

A Four-Dimensional Study of Background Check Policy in Higher Education

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ABSTRACT

This article is the second 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*. In my first article, *Evolution of Background Check Policy at Georgia Tech*, I provided an overview of the context surrounding debates for and against background check policy in higher education, a summary of my literature review, and the results of the technical dimension (one of four dimensions) of my study's conceptual framework. The majority of my data collection and analysis aligned with this technical dimension which consisted of understanding the planning, practice, implementation, and evaluation of Georgia Institute of Technology's background check policy and program. Within this technical dimension I was able to provide a re-creation of the policy as a formal written document through interviewing relevant constituents and analyzing all its formal releases/revisions (June 2005, October 2007, November 2009, & May 2010).

In this article, I articulate the results of my study within the remaining three dimensions of my conceptual framework. These three dimensions include first, the normative dimension which focuses on studying the beliefs, values, and ideologies that drive societies to seek improvement and change. Second, the structural dimension includes considering the governmental arrangements, institutional structure, systems, and processes that promulgate and support policies. Focus on this dimension included exploring/explaining the organizational structure of Georgia Institute of Technology as well as how the Institute's background check policy was influenced and affected by related federal laws and University System of Georgia policy. Finally, the constitutive dimension includes considering theories of the networks, interest groups, providers or end users, and beneficiaries who influence, participate in, and benefit from the policymaking process. Focus on this dimension included identifying some of the organizations and interest groups that share close professional and financial relationships with Georgia Institute of Technology. These relationships were important because they can (and often do) have a strong influence on organizational policy decisions. 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; Privacy v. Security Debate; Risk Management; Employment Liability.

Introduction

The current study was designed to attend to the concerns expressed by the American Association of University Professors (AAUP, 2006) with regard to a lack of systematic studies on extensive background check policy in higher education. 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.

This article is the second of a short series of works designed to articulate the results and research approach I utilized in my overall dissertation study, *Analysis of Background Check Policy in Higher Education*. In my first article, *Evolution of Background Check Policy at Georgia Tech*, I provide an overview of the context surrounding debates for and against background check policy in higher education, a summary of my literature review, and the results of the technical dimension (one of four dimensions) of my study’s conceptual framework. The majority of my data collection and analysis aligned with this technical dimension which consisted of understanding the planning, practice, implementation, and evaluation of Georgia Institute of Technology’s background check policy and program. Within this technical dimension I was able to provide a re-creation of the policy as a formal written document through interviewing relevant constituents and analyzing all its formal releases/revisions (June 2005, October 2007, November 2009, & May 2010).

The main purpose of this article is to follow-up from my analysis of the technical dimension of my conceptual framework and report the results of my study within the remaining three (the normative, structural, and constitutive) dimensions. My overall research question was as follows: 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?

Summary of Data Analysis Technique

In a follow-up article, *Qualitative Methods in Higher Education Policy Analysis: Using Interviews and Document Analysis*, I will discuss, in detail, my awareness of important researcher positional and political concerns (related to my employment with Georgia Tech) and I will also articulate the research development, design, and overall approach I utilized in addressing my research question. In summary, 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. 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.

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.

Results

Triggering Events & Policy 8.1

My searches within the literature support the American Association of University Professors' (AAUP, 2006) claim regarding a lack of sufficient systematic studies about background check policy in higher education. 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. In alignment with the results of my study, Cooper, Fusarelli, and Randall (2009) assert that "triggering events" (p. 69) often shape, influence, and change policy initiatives and societal interests. Triggering events can often cause certain societal anxieties to appear suddenly in the limelight and/or disappear from view due to competing concerns. Thomas Birkland (2005) also discusses the importance of these types of events; however, he uses the term "focusing events" (p. 101). Birkland reminds us that these focusing events can (and often do) attach emotional elements that support policy agendas. For example, on a national level, had it not been for the 2001 terrorist attack on the New York World Trade Center, President George W. Bush's promotion of the Patriot Act would perhaps have been more scrutinized regarding the authority it extends over the privacy of U.S. and foreign citizens.

