Job Applicants – Sometimes they name, infrequently they blame and rarely they claim

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JOB APPLICANTS - SOMETIMES THEY NAME, INFREQUENTLY THEY BLAME AND RARELY THEY CLAIM

Abstract
Although job applicants may be subject to discrimination in the selection process, most victims do not lodge claims. For a claim to be made a perception of injustice must be followed by a response, i.e. naming, blaming and claiming. A survey of job applicants found that many job applicants did not name, blame or claim but could differentiate between unfairness and illegal discrimination. Employers are warned that their chances of a formal complaint are slight but the consequences of discrimination may be more far-reaching.
Despite the existence of a range of policy measures to combat discrimination in employment, illegal discrimination is still quite common (Bloch, 1994; Ogbonna and Noon, 1999) and is sometimes overt e.g. in job advertisements (Bennington, 1998; McGoldrick and Arrowsmith, 1993). Different research methodologies such as pseudo-applicant methodologies (Bennington, 1998) and employer surveys (Bennington and Wein, 2000) have also detected strong evidence of discrimination. Such discrimination often occurs in hiring – the process and outcomes of which are subject to assessments of justice by candidates (Galea and Wright, 1999) and judgments about illegal discrimination. To understand the process by which some job applicants determine that they have been subjected to discrimination, this paper reviews relevant theories and findings on grievance filing before reporting on an empirical study which examined the perception of unfairness and illegal discrimination in the hiring process.

THEORETICAL EXPLANATIONS
Defining an experience as unfair, and possibly even subsequently lodging a grievance, has been described as the “naming, blaming and claiming” process (Felstiner, Abel and Sarat, 1981). Naming is the recognition that an experience has been injurious or wrong and generally happens when people “get less than they have gotten in the past, or less than similar relevant others are getting” (Coates and Penrod, 1980/81: 668). Not all injurious experiences are “named”. For example, less than 20 per cent of those who have experienced sexual harassment label themselves as having been sexually harassed (Magley, Hulin, Fitzgerald and DeNardo, 1999). When “naming” does occur, however, the next step in the path to claiming is “blaming”, i.e. the victim must not only recognise the behaviour as wrong but must also attribute blame (Felstiner et al, 1981). The final step of “claiming” is then possible.

However, little is known about claiming in relation to discriminatory hiring practices, or even within workplaces (Olson-Buchanan, 1997). Demographic variables (e.g. sex, age, race) have been found to be inconsistent predictors of grievance claims and to explain little of the variance; the roles of supervisors and shop stewards have proven more important than employee characteristics (Bemmels, 1994; Bemmels, Reshef and Stratton-Devine, 1991).

Whether discrimination is evident to applicants during the hiring process, and how this manifests itself might also be examined using organizational justice theories (Steiner and Gilliland, 1996), as fairness reactions can influence applicant attitudes, intentions and behaviour (Ployhart and Ryan, 1998). The organisational justice perspective incorporates the role of distributive, procedural and interactional forms of justice (Gilliland, 1993). Distributive justice relies on the distribution of outcomes with respect to a distributive rule usually based on equity, which, in turn, usually relies upon a comparison to be made with the perceived competition (Bowen, Gilliland and Folger, 1999). Given that it would be unusual (except for graduate or internal applicants) for job applicants to have a comparative reference, Gilliland (1993) suggests that distributive justice be based on a determination of the applicant’s deserved or expected outcome. Procedural justice focuses on the perceived fairness of the procedures used in making decisions as well as opportunity to influence the decision (Bowen et al., 1999). Although these two forms of justice are conceptually and empirically correlated they remain distinct (Ployhart and Ryan, 1998). Interactional justice, often included as an aspect of procedural justice (Folger and Cropanzo, 1998), refers to what is said to applicants during the decision process and how it is said (Bies and Moag, 1986; Tyler and Bies, 1990).
Grievances based on procedural justice have been found to command more support than distributive justice grievances (Leung, Chiu and Au, 1993), and, within organisations, perceptions of procedural justice are more related to satisfaction than distributive justice (Ruiz-Quintanilla and Blancero, 1996). However, subjects in simulation studies have not reacted negatively to positive rule violations i.e. positive discrimination (Ployhart and Ryan, 1998).

