

## On Hiring Women and Minority Attorneys: One General Counsel's Perspective

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*We understand that your firm is and will continue to be an equal opportunity employer and that your firm will continue to actively recruit and promote women and minorities. We ask that the first person you consider for assignment to the case be a woman or a minority employee of your firm with appropriate experience. We also ask that you report to us annually the number and percentage of women and minority partners in the firm.*

This is an article about Oracle's outside counsel retention policy designed to eliminate law firm excuses for not assigning women and minority attorneys to legal matters. Corporate legal departments can promote the hiring and advancement of women and minority outside attorneys by adopting and encouraging the retention policy above, or one similar to it. While the focus of the article is on racial and ethnic discrimination, the policy also encompasses efforts to counter gender-based discrimination.

Gender and race discrimination have existed since the beginning of the legal profession. The first woman to graduate from Harvard Law School was a member of the class of 1953. Stanford's first African-American law student graduated in 1968. Discrimination continues in ways both overt and subtle. Statistics show the effects of continuing discrimination: in the largest law firms in San Francisco, the city with the "best" statistics for minority hiring in the country, only 5% of the partners are minorities. Minorities are still the last to be hired and the first to be asked to leave. Women fare better, but not much. Female minorities suffer the brunt of dual discrimination.

A story relayed to me directly by a participant crystallized the creation of the retention policy described in this article. This story highlights the problem and conveys better than statistics the effect of discrimination in the legal marketplace.

The story is about a lawyer with "all the credentials": undergraduate work and law school at Ivy League schools; a star on his college athletic team; a summer associate in name law firms while in law school; a law clerk to a federal judge; a successful career with a Wall Street law firm; and, a reputation as an excellent lawyer with outstanding social skills.

As with most "stars," he encountered few if any problems at his law firm--until his firm's retreat in which there was a role-playing exercise during sensitivity training on diversity. He played an associate in a case in which the inside lawyer tells the partner to make sure that he does not assign a minority to the case. In this role-playing, the partner said, "Of course!," and assigned the case to someone else.

The associate afterwards asked the partner whether he was serious. He could not believe that the partner would act in real life the way he acted in the role-playing session. The partner replied matter-of-factly, "If the client tells me not to hire a minority attorney, I won't hire one." He was not joking. "Don't you realize what you're doing?" the associate asked. "Yes. I'm doing what the client wants me to do."

Imagine how the associate--a lawyer with "all the credentials" who happens to be African-American--must feel. He has played the game as well as anyone, and yet, in a profession that prides itself in its belief in and defense of equal opportunities, he is told that he will not work on a case simply because he is black. If this exclusion can take place in the context of sensitivity training for diversity, how commonplace is the exclusion that takes place in the real world?

Many corporations address the situation with policies that "support" or "encourage" the hiring of women and minorities as outside counsel. These are laudable policies, but neither "permission" nor "encouragement" is enough. Despite the existence of these corporate policies, many partners in law firms continue to exclude women and minorities from corporate assignments. They will continue to do so unless they are told explicitly that the assignment of minorities is not only supported and encouraged, but rewarded--and unless disincentives exist for failing to hire and retain minority attorneys.

Oracle's legal department is committed to retaining outside counsel with the same qualities I demand of our own lawyers in-house: competence, honesty, and a passion for and commitment to their work. In short, I want quality lawyers. In the final analysis, gender, race, ethnic background, sexual preference, physical challenge, and other such criteria are irrelevant because a legal department must deliver the best legal services possible to a company and management concerned first and foremost with results. Quality and diversity, however, have never been inconsistent.

Oracle's legal department is diverse (of the lawyers at headquarters, 50% are women and 25% are minorities). The pressure on me as general counsel is to provide quality services at a reasonable price with the best results possible. It would be easy to justify whatever hiring practices I enact if they accomplish these goals. It would have been easy to continue with an "encouragement" retention policy. I could point at my own department's diversity and the policy and state, "I'm doing everything I need to do to accomplish my mission." But that would not be the case; we can always do better and we should take every opportunity to do so.

Although our outside counsel retention policy itself has not changed Oracle's hiring practices--we have always hired outstanding attorneys, many of whom are women and minorities--we have implemented it to ensure that we continue to be conscious about making a difference wherever we can. I am proud to be a lawyer, but I am not proud of the discrimination that still takes place in our profession.

Oracle's legal department decided to do something to get people's attention, to take a stand. We want to do more than encourage the hiring of women and minorities. We want law firms to know that social responsibility is very important. We want to reward those firms whose conduct supports anti-discrimination and not reward those who prefer benign neglect. Most of all, we want to shatter the perception that corporate law departments may shy away from hiring women and minorities for their important cases, the odious assumption being that they are inferior and cannot be trusted to succeed in important matters.

