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# Introduction

IN A BUSY commercial plaza in Southern California's Inland Empire—the greater metropolitan region east of Los Angeles—six men and one woman who had recently been released from prison gathered around plastic folding tables for day one of “job-readiness orientation.” The program was hosted by the Hub, an organization that since the 1970s, has been helping job seekers with recent felony convictions to find and maintain employment in cities across the United States.

I pulled into the parking lot matching the address I had been given, festively outlined by car-dealership-style red, white, and blue triangle streamers, but had difficulty finding a spot. I soon noted the reason: a long line of smartly dressed twenty- and thirty something-year-olds extending across the Western wear shop and Indian banquet hall to the entrance of “BGM Staffing.” This agency, I would soon learn, was charged with hiring workers for a nearby twenty-two-acre retail distribution center that employs approximately one thousand people, and hundreds more during peak holiday periods. With few exceptions, the Hub's eager clients just a few doors down could not qualify for the jobs because of their recent felony convictions. Indeed, the Hub was founded precisely because not all people who need a job can get in a line like BGM's.

Pressing through the tinted glass doors made heavy by the air pressure difference between inside and out, I was greeted by two large posters suspended from the ceiling with long wires—one featuring a group of men working together on a landscaping crew, and the other, a woman embracing her mother. Beneath the posters, a white folding table displayed the day's newspapers, a few organizational brochures, and a freestanding easel for announcements. The space was expansive, approximately fifty by seventy-five feet, and sparsely furnished. Fluorescent lights lined the high ceilings and a tightly-woven forest-green Berber carpet covered the floor.

Glancing to the far end of the room, I spotted Janine, the Hub's regional director and my primary point of contact, seated behind her desk in the corner office, talking on the phone.<sup>1</sup> I took a seat in the most obvious place—a dirty beige sofa next to an artificial fern adjacent to the computer room. Laminated letters spelling “WALL OF FAME” were hung at the computer room's entrance to inspire the dozens of job seekers who would pass by it in the coming year on their way to fix résumés, check email, and run job searches on Craigslist. Glued beneath the letters was a seven-foot tree cut from construction paper from whose branches dangled the names of every “job seeker of the month” as well as the fifty-one men and women who had acquired permanent jobs in the first year of this location's opening. Approximately one hundred more names would be added in the coming year, reflecting the organization's then placement rate of approximately 58 percent.<sup>2</sup>

Before long, the Hub's mid-forties, Hispanic job coach, Jorge, invited me to join the new cohort in the conference room where he was leading the job-readiness orientation.<sup>3</sup> Taking a seat at the table, I asked lightly, “How was the commute?” The replies were sobering. Gary had taken three buses, having left his home in Colton at 5:00 a.m. in order to reliably arrive by 9:30 a.m., even though Colton was only a few miles away. Brian had ridden his bike four miles to reach a direct bus line. Roshawn, Courtney, and Jaime had each taken two buses. Ronaldo had driven all the way from Victorville—a journey that takes somewhere between ninety minutes and two hours depending on the time of day. Jamal stayed quiet. Having arrived in just forty minutes, door-to-door, in the comfort of my newly acquired Toyota Camry, I vowed never again to complain about traffic.

Gary, white and male with short white hair, was likely the eldest, somewhere in his sixties. He had been imprisoned for a little more than ten years. Gary's last work experience had involved leading teams to set up and tear down booths at convention centers and other event venues. Prior to this, he had worked in warehouses. He enjoyed the events trade, but as he explained, the work was physically demanding, and both the passage of time and toll of prison meant that he was now far from the physical condition he used to take for granted. The other obstacle to returning to events work was that the jobs are by definition irregular and the hours long, and Gary now had to be at mandatory drug and alcohol counseling every day at 5:00 p.m. as a condition of his parole. Additionally, he needed a pass from his parole officer, even for local travel. As a person with a sex-related conviction and on the sex offender registry, even after completing parole, Gary's movement would forever be

monitored and restricted.<sup>4</sup> He would need to find a job with set hours and location. The nearby Ashley Furniture warehouse or the warehouse for Friendly Dollar the major bargain retail chain, he figured, would be ideal.

Brian, light-skinned, Latino, and in his mid-twenties, was the youngest of the group, and the only one in the cohort who had never really had a job. He had recently applied for a service job with a trucking company. The manager said he met the qualifications, but then asked if he had any convictions. When Brian replied that he was “fresh out of prison,” the manager gave him a funny look and said he couldn’t give him the job because it meant being behind the counter with the cash register, though Brian’s conviction had nothing to do with money or dishonesty. On another occasion, Brian told the group, an employer had asked directly what exactly the conviction was for, to which Brian had simply replied, “A 192(a).” “The manager asked me what that was,” Brian recounted. “I said, voluntary manslaughter and his eyes got real big and he was like, OH!!”

Jorge took the opportunity for a teaching moment. “Part of the training will be learning to talk about the conviction, without saying the penal code or the name of the conviction—these are off-putting.”

Roshaun, an African American man in his mid-thirties, had come to the Hub when he became discouraged going it alone in the job market. Most recently, he told the group, he had interviewed at Pizza Hut and a regional chain by the name of Lucille’s. At Pizza Hut, he had stumbled in his responses to the manager’s performative prompt: “Show us how you would sell a pizza.” Lucille’s had been eager to interview him, he said, but wanted to do so at 7:00 a.m. in the city of Ontario, an impossibility by bus. Since his release from prison, Roshaun had been searching for jobs in the restaurant industry, but despite his experience as a cook with several major restaurant chains, he was not catching a break. The Hub, as he understood it, provided mentoring, training, and support to its job-seeking clients, and most important, would lend its reputation and connections in the business world.

Courtney, an African American single mother of two, had been pursuing her certified nurse aide license prior to imprisonment. On release, she had sent a letter along with her fingerprints to the California Board of Registered Nursing. It replied that her felony conviction, which had been classified as violent, prevented her from obtaining the license. After further communication, the board determined that because her conviction was not related to nursing, she could eventually nurse again, but not until completing her parole. She would have to look for something else in the meantime to support herself and her kids.

