

# The Illusion of the FBI Database

A BIB Resource

# I. Introduction

While many positions both for paid and volunteer employment mandate the use of fingerprinting as the methodology for background screening, it's important for all employers to understand the risks of using the FBI Criminal Database as a single source, especially if you are not mandated to do so. Limiting the search to just a state repository and the FBI database can place employees, vulnerable populations and the general public in danger.

Many believe fingerprinting to be the gold standard because of its FBI designation. But recent reports have called out its shortcomings; even the FBI acknowledges this.

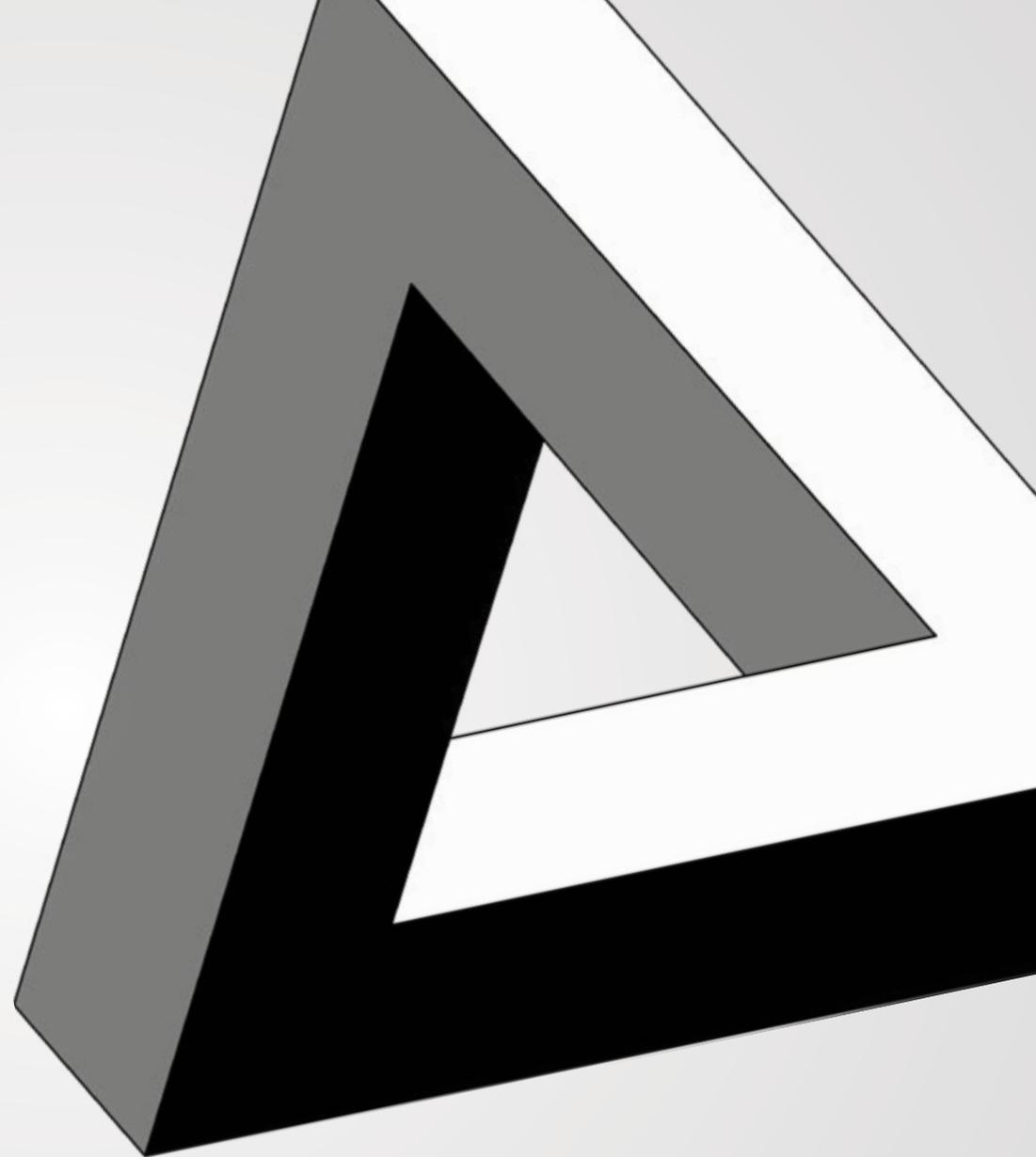
With employers mandated to use this screening process, how can they ensure accuracy in their screening program? This ebook investigates the history and deficiencies of the FBI database, how background checks are performed and the elements of a more reliable screen.