Technical Dimension: Summary Discussion

In my first article of this series, *Evolution of Background Check Policy at Georgia Institute of Technology*, I describe in detail, the results of my study within the technical dimension of my conceptual framework. The majority of my data collection and analysis aligned with this dimension which consisted of understanding the planning, practice, implementation, and evaluation of Georgia Institute of Technology's background check policy and program. Within this technical dimension I was able to provide a re-creation of the policy as a formal written document through interviewing relevant constituents and analyzing all its formal releases/revisions (June 2005, October 2007, November 2009, & May 2010). 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 (who served as Director of Employment for the Georgia Tech Office of Human Resources during the mid-1990s to 2004) 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 (who

served as the Georgia Tech Director of Employment after Russ retired) 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 (USG) 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 additionally 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 added specifics pertaining to eligibility for employment for applicants with drug-related convictions.

Normative Dimension

According to Cooper, Fusarelli, and Randall (2004), the normative dimension of understanding organizational policy “includes the beliefs, values, and ideologies that drive societies to seek improvement and change” (p. 43). My focus within this dimension included gaining a basic understanding of Georgia Tech’s organizational mission, demographics, financial basics, and cultural make-up.

Georgia Tech’s organizational mission reads as follows:

Technological change is fundamental to the advancement of the human condition. The Georgia Tech community - students, staff, faculty, and alumni - will realize our motto of “Progress and Service” through effectiveness and innovation in teaching and learning, our research advances, and entrepreneurship in all sectors of society. We will be leaders in

improving the human condition in Georgia, the United States, and around the globe.
(Clabby & Bramblett, 2010, p.15)

Georgia Tech is accredited by the Southern Association of Colleges and Schools to award bachelors, masters, and doctoral degrees (Clabby & Bramblett, 2010, p. 22). Georgia Tech's science and technology academic culture is reflected in the College of Engineering's dominance in 2010 student enrollment. Of the total 13,750 undergraduate students 8,076 were enrolled in engineering programs, and among graduate students 3,835 (of a total 6,970) were pursuing engineering degrees (p. 7). As of fall 2010 Georgia Tech employed a total of 6,120 faculty and staff. Over 79% of full-time teaching faculty were male, and the majority of total employees on campus were academic faculty (1,052) or research faculty/other professionals (3,880) (p.6). Tuition and fees for FY 2011 were \$8,716.00 for undergraduate Georgia residents (\$26,926.00 non-resident) and \$10,282.00 for graduate Georgia residents (\$27,850.00 non-resident). The overall budget for Georgia Tech in fiscal year 2010 was over \$1 billion with revenues of \$1,158,535.00 and expenditures totaling \$1,093,918,357.00, most of which comprised research (\$461,892,472.00) and instruction (\$207,560,218.00) (p.10).

Georgia Tech Culture. In my interviews with Russ Cappello, Rick Clark, and Erroll Davis, each of them described their interpretations of Georgia Tech's culture. According to Russ,

I think it's probably a typical university. It's kind of laid back.... One of the reasons why they hired me was because I worked with ITT and they wanted, this was at GTRI, wanted to be successful like civilian companies, I'll say, very commercial companies.... Universities are very different. My environments are the army, 20 years in the army, and then ITT, a very commercial company, and then the university. And all three of those are totally different environments, the university being probably one of the hardest to navigate. (Cappello, 2011)

According to Rick Clark, current Georgia Tech Director of Student Admissions,

the culture at Georgia Tech, I would say it does have a bit of corporate-mindedness. It's a fairly innovative place. I think that it's a place that challenges people not really that satisfied with the status quo. So for a student I think that means that they're surrounded by professors and staff and other students who are going to contest what they believe and want to sharpen them. And I think for those of us who are employed by Georgia Tech, we are also surrounded by bright and motivated people, which is encouraging everyone to look to be better. So it's a forward thinking culture, I think, and a place that kind of recognizes how pivotal we really are. It sounds a bit hyperbolic but truly improving the human condition in our world and that is part of our mission. (Clark, 2011)

While Erroll Davis did not work specifically at Georgia Tech he describes his impression of the individual Institute from his perspective as former Chancellor of the entire University System of Georgia (2006-2011),

it was one the 35 degree-granting institutions that reported to my office. I always viewed it as one of the more capable or most capable institutions in the system. And again, it was, of course, populated by very bright people.... and certainly has a very strong alumni body and a very giving foundation body. (Davis, 2011)

Structural Dimension

The structural dimension (of my conceptual framework) “includes the governmental arrangements, institutional structure, systems, and processes that promulgate and support policies” (Cooper, Fusarelli, and Randall, 2004, p. 43). Therefore, 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.

