The Provider's Prospective

A Piece of Paper in a File

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Finding myself on the phone with the CEO of a large screening firm several years back, I took the opportunity to elevator-pitch a technology I'd been developing—how it will significantly improve data quality, security and so forth. He listened patiently for about forty-five seconds before interjecting: "*that's great and everything but my clients couldn't give a [blank] about any of that. All they want to hear about are price and turn-around."*

Shortly thereafter I was offered the argument by another major screening firm that as long as I was going to the courts every day anyway I might as well take along their work at a significantly reduced unspecified rate. When I finally asked what rate they were hoping for the instantaneous response was: *"pennies on the dollar".*

Then a few months back I was talking shop with one of my client-friends as we trailed our wives and kids around the San Francisco Zoo. When our discussion fell upon the basic purpose of our industry, he relayed how a former client had once informed him point blank that all his company cared about was *"a piece of paper in a file"*.

This statement struck me as a core sample from the distant HR world—transported back to the Provider Sector and casually revealed to me somewhere between Penguin Island and the African Savanna.

At once it seemed to offer the promise of illumination of a certain undercurrent within the screening industry that runs contrary to the NAPBS.

During the formation of the NAPBS I was privileged with a request to help create standards for criminal research providers. With subsequent contribution from Mike Sankey, Carl Ernst, Cliff Williams, Dean Carras, Les Rosen, Mike Coffey and others, including ultimately Larry Henry who provided a legal review and comment, these standards in time became the *NAPBS Criminal Research Provider Guidelines*.

I was next invited to co-chair the founding Provider Committee. After meeting in Scottsdale we departed the first annual conference with the understanding the PC had been tasked with the responsibility of helping the NAPBS professionalize the provider sector.

Uncounted volunteer hours then ensued in the direction of this purpose.

Among other products, eight sets of Provider Guidelines were formulated for the major provider types.

An On-line Exam has been established for the *NAPBS Criminal Research Provider Guidelines,* with another underway for the *NAPBS Provider Data Security & Privacy Guidelines*—both of which were envisioned as a first step toward formal Provider Accreditation.

NAPBS Provider Directories have also been published so that member providers can be readily distinguished.

In short, the PC has consistently endeavored to fulfill its charge—initially by creating and establishing guidelines for providers; currently by getting at least two of those guidelines broadly known and applied; and in the future by conceivably using them as the basis for a Provider Accreditation Program.

Frankly, the last several years have witnessed perceived challenges to this objective—most notably in the form of the aforementioned undercurrent, which has often been popularly described as *commoditization*[1].

A wholesale provider can possess at once a reduced perspective of the retail sector, and a certain unique insight into the underbelly of the screening industry. Which is to say: I could be lacking the CRA's Perspective here, and this *paper-in-the-file* comment could be unrepresentative, merely a core sample from the fringe, if you will. But from my Provider's Perspective at least I am inclined to associate it with our so-called commoditizing undercurrent.[2]

Clarifying any activity involves an examination of its purpose. And yet I'm uncertain the basic *purpose* of the screening industry has ever been officially articulated.

The stated purpose of my own research group is: *to help protect honest employers and employees from anti-social behavior in the workplace*.

I would think something along this line might fly for our industry in general. However, a look at its history clearly indicates its formation in no small part stems from the specter of the negligent hiring suit—which fact opens the door to a potential variation of purpose.

On one side of the spectrum we would surely find the purpose to screen for antisocial personalities, and otherwise ensure convicted applicants are not unsuitably placed. Conceivably such would be the governing motivation for quality-oriented background screening firms.

At the opposite end however we reportedly discover at least one End User with the purpose to obtain a piece of paper in a file—which seems to forecast this company will demand the cheapest, fastest, irreducible minimum background check that will yet suffice to technically secure their impunity in the event of a suit.

If enough End Users shared this purpose—to secure corporate impunity with a cheaply acquired consumer report—it stands to reason they would collectively foster a demand for ever cheaper background checks with relative indifference to quality. Presumably, they could even warp the purpose of the industry (into, what, the negligent hiring suit indemnification industry—$5 per applicant premiums?).