## ***What is a background check?***

A background check is the compiling of public records associated with someone's criminal or civil history. This means the *information provided in a background check is a commodity.*

If the data is publicly available for anyone to access, then why are there such differences between the FBI Criminal Database and a professional grade background screen?

*The difference lies in the method in which the data is collected.* Continue reading to learn why fingerprinting is neither a reliable nor complete source for employment background screening.



**Above:** *The Penrose Triangle*, sometimes called the "Impossible Triangle," is impossible to create in physical 3-Dimensional space

**Cover:** *The Hering Illusion*, commonly known as the "Parallel Lines illusion," shows two parallel lines that appear bowed outwards when presented over a radial background

## 2. FBI Database: Limitations

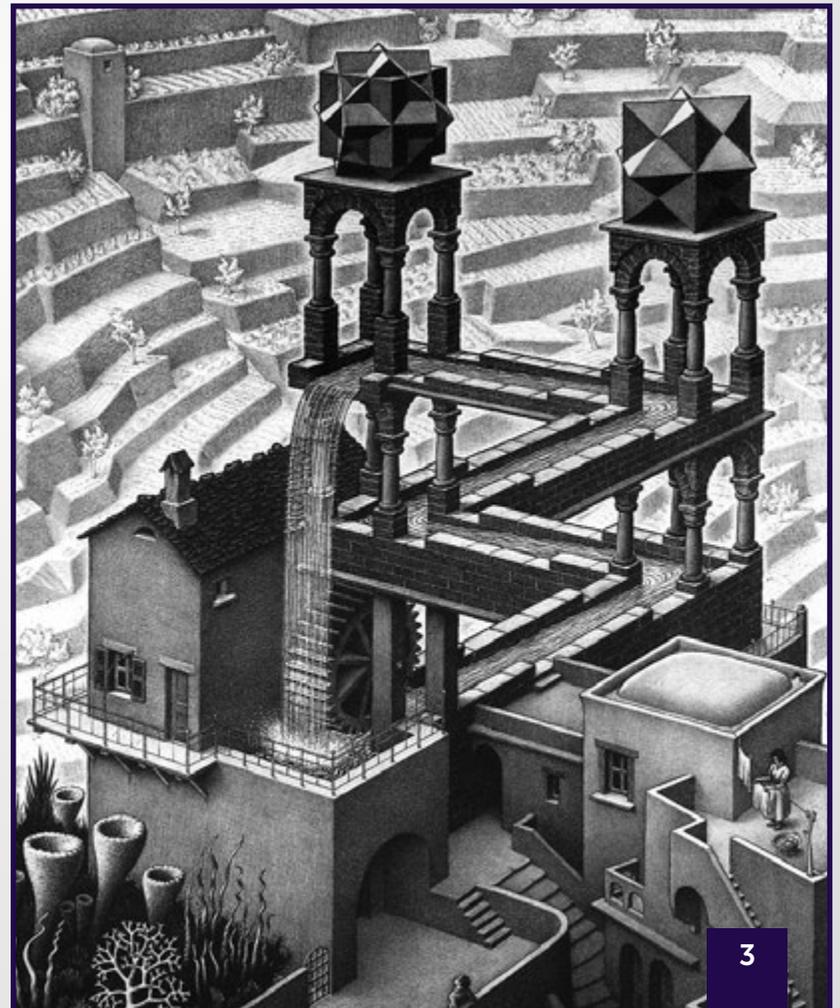
The National Employment Law Project (NELP) recently submitted a report entitled, "**Wanted: Accurate FBI Background Checks for Employment**" highlighting the myriad of inaccuracies of the FBI Criminal Database.

The report found that over half of the FBI's records do not include final dispositions. NELP's report shined an important light on how these inaccuracies can have a dramatic impact on job seekers. With almost 17 million employment related background checks processed with the FBI in 2012, *there were at least 600,000 records that contained mistakes.*

Partial records are but one shortcoming of the FBI database. The bigger story: missing records. **The FBI database does not contain every criminal record** reported in every county court, which is the official court of record in most jurisdictions. Many believe it does.