Georgia Tech Organizational Structure. According to Russ, Georgia Tech’s organizational structure is as follows, “you have a hierarchy starting with the president... then the provost sits at the right hand followed by the deans and directors” (Cappello, 2011). Rick Clark describes Georgia Tech’s organizational structure a little differently in that

we are one of 35 system members of the USG so we’re governed by a Board of Regents. We’re a publicly-funded, less so than we used to be, institution here in the state. We operate technically as a nonprofit, but obviously Georgia Tech has a lot of affiliations that make us a pretty big contributor to the economy of the city and the state. But our primary function is to educate.... that extrapolates out not only to students but to corporations and partners as well. (Clark, 2011)

According to Jean Fuller, Georgia Tech’s structure is different than private sector organizations because

within higher education institutions the major units are academic, well let’s put it this way let’s say Georgia Tech, the major units are the academic side, research, and then the business side.... The business unit of the system is responsible for the daily financial operations of the campus in general; both academics and research are audited by the business offices of the Institute who in turn are responsible for reporting annually to the Board of Regents, so they do have some checks and balances there. (Fuller, 2011)

My interview with Erroll Davis mainly focused on discussing his role as the previous chancellor of the University System of Georgia and he described the Board of Regents (which oversees Georgia Tech) as

composed of 18 members, all of whom are appointed by the governor for seven-year terms. There is one representative for each of Georgia’s 13 congressional districts, then there are five at large. The board will get larger next year when Georgia gets its new congressional seat and also some of the regents may have overlapping districts and so they may have to sort themselves out. (Davis, 2011)

Georgia Tech’s executive leadership, also known as the president’s cabinet, is made up of 29 individuals all holding positions as deans, vice presidents, and/or executive vice presidents in various academic, research, service, or administrative campus units (for a full review of all the Georgia Tech leadership organizational charts see Clabby & Bramblett, 2010, p. 28-37). The two main arms supporting Georgia Tech’s mission and employing the most faculty and staff are the Georgia Tech

Research Institute (GTRI) and the six major colleges forming the campus' academic units. Various disciplines are represented in these colleges including architecture, computing, engineering, management, sciences, and liberal arts.

At the top of Georgia Tech's leadership stands George P. "Bud" Peterson, the current (and 11th) president of Georgia Tech (appointed in April, 2009). According to his biography webpage on the president's office website, before coming to Georgia Tech, Dr. Peterson held several academic and/or research leadership positions. These included Chancellor of the University of Colorado, Boulder (2006-2009); Provost at Rensselaer Polytechnic Institute in Troy, New York (2000-2006); and Program Director at the National Science Foundation for Thermal Transport and Thermal Processing (1993-1994). Dr. Peterson's academic background was mainly in science and engineering which is in alignment with the programs offered at Georgia Tech.

Policy 8.1 & Privacy Law. The structural dimension of my conceptual framework also emphasizes that "analysis of the role and effects of federal, state, and local institutional structure is critical" (Cooper, Fusarelli, and Randall, 2004, p. 43) for understanding policy. Thus, my research led me toward understanding how Policy 8.1 relates with (and was influenced by) major laws and regulations related to privacy and security. For example, my readings on privacy issues, as well as analysis of several federal online documents, highlighted that Policy 8.1 has a strong connection with the Fair Credit Reporting Act (FCRA), the Federal Educational Rights and Privacy Act (FERPA), and the Health Insurance Portability and Accountability Act (HIPAA).

The Federal Trade Commission and Fair Credit Reporting Act. One of the federal government's early efforts to protect U.S. citizens from wrongful acts is the Federal Trade Commission (FTC). "When the FTC was created in 1914, its purpose was to prevent unfair methods of competition in commerce as part of the battle to 'bust the trusts.'" Over the years, Congress passed additional laws giving the agency greater authority to police anticompetitive practices. In 1938, Congress passed a broad prohibition against "unfair and deceptive acts or practices." Since then, the Commission also has been directed to administer "a wide variety of other consumer protection laws" (FTC, 2008b). The FTC is important to my study of Policy 8.1 because it is the overarching federal program that oversees the Bureau of Consumer Protection. The Bureau of Consumer Protection, which "works to protect consumers against unfair, deceptive, or fraudulent practices in the marketplace," (FTC, 2008a) has seven divisions, each with its own area of expertise, including Advertising Practices, Consumer and Business Education, Enforcement, Financial Practices, Marketing Practices, Planning and Information, and (the division most important for this study) Privacy and Identity Protection.

