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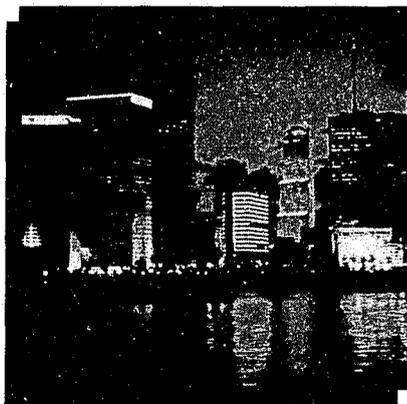
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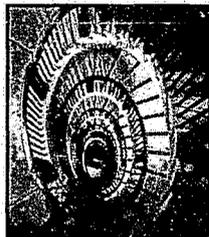


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The Cover: This month's *Legal Digest* addresses recent Supreme Court decisions of particular importance to law enforcement officers. Featured on the cover is the spiral staircase located in the Supreme Court Building in Washington, DC.

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William S. Sessions, Director

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Pre-Employment Background Investigations

By
THOMAS H. WRIGHT

The pre-employment background investigation may be the most important investigation that a law enforcement agency will ever conduct. How the investigation is executed, and its results, will impact on an agency for years to come. If a proper and thorough investigation is conducted, an agency can eliminate undesirable applicants from consideration and hire qualified, dedicated employees. If, however, a thorough pre-employment investigation is not conducted, the agency exposes itself to a vast array of libelous situations, occupational problems, or at the very least, non-productive employees.

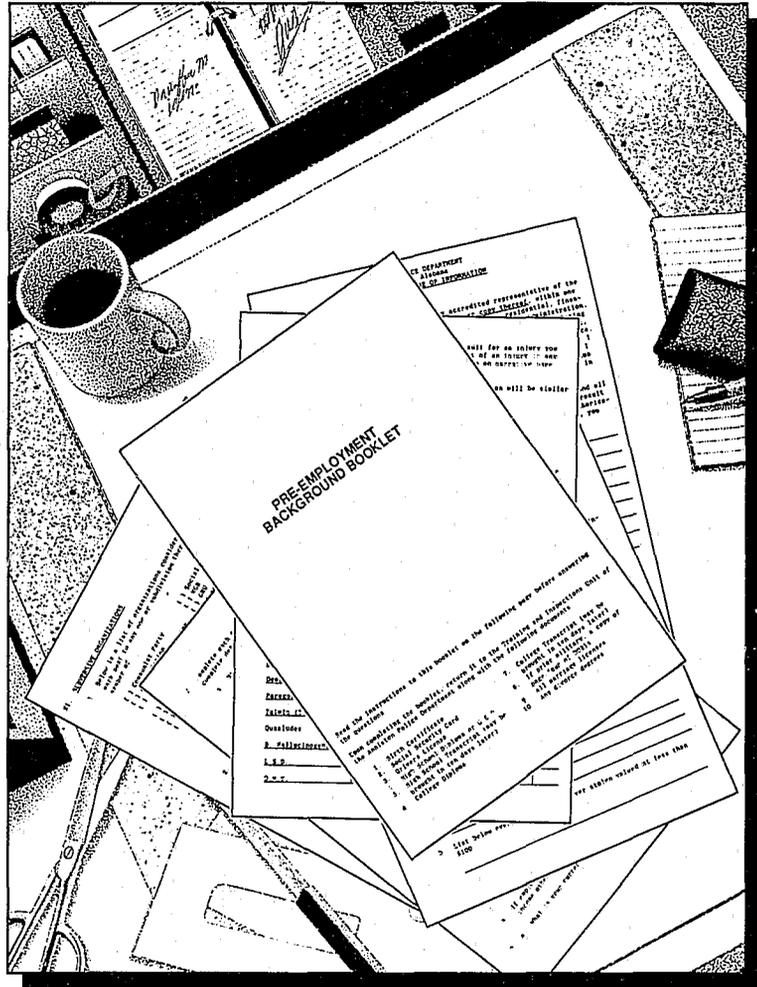
PREVIOUS EFFORTS

Throughout the history of American law enforcement, pre-employment investigations had been relatively simple, since most applicants grew up in one city, lived there most of their lives, and worked at one or two local jobs before applying for a law enforcement position. Even if they had enlisted in the military or gone away to college, the activities of the applicant could be verified with a telephone call or letter to one or two jurisdictions.