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[1] Commoditization: *the process by which a product reaches a point in its development where one brand has no features that differentiate it from other brands, and consumers buy on price alone.*

[2] By the way, in regard to *Provider Perspective* versus *CRA Perspective*, of one thing I am certain: these terms should never be referred to by their acronyms, at least not outside of the industry.

If companies are actually aiming to indemnify themselves with cheap, low quality, token background checks then my next question would have to be: who *would* be left liable in the event of a suit?

I can only assume it would be the producer of that piece of paper in the file. And any liability they might inherit would presumably extend to their provider. But then again if that provider's correspondingly cheaper rates or level of professionalism does not admit for the considerable expense of E & O insurance, it is probably in effect just the CRA.

Again, CRAs would have a more comprehensive perspective on this than I could. (In the words of a fly-fishing guide-friend of mine: "we should ascertain by finding out".)

To be sure, there is also the factor of healthy *competition* yet—although in my estimation this term warrants scrutiny in the way it is commonly employed against quality-oriented providers (and I would imagine CRAs as well).

I was inspired to write this article by a recent report that seems to epitomize the *paper-in-a-file*, *pennies-on-the-dollar,* commoditizing undercurrent—specifically, concerning a quality research provider whose cheaply-rated "competitors" are unlicensed and undocumented aliens.

Now, how any screening firm or national or regional provider would ever come to reward unlicensed, undocumented aliens as their source of criminal record information is a question worth pondering. (I maintain that individuals who are themselves being criminal in life ought not to be engaged in the business of detecting and reporting criminality in others. After all there is such a thing as a *personal ethics blind spot*).

I appreciate healthy competition. But c*ompetition* by definition implies the offering of a comparable service. The word *compete* means the *ability to do as well as or better than the others*. If competition among providers were limited to the superficial factors of *price* and *turn-around,* that would be one thing; but take into account the third, typically less salient factor of *quality* or *professionalism* and so-called "competitors" begin to differentiate considerably regardless of appearances.

Surely our aforementioned quality provider is not in bona fide competition with the unlicensed, undocumented aliens providing criminal research in their area. For starters they have a business license; are a founding member of the NAPBS; seed money contributors, and contributors to the NAPBS *I Made a Difference* campaign; are long-term PC members; have certified on the *NAPBS Criminal Research Provider Guidelines Exam*; studied and subscribe to the *NAPBS Provider Data Security & Privacy Guidelines*; and a portion of their bottom line goes to Errors & Omissions insurance, as well as the secure handling, storage and disposition of PII their clients entrust them with.

In short, they are a professional NAPBS member-provider who could not viably "compete" with more cheaply rated, non-professional, unlicensed, uninsured, data-insecure, non-NAPBS contributing providers—at least not without abandoning many of the elements that basically constitute their professionalism, including those that are—or should be—industry-critical.

In all practicality though quality research providers, like quality CRAs, can discover a certain challenge in the fact that all those little professional actions they undertake to

render their product—including those that are industry-critical—may be neither obvious nor even required by their clients in the way price and turn-around commonly are.

Indeed, providing a quality-oriented professional service in the abstract environ of an information industry can even backfire on one at times. Over the past nearly15 years we've lost a few clients and temporarily endangered relationships with a few more by consistently adhering to *Criminal Research Provider Guideline* # 37: *The research provider should notify their customer immediately upon any timely discovery of a significant error or omission in their reported results*.

It would seem expedient for any professional researcher to avoid the potential repercussions of observing this guideline—especially if any of their "competitors" refrain from doing so as a matter of course. However, such would clearly betray the purpose of their hat—which again is to help protect employers and employees from criminality in the workplace, and to ensure convicted applicants are not inappropriately placed.

(By the way, I would add that any client who would make their provider sorry for observing this guideline is courting potential future silence the next time their provider discovers a misreported false-negative or other significant error or omission.)