The Division of Privacy and Identity Protection “oversees issues related to consumer privacy, credit reporting, identity theft, and information security.” The Division also “enforces the statutes and rules within its jurisdiction, engages in outreach and policy development, and educates consumers and businesses about emerging privacy, credit reporting, and information security issues, as well as identity theft prevention and assistance” (FTC, 2008c). The Division of Privacy and Identity Protection enforces the Fair Credit Reporting Act (FCRA) which “ensures the accuracy and privacy of information kept by credit bureaus and other consumer reporting agencies, and gives consumers the right to know what information these entities are distributing about them to creditors, insurance companies, and employers” (FTC, 2008c). For example, under the FCRA, employers using a third-party contractor to conduct background checks are mandated to obtain expressed permission from the individual being checked. The FCRA also requires that the individual being checked has a right to obtain a copy of the background check report. These two federal regulations are very important to the background check process as they provide a reasonable level of protection for employment candidates.

FERPA & HIPAA. The 1974 Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act of 1996 (HIPAA) are both important to background check policy in that each are federal regulations that protect official records. In brief, the major goal of HIPAA is “to assure that individuals’ health information is properly protected” while also “allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well being” (United States Health and Human Services, 2003).

FERPA is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. According to Lake (2009), FERPA “is a pillar in the panoply of federal laws protecting basic civil rights,” and it is “essential if other civil-rights laws are to have full meaning and effect.” Before the 1960s and 1970s, many colleges’ record keeping could easily be categorized as “primitive” compared to today. “An evil Dean Wormer could create secret files or selectively disseminate information about students without their knowledge or consent.” A dean could easily make an insinuation that a student was a member of an unconstitutional society to “poison that student’s future.” FERPA legislation “changed an entire culture of records management on campuses” and “drove dark practices to the margin.” FERPA’s passage, with its perceived strict regulatory protection of student records, ensured “a somewhat weird era of federal privacy-law regulation” lasting over 30 years. “Legions of administrators predictably overreacted and invented their own

versions of FERPA to avoid war with the government,” and many of these “self-inflicted protocols protected student privacy far too much, not too little” (p. A72).

FERPA and HIPAA were launched into the media spotlight because of the Virginia Tech campus shootings. Seung-Hui Cho, the student who shot over 30 people on Virginia Tech’s campus in April 2007, was previously identified as a danger to himself and others in 2005 by the Carillion St. Albans Behavioral Health Center. Had these records been shared with other governmental entities, such as the federal system for firearms background checks or the Virginia Tech campus police, Cho may have been prevented from purchasing the firearms he used in the shooting. St. Albans did share the records (which were protected under HIPAA) with the Virginia Tech Cook Counseling Center; however, the counseling center never shared the records (protected under FERPA) with any other campus unit or outside entity. FERPA does allow institutions to communicate with “appropriate officials” in the event of a safety or health-related “emergency;” however, these terms are often left open to interpretation so “colleges and universities have historically erred on the side of not disclosing information to third parties out of concern for student’s privacy and an interest in complying with federal law” (Rasmussen & Johnson, 2008).

As a direct consequence of the Virginia Tech incident, the Department of Education revised the FERPA regulations. Announced in December 2008 and effective as of February 2009, “the new rules try to strike a better balance between privacy and safety.” Colleges are now permitted to release information about a student if “there is an articulable and significant threat to health or safety of the student or other individuals.” Overall, the new regulations provide colleges with more discretion in defining what constitutes an emergency, what records can or may be disclosed, and to whom. As Lake (2009) further describes, “now that a period of testing has passed” FERPA regulation is more “free to evolve into a more facilitative law” and less as “a watchdog to protect other civil rights.” FERPA originally surfaced “in a climate of mistrust and misdeeds” so “colleges should celebrate the new regulations as a moment of redemption” (p. A72). Of course, with trust and additional freedoms comes added accountability. The weight of responsibility in exercising proper judgment regarding campus safety and appropriate confidential record sharing now falls heavily on campus officials.