Many employers are utilizing the FBI database as the single source of screening—which in most cases is legislatively mandated—but are not finding all the criminal records, potentially exposing their organization, employees, customers and students to risk.

M.C. Escher's *Waterfall*, inspired by the *Penrose Staircase*.



# FBI Database: Warning

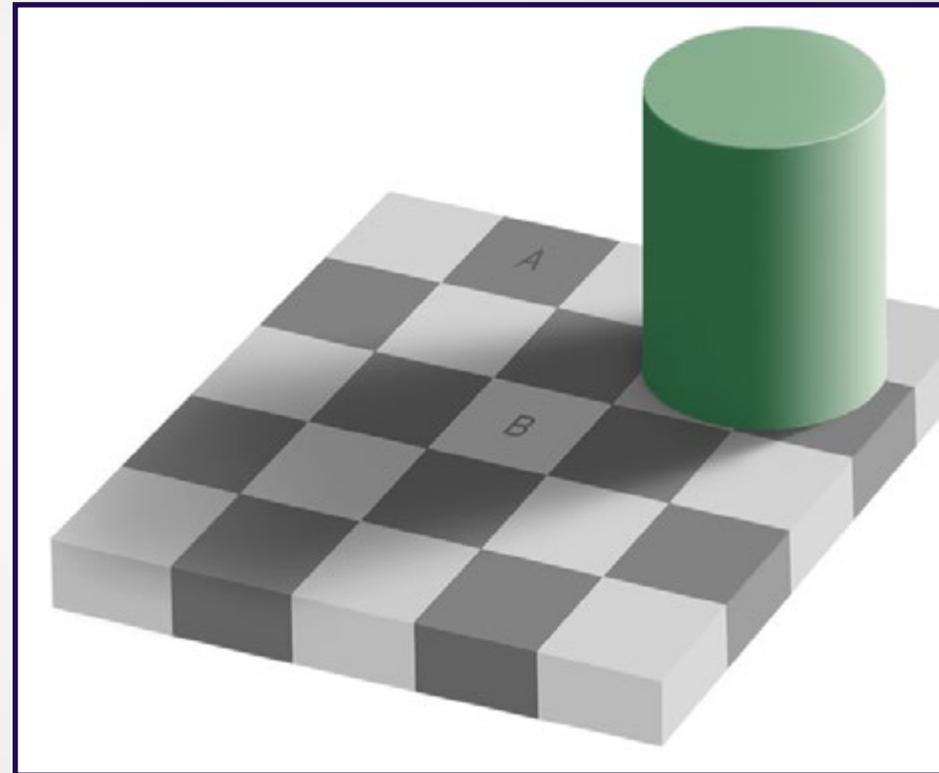
The U.S. Justice Department has even publicly declared that the FBI database should not be a sole source.

In a 2006 U.S. Justice report they stated, **“Users may not want to rely exclusively on an FBI and state repository check** and may also want to check other record sources, such as commercial databases and local courthouses to obtain more complete and up-to-date information in support of criminal history background screening.

In addition to the data quality issue of obtaining comprehensive criminal record information, **there is an issue of ensuring that users are provided information that is accurate and up-to-date.**”

*“Notwithstanding disclaimers to the contrary, [FBI Background Check users] erroneously view the fingerprint-based record from a government repository as always current and reliable.”*

*U.S. Attorney General’s Report on  
Criminal History Background Checks,  
June 2006*



The *Checker Shadow Illusion*: Squares A and B are the exact same color, but the shadow cast by the cylinder makes B appear lighter.