As society became more mobile in the 1960s and 1970s, conducting a complete pre-employment investigation became much more

difficult and complex. Often, an applicant had attended several high schools in different jurisdictions before enrolling in college in yet another. After graduation, the individual may have worked in several different cities before seeking employment with a law enforcement agency. This all served to complicate the investigation process.

Meanwhile, as these factors made background investigations more difficult to conduct, other factors were making them an indispensable means of protecting an agency from both public embarrassment and legal action. More and more, law enforcement agencies were being held accountable for the actions of their employees. An in-



creasing number of agencies were also being sued for "negligent hiring" and "negligent retention."¹

A negligent hiring suit is based on the legal concept of *respondeat superior*, or "let the master answer."² This suit alleges that the employer is negligent by placing the employee in a position for which the employer knows, or should know, the individual is not suited.

Negligent retention is the breach of an employer's duty to monitor an employee's unsatisfactory performance and take corrective action through retraining, reassignment, or discharge. For example, a department may be held liable if it knowingly allows an officer who cannot successfully qualify with a handgun to continue carrying the weapon.

However, due to the U.S. Supreme Court's 1986 decision in *Daniels v. Williams*, which held that negligence is not actionable as a constitutional violation, the viability of negligent hiring or retention suits are now dependent on each State's tort law. Since State tort laws vary, there are differing degrees of vulnerability to these types of suits. Therefore, each department should be familiar with the relevant statutes governing negligent hiring and retention suits in their State.³

REASONS

Of course, a department should have its own reasons, aside from avoiding damaging legal actions, for conducting extensive pre-employment investigations. A thorough background check could uncover falsified information submitted by an individual on the employment application. The probe

“ **A vigorous and intensive background investigation procedure can help to ensure that only the most qualified individuals are recruited....**



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will give some indication as to the competency, motivation, and personal ethics of the applicant. These are important factors that should be made known to the department, to some degree, *before* an individual is hired.

Should derogatory information become known after hiring, it could even jeopardize criminal cases made by the officer. Recently, it was learned that a sheriff's deputy had been convicted of extortion in Federal court before he was hired as a deputy. As a result, numerous appeals were filed on criminal cases that the deputy had investigated, including several capital murder charges. Although none of the appeals were successful, the sheriff's department and the local prosecutor's office expended valuable resources and personnel hours defending the cases.⁴

Many law enforcement agencies claim that they do not have the time, money, or personnel power to conduct a thorough background check. However, as some agencies have discovered the hard way, it could easily become a "pay me now

or pay me later" situation. Either an agency can devote the money and resources now to conduct a thorough pre-employment background investigation, or it can spend much more in the future defending against a myriad of legal actions or constantly retraining an unfit employee.

THE INVESTIGATION PROCESS

Preliminary Interview

Once an individual has applied for a law enforcement position, a preliminary meeting with the applicant should be arranged. This meeting should be conducted by the agency's personnel officer or the person who will be conducting the background investigation. During this meeting, the investigating officer should advise the applicant of the following information:

- Details of the background investigation process,
- Salary,
- Benefits,
- Working conditions,

- Vacation and sick leave provisions,
- Off days and shift schedules,
- Probationary status and duration,
- Civil service or union rules,
- Overtime pay policies,
- Retirement plans, and
- Any other information that would directly affect the prospective employee.

In addition, the officer should have applicants discuss why they want a career in law enforcement, why they want to work in this particular agency, and how their spouse feels about them working in the law enforcement field. This should be an interactive interview, and applicants should also be allowed to ask questions at this time.

