities" heading the Office of Legal Affairs was added as also being responsible for "assistance with policy interpretation."

InfoMart Reports Data

Georgia Tech entered into a contractual relationship with InfoMart Inc. in June, 2005 and performed background checks for Georgia Tech until December, 2009. Financial and statistical reports from InfoMart revealed the following.

1) 2005 (June-December): $18,053.05 total cost for 777 applicant screenings (13% of which had criminal history records).
2) 2006 (January-December): $56,051.35 total cost for 1402 applicant screenings (14% of which had criminal history records).
3) 2007 (January-December): $56,592.90 total cost for 1377 applicant screenings (13% of which had criminal history records).
4) 2008 (January-December): $75,407.40 total cost for 1631 applicant screenings (10% of which had criminal history records).
5) 2009 (January-December): $81,537.60 total cost for 1387 applicant screenings (8% of which had criminal history records).

Policy 8.1 Summary Discussion

In summary, the inception of Policy 8.1 was highly influenced by triggering events. First, when Georgia Tech hosted the Olympics in 1996, the federal government performed background checks on all Georgia Tech personnel which raised suspicions about the number of staff with criminal histories. Second, in my interview with Russ Cappello he provided examples of incidents before 2004 where criminal histories were uncovered by accident adding additional risk management concerns within the Office of Human Resources. Third, in 2004 when the Georgia Tech police department refused to continue conducting courtesy (no cost) criminal history searches on temporary staff hires (the informal practice at the time), this forced the campus to make a critical decision regarding its approach to background checks. Jean Fuller saw this as an opportunity to convince senior leadership to invest more time and funding in background checks as a risk management strategy.

When Policy 8.1 was formalized in June, 2005, this marked the first time Georgia Tech contracted with an outside vendor to conduct background checks, increasing both the liability and costs associated with pre-employment screening. In June, 2005 Policy 8.1 also established much more stringent rules regarding which positions required a background check, which applicants were eligible for hire, and when an employment offer could be extended. In October, 2007 Policy 8.1 was revised for the first time in response to the University System of Georgia initiative requiring all USG institutions to adopt a background check policy. This revision changed the previous approach in that all employment offers, including faculty, required the minimum level background check with the option for additional screenings as long as the additional checks were supported by a job related rationale. Also, added was an option to petition for a background check waiver as well as additional flexibility in making hiring decisions to applicants with felony convictions. In November, 2009 Policy 8.1 was revised extensively adding an overabundant amount of wording and procedural specifics, including an elaborate discussion surrounding moral turpitude. This version required background checks for international applicants and hires through third-party employment agencies. Conditional employment offers before completion of a background check were allowed in this version and the concept of using a Background Investigation Committee (BIC) was introduced. In May, 2010 (the current version) Policy 8.1 was scaled back removing the background check requirement for international applicants and hires through third-party employment agencies. Almost all the wording surrounding moral turpitude was removed and replaced with "Georgia law defines crimes of moral turpitude." Finally, this version provided more specifics pertaining to eligibility for employment for applicants with drug related convictions.

Limitations

Additional Dimensions of my Conceptual Framework

The article focused mainly on the results of my analysis within the technical dimension of my conceptual framework. Reporting on all four of Cooper, Fusarelli, and Randall's 2004 dimensions of policy analysis was a task devoted to my entire dissertation and not appropriate for the scope of a single journal article. In a follow-up article (Owen, in press) I will report the results of my study within the other three dimensions of my conceptual framework. The normative dimension "includes the beliefs, values, and ideologies that drive societies to seek improvement and change." This dimension is important because it considers the goals, needs, and assumptions of policy (the aspects of policy and policy-making that are often not easily explained through the logical and systematic approaches of positivistic methods). Study in this dimension included consideration of the organizational mission and cultural make-up of Georgia Tech. The structural dimension "includes the governmental arrangements, institutional structure, systems, and processes that promulgate and support policies." The structural dimension advocates that "analysis of the role and effects of federal, state, and local institutional structure is critical" for understanding policy. Focus on this dimension included exploring/explaining the organizational structure of Georgia Tech as well as how Policy 8.1 was influenced and affected by related federal laws and University System of Georgia policy. Finally, the constituentive dimension includes "theories of the networks, elites, masses, interest groups, ethnic/gender groups, providers and 'end users,' and beneficiaries who influence, participate in, and benefit from the policymaking process" (Cooper, Fusarelli, & Randall, 2004 pp. 43-44). Focus on this dimension includes consideration of some of the organizations and interest groups that share close professional

relationships with Georgia Tech. These relationships were important because they can (and often do) have a strong influence on Georgia Tech policy decisions.

The Privacy vs. Security Debate

Many of the controversies about background checks in higher education center around, or are related to, privacy and/or security. Therefore, this study would be incomplete without discussion of these two topics. However, it is important to note that security and privacy (especially privacy law) are both elaborate subjects. This study (and the overall dissertation on which it was based) focused specifically on a single background check policy at one higher education institution. Therefore, my discussions on security, privacy, and privacy law were limited only to the most relevant aspects of these topics as each related to the focus of my study. Further review/examination on privacy and security would be better left to studies devoted individually to each of these complex topics.

References

AAUP. (2006). *Policy documents & reports* (10th ed.). Washington, DC: American Association of University Professors.

Birnbaum, R. (2000). *Management fads in higher education: Where they come from, what they do, why they fail*. San Francisco, CA: Jossey-Bass.