### 3. Intended as an Index

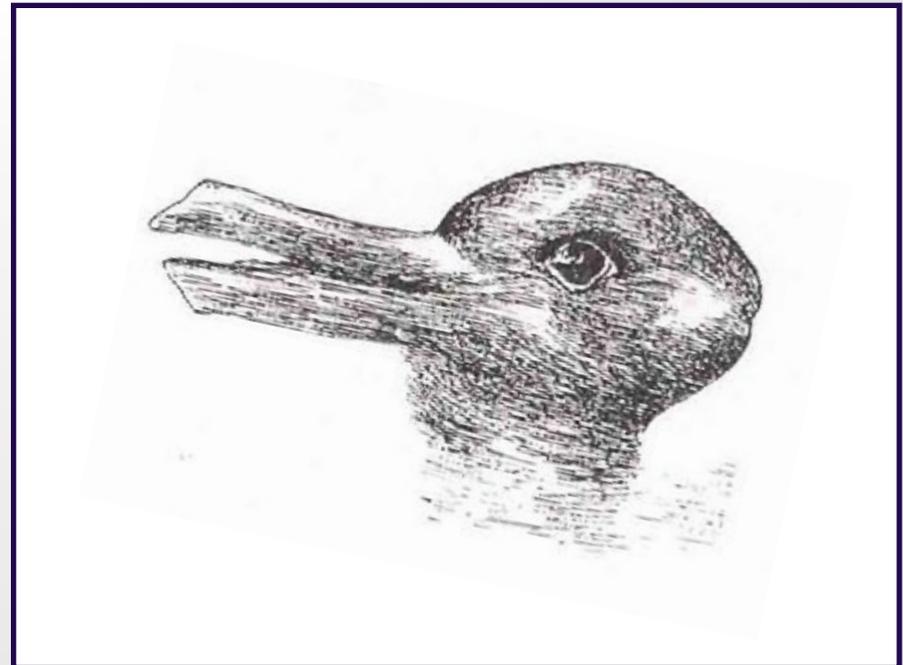
To understand fully why the FBI Criminal Database is so insufficient, it's important to understand that **this database was never intended to be a comprehensive listing of every criminal offense committed in the U.S.**

Nor was its inception tied in any way to screening employees.

*It was conceived to be an index of arrests, which is exactly what it is.* A report (or rap sheet) from the FBI is typically just a list of arrests with dates and charges. No other information is included in at least half of its records.

This means employers who utilize this as a screening mechanism do not have a complete story and must make a decision based only on the information provided. And without a complete view of an individual's criminal history, employers are definitely making mistakes: either passing on candidates who actually do not have convictions or hiring those that have serious criminal offenses because of missing records.

What do you see, a rabbit or a duck? The *Rabbit-Duck Illusion* has been confusing viewers since 1892.



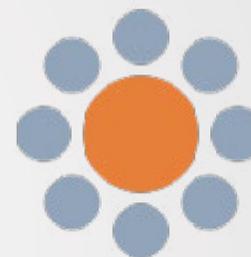
## 4. Compiling the Data

Because of the very complex data environment of criminal records and a lack of transparency on the part of governing agencies, determining how the FBI compiles and maintains its databases involves rigorous investigation. The FBI was very quick to place blame on the states after the NELP report was published, stating that it depends on state repositories to report all information to the FBI database.

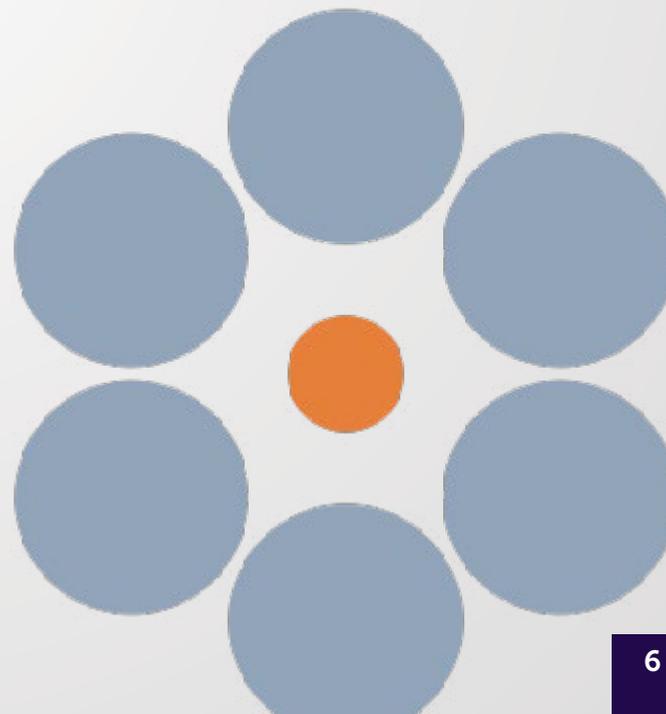
Looking at the state repositories as the source of records is just another link in this broken down data trail. According to a 2012 Justice Department study, 21 states reported a significant backlog for entering court disposition data. **Some states can take up to 555 days to enter final dispositions into record!**

Each state also has its own court system with its own processes. **There are over 5,400 courts in the U.S.; only a fraction of these courts actually report to their state repository,** leaving huge gaps in the integrity of the data. Some county courts like Maricopa County in Arizona (which includes Phoenix) do not report any records to a state repository. This means if the only way the FBI collects data in Arizona is via the state repository, records for this area would not be included. That represents a population of nearly four million residents.