Jaime, a Latino in his early forties, had worked as a construction journeyman prior to imprisonment. He was accustomed to working and making good money, having begun his career in concrete construction during summer breaks back in high school. “I’ve never been on an interview,” he told the group, somewhat boastfully. “For construction, you just show up and talk to the foreman.<sup>5</sup> Plus, I’ve always been working.” On his release from prison a few months prior (having been incarcerated a little less than two years), Jaime had tried his usual job-seeking methodology: he’d headed straight to an active jobsite, talked to the foreman, and got himself hired. There was a euphoric sense of freedom to being back at work, he said, but after three days, the company discovered he was on parole and asked him to leave. This was somewhat surprising given the construction industry’s reputation as “felony friendly.” The foreman encouraged Jaime to return to the job once he was off parole. The problem, it seemed, was not that they didn’t trust him, and certainly not that they didn’t like his work, but rather that a company policy prohibited hiring people on parole. The experience humiliated Jaime, and he worried that it might recur if he continued to go it alone in the job market. Setting aside his aversion to associating with a program for “ex-cons,” he had swallowed his pride and enrolled at the Hub.<sup>6</sup>

Ronaldo, short, strong, brown-skinned, and by far the sharpest dresser, arrived each day at the Hub in freshly pressed khakis and a polo shirt, tucked in with a belt. While guys with a history in construction tended to feel uncomfortable with the Hub’s professional dress requirement, he didn’t seem to mind. Ronaldo had more than a decade of fence installation experience—chain-link, wood, cast iron, you name it. If you needed a fence, Ronaldo was your guy. He also had general construction skills, but fencing was what he liked best. Ronaldo had spent thirteen years in prison. He was married to a woman who worked as a manager at a nearby company that made parts for military airplanes. His old boss had been giving him odd jobs since he got out of prison and would have been glad to take Ronaldo back, but most of the contracts he was getting were through the State of California, which required extensive background checks. “The crazy thing is,” Ronaldo told the group, “I can actually pass the checks because I don’t have a drug or sex-related conviction.” As he explained, however, the mere fact of having a conviction triggered a process so onerous and time-consuming that his boss, a small business owner with minimal administrative capacity, just couldn’t do it.<sup>7</sup>

Finally, Jamal, dark-skinned, African American, and exceptionally quiet, was only in his late thirties, but had been incarcerated the longest—sixteen

years. This sentence was meted out near the end of the 1990s, when the United States' reliance on imprisonment was marching vigorously toward its zenith. Black men in particular were disproportionately targeted for imprisonment, and the courts gave them longer sentences than their white counterparts.<sup>8</sup> Despite the long time in prison, Jamal's job history was fairly robust. As a young man, he had managed an Applebee's restaurant and also worked several years as a medical technician in a psychiatric hospital.

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This book argues that decisions to hire or not hire people with criminal records have less to do with employers' personal attitudes or beliefs, and more to do with the contexts in which they make hiring decisions. One significant and underexamined part of that context is the emergence of a "criminal record complex," a set of public and private interests that encourages the exclusion of people with criminal records in the name of protecting businesses and organizations against risk. To develop this argument, *The Criminal Record Complex* chronicles daily interactions between employers, workforce development professionals, and job seekers with recent felony convictions in the Inland Empire, analyzing how, why, and under what circumstances discriminatory decisions based on criminal records get made.

When this research began in 2014, 80 percent of the Hub's clients were categorized as male. The majority were between the ages of twenty-six and forty-five. Twenty percent were under the age of twenty-six, and 15 percent over the age of forty-five. All participants had been convicted of felony offenses—45 percent with convictions classified as "violent," and 11 percent as sex related. Although these classifications do not necessarily accurately reflect (much less contextualize) actual events, they nonetheless sound alarming to the lay ear.<sup>9</sup> These people had come to the Hub in hopes that the organization could help them find work quickly. Most had been referred to the program by parole officers and case managers; others had asked permission to participate after having become discouraged by going it alone on the job market.

Jorge explained the basics of the Hub's four-pronged social enterprise program model. The next few days would be devoted to résumé preparation; Friday would involve training for the organization's transitional work crew. Next week, they would be employed three days per week for up to seventy-five days through a landscaping contract brokered between the Hub and a city government. This arrangement would allow them to earn an immediate income of

ten dollars per hour and build recent work experience. On the off days, they would participate in job-readiness coaching, including online job search and interview training, and begin looking for permanent work. When deemed “job ready,” Jorge would assign them to one of the Hub’s “job developers”—professionals charged with cultivating and connecting people to job opportunities—who would feed them leads and support them in a range of ways to become and remain employed. Although the majority would ultimately succeed, all would struggle in various ways to find work. Many would graciously allow me to observe and document those struggles.

### Criminal Record Employment Discrimination

People with criminal records who are looking for work in the United States face a stark reality: finding work is an urgent priority, but many employers cannot or will not hire them.<sup>10</sup> Although the precise percentage of US businesses conducting criminal background checks is difficult to quantify, since at least the mid-2000s, most have done so as a matter of routine and used the information in the process of selecting competitive candidates.<sup>11</sup>

This was not always the case. Prior to the 1970s, a prospective employer would not likely even have known about a past conviction. Records of arrest and prosecution were collected as well as consulted primarily by police for the purposes of policing and criminal justice. Criminal background checks were rare in employment contexts, reserved only for positions of significant public trust.<sup>12</sup> Within a span of just forty years, criminal background screening grew from a tool unique to law enforcement to a widespread practice in employment, rental housing, college admissions, volunteering, and personal life.

Today, even a minor criminal record such as an arrest or misdemeanor conviction can trigger significant consequences in the job market.<sup>13</sup> Most acutely impacted are the 610,000 people released from state and federal prisons each year, whose level of joblessness is about 60 percent, and the nearly 20 million people with convictions classified as felonies, whose average annual income is about \$7,000 less than people with similar levels of education who lack criminal records.<sup>14</sup>

That 80 million US adults (1 in 3) have a record of prior arrests, convictions, dismissed charges, or charges pending is the result of the United States’ unprecedented escalation of the use of surveillance, policing, and aggressive criminal prosecution that began in the 1970s.<sup>15</sup> Whereas throughout the 1900s until the early 1970s, the United States held less than 200,000 adults in prison or jail

(approximately 96 people per 100,000), as of 2024, there were 1.9 million people imprisoned or jailed (approximately 531 per 100,000), and an additional 3.7 million on probation or parole.<sup>16</sup> These globally and historically unprecedented numbers led scholars as well as activists to decry an era of “mass incarceration,” “mass conviction,” “mass probation,” and “mass supervision.”<sup>17</sup>

Yet describing a phenomenon as “mass” can downplay its targeted nature.<sup>18</sup> As of 2022, the average rate of Black imprisonment was 911 per 100,000, nearly five times the rate of white imprisonment (911 per 100,000 versus 188 per 100,000). Data collected in 2011 showed that compared to 8 percent of the US population, 23 percent of African Americans have a felony conviction. When comparing only men, the disparity was that much starker: 33 percent of adult African American men have a conviction classified as a felony, versus 13 percent of all adult US men.<sup>19</sup> American Indians are imprisoned at a rate quadruple that of whites (801 per 100,000), and people of Latin descent at a rate double that of whites (426 per 100,000).<sup>20</sup> Women’s imprisonment rates have grown at twice the pace of men’s for at least the past two decades, and Black women are especially overrepresented.<sup>21</sup> As for socioeconomic status, the median annual incomes of people who get sent to prison are 41 percent lower than non-incarcerated people of similar ages at the time of their incarceration.<sup>22</sup> People who have been imprisoned are nearly twice as likely to have no high school credential and are eight times less likely to complete college.<sup>23</sup>

But it’s not just that *rates* of imprisonment and felony conviction are unevenly distributed; it’s that their impacts are unevenly felt. While having been incarcerated has a negative impact on unemployment for all groups, studies of employment outcomes since the early 2000s have shown that employers repeatedly choose white male applicants with criminal records over Black male applicants with criminal records.<sup>24</sup> Those parsing gender show that women with criminal records are generally more detrimentally affected in the job market than men, and that women who have been imprisoned tend to get hired at lower rates than men who have been imprisoned.<sup>25</sup> This is partly because concern about convictions is more pronounced in positions more often occupied by women, such as those involving customer contact or office work, and because women tend to dominate key industries in which criminal background checks are required by law, such as childcare, education, and health care.<sup>26</sup> As I will discuss shortly, however, it is also related to long-in-the-making gendered and racialized ideas about criminality.