Background Investigation Booklet

At the conclusion of the preliminary interview, the applicant should be given a background investigation booklet to complete. The booklet should be explained thoroughly by the investigating officer. The applicant should then be given a specific date and time (preferably in about 2 weeks) to return the completed booklet to the officer. The applicant should be instructed to be completely truthful in answering all questions in the booklet, as all information will be verified.

Once the booklet has been completed and returned, it becomes the heart of a good pre-employment background investigation because it is the primary source of information

concerning the applicant's past. To provide a good basis for an intensive investigation, the booklet must be a comprehensive and thorough document. (See table 1.)

When the booklet is returned, it should be reviewed in the presence of the applicant by the investigating officer. The officer should ask the applicant about any information that is unclear or questionable, and about any information that appears to have been omitted. The applicant should then sign a statement guaranteeing that the information is accurate and that the applicant understands that any false answers or omissions could lead to disqualification. This statement should be notarized by a notary public.

Also at this time, a "release of information" form should be signed by the applicant and notarized. This

**“
The investigating officer should personally contact as many of the applicant's previous employers ...as possible.
”**

release allows persons, businesses, and agencies to release information to the investigating officer that would normally be restricted under the Privacy Act. The release should be very broad and cover personal history and employment, residential, credit, performance, attendance, disciplinary, arrest, and conviction records. A statement should

be included in the release that a copy of the release of information form can serve as the original. (However, because some institutions, such as the military, require an original, the investigating officer should obtain at least three release of information forms from the applicant.) The release and/or copy should then be taken to all interviews.

Finally, when an applicant returns the booklet, they should be instructed to provide the following documents:

- Birth certificate,
- Driver's license,
- Social Security card,
- High school diploma,
- High school transcript(s), and if applicable,
- Marriage license(s),
- Divorce decree(s),
- Department of Defense Form DD214 (verifying prior military service).

All original documents provided by the applicant should be inspected and photocopied by the investigating officer. Copies should not be accepted from the applicant since they can be easily altered.

Photos and Prints

Next, the applicant should be photographed and fingerprinted. The photo should be available in case a previous employer, or other person to be interviewed by the investigating officer, does not remember the applicant by name.

At least three sets of fingerprints should be taken. One set should be retained by the investigating officer. One set should be sent to

the State criminal identification agency, and the other forwarded to the FBI for criminal history checks. These prints should be taken on the cards supplied by the State agency regulating the hiring of law enforcement officers and the FBI's applicant fingerprint card. They should not be taken on an agency's arrest fingerprint card. Since it often takes 6 to 8 weeks to get the results of criminal history checks, the fingerprint cards should be mailed to the State agency and FBI as soon as possible.

Education

Once the pre-employment booklet has been completed and returned, and the applicant has been photographed and printed, the actual investigation begins. Information concerning the applicant's education, including high schools, trade schools, and colleges or universities, should be contained in the background booklet. It is unnecessary to include information regarding elementary schools.

In reviewing the list of schools, any discrepancies with locations or dates should be noted. Each school should be contacted, preferably in person, by the investigating officer. If this is impractical, then the schools should be contacted by mail or telephone in order to verify the applicant's attendance. Additional information concerning disciplinary actions, club and organization memberships, scholarships, awards, and extracurricular activities should also be obtained. When possible, it is very useful to talk to teachers who remember the applicant and can provide any insight.

Table 1	
IMPORTANT INFORMATION	
• Applicant's personal and family history	
• Education to include all schools attended and degrees attained	
• All residences for at least the last 5 to 10 years	
• Employment summary for the past 5 to 10 years	
• Applicant's criminal history to include arrests, locations, dates, and dispositions	
• Traffic citations and accidents for at least the last 5 years	
• Credit history to include present creditors	
• Undetected criminal acts	
• References, friend, and associates	

It is also advisable to request a copy of the applicant's transcripts from the school. This should be checked against the one provided by the applicant. In checking with colleges and trade schools, the investigating officer should also check for unpaid bills, loans, or other outstanding fees. For all schools contacted, the investigating officer should make a written report documenting the contact and the name of the person interviewed.