Reluctance to report incidents of discrimination might also be explained by the theory of motivation, defined as “the process of allocating personal resources in the form of time and energy to various acts in such a way that the anticipated effect resulting from these acts is maximized” (Naylor, Pritchard and Ilgen, 1980: 159). Expectancy theory suggests that action will only be taken when the perceived gains exceed the attractiveness of any other action (Klaas, 1989). Perhaps the benefits of complaining are overshadowed by concerns that the process will consume considerable time and resources, or even that the complaint will fall on “deaf ears” (the term used by Peirce, Smolinski and Rosen (1998) to describe a problem in respect to sexual harassment complaints).

The key element, for our purposes, is that of question propriety, an aspect of procedural justice which includes “both improper questioning and prejudicial statements” (Gilliland, 1993: 709). Illegal questioning is of particular interest due to the dearth of research on this issue, the secrecy of the hiring process, and the relationship between perceptions of unfairness and potential allegations of illegal discrimination needing to be a concern to all employers.

**REPORTING RATES OF DISCRIMINATION**

Many victims of discrimination do not lodge complaints either in the public sector (Morgan, 1999) or the private sector (Peirce, Rosen and Hiller, 1997). Reasons are unclear, but Magley et al (1999) suggest that normative beliefs and age may affect the chances of “naming”. Thus, given that much recruitment and selection activity occurs “behind closed doors”, it is not surprising that less than one fifth of U.S. employment discrimination lawsuits involved hiring, and, applicants (5 for each incumbent employee) were 5 per cent less likely to file a lawsuit than employees (Bloch, 1994). Conversely, it has been suggested that unsuccessful job applicants might find it easier to name the experience as discrimination rather than admit that they are insufficiently qualified for the job (Shepherd, 1995). While this suggests that many more people should name the experience, if the victim is seen as an economic agent who calculates the value of claiming by considering the results minus the costs of taking action (Sheppard, Lewicki and Minton, 1992), it is possible to see why many choose not to complain.

Research shows that sexual harassment victims are reluctant to complain due to concerns about their careers, personal risks associated with reporting harassment, and reporting policies and procedures (Peirce et al., 1997). Complaining has also been linked to women’s concerns about risking relationships (marital, maternal and parental) (Morgan, 1999). Non-reporters of workplace corruption seem to have similar concerns to sexual harassment victims e.g. insufficient proof, no legal protection from negative consequences, anonymity and confidentiality, lack of family support, career effects etc (Zipparo, 1999). The consequences of complaining therefore seem to be a major obstacle for many victims.

Given that many applicants are unemployed, and unemployment typically involves a greater chance of poorer health and social well-being, possibly depression, isolation, passivity, degradation, humiliation, and a lack of financial resources, leading to less power and control (Dalbert, 1997; Kieselbach, 1997; Rantakeisu, Starrin and Hagquist, 1997), it is not surprising that many do not name, blame or complain. This is supported by findings which show that women with low self-esteem are more likely to perceive harassment but less likely to report
incidents than those with high self-esteem; those with low self-esteem and perceived personal control are more likely to perceive age discrimination (Hassell and Perrewe, 1993); and women with internal locus of control are more likely than those with an external locus of control both to perceive and to officially report sex discrimination incidents (Lanier and Barnett, 1996).