Constitutive Dimension

The constitutive dimension of organizational policy includes considering the “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, and Randall, 2004, p. 43-44). This aligns closely with Eugene Bardach’s (2009) claim that

an important feature in policy analysis and “telling the story” is “establishing key features of the political environment” (p. 112).

Georgia Tech has strong professional and financial relationships with several federal, state, and private organizations that have a vested interest in Georgia Tech’s research efforts. As the 2010 Georgia Tech fact book states:

Georgia Tech is a major center for advanced technology in Georgia and the southeast. With 2,600 academic and research faculty, 13,750 undergraduate students, and 6,970 graduate students, the Institute conducts research of national significance, provides research services and facilities to faculty, students, industry, and government agencies, and supports the economic and technological growth of the state. Research operations are carried out through schools, centers, and laboratories. Last year, Georgia Tech reported research activity totaling \$562 million, placing the institution 28th among universities for research and development (or 6th among institutions without medical schools). Most of the research is supported by contracts with government organizations and private industry. The Georgia Tech Research Corporation, a non-profit organization incorporated under the laws of the state of Georgia, serves as the contracting agency. It also licenses intellectual property created at Georgia Tech, including patents, software, trade secrets, and other similar properties. (Clabby & Bramblett, 2010, p.130)

In the 2010 Georgia Tech report of research awards by agency (Clabby & Bramblett, 2010), the majority (70.4%) were federal contracts, \$392,009,321.00. Agencies awarding grants and contracts to Georgia Tech varied, with the U.S. Air force (\$93,720,959.00 or 16.8% of total awards), the National Science Foundation (\$83,952,428.00 or 15% of total awards), and private industrial organizations (\$75,590,841.00 or 13.6% of total awards) contributing the highest amounts. Other agencies included, but are not limited to, the U.S. Dept. of Defense (8.2%), U.S. Army (7.6%), U.S. Dept. of Health & Human Services (5.6%), and the U.S. Dept. of Energy (2.3%). These relationships can and often do have a strong influence on Georgia Tech policy decisions. For example, and specifically relating to background check policy, it is in Georgia Tech’s best interests to represent itself as an organization that values strong risk management. As Jean describes,

Georgia Tech is governed by policies and procedures from the Board of Regents. Tech receives millions of dollars from the federal government through its research efforts and must therefore practice federal guidelines in reference to hiring practices as well as ADA compliance.... Now the background checks assist employers in not making hiring choices that could be detrimental to their bottom line and put the company or organization at risk legally. Weeding out undesirable applicants also possibly protects the quality and interests of organizational relationships and existing employees; however, nothing is 100% sure. (Fuller, 2011)

Limitations & Further Avenues of Study

After completing my data collection and analysis, I have found that there are four related areas where further study could be conducted. The first of these would be a more elaborate look into the privacy v. security debate. Second, it would perhaps be interesting to extend further study into finding out if the existence of a background check policy has (or could have) an impact on faculty and/or student recruitment. The third potential area of further study would be on the topic of background checks extending beyond the pre-employment arena of higher education and into the student matriculation process. Finally, as recent as April 2012, the U.S. Equal Employment Opportunity Commission (EEOC) released the updated government document *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*. This document raises concerns regarding the future of background check policy as it relates to equal employment opportunity.

The Privacy v. Security Debate

Many of the controversies regarding background checks in higher education are centered around, or are related to, privacy and/or security. It is important to note that security and privacy (especially privacy law) are both elaborate subjects. This study 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 my study. I recommend further review and examination of privacy, security, and privacy law, especially in regard to potential implications of implementing background checks on students as part of the matriculation process.