Somewhat counterintuitively, then, in “absolute terms,” the negative economic effects of imprisonment are most visible among white people with



substantial preprison work histories.<sup>27</sup> However, as others have noted, to observe that groups with more advantage in the job market have the most to lose is not the same as reasoning that the effect of imprisonment on their job prospects is therefore greater.<sup>28</sup> At the end of the day, Black formerly incarcerated women experience the highest levels of unemployment (43.6 percent), while formerly incarcerated white men experience the lowest (18.4 percent).<sup>29</sup> It is a basic argument of this book that use of criminal records in employment decisions represents one of the most important contemporary processes exacerbating inequalities along lines of class, race, and gender in the United States.

This problem is not limited to the United States, however. Though the widespread public availability of criminal records in the United States is unmatched in other Western countries, and criminal record-based restrictions and disqualifications are more extensive, long-lasting, and severe, there are nuances to this exceptionalism as well as signs that it may be shifting.<sup>30</sup> For example, in Europe, where public access to government criminal record databases has been strictly limited, employment discrimination based on criminal records is still permitted, and the number and scope of state-sponsored limitations appears to be growing. Evidence also suggests that US-style commercial providers of criminal record data have begun to emerge, finding ways to work around privacy restrictions.<sup>31</sup>

In recent decades, public leaders in the United States have attempted to mitigate the systemic unemployment of people with criminal convictions in a variety of ways. Most significant, in 2012, the spotlight created by the Ban the Box movement prompted the federal Equal Employment Opportunity Commission (EEOC) to update its *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions*.<sup>32</sup> The agency had long reasoned that because Black and Latino/a peoples are disproportionately represented in rates of arrest, conviction, and imprisonment, to deny jobs on the basis of criminal history may have a racially disparate impact.<sup>33</sup> The new policy sought to reduce these disparities by prohibiting blanket exclusions such as “no felonies,” and instead required employers to conduct “individualized assessments” of applicant’s criminal records, taking into consideration the nature and gravity of the conduct, time passed since the conduct, and/or completion of sentence as well as the “nexus” between the nature of the conviction and the job duties.<sup>34</sup> Initial difficulties with enforcement notwithstanding, a number of successful lawsuits directed at high-profile companies discriminating on the basis of criminal records drove home the possibility of being held accountable, causing many employers to revisit their policies.<sup>35</sup>

Ban the Box policies also proliferated across the country. In 2013, then California governor Jerry Brown directed all government employers to remove conviction questions from their applications and delay background checks until it was determined that an applicant had satisfied the “minimum employment qualifications” for the position. In 2015, US president Barak Obama followed suit, removing conviction questions from applications for federal employment. Many cities and counties also implemented far-reaching “Fair Chance” policies requiring more uniform as well as transparent processes and procedures, including delaying inquiries about criminal records and background checks until after conditional job offers have been made. In some places, these policies also apply to employers in the private sector. As of this writing, Ban the Box and Fair Chance initiatives have been implemented 37 states and over 150 cities and counties across the United States.<sup>36</sup>

Despite these successes, however, widespread and pernicious discrimination persists. While some evidence suggests that employment outcomes for people with criminal convictions have improved, research using a range of methods and in different parts of the United States has shown that many employers misunderstand as well as deliberately ignore Ban the Box and Fair Chance regulations, do not use the EEOC guidance criteria, and/or have implemented the most visible procedural requirements while leaving the substantive aspects of their hiring practices unchanged.<sup>37</sup> Even in California—home to the most sweeping legislation regulating the private sector use of criminal records ever enacted in the United States—a recent study of Inland Empire employers found that roughly 75 percent of hiring decision-makers were still unwilling to seriously consider an applicant with a drug, property, or conviction classified as violent. In direct violation of the Fair Chance act, nearly 80 percent continue to consider criminal history prior to a conditional offer of employment.<sup>38</sup>

You see, even if education and enforcement were undertaken and employers could somehow be made to comply with the letter—or even spirit—of the law, a great deal of discrimination would still be taking place. This is because nothing in the law ultimately prohibits employers from rejecting someone on the basis of a criminal record. In fact, many state and federal laws *require* exclusion.<sup>39</sup> The law thus maintains an uneasy straddling of the idea that criminal record discrimination is, on the one hand, incompatible with the goals of rehabilitation and reintegration, and on the other, sometimes warranted. This wishy-washy stance—allowing while simultaneously discouraging discrimination—not only generates on-the-ground confusion; it requires

employers to hold two incompatible ideas side by side: discrimination based on criminal status may be unjust, yet is justified. Confusion is further compounded by procedural reforms that have not so much worked to eliminate discrimination as to make it more consistent and orderly.

## From Sentiment to Systems

Common explanations of employers' aversion to hiring people with criminal records tend to focus on perceived risks: the idea that bringing people with criminal records into the workplace increases businesses' exposure to liability, reputational damage, financial loss, or worksite violence. Though little evidence supports the notion that criminalized people introduce increased risk to the workplace, studies have shown that employers fear being held legally responsible for the actions of their employees, feel obligated to minimize risk and discomfort for other employees, and are broadly concerned about public reputation and customer perception.<sup>40</sup> Despite a lack of correlation between the type of crime and likelihood of subsequent participation in criminal activity—even for crimes considered serious—evidence suggests that employers are especially concerned about bringing people with certain types of convictions into their organizations, particularly those classified as violent or sex related.<sup>41</sup> Some explanations of employer aversion emphasize the role of stigma: employers' negative perceptions of and attitudes toward people who have been criminalized.<sup>42</sup> Studies supporting a stigma thesis have found that employers view job candidates with criminal records as untrustworthy or unreliable, and may associate a criminal record with negative characteristics including tardiness, absenteeism, drug and alcohol problems, and inability to get along with coworkers.<sup>43</sup> Stigma theses have also explored the ways unfavorable ideas about criminality intersect with negative ideas about race to produce doubly negative employment outcomes for Black criminalized job seekers.<sup>44</sup>

The job market experiences elaborated in the coming chapters in many ways affirm these interpretations of employer behavior. We will see that there is no shortage of prejudice against people who have been criminalized, nor a shortage of racial bias, and the idea that it's risky to hire someone with a criminal record circulates widely. As I made my way further into the private sector world of work, however, it became ever more apparent that the problem of criminal record employment discrimination was not merely the outcome of individual employers' attitudes, perceptions, concerns, or beliefs. While the

worldviews and personal backgrounds of business owners and hiring managers certainly informed how they related to the applicants they interviewed, sentiments and ideas simply weren't the main factor accounting for many of the hiring decisions I witnessed.

