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## What Were You Thinking?

“Wait!...No!...Oh, my G...What were you thinking?” Over the years, we have had numerous chances to review case facts with senior managers, and in some cases company attorneys, each recounting the consequences of an interviewer’s decision making. Quite often, the story’s full retelling, plus its aftermath, required more than one beverage.

It is amazing how one decision can create such an immense amount of extra work and cost for an organization. It is not even that the interviewer intended to do anything wrong, but events somehow...just...well...seemed to spin out of control. One phone call, a little advice, a glance at the “big picture,” or perhaps a moment of reflection might have prevented the “fiasco.” And, as is always the case, hindsight is twenty/twenty.

In our last column, we posted our “non-exhaustive” top ten interviewer dos and don’ts list. In this column we thought we would expand on how some of the don’ts came to be included.

Many of the problems we discussed with management were preventable, while some, only exacerbated an already bad situation. When subsequent problems arose, *everything* went under the microscope, and even well meant efforts appeared sinister under the theories of opposing counsel.

### Training

Let’s first consider the training of new employees. Everyone says that this is the first step in developing the skills and insights of new associates, so exposing them to the organization is a manager’s responsibility. Right?

The regional manager had a number of new associates he was training that needed to be introduced to the organization’s ways. All the company’s policies and procedures needed to be explained. Were they skilled in the interview process, he wondered? In-service observation of an interviewer would help, wouldn’t it?

Touring stores led the regional LP manager to a location with a scheduled dishonest associate interview. This presented the perfect opportunity to review the thoroughness of the company’s investigation efforts with the new LP professionals, plus an actual observation. After all, there was a video of the employee concealing merchandise, so this was pretty much a done deal.

The briefing for the interview concluded, the associate was summoned, which left the interviewer, witness, and trainee to await her arrival. It was decided that the witness and trainee would sit side by side near the door, while the interviewer would sit between the associate and the door.

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As the interview progressed, the trainees were swapped in and out so they all had time to observe. The associate confessed to tens of thousands of dollars in merchandise theft, most of which was not substantiated by any detail. The final statement consisted of a preprinted set of questions that the employee answered by writing on the line below them and signing. How did she arrive at the final dollar amount? “By my memory” was her written response.

Later, according to her lawyer’s civil complaint, the associate was held against her will, intimidated, forced to increase her admission falsely, and suffered intentional infliction of emotional distress because of the company’s actions. She was shamed to be made a spectacle of, could not sleep, and her admissions were the result of a previous injury she had suffered. There were other charges in the complaint, but the circumstances surrounding the interview were twisted to match the plaintiff’s attorney’s arguments, regardless of the good intentions of the interviewer. The end result was a settlement for mid-six figures for the plaintiff.

What contributed to this settlement was a poorly conceived attempt at training, ill-planned room setting, a weak

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## INTERVIEW & INTERROGATION

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unsubstantiated statement, plus a plaintiff's attorney with a record for winning.

### Age

After conducting an investigation into the unauthorized removal of sample cologne testers, the decision was made to interview the employee involved. The long-tenured elderly associate admitted borrowing a tester to see if her daughter liked the scent, but claimed that it was later returned to the store. The associate was terminated by the interviewer. Concurrently, the company was embroiled in a cantankerous age discrimination lawsuit. Gasoline on a fire, you think?

Ever wonder why there is a review of the investigation and the associate's statement before the decision to terminate is made?

### Arrest

An investigation of merchandise theft in a store led to a part-time employee. The interviewer obtained a statement from the employee admitting the theft of several items from the store. In the associate's statement he acknowledged stealing from the company, but did not identify the specific store in his statement. The associate was charged with theft and led from the store in handcuffs by police.

At trial, the loss prevention interviewer testified and presented the statement obtained from the employee as evidence. The judge found the defendant not guilty, because the prosecutor had failed to ask where the store was located. Since neither the statement, nor testimony, established venue for the charge, the associate was found not guilty by the court.

In another case, a store manager was investigated after a tip he was seen removing merchandise from the store without paying. During the interview the manager said he was given permission by the district manager to remove the merchandise, and then to pay for it later. Reached by phone, the district manager said he may have given the manager permission for one of the items, but could not recall being told of the others. The loss prevention interviewer obtained a statement from the manager and had him arrested in the store.

Later, after being disciplined for letting the store manager remove merchandise from the store without paying and hearing of the manager's arrest, the district manager changed his story claiming he now recalled giving his permission to pay for all the items later.

Too quick to arrest? Were all the bases covered? Guess what happens next—lawsuits for false arrest.

The failure to lock in an important witness' story with a statement and to establish venue for a criminal charge left the company holding the bag.

### Threats

The interviewer had received implications regarding an associate being involved in theft from a company store. Confronting the associate in a store office, the interviewer kept her for almost four hours without obtaining an admission. The

interviewer was overheard yelling and pounding the table by other store employees. He was also overheard threatening to have the woman's children taken from her if she did not confess. Interestingly, the interviewer also threatened the employee with arrest for stealing a pair of gym shoes, which the company did not even sell.

Guess what happens next...lawsuit. No witness present, unless you count the other employees who could overhear the interviewer's threats. With the excessive amount of time for the interview, the large angry male interviewer alone with the young female employee, threats intended to intimidate, it was clearly Christmas time for the plaintiff's attorney.

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### Polygraph

A mailroom supervisor discovered several opened pieces of mail in a wastebasket near where a subordinate had been standing. She reported the information to management. Later after an interview the employee was asked to take a polygraph examination relating to the opened pieces of mail. He failed the examination, but made no admission to tampering with the mail. Management requested that the supervisor and other employees also submit to a polygraph examination, which they all refused to do. Subsequently, the supervisor was terminated.

The company had violated the Employee Polygraph Protection Act administered by the U.S. Department of Labor. Violation of the act is punishable by up to a \$10,000 fine, and then the offender can be sued civilly by the employee. The law is very restrictive and even suggesting or implying that an associate should take a polygraph examination may expose the company to litigation.

In most cases the interviewer is doing the best job he knows how, but lacks the big picture which could have prevented many of these problems. Most companies have put policies and procedures in place that can help prevent the types of problems just discussed. Still, it is the front-line interviewer who must take a balanced, considered approach to decision making if organizations are going to minimize their exposure to litigation.

*AUTHORS' NOTE: The examples utilized for this column are a compilation of the most typical problems we have addressed over the years. Some facts were combined from several cases to create the examples. ■*