The response in favor of the policy has been overwhelming. The heartfelt letters and statements of appreciation I have received tell me that I have touched a chord in the feelings of those who understand what we are trying to do. I know, however, that with every action there is an equal and opposite reaction. Although the policy has had the unqualified support of the firms we have hired, I am aware that others may not be as supportive--but that they fear the consequences of an open stand against the policy.

The "politically incorrect" responses have been whispered, not shouted, but I want to address them. This is an uncomfortable subject for many people and we need to encourage dialogue to effect change.

### **A preference for women or minorities constitutes reverse discrimination.**

I am confident that the policy as written does not constitute reverse discrimination. In practice, white males have been routinely hired by our department. I find most instructive the response of those informally polled about their belief that policies like our retention policy constitute reverse discrimination. When asked whether they would change positions with women or minorities to obtain the so-called preferences resulting from this purported reverse discrimination, the unanimous response has been, "No." The "reverse discrimination" argument assumes that the status quo of existing discrimination is a

preferable course to our policy, an assumption with which I disagree.

**You are lowering your standards of quality with this policy. You may (will) not be able to get the best lawyer.**

Those who oppose the policy on this ground tread on paternalism at best and are insulting to outstanding attorneys at worst. This is similar to the argument that a law firm has been unable to hire "a qualified woman/minority." What is most dangerous about this argument is that it tends to be a self-fulfilling prophecy because the person holding the assumption is the same person doing the judging. We will take our chances, if there really is a risk that there are no high quality minority attorneys or that those on staff at the firm are lower quality hires. I do not believe that this is a substantial risk, and, in practice, we have never run into this problem.

**We have a hard time hiring and keeping women and minority attorneys despite our best intentions.**

While I am sympathetic to those who have tried their "best," my response is that the results suggest that they perhaps could have done better--and I encourage them to keep trying. Keep trying and the genuineness of your attempts will eventually pay off; this is not unlike other challenges in the practice of law which lawyers put their minds and hearts to overcoming every day of the week. I have stated my response in harsher terms to those who I believe have not tried hard enough. We hire lawyers to solve legal problems, not to provide excuses. I tell those who want my business but not my terms, that if this response is reflective of the type of "solution" I will be provided on a legal matter, I am not interested in hiring the lawyer or law firm. I want lawyers who solve problems, not ones who tell me why things cannot be done.

**The best women and minorities are sought after and we don't stand a chance in the competition for them.**

This is the flip side of the "we can't find qualified ones" argument. I do not believe this argument is well supported, but assuming it is true, most lawyers are pleased to be strongly courted by several firms or employers. This is a competitive world and law firms must be prepared to compete for the highest quality lawyers or go out of business. I find that in most instances the firms who articulate this argument are not really interested in competing for women and minorities.

**This is a tough economic environment and we cannot afford to hire women and minorities.**

In a tough economic environment, many qualified attorneys of all races are subject to the contractions of the market and downsizing. Indeed, I would venture that since their seniority is often lower, there may be more women and minorities available due to

downsizing than their majority counterparts. In a tough economic environment, there is more, not less, opportunity for increasing diversity at a fair price.

**This kind of policy fosters a sense of entitlement.**

On the contrary, it fosters loyalty from those whose own good practices are being rewarded. I have not found women or minorities feeling "entitled" to receive our legal work. Law firms who satisfy our policy do not feel more "entitled" to our legal work. Lawyers and law firms will continue to receive legal work only if their work meets professional standards of excellence.

I urge corporate counsel to use their leverage to address the discrimination that still exists in our legal system. Corporate counsel can accelerate diversity in the retention of outside counsel by providing outside counsel with financial incentives for doing it and disincentives for not doing so. The policy discussed in this article addresses both, and I encourage you to adopt it.

In-house lawyers know how it feels to be treated like second-class citizens. Too often we are assumed to be less competent than outside counsel. Others who face such treatment often can do little about it, but we have the power--and the responsibility--to make a positive difference.

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\* This article was published in the *ACCA Docket* (Summer 1994). It was initially published in a slightly different form in a special diversity issue of the *ABA Business Law Today* (May 1994). The article will be included in an upcoming book by Mr. Ocampo, *A Civil Rights Carol*, which will include the text of his welcome address to the Boalt Hall Class of 2000 (in which only one African-American matriculated in a class of approximately 270 students) and other speeches and commentary relating to diversity in the legal profession and in society. Those interested in receiving notice of publication should write Mr. Ocampo at [rocampo@worldnet.att.net](mailto:rocampo@worldnet.att.net) and use "A Civil Rights Carol" in the subject line of the email.

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