Student and Faculty Recruitment

Due to the fact that Scott Morris recently started his employment at Georgia Tech as Associate Vice President of Human Resources in January 2011, our conversation was dominated mostly with discussion of our thoughts about the current version of Policy 8.1. In our discussion we agreed that it would be interesting to know if the existence of a background check policy has (or could have) an impact on faculty and/or student recruitment. In regards to faculty, would a background check as part of the employment recruitment process dissuade them from applying? Or would the background check itself send the message that Georgia Tech values the safety and security of its population? Extending the same concept to student (and especially parent) decision-making, does a background check policy for employees provide additional assurance that Georgia Tech's campus is a safe environment? Additionally, if there is an effect on decision-making in this area, how

might this economically impact an institution? Does a background check policy for higher education employees influence the buying behavior of students and/or parents (and if so how much)?

Background Checks on Students

Because background checks have increased for university staff and faculty members, is it possible (especially due to the recent incidents of student violence at Virginia Tech and Northern Illinois University) that background checks may increasingly become part of the matriculation process? My readings within the literature and discussions with my interviewees indicate that this will be a future topic of increased debate. In my interview with Rick Clark (current Director of Undergraduate Admissions for Georgia Tech) we discussed the current preventative measures that Georgia Tech uses to screen student enrollment applications. On the application there is a question that asks if the applicant has ever been convicted of a criminal offense; however, actual criminal records are not used when making matriculation decisions. Rick explained that

even the way we do this now which is a self-reported background, we don't do formal backgrounds or paid background checks, but we do have prescribed Board of Regents questions where students on their honor are offering information, which is solicited, and then we follow up when necessary. And a sizable percentage of students have something that comes across in that. (Clark, 2011)

In a follow-up question, I asked Rick to provide an example of an incident where questionable information was found in an admissions application and he responded with

probably the one that jumps to mind the most quickly was just a few years ago where we had a student who indicated that, yes, they were currently being charged with a felony.... Although he kind of found a way to downplay that a little bit even though answering "Yes," and then expounding on that. But it turned out the student had semi-automatic weapons and ninja masks and some real quote "black plastic" in the trunk of his car on school property, and the police found this. And that occurred during the junior year of high school. The student was expelled, was finishing up in a home-school kind of situation. Very, very solid academically, but yet a real threat to campus.... If we hadn't asked the question and – well, of course there's part of you that says, "Has there been enough separation of time? Was that an anomaly?" But again, what do you risk by putting a student like that on campus, given all the other choices you have of students to admit. (Clark, 2011)

According to Scott Morris, he believes that background checks are not appropriate for student enrollment applications. "I'm not sure I would be a supporter of a background check policy for entrance into higher education because of the access issues" (Morris, 2011). Erroll disagreed with Scott and expressed, "I'm increasingly gravitating toward the view that if students are going to be treated as adults, then adults are subject to background checks" (Davis, 2011). Moving forward, Erroll believed that "the real question with the kids is who's going to pay for it" (Davis, 2011). University admissions officials would need to decide when a background check would be conducted during the application process. This decision could have serious financial implications, especially for

universities that receive thousands of applicants and only admit a small percentage of the total applications received. Erroll recommended potentially using something similar to a “student background check clearing house” system and having a third party supply the background check information. Similar to GRE/SAT scores or transcript dissemination, “Maybe there should be a universal background check for students, and they should pay it one time and then those results can be sent to schools” (Davis, 2011). While this idea may be a viable one, Rick warned, “If we didn’t admit every kid who got busted with a six-pack at prom, we wouldn’t have a class” (Clark, 2011).

Early Signs of Background Checks on Students. There is evidence in some of the related literature of opinions steering toward considering background checks as part of the higher education matriculation process. According to the 2008 report, *Campus Violence Prevention and Response: Best Practices for Massachusetts Higher Education*, “Colleges must respond proactively to the risk, as parents rightly expect a special level of care for their sons and daughters.” Recommendation number 19 of this same report (within the policies and procedures category) advocates, “Graduate student applicants should be directly queried regarding any unusual academic histories, as well as criminal records and disciplinary actions” (O’Neill, 2008).