Despite this, many states legislatively mandate that certain jobs utilize the FBI for their background check. Examples include teachers, government employees, healthcare workers and other occupations that allow access to vulnerable populations and finances.



*The Ebbinghaus Illusion: Which orange circle is bigger?  
Are you sure?*



## 5. Troubling Statistics

The previously cited Justice Report also called out **these troubling statistics** regarding state repositories:

- › 32 states report that approximately 60% of their arrest records include final disposition. This represents 70% of individual offenders.
- › Only seven states reported that 95% or more felony charges have a final disposition.
- › For arrests in the last five years, nine states reported less than 50% of their records had final dispositions.
- › Publicly available state registries list only 77% of state-registered sex offenders.
- › In addition to timeliness challenges, the report also found the key reason that cases lacked dispositions: they cannot be properly linked to the arrest. Many states use codes or tracking numbers, which requires each agency that touches the record to tag it with this system. Accuracy and completeness hinges on there being no errors in the tracking numbers, which is highly unlikely. 30 states reported that a staggering 25% of dispositions could not be linked to an arrest.
- › Partial or no data was available for Alaska, California, Colorado, Indiana, Louisiana, Massachusetts, New Hampshire, New Mexico, North Dakota, Rhode Island, South Carolina and Tennessee, along with US territories of Guam, North Mariana Islands, Puerto Rico and the Virgin Islands.

The report revealed several states have dangerously low disposition levels and therefore have a higher chance of receiving incomplete records:

- › Alabama: 11% of arrests in last 5 years
- › Idaho: 34% of arrests in last 5 years
- › Maine: 38% of arrests in last 5 years
- › Mississippi: 11% of arrests in last 5 years (only 1% of felonies!)
- › Nevada: 12% of arrests in last 5 years
- › Oklahoma: 34% of arrests in last 5 years

Why such small percentages on the offenses that are most important for hiring?

**State repositories do not actively seek out disposition information to complete files.** Yet, all of these states mandate fingerprinting for certain positions, including teachers.



*The Müller-Lyer Illusion:*  
These lines are the same length. Or are they?



# Troubling Statistics

Other offenses that may be missing are misdemeanors. Many lower level misdemeanors are not indexed by the FBI database. These charges do not get added to rap sheets in many states because law enforcement agencies do not fingerprint for these violations. In Texas, only Class B misdemeanors or greater are reported to the state repository. Class C misdemeanors are not reported and could include: public intoxication, bad checks, simple assault and petty theft.

Another disposition challenge is the practice of "cite and release" arrests, wherein a subject is arrested but not fingerprinted. All 50 states allow cite and release arrests for misdemeanors. Louisiana and Oregon law enforcement may cite and release for felonies as well. The 2015 GAO Report on Fingerprinting estimated there are over 1.6 million dispositions with no linking arrest. (*Note: Non-fingerprint related offenses are found at the county court or court of record.*)

Even if an applicant was a lifelong resident of one state, there is no guarantee that the FBI database has all the criminal record files from every county in that state. And the records they do have could be riddled with inaccuracies. Once a record is found on the FBI database, there is no follow-up to verify or provide final disposition.

If there is something on the report that either does not belong to the candidate or is inaccurate, individuals have very few resources to have a record corrected or removed. **Because the search is not conducted through a Consumer Reporting Agency (CRA), the Fair Credit Reporting Act (FCRA) does not apply.** Most candidates never even receive a copy of their FBI record, making it impossible to understand if a criminal offense precluded them from employment.



*Rubin's Vase* is a well-known illusion: You can see the positive shape (a vase) or the negative shapes (faces).

## 6. Bridging the Gap

For those employers who must utilize the FBI database, there is an opportunity to expand the search. With a professional grade screen conducted by a CRA, employers are utilizing every source available to ensure that the information received is the most accurate and up-to-date.