However, even when they name and blame, some victims do not know who to contact e.g. one Australian study found that 54 per cent of respondents were unaware of reporting procedures in respect to workplace corruption (Zipparo, 1999). Some know who to contact but have indicated that the legislation makes them reluctant to do so (Devine and Alpin, 1988). Other employees have filed grievances but have potentially jeopardised their jobs as a consequence (Olson-Buchanan, 1996). Specific groups such as gay and lesbian workers have been found to rarely lodge complaints even if they have a knowledge of the legislation - they may name the incident but rather than blaming the employer, they may blame society as a whole (Chapman, 1995). Alternatively, they may feel a lack of access to the law, may be deterred by the unsuccessful cases reported in the media, or they may be concerned that publicity may affect their chances of obtaining another job (Chapman, 1995). Thus, given the variables associated with employment status, self-esteem, locus of control and past socialization (Sheppard et al, 1992) it is possible that observers may perceive injustice even though “victims” have failed to complain.

**THIS STUDY**

In considering the theory and empirical findings, the propositions which arise include:

**Proposition 1:** Not all job applicants who experience illegal questions will name the selection process as unfair.

**Proposition 2:** Of those who are asked illegal questions (rule violations), those who experience negative outcomes will define the process as unfair.

**Proposition 3:** Of those who define their experience as unfair, only some will name their experience as illegal discrimination.

**Proposition 4:** Naming of illegal discrimination will be positively associated with the number of illegal questions asked during the process.

**Proposition 5:** A small percentage of those who name their experience as illegal discrimination will report the incident.

**Proposition 6:** Independent assessors will define reported experiences as illegal discrimination more often than job applicants (even though their perceptions will be based solely on the reports of the job applicants).

Much research has linked perceptions of procedural and distributive justice to worker attitudes (Fryxell, 1992), but no research has been directed at job applicants’ ability to differentiate between unfairness and discrimination, and whether applicants even know what to do in cases of perceived illegal discrimination. Although Gilliland (1993) suggests that this has not been examined because companies may neither recognise nor acknowledge that such illegal activity occurs, it has been found that illegal questioning is openly admitted by employers (Bennington and Wein, 2000). Therefore, to understand what interpretation job applicants put on this behaviour, a study of job applicants was conducted to investigate their perceptions of the fairness of the selection process and their experience of illegal discrimination.

**METHOD**

A sample of households was systematically selected from the residential telephone directory in a major Australian city (Telstra Corporation Limited, 1998). The directory represents 80 per cent of the city’s households given that 17 per cent of households have unlisted numbers (Telstra, 1998), and 3 per cent do not have fixed telephone services (ABS, 1998). Trained interviewers contacted households and requested to speak to job applicants who were over 18 years old, had applied for,
or been interviewed for, a job in the last 6 months, and who knew the outcome of their application. Each household was called on a maximum of 7 occasions at various times. 4,883 households were contacted to obtain the final sample of 186 applicants who met the eligibility criteria. Although 209 were established as meeting the criteria, 23 of these declined to participate.

The interviews were administered in a standard manner using a structured questionnaire which covered biographical information; process outcome; interview experience including whether they were asked illegal questions about their age, gender, marital status etc (i.e. questions about prohibited grounds under State anti-discrimination law); and, if so, whether they perceived positive or negative discrimination. Perceptions of unfairness versus illegal discrimination were ascertained, and reporting knowledge and behaviours were covered. Interviewers trained on the anti-discrimination legislation also made judgments as to whether the experiences reported by the applicants constituted illegal discrimination.

Although there has been some suggestion that perception of fairness might be influenced by the outcome (Gilliland, 1993; Lind and Tyler, 1988), prior knowledge about the outcome does not change the way people define the fairness of a procedure (Tyler, 1996), so this study did not seek to prevent any possible confounding of these variables.

Sample
The 186 participants (job applicants) comprised 45 per cent males and 55 per cent females and ranged in age from 18 to 61 years; the mean age being 30 years. At the time of their job application, 43 per cent of applicants were already employed. Participants had applied for positions in the following categories: managerial, professional and para-professional (44 per cent), trades, semi-skilled and manual (22 per cent), and clerical (11 per cent). In almost half of the cases (45 per cent) applicants were unsuccessful in obtaining the targeted position.