Use of extensive background checks in higher education has already expanded to professional school admissions. Jon Weinbach (2007) reports “business schools have taken the lead in cracking down.” Corporate security firm Kroll initiated a Global Academic Verifications division in 2003 in response to incidents of admissions fraud. “[Kroll] now does resumé checks on accepted students for about 20 business schools, including Wharton and Columbia” (p. W1-W10). Dana Forde (2006) reported that in early 2006 the Association of American Medical Colleges (AAMC) approved use of a national system for background checks on student applicants. “State legislators see the system as an added protection for vulnerable patients.” Others, however, fear that a national background check system may disproportionately affect minority medical school applicants. Some AAMC officials have acknowledged that a potentially biased criminal justice system “could mean a disproportionate high number of minorities will be scrutinized” or the background check will deter minorities from even applying. If this were the case, “it would be a major setback for medical schools struggling to increase minority enrollment.” According to Dr. Robert Sabalis, associate vice president for student affairs and programs at AAMC, criminal background checks are “needed to comply with state and hospital requirements” and review of the record will focus on offenses committed as adults, not juveniles. AAMC will present guidelines and potential best practices, but each medical school “will develop its own policies and procedures for determining which past offenses raise concern” (p. 15).

Background Checks and Equal Employment Opportunity

As recently as April 2012, the U.S. Equal Employment Opportunity Commission (EEOC) released the updated government document *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (EEOC, 2012a.). According to the EEOC, the 2012 *Enforcement Guidance* is designed to “consolidate and supersede the commission’s previous 1987 and 1990 policy statements on this issue” and act as “a resource for employers, employment agencies, and unions covered by Title VII” (EEOC, 2012b.). Applying analyses of Title VII in relation to the use of criminal history records when making employment eligibility decisions is a “well-established” practice according to the EEOC. Fundamental background check policy considerations endorsed by the 2012 *Enforcement Guidance* include the following. (1) “Arrest records are not probative of criminal conduct.” (2) Employers should focus on convictions because convictions “are considered reliable evidence that underlying criminal conduct occurred.” (3) “A policy or practice that excludes everyone with a criminal record from employment will not be job-related and consistent with business necessity and therefore will violate Title VII, unless it is required by federal law.” Finally, (4) national data support “a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.” This is based on “a finding that criminal record exclusions have a disparate impact based on race and national origin” (EEOC, 2012a.). Therefore, any individual employment exclusion with a disparate impact must demonstrate that the decision was job-related and consistent with business necessity. The EEOC 2012 *Enforcement Guidance* specifically references data that reveals

Arrest and incarceration rates are particularly high for African American and Hispanic men. African American and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population. Assuming that current incarceration rates remain unchanged, about 1 in 17 White men are expected to serve time in prison during their lifetime; by contrast, this rate climbs to 1 in 6 for Hispanic men; and 1 in 3 for African American men. (EEOC, 2012a.).

According to Leslie Silverman, former vice chair and a previous commissioner of the EEOC, this 2012 *Enforcement Guidance* does not introduce any new roadblocks that prevent employer’s access to criminal history records; rather, the guidance makes an attempt to offer employers a more detailed understanding of how “to embrace the long-standing three-factor test identified by the courts in *Green v. Missouri Pacific Railroad Company*, when evaluating criminal history.” These three factors include (1) “the nature or gravity of the offense or conduct;” (2) “the time elapsed since the conviction and/or completion of sentence;” and (3) “the nature of the job sought or held” (Silverman, 2012).

The EEOC makes the claim that the “*Green* Factors” at the present time and in the “absence of a validation study that meets the Uniform Guidelines’ standards” are to be utilized as “the starting

point for analyzing how criminal conduct may be linked to particular positions.” Further, and specifically one of the main reasons why I advocate further inquiry into the topic, the EEOC recognizes that

although there may be social science studies that assess whether convictions are linked to future behaviors, traits, or conduct with workplace ramifications, and thereby provide a framework for validating some employment exclusions, such studies are rare at the time of this [EEOC Guidelines] drafting. (EEOC, 2012a.).

The single study referenced in the 2012 EEOC *Enforcement Guidance* connected with this concern reports that “contrary to expectations, criminal convictions that occurred prior to entering the workforce were unrelated to counterproductive work behaviors” (Roberts et. al., 2007).