Employment

The investigating officer should personally contact as many of the applicant's previous employers for the past 5 to 10 years as possible. In a negligent hiring suit, this is the first area that the plaintiff's attorney will examine to determine if a thorough background check was conducted.

In discussing the applicant with previous employers, the following areas should be addressed:

- Dates of employment,
- Salaries,

- Applicant's position with the firm,
- Duties and responsibilities,
- Job performance,
- Absenteeism, tardiness, use of sick leave,
- Honesty and judgment,
- Disciplinary actions,
- Reason for leaving employer,
- Temper,
- Self-initiative, and
- Attitude with the public, co-workers, and supervisors.

A good test question to pose to previous employers is whether they would consider rehiring the applicant.

If the applicant has been employed in the criminal justice field as a law enforcement officer, or in some other capacity, additional questions must be asked concerning the individual's productivity, use of force, courage, quality and quantity of cases made, involvement in inter-

nal affairs investigations, assignments, duties, and report writing abilities.

If possible, the investigating officer should request permission from previous employers to interview co-workers and supervisors. Also, if the employer permits, the employment application submitted for that position should be reviewed and checked for any discrepancies with information provided by the applicant in the pre-employment booklet.

Credit Checks

One excellent source of information concerning an applicant is a credit history check conducted through a local credit agency. Although there is a nominal fee for this service (about \$10 to \$25), the credit check can trace the applicant's credit history throughout the country. The following information can be revealed in a credit report:

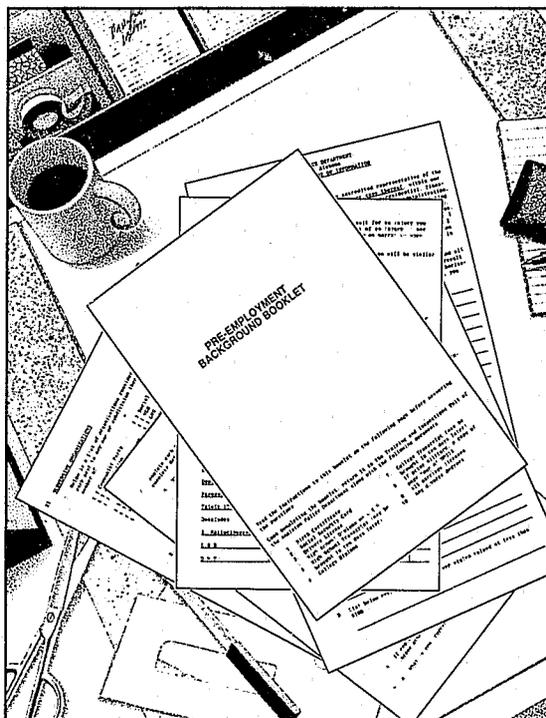
- Previous employers,
- Previous addresses,
- Creditors (and amounts owed),
- History of credit payments, and
- Any civil actions taken against the applicant.

Any creditor can be contacted by obtaining an address and phone number from the credit bureau.

Criminal History

Surprisingly, many departments that conduct an otherwise thorough background check fail to

perform an adequate investigation into an applicant's criminal history. Many agencies check the applicant only through the State criminal information system or simply mail the applicant's fingerprints to the FBI



for a criminal records check. Although this is a good practice (in most States it is the law), not all arrest and conviction records are kept in these files.

The best method to verify the criminal history of an applicant is to contact, either personally or by mail, each law enforcement agency and court of record in the jurisdictions where the individual has lived. If any convictions are verified, the State agency regulating the hiring of law enforcement officers must be contacted to see if the convictions bar the applicant from being sworn in as an officer in that State.

Driving Record

Since a significant portion of a police officer's time is spent driving a patrol car, an adequate check into the applicant's driving history is very important. In fact, a large percentage of the legal actions taken against law enforcement agencies result from officers being involved in traffic accidents.