RESULTS
Proposition 1 was supported in that 75 job applicants acknowledged being questioned about one of the prohibited grounds of discrimination, yet only one-third of this number indicated that the process was unfair (see Table 1) i.e. in more than half of the cases for which complete data sets were available applicants reported having been subjected to illegal questions.

In respect to Proposition 2, although the cell sizes become very small (see Table 1), it is interesting to note that almost twice as many unsuccessful applicants (compared to successful) who reported being asked illegal questions perceived the process as unfair. Although approximately half of those who were successful also perceived the process as unfair, the majority of successful applicants who were asked illegal questions perceived the process as fair. (Thus there was not clear support for Proposition 2)

Table 1 About Here

Judgements of unfairness were made by 17 per cent of this sample, but the bases for these assessments did not relate solely to illegal questions. Question propriety, process issues and positive rule violations (or positive discrimination) were also evident in the comments:

“I’m successful in getting the job because I’m Catholic. People who are not will not get the job.”

“The employer wanted someone much younger, that is 30-35 years”

Proposition 3 was supported in that only 4 applicants (or 16 per cent) thought that aspects of the
selection process constituted illegal discrimination. Proposition 4 was also supported, i.e. the association between the number of illegal questions asked in the selection process and judgements of illegal discrimination was significant ($r = 0.256, p = 0.000$).

Applicants comments related to illegal discrimination included:

“The person who got the job was the youngest amongst the people who applied for the position. There’s an unwritten policy in this organisation… the policy was never written or said out loud but people know that the organisation is practicing it.”

“With the question about age, I decided not to put it on my resume, but still a lot of employers wanted to know.”

“Discriminated against my age at one job because I look younger than my age.”

Only 2 respondents raised the alleged discrimination with a relevant authority, supporting Proposition 5. Comments which may facilitate understanding of this issue included:

“It’s extremely hard and time consuming for people to lodge a grievance statement regarding the selection process. It could create enemies by doing so. It’s just not worth to do that sometimes”

“It’s very hard to prove that the employer is being discriminatory. They are not going to tell you the real reason why you are unsuccessful e.g. its because of your age, race etc.”

“All backgrounds are prejudiced that is to say employers prefer to employ people like themselves (with the same background). Organisations have become closed shops. You get subtle vibes ….when people hear it (my Irish accent) they tend not to want to employ me because if anything happens (e.g. jokes) they can be held up for discrimination because of such laws and can be sued.”

“Most people who recruit are very aware of what they can or cannot say or ask. Only once or twice have I seen them slip e.g. What is your age or marital status, but that’s been in small business. Big businesses don’t ever ask.”

“A lot of what goes on in an interview is invisible.”

“I knew there was discrimination but I did not follow through because I did not think it was worth the trouble, and it was no big deal…”

Even though 55 per cent of applicants reported being asked illegal questions, only 6.6 per cent defined their interview experience as constituting illegal discrimination. However, in nearly 18 per cent of cases, the research interviewers indicated that illegal discrimination had probably occurred, thus supporting Proposition 6. The correlation between our research interviewers’ assessment of illegal discrimination and the number of illegal questions asked resulted in a significant correlation ($r = 0.423, p = 0.000$). Somewhat less than a third of respondents did not know where to lodge a complaint of discrimination, but about two thirds had sufficient idea to put them in contact eventually with a relevant authority who might be expected to refer them to the appropriate agency(see Table 2).