Rather than conceive of individual bias or racism as motivating hiring decisions, this study draws attention to the underlying systems, structures, and vested interests that shape employer's ideas and practices. Sociologist Lori Freedman's study of physicians' willingness to provide abortion care provides a useful parallel. Just as Freedman found that decisions to provide or not provide abortion have more to do with constraints resulting from the financial restructuring of medicine than with personal attitudes regarding abortion, I found the distinction between employers who hired people with criminal records and those who did not derived more from structural conditions than from "unwillingness" or "aversion." To adapt Freedman's helpful phrasing, while openness to hiring people with criminal records may be a necessary precondition for inclusive hiring, it is alone insufficient.<sup>45</sup>

Watching job seekers interact with employers revealed dozens of scenarios in which hiring managers and business owners *wanted* to hire or promote the Hub's clients, but did not do so because someone with more authority in their human resources (HR) department or legal team would not approve it, their company had agreed to a general liability policy that precluded it, or a legal statute prohibited people with convictions from the role. Though it is important to note that such policies are not always as fixed as employers perceive or portray, busy employers without a particular investment in hiring people with convictions often simply accept restrictions at face value, without taking time to further investigate or negotiate.<sup>46</sup>

For example, Ronaldo's old boss in the fencing business absolutely would have rehired him but for the State of California's Michelle Montoya School Safety Act, which requires school districts to obtain criminal background checks on all employees prior to hiring, including the employees of businesses that contract with school districts for janitorial, administrative, landscape, transportation, and food related services, and prohibits any person who has ever been convicted of a "serious" or "violent" felony from being employed by a school district in any capacity.<sup>47</sup> Likewise, Courtney was rejected not by her home health employer or its clients but instead by the California Board of Registered Nursing, which reserves the right to disqualify any applicant with a criminal conviction within the past seven years as well as any applicant with a "serious felony" (regardless of timing) from obtaining a nursing license.

Recall too that Jaime's foreman wanted him on the construction site, but company policies beyond his immediate control prevailed. A concern with criminal records, I noticed, did not often seem to derive from employers' own reasoning or experiences.

A focus on individual employer's perspectives is reasonable given the tremendous discretionary power afforded them in the United States. But an over-emphasis on personal viewpoint can reinforce the problematic idea that actions are the unfettered manifestation of the stuff in people's heads, or that people discriminate only or primarily *because* they harbor biased ideas.<sup>48</sup> Not only is the correlation between thoughts and behavior less strong than we may imagine, as sociolegal scholar Amanda M. Petersen underscores, an individual-level, psychologically based approach focused on "single decision points" tends to downplay the institutional, historical, and systemic factors shaping those decisions.<sup>49</sup> While researchers and advocates continually default to the ideas of employer "unwillingness" and "bias," I believe we need to shift the lens beyond this bad actor framing to the external risk policies, practices, and logics that play a huge role in shaping employers' ideas and decisions. Observing daily interactions between hiring managers, criminalized job seekers, and workforce development professionals in the Inland Empire taught me that hiring is much more than an individual-to-individual exchange.

## The Racial Risk Economics of Criminal Records

There was a glaring irony in the Hub's location, a stone's throw from a busy staffing center where the vast majority of its job-seeking clients could not get hired.<sup>50</sup> Although a handful of Hub clients succeeded in getting jobs at the warehouse, they were hired through a different staffing agency that handled the janitorial services and did not have a felony conviction barrier.<sup>51</sup> It was not lost on anyone at the Hub that the jobs at BGM Staffing next door began at eleven dollars per hour, while the cleaning jobs paid nine (California's then minimum wage). This proximate juxtaposition of people doing comparable work for different rates of pay provided a constant reminder of two job markets: one for first-tier candidates and another for the disparaged second. Equally telling, however, was that the so-called first-tier jobs paid only eleven dollars per hour.<sup>52</sup> Indeed, people with criminal records join labor markets long stratified by differentially valued labor; their criminalization merely intensifies this stratification.

Criminalization produces people willing to work for the lowest wage—simultaneously justifying jobs that pay nine dollars per hour and naturalizing

the idea that a good job pays eleven. This tiered labor market with criminalized and racialized people at the bottom can be traced to capitalism's larger history of making risk profitable and criminalizing populations seen as lacking value, posing a danger, or otherwise getting in the way.

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Histories of capitalism reveal how the astonishing generation of wealth in the nineteenth-century United States was a product of not only human labor but also commercial risk taking and the commodification of those risks. Indeed risk itself became a capital.<sup>53</sup> Whether the commodity was fish, timber, rum, indigo, rice, cotton, European indentured servants, or enslaved Africans, protection against potential losses (insurance) played a key role in global trade—so much so, writes historian Jonathan Levy, that the Atlantic slave trade “would have been impractical without [it].”<sup>54</sup> Just as the construction of racial difference became central to capitalism's development, in this context of maritime sea voyaging, slavery and plantation economies, race generally and Blackness in particular became foundational to risk management's logic.<sup>55</sup> Throughout the twentieth century, racialized notions of risk permeated a range of social structures serving capitalist development, becoming a key variable in actuarial assessment criteria for health and life insurance, property value assessment, banking and lending, credit scoring, and government programs.<sup>56</sup>

Notions of *criminal risk* and the treatment of particular people, activities, and communities as criminal have played key roles in the pursuit of profit. Since the earliest days of conquest and colonization, criminalizing systems have been deployed to contain, control, and disappear populations deemed unwanted, unneeded, or threatening to pursuits of wealth and power. For example, during the United States' westward expansion, criminalization and incarceration served as central strategies for the elimination of Indigenous people along with the containment of poor white itinerant men, Chinese immigrants, and Mexican radicals seen as threatening to the colony.<sup>57</sup> Newly emancipated Black people were actively constructed as criminal and treated as especially threatening.<sup>58</sup> In the US South, the practice of hanging was used as a tool to maintain the racial economic order, by primarily targeting upwardly mobile Black people who were acquiring wealth and property, while the chain gang system reinforced gendered and racialized ideas about who should do what kinds of work.<sup>59</sup> During and after Reconstruction, a range of laws restricting the rights and privileges of people with convictions served to

control free Black peoples' movement, coerce their labor, and prevent their participation in elections.<sup>60</sup>

This targeted criminalization both relied on and reinforced the idea that Black people had a special propensity toward crime. Historians have detailed how, in the context following emancipation, social scientists leveraged statistical data and Darwinian evolutionary theory to raise questions about Black humanity as well as appropriateness for citizenship, touting high Black arrest and imprisonment rates as proof of cultural deficiency and inherent criminality.<sup>61</sup> Prominent criminal anthropologists such as Cesare Lombroso conducted pseudoscientific bodily measurements, germinating the idea that criminals were an inferior biological "type" who could be identified and monitored.<sup>62</sup> Despite the efforts of trailblazing activist-scholars like W. E. B. Du Bois, Franz Boas, and Ida B. Wells to refute this logic with empirical evidence, the idea took hold that African American crime was rooted in biology, in contrast to an understanding of crime committed by European immigrants and working-class whites as rooted in environment and condition.<sup>63</sup> These ideas were also gendered. Whereas white women were generally viewed as pure, submissive, domestic, and therefore incapable of serious criminality, Black and Indigenous women were constructed as defiant, undomestic, immoral, and unfeminine, rendering them unrecognizable as true "victims," and heightening their vulnerability to both interpersonal and state-based male violence.<sup>64</sup>