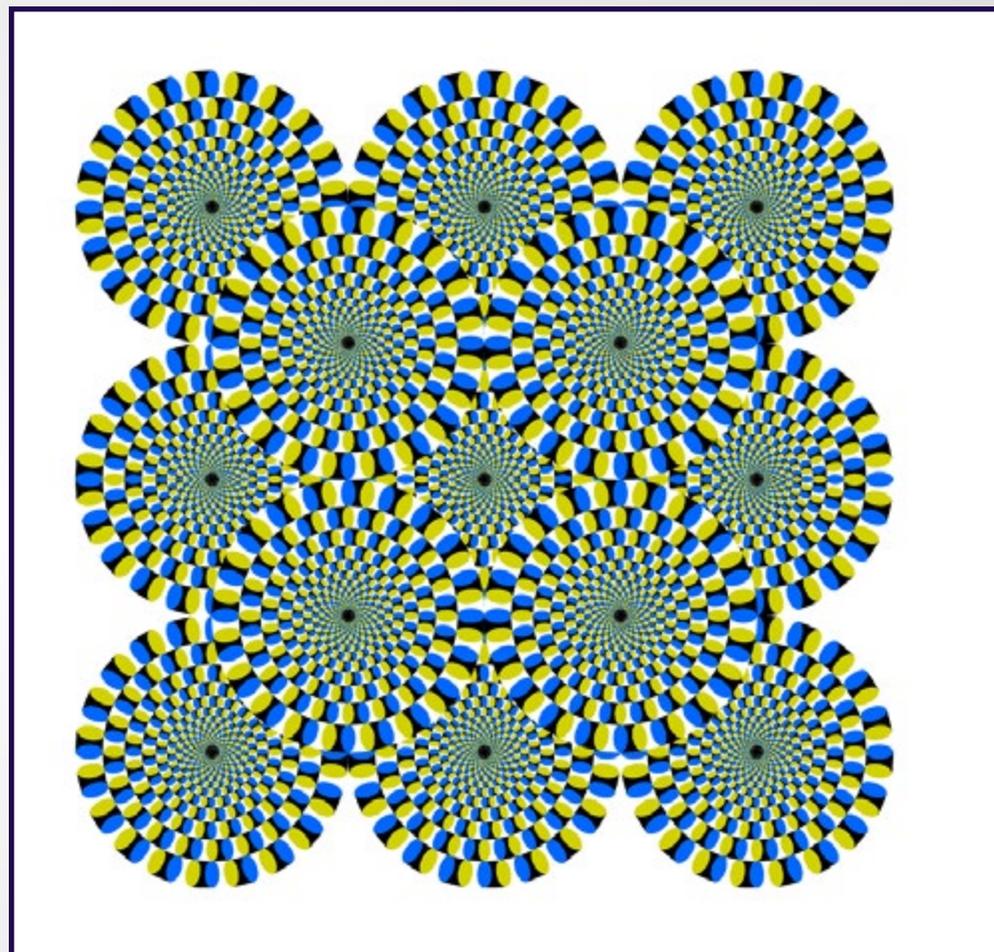
A CRA conducts a search much differently, beginning with an **Address History Trace** to create a “jurisdictional profile.” A “jurisdictional profile” maps out the cities and counties where the applicant has lived and worked. **Each jurisdiction uncovered would be searched at the county court level.**

An additional **state and national search would be conducted** as a means to find records outside the counties where the applicant has lived. Any records found in these databases are verified at the court of record. A reputable CRA would not submit an unverified or incomplete record to an employer.

A CRA can also make the whole process easier and faster. They have web based systems that ease the administrative burden. CRAs also must comply with the FCRA; they will furnish an applicant with a copy of their report and investigate and resolve any disputes.

CRAs can also assist with policy management, by automatically passing clean reports. This way, employers only need to review those reports with serious offenses.

Adding the professional grade screen to your search not only broadens the sources to find records the FBI database may have missed, but it can also bring context to any offenses found by the fingerprint search that may be incomplete. Having this full picture of an applicant’s criminal history allows employers to make the best decisions and hire confidently.



Yes, your eyes are playing tricks on you. *Peripheral Drift Illusion*—and the more commonly known “Rotating Snakes” illusion, above—makes the brain think parts of the image are spinning. But it’s not!