Importance of a “Generalized Concern About Security.” Leslie Silverman, in her assessment of the EEOC 2012 *Enforcement Guidance*, points out another shifting characteristic of background checks in that employers are now increasingly responsible for providing evidence-based rationales for their policy decisions. The EEOC recognizes that employment exclusions that comply directly with a federal law will not violate Title VII. Occupational licenses, registration, and a security clearance are provided as examples. The EEOC warns that if a background check policy practice “exceeds the scope of a federally imposed restriction,” the employer may be liable if it “cannot provide evidence justifying an enhanced policy.” An example provided by the EEOC articulates a scenario in which a financial institution complies with a federal standard of not hiring any applicant who has a criminal conviction within the past 10 years. If the financial institution decides to extend the time frame to 20 years, it “must be able to offer evidence showing that there is an elevated likelihood of committing crimes for someone who has been crime-free for more than 10 years.” The rationale for enhanced policies of this type cannot be based solely on a “generalized concern about security” (Silverman, 2012).

Discussion

At this stage of background check policy development in higher education I share many of the American Association of University Professors’ (AAUP) concerns expressed in 2006, especially the concern relating to a lack of systematic studies of the need for the information background checks produce. According to Stone (2002), regulatory activity related to safety often focuses on “potential future needs.” These needs “often have a political potency far greater than actual needs, because fear of the unknown plays a bigger part.” Further, Stone advocates, “The human imagination is capable of creating infinite terrors, and terror explains why there is often an emotional fervor to arguments about this type of need” (p. 95). I find a close connection between Stone’s

warning of policies “based on a condition of being at risk” and the EEOC’s cautionary claims about background check policy based on a “generalized concern about security.” Beyond all the emotional support for background check policy, it is important to consider the possibility that these policies are an over-reaction related to our fear and subsequent need to protect against future (potential) harms that have not yet happened.

Would a student admissions background check have prevented Seung-Hui Cho from killing 32 people on Virginia Tech’s campus? There is a strong indication that it would not, given that Cho did not have a criminal history record. If Amy Bishop, hired at the University of Alabama in 2003, was subjected to the university’s 2006 background check policy, would it have prevented her from shooting several of her campus colleagues in 2010? Dr. Bishop was implicated in previous crimes; however, she was not charged. Had Dr. Bishop actually been charged with previous violent crimes, a pre-employment background check may have influenced the University of Alabama’s hiring decision. According to Ray Garner, a spokesman for the University’s campus in Huntsville, the university knew nothing of Dr. Bishop’s violent past when she was hired, and there were no indications of trouble in her personnel file (Dewan & Zezima, 2012).

On the other end of the spectrum, is it possible that universities utilizing background check policy are excluding (or terminating) good candidates with an acceptable low risk for crime or violence? In September 2003, Smallwood (2003) released the story of Paul Krueger. Paul Krueger was a Pennsylvania State University professor with multiple murder convictions in his criminal history which were unknown to several of his past higher education employers. When Penn State learned of his criminal history, his employment was terminated. Paul Krueger’s career appeared to be experiencing upward momentum with a history of progressively higher-level academic appointments at increasingly prestigious institutions. If Paul Krueger was allowed to continue his employment with Penn State University, is it possible that he could have made significant contributions to academia, even after he paid his debt to society for his teenage criminal record? As discussed previously, the EEOC now strongly recommends considering the importance of the time that has elapsed since the occurrence of the criminal offense as well as the subsequent conduct and/or completion of a sentence. In support of these considerations, the EEOC, in its 2012 *Enforcement Guidance* cites several studies demonstrating that the risk of recidivism declines over time and individuals with criminal histories can eventually pose the same level of risk as an employee with no record of criminal history.

In conclusion, I understand how, and why, background check policy has grown and solidified into a strong presence in the higher education environment. However, where is the empirical evidence demonstrating that background check policy actually makes campuses safer? If there truly is an absence of such evidence, how do we measure the effect background checks may have in preventing campus crime and violence? Is it possible to empirically demonstrate an increase

in safety, and if not, have we simply created a financially expensive illusion of safety for our campus communities? There is a need to find a more reasonable level of historicity for background check policy in higher education. Before we expand background checks to student matriculation and increase financial investments into background check policy (especially funds that can or should be used to support the academic missions of higher education institutions), I recommend follow-up studies that will help us further understand its empirical validity. I believe a step in the right direction would be further inquiries that would perhaps connect data between campus police and human resource departments. I do agree that background check policy *may* contribute to safer campus communities; however, I remain highly concerned regarding the amount of assumption I have encountered throughout this study indicating that background check policy actually *does* prevent campus crime and violence.

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