In the 1970s, methods aiming to *predict* criminal risk began to grow in popularity, along with a broader shift in philosophies of criminal management away from treatment and reintegration, and toward punishment and incapacitation. Control techniques became animated less by desires to observe, evaluate, or rehabilitate individuals, and more by efforts to classify, categorize, and manage according to the perceived likelihood of "reoffending."<sup>65</sup> Through this "actuarial turn," statistical and other probability methods were increasingly used to determine surveillance and policing priorities, set bail policies, specify sentence length, and consider eligibility for release from prison.<sup>66</sup> In these statistical calculations, a prior criminal record came to serve as the principal proxy for the prediction of future crime.<sup>67</sup> By recoding the fact of having been convicted as the key indicator of future threat, actuarial tools folded systemic vulnerabilities into seemingly value-neutral criteria, marking people as permanently criminal and justifying the perpetual management of their "riskiness."<sup>68</sup> When background checks emerged as gatekeeping mechanisms in the economy, they singled out workers with criminal records as less desirable, allowing for greater exploitation and control.

## The Criminal Record Complex

Sometimes the things that strike us in the field are the least spectacular. A few months into the field research, one of the Hub's job developers, Sasha, invited me to ride along with her to a rural part of San Bernardino County. Without a particular destination in mind, Sasha sometimes liked to search for job leads by just driving around and stopping at busy-looking establishments that matched the skills or interests of her current caseload to ask whether they were hiring. Entering the commercial strip of a small town named Yucaipa, we stopped to inquire about possible job openings at several establishments, including a small welding shop (several Hub clients were enrolled in a welding class through a community college), and with Roshaun in mind, a restaurant. Winding along a back road off the main drag, we spotted a help wanted sign outside a bakery. Encouraged, we stepped inside the storefront, filled with the pleasant aroma of fresh pastries. I hung back while Sasha approached the woman at the front counter. "Good morning! We noticed you're hiring," she began. "Could you tell us a little bit about what you're looking for?" The clerk was friendly. "Right now we need another baker, someone with kitchen experience who doesn't mind the early shifts." Sasha continued to chat her up, asking questions like, How long have you been in business? Family owned? Do you bake for supermarkets or is it mostly walk-ins? How should someone apply?

Then as she was so good at doing somewhere in the flow of the conversation, Sasha slipped in the crucial question: "By the way, do you guys do background checks?"

"Funny you ask," the woman replied. "We've never bothered, but I guess we're about to start because the new payroll company we just hired includes it as part of the package."

Having internalized the individual-level and attitude-focused frameworks described earlier, my initial foray into the business community was, in hindsight, something of a search for individual "excluders"—employers denying applicants out of deeply held biases about crime and race—and "includers"—employers hiring out of progressive beliefs or goodwill. Yet in this moment at the bakery, I witnessed how, through the banal administrative practice of payroll, the managers of this small business on a country road—heretofore unconvinced of the need for criminal background screening—would soon be conducting checks on all new hires as a matter of routine.<sup>69</sup> Through



interactions like these, I came to see how a narrow focus on employers as individuals detracts from our understanding of the broader processes, institutions, and practices that structure employment. In this story that I had presumed would be about two actors—employers and job seekers—a third always seemed to be in the room.

As I elaborate fully in chapter 2, the shift in the bakery's hiring processes can be traced to the creation of systems of criminal identification by private police agencies in the late 1800s as part of their efforts to protect mines, factories, railways, warehouses, banks, and other capitalist enterprises.<sup>70</sup> During the early 1900s, the use of these records grew among judges, wardens, doctors, and other professionals working inside prisons and other parts of the legal system, while during the Cold War and McCarthy periods in the 1940s and 1950s, governments and large organizations turned to background checks as a way of demonstrating loyalty and legitimacy.<sup>71</sup> In response to radical political organizing in the 1960s and 1970s, police expanded the scope and volume of the intelligence and investigative data they were collecting, while emerging technologies facilitated the digital integration and automation of new databases, and improved systems for sharing criminalization data among law enforcement agencies.<sup>72</sup>

At the same time, legislatures were laying the foundation for discrimination by enacting an increasing number of statutes excluding people with convictions from accessing public benefits such as student loans, subsidized housing, and food stamps; removing voting, parental, and other civic participation rights; and restricting criminalized people from working for public agencies, under government contract, and in particular industries and professions.<sup>73</sup> They did so both through direct statute and by preventing access to occupational and professional licenses, business permits, and other credentials.<sup>74</sup> "Moral panics," defined by cultural studies pioneer Stuart Hall and collaborators as situations wherein "the official reaction to a person, groups of persons or series of events is *out of all proportion* to the actual threat offered," also ratcheted up the perceived need for background checks.<sup>75</sup> In particular, moral panics around child protection in the 1980s and 1990s grew the number of occupations in which checks were not only allowed but often *required* and tethered to a stunning number of state-mandated restrictions.<sup>76</sup> Legislatures granted access to more and more users outside the criminal legal system, and more of the data were becoming available online.<sup>77</sup> Courts had been slowly expanding the scope of employers' liability for the actions of their employees, and in the late 1990s,

when a handful of dramatic incidences of workplace violence resulted in multimillion dollar lawsuits, employers began to fear that failing to conduct background checks might expose them to undue financial risk.<sup>78</sup>

In this already intense climate of blame and litigiousness, the terrorist attacks of September 11, 2001, unleashed a tidal wave of racialized fear, shifting the lens of criminal risk toward Muslims, Arabs, and others perceived as such, and heightening the perceived need for tools to guard against potential threats.<sup>79</sup> Building on the foundations laid by policy and law, a commercial background screening industry blossomed to meet—and stoke—the new-found demand for background checks. Private firms flooded the market, working to turn criminal record data into a product for sale that could move quickly into the hands of end users.<sup>80</sup> With the support of professional experts in employment law and HR management to provide advice, information, and support, private screening firms took the practice to scale, making it possible for anyone who wanted to conduct criminal background checks to do so easily, cheaply, and efficiently. With racialized risk management as an animating force, the idea that harm could be prevented through background screening was aggressively promoted—a notion that was hugely useful and profitable for some.

I name this convergence of public and private interests that initially motivated, and now drives and sustains, the use of criminal background checks “the criminal record complex.” These interests include state institutions such as police, courts, legislatures, government agencies, and regulatory boards; risk industries such as insurance, risk modeling, and background screening; and fields of expertise such as HR management, employment law, and workplace security. Through the creation of policies, laws, practices, and products promising to buffer businesses and organizations against risk, this assemblage of actors, institutions, and industries reinforces the idea that people with criminal records are inherently risky. In various ways, these entities stand to gain from the inaccurate assessment that people with criminal records are dangerous to employ.