Other examples concern *Criminal Research Provider Guideline* # 34: *The research provider shall use only the most current, complete, best possible source of public record in performing their research. If not, the provider must disclose this fact up front to their customers.*

For years some providers in Contra Costa, CA have indexed their search requests on the fiche indices available in this county. In that this index is perpetually out of date it does not constitute the *most current* source—which is actually the clerk's computer index that has been indirectly available to the public since the mid 90's.

One past advantage to utilizing the non-current fiche index is that prior to January 3, 2006 (when CA AB 145 took effect) they could circumvent the $5 court search fee.

Another advantage is that searches can be turned around more quickly than with the clerk's index.

Similarly in Santa Cruz, CA it is possible to short-cut pulling case files by obtaining what is called a judge's print. Any researcher comfortable with taking this short-cut can "out-perform" more quality-minded providers by days on their case turn-around. The problem is, unless they also elect to observe Guideline #34—by honestly disclosing their short-cut—they are exposing their clients to an unwitting violation of FCRA §613(a)(2) with every case report they so quickly turn around, because the judge's prints are consistently *incomplete* compared to the hard files. Even if they did disclose their shortcut any client who did not then contemporaneously notify the consumer or otherwise vet their provider's case information would now be *knowingly* violating federal law.

So here we have two examples of a less professional provider seemingly out-performing a more professional provider on *price* and *turn-around,* by violating *NAPBS Criminal Research Provider Guidelines*, sacrificing the *quality* corner of the *quality-speed-price*

triangle and legally exposing their unwitting clients (and End Users) to render a faster, cheaper search.

Similarly I once had a new client assert that he was not going to pay us for an involved search because he had been "forced to hire an alternative researcher" who accomplished in one hour what we had "failed to do for the better part of a week" (and at a cheaper rate, of course)—which was to search and clear Jose M. Lopez in the San Francisco Criminal Court.

It so happened we had just completed this search ourselves and found the subject ultimately clear. I endeavored to explain how no researcher could have professionally searched and cleared such a common name in the SF Court in one hour—that we had to research at least 52 possible records in order to verify each one as a non-match—two with matching middle initials on the index, fifty with no middle name or initial.

This client flat out refused to accept my explanation for the time discrepancy, opting to tout the virtues of their alternate researcher who in their view roundly out-performed us on price and turn-around. Of course, this researcher potentially exposed both their client and their End User by violating *NAPBS Criminal Research Provider Guideline #24*[3]. But the client was unable or unwilling to appreciate this fact. (Presumably, his reaction would have been quite the opposite had we found a matching record at the bottom of all those possible records. To be sure, many common names with 30-70 possible records are ultimately found to be clear—which fact a provider may gamble on. On the other hand, had the applicant been Jose M. Lopez, with a certain DOB we have on file, the 52 possible records would have eliminated down to one matching reportable felony conviction).

Rather put out by the disdainful mistrust, I finally all but told this client had I better understood their standards from the onset I might have provided them with a *much* cheaper rate and a *significantly* faster turn-around—by foregoing the court all together and clearing their requests on receipt (the reductio ad absurdum of the *quality-speed-price* triangle sans *quality*).

I count myself fortunate in that I've only suffered a few clients like this. Without a doubt they are the exception to the rule. The overwhelming majority of CRAs I've had any direct experience with consider themselves quality firms who prefer quality providers.

At the same time, from what I can see some CRAs and National and Regional Providers over the past several years have, to some extent, been forced into "competition" with the commoditizing, soulless, faster-cheaper element of our "maturing" industry.