Most States have automated driver history records that can be easily accessed by the police department. Those that do not should be contacted by mail to obtain the necessary information. Again, the investigating officer should not rely solely on the computer information, but should query each jurisdiction in which the applicant has lived to verify any traffic accidents or citations.

Once any traffic accident or citation is verified, the investigating officer should contact the reporting agency for copies of the accident report or citation. Dispositions of citations should also be verified with the appropriate agency.

Spouse Interviews

The applicant's spouse should always be contacted personally by the investigating officer. The interview should be informal. The officer should ask spouses how they feel about their husband or wife becoming a law enforcement officer and whether they are aware of the shift work involved. The hazardous nature of the job should also be discussed, and the spouse should be allowed to express any fears or concerns they have regarding the job.

Military History

Applicant military records are available through the National Personnel Records Center in St. Louis, Missouri. To obtain these records, the investigating officer must submit an *original* Release of Information Form and a Department of Defense Form 180 (Request Pertaining to Military Records), which must be signed by the applicant. The investigating officer should be specific regarding the information being requested to include awards, citations, disciplinary actions, and medical records. Due to the large volume of data and the number of requests received, it may take 8 to 10 weeks to receive this information.

OTHER PRE-EMPLOYMENT CONSIDERATIONS

There are other approaches to help determine an applicant's suitability for employment. These can be used to supplement the pre-employment investigation.

Polygraph

This can be an excellent tool to aid the investigating officer in learning about the applicant. The polygraph should only be used as a tool to lead to the truth and should not be used as the determiner of fact. Examination questions should be limited to areas that would have an actual effect on the applicant's ability to perform necessary duties and should not be overly personal in nature. However, since several States have statutes that limit or preclude use of polygraph in pre-employment testing, each department should be familiar with appli-

able regulations before using a polygraph in the pre-employment investigation.⁵

Writing Ability

Because so much of police work involves writing, it is justified for an agency to test the ability of an applicant to write clearly and effectively. Many types of writing exercises can be used to test an applicant's ability. Two very useful tests are the "Mock Crime Scene" and the "Why I Want to be a Police Officer" paper. In the mock crime scene exercise, the applicant is given a scenario and asked to write a complete

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”

crime incident report with narrative. In the other, applicants are asked to write a brief paper stating why they have chosen the law enforcement field.

FINAL INTERVIEW

After the pre-employment investigation is completed, the agency should conduct a formal interview with the applicant. The interview panel, made up of ranking officers within the agency, should ask the applicant to discuss areas such as

current local, regional, and world events, general law enforcement issues, and personal and professional background. Any information uncovered during the background investigation that may have a negative impact on the applicant's ability to perform necessary duties should also be discussed. It is advisable to videotape this session so that it can be viewed at a later time to check for answers and movements that may have been missed during the actual interview.

CONCLUSION

Although a thorough pre-employment background investigation is a time-consuming and tedious process, it can save agencies from a number of potential problems. These problems range from possible legal actions to hiring applicants who are not suited to a career in law enforcement. It may also save the time and effort needed to retrain an individual or process an extensive administrative action. A vigorous and intensive background investigation procedure can help to ensure that only the most qualified individuals are recruited into law enforcement agencies.

LEB

Footnotes

¹ J. Gregory Service, "Negligent Hiring: A Liability Trap," *Security Management Magazine*, January 1988, pp. 65-68.

² J. Gregory Service, "Let the Master Answer," *Security Management Magazine*, May 1987, pp. 100-102.

³ See *Daniels v. Williams*, 106 S.Ct. 662 (1986).

⁴ Mike Dorning, "Investigator is Convicted Extortionist," *The Anniston Star*, January 31, 1988.

⁵ There are also court decisions affecting the use of the polygraph in the hiring process. See, e.g., *Woodland v. City of Houston*, 731 F.Supp. 1304 (S.D.Tex. 1990).