My development of this concept draws its analytics explicitly from the well-known (though often misconstrued) concept “prison industrial complex.” Popularized at the historic 1998 Critical Resistance conference in Berkeley, California, in the face of the United States’ globally unprecedented prison boom, the term aimed to illuminate and critique the overlapping private and public interests driving police, surveillance, and prison expansion.<sup>81</sup> Activists

and scholars highlighted how this reliance was propelled not by rising crime but instead an ensemble of actors whose motivations ranged from the concrete and obvious—prison guard unions seeking job security—to the more abstract—states’ seeking to maintain legitimacy by appearing to provide security.<sup>82</sup> Naming a criminal record complex as a key node of a broader prison industrial complex, makes an argument that criminal background screening has little to do with creating safe workplaces or communities, and rather exists for the sake of those invested in the practice.<sup>83</sup> It is a strategy, to borrow sociologist David Garland’s phrasing, that has been adopted not because it is known to solve problems but instead because it can “characterize problems and identify solutions in ways that fit with the dominant culture and the power structure upon which it rests.”<sup>84</sup> This framing also joins the struggle over criminal records to the political vision and social movement to end the reliance on surveillance, policing, and imprisonment, and create lasting alternatives to punishment and control.<sup>85</sup> Given their wide availability, digital permanence, and state-sanctioned discriminatory power, criminal records are a linchpin of this reliance.

*The Criminal Record Complex* reveals how in a business climate characterized by fear and litigation, hiring decisions are increasingly shaped by the logics of preventative risk management that employers did not invent, and do not necessarily share. By unsettling common understandings of discrimination as mainly a problem of individual prejudice, and attending to the ways actuarial risk structures become embedded in everyday practices and organizations, this book furthers an understanding of how social marginalization gets reproduced through practices that appear necessary, rational, and value neutral.

An emphasis on the political and economic does not discount the role of discretion, or imply that employers’ personal beliefs and values are not important; the two are of course interconnected and mutually reinforcing. My argument is simply that too much weight has been placed on the role of individual employer’s subjectivity, and not enough on the broader forces shaping their ideas and constraining their choices.

It was my observation that most employers who conducted background checks did so out of a knee-jerk assumption that they are a good thing to do. By asking how criminal background screening became a mainstream and routine practice—a common feature on the menu of payroll packages—I interrogate rather than take this common sense for granted. *The Criminal Record Complex* casts doubt on the underlying assumption that criminal records

provide a useful sorting mechanism. It questions their ability to sort suitable from unsuitable workers, to reflect people's essential character, or to accurately divide the world into good people and bad.<sup>86</sup>

## Activist Research and the Politics of Method

I never wanted to write a book that would simply document how hard it is to find work with a criminal record. While there is value in putting to words the challenges people are experiencing, as a political intervention, I felt this kind of approach would rely on the liberal logic of “caring” that my data were demonstrating to be somewhat irrelevant. Rather than aim to change hearts and minds, I endeavored—with all the idealism of an organizer turned grad student (smile)—to discover something new that could be useful for challenging criminal record discrimination. I believed ethnography—with its power to illuminate how big systems work in daily practice, the details of how policies are enacted, and how practices are understood and felt by those experiencing them—could help.

The idea that anthropology could, and even *ought to*, serve as a tool of liberation was cultivated and taught to me by activist anthropologists at the University of Texas at Austin.<sup>87</sup> In that spirit and tradition, this study aimed to translate the most basic strategic question at the core of the social movement—What will it take to change this reality?—into the kinds of questions that could be answered through social scientific research. Like other scholars working at the intersection of employment and criminal records, I too began from a willingness framework: Why are so many employers unwilling to hire someone with a criminal record? Why, in the face of pervasive discrimination, are some willing? Over time, my engagements in the business community helped me recast these questions to the more pertinent: What makes exclusion and exploitation possible, and likely?<sup>88</sup>

Several important conversations helped me to develop these questions and design the research methodology. An early conversation with King Davis, then director of the Institute for Urban Policy at the University of Texas at Austin helped build my confidence in the importance of the distinction between employers who hire and don't hire people with conviction records. Identifying just one or two factors differentiating the two groups, he suggested, could be a crucial contribution. A conversation with one of the Hub's regional directors confirmed that even workforce development organizations know little about what differentiates employers who hire from those that don't. This director stressed that in his experience, however, most employers fall into neither of

these camps; they are much more malleable than the hire / not hire binary portrays. He believed nuancing this monolithic picture could be enormously significant. Other leaders at the Hub were particularly interested to know more about who and what influences employers. They believed liability insurance to be a major driver of adverse decisions, especially for large corporations, but the details, such as what exactly increases or is believed to increase an employer's exposure, were less clear. They also wondered about the sources of employer's information about exposure to liability—how and with whom employers think through what they hear.

Not everyone embraced my research questions. For example, while job seekers at the Hub were generally receptive to my agenda, which they perceived as sympathetic to their challenges, they did not necessarily understand or agree with the basic premises of the research. Rather than share my concern with discrimination, they tended to emphasize their own responsibility to represent themselves well and prove to employers that they were truly trying to make a change in their lives. They self-criticized, remarking, “advocates can't be out there trying to persuade employers to take a chance on us if we're not doing what we need to do,” and blamed the problem of discrimination on “a few bad apples ruining it for the rest of us.” For some, discrimination seemed so commonsensical, so thoroughly justified, they did not even understand the need for investigation. “But Melissa, don't some employers not want to hire us because we're felons?”

Similarly, some reentry and workforce development professionals found my framing overly focused on employers. For example, when I explained to Jerome Smith, the African American leader of a local youth organization, that the ultimate goal of my research was to contribute to a change in how people with criminal records are viewed and considered by employers (a goal I assumed he would share), he almost yelled, “Have you run a logic model on this? You can't force employers to hire them, they have to figure it out! We need to get offenders to quit going to jail. Reform jails, not employers.”

From Smith's perspective, the problem was crime and the socioeconomic conditions that produce it, not discrimination on the basis of criminal status. Energy would be better directed toward preventing people from going to prison in the first place through economic development and community investment—a focus of his organization. Smith and others rejected liberal approaches seeking to persuade power holders to “care” about the issue of reentry or see criminalized people in a different light. They made blunt comments like, “People think you don't have to reoffend. They don't understand or

believe in social inequality.” These and other rejections of my research lens were welcome, if uncomfortable, provocations that provided opportunities to push my thinking.

There were a number of reasons to locate the research in the Inland Empire as opposed to Los Angeles, where I was more familiar with the context and better connected. The first had to do with an observation shared by sociologist Katherine Beckett, based on her experience studying employers’ and landlords’ use of criminal records in Seattle.<sup>89</sup> Beckett explained how Seattle’s politically correct and legally aware environment had encumbered her ability to collect meaningful data. At the end of the day, she said, “employers don’t want to tell you what they are thinking or doing unless it’s perfect, and then it’s boring.” As a region known for political and social conservatism, I hoped the Inland Empire would be a place where people would more freely express and enact racially bigoted, illegal, and otherwise unpolitically correct views, thus making discrimination easier to observe.<sup>90</sup> This presumption was based in part on Janine’s recounting of how difficult it had been for the Hub to find somewhere to rent in the area. In multiple phone calls, she had plainly stated, “We provide employment services and transitional work for people coming home from prison.” To this, landlords freely replied, “Sorry, we don’t want people like that around,” or, “We don’t want to have you as occupants.” After months of searching, Janine had finally encountered a landlord who supported the mission, acquiring this spacious suite that had been recently vacated by a low-end retail clothing store, and before that, a church. Job ads in the Inland Empire were equally blatant; “no felonies” and “must be able to pass a background check” were boldly displayed, with no regard for—or perhaps even awareness of—the illegality of blanket exclusions under federal law. Employers in the Inland Empire also regularly asked other kinds of discriminatory questions such as, “How old is the applicant?”