Table 2 About Here

Although not set out in the propositions, the issue of interactional justice was considered by examining the relationship between fairness and interview enjoyment. A positive and significant relationship was revealed ($r = 0.511, p = 0.000$).
DISCUSSION

Five of the six propositions were supported by the empirical data. The one proposition which was not fully supported tends to indicate that some people think that the asking of discriminatory questions, although illegal, is not unfair! Even though over half the sample were asked illegal questions, less than one-fifth of the sample named their selection process as unfair. Respondents were clearer about having been subjected to illegal discrimination. This tends to suggest that either respondents do not support the anti-discrimination legislation, or do not see it as applicable to their own situation. Perhaps this should not be surprising given that it has been common for applicants to either be directly questioned about their age, marital status etc. or to be required to provide this information on recruitment forms. Thus, they do not name the process as unfair as they have been socialised into expecting the request.

Notwithstanding these findings, the potential importance of interactional justice was noted in that applicants who thought that the process was fair were likely to have enjoyed the interview, and those who thought that the process was unfair were less likely to have enjoyed the interview. Each of the theories discussed, though, has something to offer in the interpretation of the results. For example, many applicants did not even name their experience of illegal questions as being unfair or discriminatory, yet many were cognizant of the illegal nature of the behaviour even if they did not lodge complaints. Naylor et al’s (1980) theory of motivation and the view of the victim as an economist (Sheppard et al., 1992) possibly assist us here, although this study produced only limited qualitative data to support these perspectives.

It is noteworthy, too, that job applicants were still able to discern and name the process as both unfair and discriminatory even if they were successful i.e. the issue of distributive justice did not cloud the recognition of procedural justice issues for many job applicants. These issues should be of concern to employers.

Sheppard et al. (1992) suggest that there are three goals of organisational justice. Two of these appear to apply to the treatment of job applicants: performance effectiveness, which can only be assured through valid assessments of merit, and individual dignity and humaneness. Therefore, it might be argued that applicants are entitled to greater respect in the hiring process. It also behoves human resource practitioners, employers and their representatives to become more sensitive and sophisticated in their assessment techniques such that they can avoid the use of discriminatory proxy variables in the selection process. Applicants do detect illegal discrimination and, although the numbers of complainants are relatively small, others have sufficient knowledge as to where complaints can be lodged.

As Johnes and Sapsford (1996: 10) state: “Labour market discrimination is offensive for reasons both moral and pragmatic. It is both inequitable and inefficient….”, so employers might wish to consider the organisational justice concerns about potential spill-over effects from disgruntled applicants as well as the moral concerns about illegal or discriminatory questioning in hiring. Nevertheless, the implications for employers of this study are that they can feel relatively secure in the knowledge that the risk of a complaint being lodged about illegal questions or other forms of discrimination from job applicants is very low. However, even where successful applicants have been subjected to positive discrimination, applicants may still label this behaviour as unfair and as illegal discrimination. This may not set the preferred stage for the employment relationship nor might this behaviour be good for public relations or future recruitment activities. Thus, although the immediate legal risks of discrimination complaints may be small, the real problems may not be that evident and may return to haunt the employer at a later date.
REFERENCES

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### TABLE 1
Unfair Process, Outcome and Illegal Questions

<table>
<thead>
<tr>
<th>Unfair</th>
<th>Outcome</th>
<th>Illegal questions</th>
<th>Total</th>
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<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Unsuccessful</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Successful</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>No</td>
<td>Unsuccessful</td>
<td>22</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Successful</td>
<td>37</td>
<td>46</td>
</tr>
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### TABLE 2
Authority to be Contacted

<table>
<thead>
<tr>
<th>Authority</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal Opportunity Commission/Board</td>
<td>35.5</td>
</tr>
<tr>
<td>Do not know</td>
<td>29.8</td>
</tr>
<tr>
<td>Unfair dismissal person</td>
<td>8.9</td>
</tr>
<tr>
<td>Union</td>
<td>7.3</td>
</tr>
<tr>
<td>Employer</td>
<td>5.0</td>
</tr>
<tr>
<td>Other (local government, university counsellor, job agency, ombusdsman, telephone directory inquiry number, wages authority, public sector merit board)</td>
<td>13.5</td>
</tr>
</tbody>
</table>