Then October of last year brought additional challenges to the *quality* or *professionalism* corner of the triangle. After better than a decade of flourishing and prospering in a consistently expanding industry, many CRAs and Providers encountered considerable set-backs for the first time. By report many research providers have correspondingly

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[3]NAPBS Criminal Research Provider Guideline # 24: In conducting a search on a Common Name, the research provider should make reasonable efforts to pursue any Partial Name Match Only or Full Name Match Only listings found on the index. If such cannot be feasibly cleared—whether by clerk check or other valid means—the provider should minimally disclose this fact in writing to their customer, including the approximate number of possible records not pursued and the reason why it was infeasible to do so.

experienced significant reductions in volume which, coupled with slow and no-paying accounts and demands for lower rates, have presented a real challenge to their viability. Indeed some have just gone out of business.

Furthermore the cut-rate and fraud element seemingly lend their efforts to the challenge with unsolicited fax and email blasts offering peerless research services at improbably cheap rates, and in some cases no court fees in jurisdictions where they apply.

While some of these efforts are obvious, some can be rather convincing. One of the earliest examples of outright provider fraud I ever witnessed was in the black market of Los Angeles in the late '90's. A clever criminal and veritable chameleon operating under a series of personal AKAs and shrewdly contrived front companies was heavily rewarded with tons of volume while running quality LA researchers out of business. One client even called to admonish me about how I really ought to get with the times and emulate the cheaper going rates being established for California. What neither of us knew at the time was at least one of the leading *criminal* criminal research providers (as in: criminal researcher providers who are themselves criminal) bringing about these cheap rates was doing so by shrewdly defrauding one legitimate researcher to the next across the counties of California, eventually ripping off decent providers for upwards of $7K, 10K and 20K in three cases I directly know of.

This fraudulent group presented themselves to me as Accucheck of Chicago, 55 West Wacker Drive. Their EIN turned out to be that of an Alabama collections agency named Accucheck, whose corporation had been closed a few years prior.

Fortunately they only took us for about two day's worth of work before we cut them off.

After providing them with over $20K worth of research one unlucky provider realized all they really had were two 800 numbers they could no longer get a response on. He engaged a PI acquaintance and their investigation eventually led to an abandoned boiler room in LA.

This clever *criminal* provider went on to anonymously expose another *criminal* criminal research provider in Southern California—reportedly by breaking into their premises, stealing incriminating documents and Federal Expressing copies of them to their purloined client list, as well as to the Los Angeles DA. A handful of providers including myself ended up in communication with an investigator from the DA's office in an effort to close this operation down. But in the end they eluded prosecution and went on to reinvent themselves anew; while the group of like-minded providers they had exposed was busted by the DA instead.

I recall being aware of the fact that many CRAs who utilized these *criminal* providers now faced the dilemma of whether or not to redo all the research they had handled for them.

One also might wonder what these clever *criminal* providers might have eventually done with the tens of thousands of consumer PII their clients freely supplied them with.

It is not without reason the *NAPBS Provider Data Security & Privacy Guidelines* call for criminal background checks on any provider and their crew with access to PII. Curiously, in the 16 years I have been providing criminal research I have only had one client ask for

authorization to perform a background check on me; and I've never had a single client request that I perform background checks on the members of my group.

In these days of challenging economic times, million-dollar web scrapers and third parties motivated to leverage the cheapest rate out of any research community—overly rewarding sources of criminal information that are not in legitimate competition with more professional, quality-oriented providers may eventually serve to erode or even nullify the aims and purposes of the Provider Committee in particular and the NAPBS in general.

As our industry's professional trade association, the NAPBS represents the *quality* and *professionalism* corner of the triangle. I imagine one key challenge before the association is to effectively establish and maintain its corner amongst both CRAs *and* their Providers; and to otherwise encourage the industry to keep all three corners viably balanced—enough to fulfill its objective of pre-empting adverse regulation by virtue of effective self-regulation.

The corresponding challenge for the PC is to assist the NAPBS in meeting this challenge—ideally, by helping differentiate professional, quality-oriented providers from those who are in specious "competition" with them; so that the former are rewarded enough to remain viable, while the latter are confined to the margins of our industry, and either penalized into professionalizing or simply left to duly reward their clients with the informal, unlicensed, uninsured, data-insecure, non-NAPBS-contributing, irreducible minimum service they are being rewarded to render.

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