There were additional reasons the Inland Empire was an “ideal” site for this project. While rates of arrest and incarceration are slightly lower than the state average, as a region, the Inland Empire hosts a significantly higher percentage of adults released on parole compared to all other areas in California. The region also suffers from rates of poverty significantly higher than the national or state averages, and directs relatively fewer resources toward crime prevention, reentry assistance, and other social supports.<sup>91</sup> At the same time, from 2011 to 2016, the Inland Empire gained more than two hundred thousand jobs, 60 percent of those in moderately paid technical and blue-collar sectors, and the remaining 40 percent in low-wage sectors—a ratio of moderate to

low-wage positions far better than the California average, but notably lacking in the number of management and professional positions available in other parts of the state.<sup>92</sup> In other words, the Inland Empire is a region in which there are (theoretically at least) lots of jobs for which people returning home from prison might qualify.

As the only entity in the region singularly dedicated to the mission of connecting people with felony convictions to employment, the Hub provided an excellent post from which to observe these dynamics. After formally introducing myself to incoming cohorts, I spent three to four days per week at the office, participating in classes, attending meetings, and chatting informally with the staff and program participants. A great deal of my time was spent in the computer lab, working with job seekers to prepare résumés and cover letters, submit online applications, make telephone calls, and communicate with employers by email. I especially came to love assisting with résumés and job applications. Crucially, it allowed me to get to know people as well as learn the details of their skills, past labor market experiences, and professional goals and interests—essential context for following their job market ventures. But more than this, coproducing a document that captured and promoted a person's best qualities built trust and camaraderie, and produced an immediate sense of satisfaction. Actually working on something tangible together also helped to cut through awkward class and race differences, and concretize the professional nature of the relationship.

Methodologically, the computer lab also provided one of the most effective ways to talk to people, which given the program structure, was somewhat difficult to do. Recall that after the first week of orientation, participants were hired on a transitional work crew for three days of the week.<sup>93</sup> This meant they headed out at 6:30 a.m. and didn't come back to the office until 2:30 p.m. to return equipment, often leaving quickly thereafter. Another obstacle to engagement was the layout of the physical space. But for the conference room, computer lab, and individual staff offices at the back, the space was wide open, and other than a singular sofa, lacked infrastructure around which to informally congregate. To address this, I set up a tiny standing desk (more of a podium really) conspicuously smack in the middle of the main suite—the opposite of anthropology's so-called fly-on-the-wall approach. I mostly prefer standing to sitting for desk work, but given that in the common area job seekers were also standing, I hoped that doing so made me seem more approachable. Whenever I wasn't in the lab, and always at 2:30 p.m. when the crew came in to collect paychecks and attend appointments with Hub staff, I stationed

myself at my podium desk in hopes of striking up conversation as participants came and went. Though I'm sure I looked (and certainly often felt) a bit ridiculous standing there in the middle of the room, the technique was effective.

In addition to directly following job seekers, I closely followed the activities of job coaches and developers as they identified and nurtured potential work opportunities and helped job seekers prepare for and go after those opportunities. Whenever possible, I shadowed job developers directly as they circulated in the business community, talking to potential employers and working to establish relationships. I did this both at the Hub and less intensively at neighboring nonprofit organizations and local government-run programs as a point of comparison. I also sat in on meetings between job developers and job seekers at various sites, in which job seekers were trained and mentored to present themselves effectively to employers.

I did not begin with preestablished relationships with business owners or hiring managers, yet answering the research questions depended on close engagement with them, and ideally, the opportunity to observe hiring processes firsthand. With these goals in mind, I began to immerse myself in the Inland Empire business community as best I could, stitching together an eclectic methodology that allowed me to observe and interact with hiring managers and business owners in different locations, including HR conferences and trainings, informational seminars, and networking events. Hosted by a range of business, nonprofit, and government organizations, including the Inland Empire Economic Partnership, Employment Development Department, Society for Human Resource Management, and various chambers of commerce, participating in these kinds of meetings helped me to get a sense of the broader workforce landscape and talk to people in the business world about hiring in ways that did not require them to reflect directly on their own practices. I also made a point to be present at any forum directed at an employer audience that specifically addressed the topic of background screening—attending many seminars, webinars, and workshops in which employment law, HR, and/or screening industry experts advised employers on how, when, and why to use background checks.

Overall, I was pleasantly surprised by how generously I was welcomed and taken seriously by such a wide range of research informants in the business community. While some were more enthusiastic and willing to give of their time than others, most seemed to genuinely appreciate the opportunity to discuss, analyze, and reflect on their hiring experiences and practices.

My interactions in these business settings led to countless informal conversations along with approximately thirty-five formal interviews with small and



midsize business owners, hiring managers, and HR professionals working for businesses and staffing agencies across many industries and sectors. Although I learned a great deal from these conversations and interviews, a simple comment made by one of my University of Texas at Austin mentors, Charlie Hale, kept coming to mind: “Ethnography requires more than just going around talking to people.” I knew that in order to go beyond the reasons for decisions that employers may state or the views they freely express, I needed to see firsthand what it is like to run a business, how decisions about hiring get made, and how criminal records figure in those decisions. To my luck (which ethnography always requires), members of a regional Workforce Investment Board introduced me to the owners of a midsize trucking firm. As I detail in chapter 4, these owner-managers generously allowed me to repeatedly visit their workplace, and eventually, observe their hiring and personnel management practices in real time.

Generally speaking, I felt my appearance as a youngish, light-skinned Black woman as well as identity as a PhD student helped me to access people across business, government, and nonprofit settings, where I was generally perceived as nonthreatening, and my research project was viewed as of mutual interest or at least worthy of support. Still, as for all ethnographers, how I am perceived, understood, and positioned in the world both enabled and limited my “standpoint”: what I could see and know in different environments.<sup>94</sup>

At the Hub, job seekers were by and large quick to trust my intentions and eager to participate in the research. My obviously empathetic stance, mixed-race phenotype, ability to properly pronounce Spanish names, and a gendered association of women with “helping” made it easy to connect across many differences. At the same time, I was sensitive to the power dynamics inherent in requesting consent from people whose needs and position as recipients in a social service program could cause them to feel pressured to participate in research. This led me to go beyond standard protocols to find ways to ensure that those participating fully understood that participation.

I was also cognizant of the troubling way stories about criminalization and redemption get used as cultural tropes of personal responsibility and meritocracy, and oversimplified so as to pull out and lift up what’s useful for the writer. Moreover, given the constant comings and goings at the Hub along with the necessarily sporadic nature of my engagements with most job seekers, I knew I would not be able to tell fully contextualized stories. My more modest goal was thus to stay close to the emotion that seemed most important to the person about whom I was writing, and whenever possible, share my writing along the way.

