

The Richard Netter Conference -- Conference on Criminal Records and Employment

I recently spoke at the Conference on Criminal Records and Employment, hosted by Cornell University's ILR Labor and Employment Law Program in New York City. The [program agenda](#) included a series of panels discussing how criminal records are reported in consumer reports, how consumer reporting agencies ("CRAs") operate, EEO law, what employers need to know when using criminal records, negligent hiring suits, re-entry issues, ban the box and others topics.

My panel, entitled "What Are the Issues of Uniformity/Inaccuracy in the Reporting of Criminal Records? How do Consumer Reporting Agencies (CRAs) Operate?" was a good opportunity to talk about how CRAs operate pursuant to the Fair Credit Reporting Act ("FCRA") and to shed more light on the role of CRAs, including during the dispute process. It was also a good opportunity to hear about concerns that local legal advocates assisting those with criminal records as they seek employment have with consumer reports generated by CRAs. Fellow panelist Sharon Dietrich from Community Legal Services discussed her concerns about inadequate matching criteria, reporting obsolete non-convictions, reporting of expunged cases, duplicative entries of the same case, confusing and prejudicial formatting and dispute processes that are difficult to use.

Considering the issue of inadequate matching criteria, it appears we can all agree that as courts move to redact personal identifiers from records, it makes the reporting of such more challenging for all the parties. More identifiers in records are better for the individual as well as the CRA conducting the background check. Ultimately, more personal identifiers are better for the end-user of the background report as well.

By clicking on the above link for the program agenda you can read each individual presenter's power point presentation. It is worth noting the examples provided with respect to formatting of criminal history information as well as the dispute process by Ms. Dietrich in her presentation.

One very interesting take away from the Conference was the discussion by Professor Blumstein at Carnegie Mellon University and his colleague Professor Nakamura of the University of Maryland. Their [report](#), entitled '*Redemption*' in an Era of Widespread Criminal Background Checks, is being widely touted by those in favor of a date certain after which a criminal history record either would not be reported by a CRA or an employer could not use such for employment screening purposes. Consider this in light of the fact that the EEOC is considering revising its criminal records guidance to place a seven year limitation on the use of criminal history records. By way of example, see a September 2011 Informal Discussion [Letter](#) from the EEOC on the use of background checks by the Peace Corps states the following, "...to ensure that applicants' criminal history information is used in a way that is consistent with Title VII, the EEOC recommends that the Peace Corps narrow its criminal history inquiry to focus on convictions that are related to the specific positions in question, and that have taken place in the past **seven years**....(emphasis added)."

Interestingly, the author of the redemption study himself, Professor Blumstein, pushed back on the notion of a seven year time limit or a bright line test. Conversely, he also stated that as the criminal history reaches farther into the past, employers should accordingly accept more risk and consider other factors about the individual. Another thought leader in the area of redemption studies, Professor Shawn Bushway of the University at Albany, SUNY, stated that perhaps 20 years was a point at which employers could choose to accept more risk. As the discussion about restoration issues for ex-offenders continues, it will be important to continue seeking solutions that balance the interests of employers and volunteer organizations seeking to appropriately use criminal history records with ex-offenders seeking to reintegrate into society through employment, housing and community ties. Conferences such as this one are a good forum for such discussions.

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