Bogdan, R., & Biklen, S. K. (2007). *Qualitative research for education: An introduction to theories and methods* (5th ed.). Boston, MA: Pearson A & B.

Bowes, W. (2007). *Fiscal affairs issues, annual meeting* (University System of GA.) (pp. 46). St. Simons Island: University System of Georgia.

Camacho, R. (1993). How to avoid negligent hiring litigation. *Whittier Law Review, 14*(4), 787-807.

Cappello, R. (2011, October 13). Interview by Gregory T. Owen [Digital Audio Recording]. Atlanta, GA.

Clabault, D., M. (2005). Background checks: What you need to know. *Compliance Magazine, 12*(4), 18.

Cooper, B. S., Fusarelli, L. D., & Randall, E. V. (2004). *Better policies, better schools: Theories and applications*. Boston, MA: Allyn and Bacon.

Crotty, M. (1998). *The foundations of social research: Meaning and perspective in the research process*. London; Thousand Oaks, CA: Sage Publications.

Davis, E. (2011, December 01). Interview by Gregory T. Owen [Digital Audio Recording]. Atlanta, GA.

DeWalt, K. M., & DeWalt, B. R. (2002). *Participant observation: A guide for fieldworkers*. Walnut Creek, CA: AltaMira Press.

Finkin, M. W., Post, R. C., & Thomson, J. J. (2004). Verification and trust: Background investigations preceding faculty appointment. *Academe, 90*(2), 113-115.

Fuller, J. (2011, September 28). Interview by Gregory T. Owen [Digital Audio Recording]. Atlanta, GA.

Georgia Tech. (2010). *Georgia Tech Mini Fact Book 2010* (pp. 24). Atlanta, GA: Office of Institutional Research and Planning, Georgia Inst. of Technology.

Hudson, H. (2007 January 18). [Letter to Erroll Davis]. Copy in possession of Gregory T. Owen.

Hughes, S., Keller, E., & Hertz, G. (2010). Homeland security initiatives and background checks in higher education. *New Directions for Institutional Research, 2010*(146), 51-62.

Hughes, S., & White, R. (2006). Risk mitigation in higher education: An overview of the use of background checks on campus. *CUPA-HR Journal, 57*(2), 23-32.

Hughes, S., White, R., & Hertz, G. (2008). A new technique for mitigating risk on U.S. college campuses. *Journal of Higher Education Policy and Management, 30*(3), 309-318.

Hughes, S., White, R., & Hertz, G. (2010). *Criminal background checks in U.S. higher education: A Review of Policy Developments*. Unpublished Article. Northern Kentucky University. Highland Heights, KY.

Keller, S. (2004). Employee screening: A real-world cost/benefit analysis. *Risk Management, 51*(11), 28.

Lake, P. (2009). Student-privacy rules show a renewed trust in colleges. *Chronicle of Higher Education, 55*(22), A72.

Lashier, R. (2005). 6 big mistakes & how to avoid them. *Security, 42*(7), 26.

Owen, G. T. (in press). A four-dimensional study of background check policy in higher education. *The Qualitative Report.*

Rubin, H. J., & Rubin, I. (1995). *Qualitative interviewing: The art of hearing data*. Thousand Oaks, CA: Sage Publications.

Saldaña, J. (2009). *The coding manual for qualitative researchers*. London, UK: Thousand Oaks, CA: Sage Publications.

SHRM. (2004). *SHRM workplace violence survey*. Alexandria, VA: Society for Human Resource Management, Survey Reports.

SHRM. (2010). *Background checking: Conducting criminal background checks SHRM poll*. Alexandria, VA: Society for Human Resource Management, 2010 Survey Reports.

SHRM. (2010). *Background checking: Conducting reference background checks SHRM poll*. Alexandria, VA: Society for Human Resource Management, 2010 Survey Reports.

SHRM. (2010). *Background checking: Drug testing SHRM poll*. Alexandria, VA: Society for Human Resource Management, 2010 Survey Reports.

SHRM. (2010). *Background checking: the implications of credit background checks on the decision to hire SHRM poll*. Alexandria, VA: Society for Human Resource Management, 2010 Survey Reports.

Smallwood, S. (2003). The price of murder: A triple homicide haunts a professor who thought he had already paid for his crime. *Chronicle of Higher Education, 50*(3), A8.

Stake, R. (2005). Qualitative case studies. In N. Denzin & Y. Lincoln (Eds.), *The SAGE handbook of qualitative research* (3rd ed., pp. 443-465). Thousand Oaks: Sage Publications.

Vinik, F. (2005). Why background checks matter in academe. *Chronicle of Higher Education, 51*(38), B13-B13.

Author Note

Gregory T. Owen is Director of Human Resources with the Georgia Institute of Technology Enterprise Innovation Institute (EI[2]) in Atlanta, GA. He completed his graduate studies at Georgia State University with a PhD. in Educational Policy and an MS in Educational Psychology. He has over 13 years' experience working in higher education and in the field of human resources. His research interests include policy and organizational development, change management, and qualitative research design. Correspondence regarding this article can be addressed to Dr. Gregory T. Owen, EI[2] Technology Square of Georgia Tech, 75 Fifth Street NW (Suite 380), Atlanta, GA. 30308. Phone: 404-385-3290 & Email: gowen@gatech.edu

Article Citation

Owen, G. T. (2014). Evolution of a background check policy in higher education. *The Qualitative Report, 19*(39), 1-17. Retrieved from http://www.nova.edu/ssss/QR/QR19/owen39.pdf