Despite the Hub's overall organizational endorsement, it was easier to establish rapport with some staff members than others. There were some staffers with whom differences in viewpoint precluded easy trust about the analysis I would develop or how their work practices would be represented in writing. Sometimes this lack of trust caused them to withhold details about particular job seekers' experiences and employers' behaviors.

There were also limits to my engagement imposed by business and professional norms that constrained my interactions to business hours and settings. I especially would have liked to have joined job seekers on their early morning or evening commutes, visited with them in the places they lived or worked, and texted with them from my personal phone. However, this kind of interaction would have seemed inappropriate, may have put them or me at risk, and would have violated the norms of professional conduct expected between Hub staff and clients. In all, this nine-to-five style of ethnography felt suitable for my topic (and worked for my schedule as a mother of two young kids), but there were times when I wondered whether these parameters prevented a deeper understanding of some of the dynamics I was observing.

It is also a common problem for female researchers that their interest in men's lives be perceived as romantic, and like most female anthropologists working among men, I had to navigate situations in both business and non-profit settings in which my intellectual interest or apparent solo presence in the field was interpreted as a sign of availability.<sup>95</sup> For Black women and other women of color, these dynamics are further charged by the pressure to accommodate that stems from the politics of racial loyalty.<sup>96</sup> And for those who share political solidarities, the risk of unwanted sexual advance in ethnographic fieldwork is further heightened.<sup>97</sup>

By far the biggest methodological challenge had to do with accessing powerful people, organizations, and institutions that were less aligned with my research agenda, or what anthropologist Laura Nader first called "studying up."<sup>98</sup> In particular, there were many instances in which job seekers' applications were denied or offers of employment were rescinded, and they did not know exactly what had happened. This obscurity—exactly how, when, or why the adverse decision had been made—was precisely what I was attempting to demystify, but sometimes I could not get close enough to power holders to discern why or how adverse decisions were made. In some cases, HR departments refused to speak with me, or more often, politely evaded my calls. In other instances, I could not broach a conversation out of fear of damaging the Hub's relationship with the employer and other job seekers' prospects.

When I *was* able to speak with powerful people, the interactions sometimes felt uneasy because of my stance as an advocate for workers with records. Although I approached corporate professionals, including those in the screening industry, with a genuine, open curiosity about their motivations, perspectives, and stakes, and was always honest about my research agenda, there was some discomfort in knowing that they would probably not “like” the meaning that I would make of the data, or agree with the study’s overall arguments and interventions. As Nader succinctly put it, “Anthropologists value studying what they like and liking what they study and, in general, we prefer the underdog.”<sup>99</sup>

Finally, a word on field notes and anonymity. It would have been inappropriate and raised suspicion had I attempted to tape-record my observations. Instead, I took copious handwritten notes, often in the moment or as quickly as possible after an encounter. Wherever it seemed I could do so without making people feel uncomfortable, I took notes on my laptop, which allowed me to more accurately capture dialogue and save time. Once, a job seeker at the Hub expressed curious discomfort at the speed of my handwritten note-taking during a meeting between himself and a job developer. What on earth, he asked me afterward, had I been writing down? His observation led me to realize that I could capture dialogue verbatim, even when writing by hand, and needed to be more mindful of the somewhat shaky distinction I had made between digital recording and note-taking.

Every individual, organization, and company depicted here has been anonymized to the best of my ability. While some individuals and groups in professional and business sectors did not request or necessarily want anonymity, others did, and it was my decision to impose a uniform standard.<sup>100</sup> Except in instances where I am writing about a publicly known institution or association in a general way, names, places, and personal details have been changed enough to make informants unrecognizable to one another as well as the general reader. That said, there are undoubtedly some cases where local knowledge might allow a reader to discern the individual or organization being described. I have been most careful to protect the identity of research informants for whom anonymity was important.

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If as a friend once suggested, “A book is an album,” which is to say, more than the sum of its tracks, *The Criminal Record Complex* encourages readers to think deeply about where we are, how we got here, and what it will take to move

forward.<sup>101</sup> We begin at the Hub, from the vantage point of people with recent felony convictions. Chapter 1, “Looking for Work with a Criminal Record,” documents the devastating impact of the criminal record complex on the lives of people with conviction records who are entering the job market. Through differently situated job seekers, it highlights the reality that while all people with criminal records experience stigma and discrimination, the experience lands in distinct ways. Demonstrating the great lengths to which criminalized people go to get hired and maintain employment in the face of nearly insurmountable barriers, the chapter exposes the baselessness of the presumption that people with criminal records are somehow unfit or unsuitable for the workforce.

As an anthropologist, I was interested in the political salience of criminal records—how and why people came to think of them as a useful sorting mechanism. Chapter 2, “The Making of Common Sense,” traces the historical evolutions of the criminal record complex to show how and why criminal background checks became nearly ubiquitous in employment contexts. While at first I thought I might write a historical chapter detailing the rise of criminal background screening in employment, and another about the vested interests and relationships that maintain and propel criminal record discrimination in the present, as I tried to figure out where to draw a line between the things that got the ball rolling and the things that drive and maintain it now, it became ever more clear that there is no clean break between past and present, nor always a tidy chronology. Drawing from primary policy and legal documents, HR, workplace security, and legal literatures, and observations and interviews with risk industry, employment law, and HR professionals, this chapter constructs an integrated (though necessarily incomplete) account of key actors and institutions whose combined efforts made routine employment screening possible, effectual, and attractive.<sup>102</sup>

Chapter 3, “Criminal Stigma and the Politics of Helping,” explores the ways that job seekers and professional employment advocates navigate the stigma produced by the criminal record complex. It shows how, given the strong tendency in the United States to blame marginalized people for their conditions, the narratives that are taken up in job market encounters often reinscribe notions of personal responsibility.<sup>103</sup> By critically examining these challenging and politically fraught dynamics, this chapter strives to think along with people doing the work of brokering between employers and criminalized job seekers about how to do it in more liberatory ways.

Despite background check’s near ubiquity, not all employers find them particularly useful for identifying reliable employees. In fact, many have found

that people with criminal records (or otherwise imperfect credentials) make dedicated and capable employees. Chapter 4, “Good Sense Hiring in Small and Midsize Business,” looks at the hiring approaches of business owners and managers in the Inland Empire whose ideas about what makes an ideal employee differ sharply from those proscribed by the criminal record complex. Exclusion may be in the interests of risk industries, but in my observation, it was not necessarily in the interests of individuals running businesses.

Finally, the purpose of this book is not only to enhance knowledge of criminalizing systems but to think with others about what it would take to change them. The conclusion, “Limits and Possibilities in the Struggle to End Criminal Record Discrimination,” invites the reader, and especially those readers actively engaged in on-the-ground organizing, activism, and policy advocacy, to think about deep and lasting interventions. It argues for steps that not only make exclusion and exploitation less severe but also chip away at the core assumptions, values, and discourses upholding the discriminatory use of criminal records, to make room to build economies and workplaces that support true safety.

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