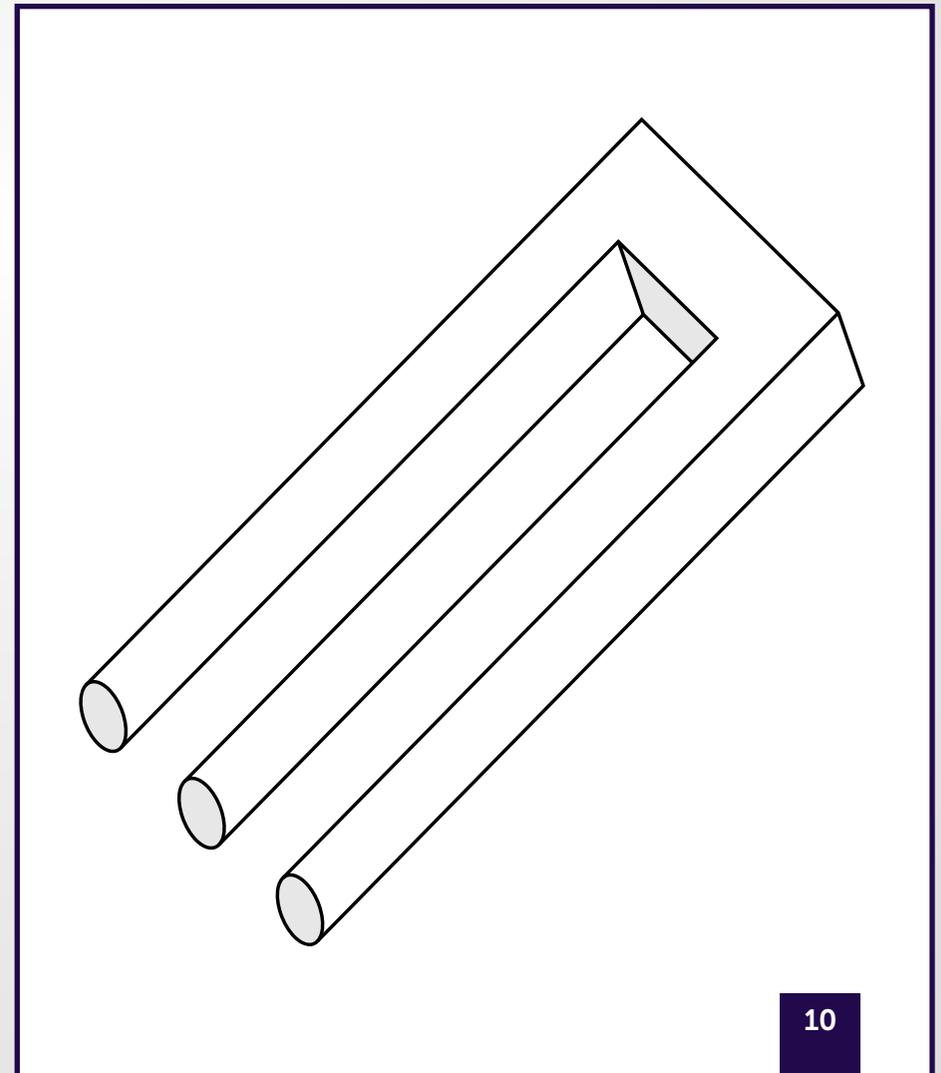
## 7. Conclusion

The FBI database has value; it can unmask anyone trying to fake their identity. However, it has many limitations like incomplete and missing records.

If you are currently *not* mandated by law to utilize fingerprints but conduct this type of search, you should carefully compare the differences in fingerprinting and professional grade screens. Using a CRA for such a screen could greatly enhance your search while reducing both costs and turnaround time.

If fingerprinting is the law in your state, professional grade background screens can still expand the scope of your search by using every available source to ensure that you make the best hiring decisions. Adding sources is the best way to make sure you don't use incomplete records or miss records altogether!

Known as the "Ambiguous Trident," "the "Devil's Pitchfork" or even just a "blivet" or "poiuyt," the shape below is an impossible object. Does it have two rectangular prongs or three round ones? The answer is: "Yes."



# About BIB

BIB offers background screening with integrity. We screen, test and verify the backgrounds of your employees and volunteers. Clients love our responsive service and how we accelerate their speed to hire while reducing their costs. With BIB, you get reliable results and easy technology. We're good at what matters and have been since 1995.

BIB is a founding member of NAPBS and a member of SHRM, AASPA, ASA, NRPA and the Church Network.

