



OUTSIDE COUNSEL

BY ELIZABETH ROTENBERG-SCHWARTZ AND JOHN GUSTAFSSON

And on the Seventh Day the Associate Rested

On a recent afternoon, the California-based firm's recruiting coordinator e-mailed a brief message to its New York recruiting partner chair: a top-10 East Coast law school has calendared its program of 1L "mock" interviews, and would the New York office please cover the event for the firm.

The recruiting partner immediately contacted the senior associate who graduated from that school, requesting that she participate and conduct the interviews.

This was the ideal scenario. The New York office had recently launched a project to improve its profile at certain schools; one of the prongs of that program was 1L mock interviews; this school was a target school. Perhaps most important, not only had this senior associate attended the target school, but also she was one of the office's prized lawyers. Not only was she on the law review, but also she was the managing editor. Not only was she academically successful, but also she was one of the most engaging personalities in the office.

The perfect storm for improving the firm's visibility and reputation. Except for one thing: the school had scheduled the mock interviews on a Friday night, and the associate was an observant Jew.

Work around it. Send someone else.

There are lots of lawyers in the firm, perhaps not perfect replacements, but comparable in personality and in talent. The firm turned to another strong candidate, a Catholic associate—a charming young man, not an alumnus of the target school, but a law review editor at another East Coast powerhouse. Certainly herein lay the solution, not as ideal a fit as the first choice, but not bad. He, too, however declined. Turns out the interviews were scheduled for a Friday during Lent, in which the observant Catholic spends the last hours of the weekly abstinence recalling the Passion of Christ through the Stations of the Cross. Undeterred, the recruiting partner successfully convinced a nonobservant associate to attend.

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Elizabeth Rotenberg-Schwartz

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Respect for Religious Observance

How could a law school make such a scheduling blunder? The answer is simple. Respect for religious observance in the general workplace environment is not common and remains largely unspoken. Law schools and firms are no exception.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in the workplace based on religion. However, for many young religious associates, even over 40 years later, observance at a law firm is not easy. While firms are eager to talk about cultural and ethnic diversity, firms rarely raise the topic of religious diversity. Since firms are not making an effort to recruit a religiously diverse incoming class, are young observant associates getting a message that they are not wanted?

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observant associates and overlook religious diversity are making a mistake. These issues affect a firm's reputation, recruiting prospects, retention statistics, and associate motivation and productivity. Moreover, embracing religious diversity may be easier than it seems. It starts with one's peers, but requires that all lawyers—including partners—embrace the work-arounds.

Real-Life Scenario

Imagine this: Six attorneys leave the comfort of their Manhattan homes to work on the classic six-week, out-of-town trial. The pace is breakneck, the working hours ceaseless. Two members of the team are religious: one a Sabbath-observing Jew (no Saturdays, please), and the other a Sabbath-observing Mormon (no Sundays, please). Would having to work short-handed for two days in a row every week increase the stress and workload of the rest of the team? Or could religious diversity play a major role in establishing and maintaining a smooth running operation?

In the real-life scenario, the partner and the senior associates trusted the junior associates to divvy up and finish their work expeditiously, never questioning that the daunting task list would somehow be completed. The two junior associates appreciated that their religious beliefs would be tolerated and accommodated and became all the more committed to the case and to the lawyers to whom they reported. Neither associate complained about carrying more weight than the other, and each was grateful to the other for "covering" on their Sabbath and labored long hours six-days-a-week in order to make sure that their work met expectations. And the partners and senior associates were happy because they never had to deal with managing assignments as the plan was executed seamlessly. How did they do it?

Learning how best to accommodate each other's religious needs was not something that came about at trial. It was a routine the pair had developed long before in the team's New York office—a routine that goes like this. Every Friday evening, the Jewish associate races home to light Sabbath candles. On Saturday, as soon as three stars appeared in the Manhattan sky (more precisely, 42 minutes after sundown), she

calls the office and speaks with her Mormon counterpart to find out what has transpired over the last 25 hours and to sketch out a plan for the following day. After diligently working all day Saturday, the Mormon associate takes Sunday off, goes to church, preaches, eats supper and spends time with other members of his ward. Their peers likened the two religious associates to the protagonists in "Ladyhawke," one cursed to become a wolf every night and the other to be a hawk every day, both able to see each other in human form only at dusk—or in this case, Saturday evening from 42 minutes after sundown until midnight.

The trial ended, but the associates' friendship and respect for each other did not. Although they maintain different beliefs, their commitments to religion in general and some uncanny resemblances in their two cultures (it seems that religious-based dating Web sites like jdate.com and ldssingles.com are equally popular) have fostered a relationship in which each may look to the other for professional and personal advice. Along the way, firm management experienced a revelation—the benefits of religious diversity far outweighed any theoretical drawbacks.

Tips on a Delicate Subject

But how to draw out these benefits? In an ideal world, all law firms would approach religious diversity sensitively and sensibly. The Book of Genesis offers partners and other senior lawyers a few tips on how to approach this delicate subject:

- (1) Let there be light. Illuminate the topic—deal with it, do not ignore it.
- (2) Divide the waters from the waters. Make sure all members of the firm understand that associates are not all the same and make it known that religiously observant associates should be encouraged to observe their practices.
- (3) Create dry land and seas. Cooperate and support (plan summer events and holiday parties on Thursday nights so that everyone can attend).
- (4) Shoot for the moon (stars and sun). Listen to associate suggestions, encourage mentoring on all issues, including handling religious observance in the work place.
- (5) Neither fish nor fowl. Accommodate employees, unless doing so would create an undue hardship for the firm (have vegetarian, halal and kosher food options at events).
- (6) Be fruitful and multiply. Never assume religious diversity will interfere with productivity (accommodating associates might have surprising effects).
- (7) Rest. Give associates the time they need to observe the Sabbath and religious holidays.

From the bottom up, here's some advice to the junior associate who must break the bad news about the Good News:

(1) Complete due diligence. Before accepting a firm's offer for employment, ask people in your religious circle if they know about the firm's approach to observant associates. If you hear tales about associates slaving on Yom Kippur, being absent from the family's Diwali celebration, working during Eid al-Fitr, or missing Easter services, recognize this probably is not going to be the place for you.

(2) Understand this is not bad news. Contrary to what the cynics might say, a lawyer's work is aided by a strong moral compass.

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(3) Work hard. Make it clear, through actions and words, that you do not intend to work fewer hours or less diligently than your peers. Make sure that the partners and associates for and with whom you work know that you are not expecting a free ride.

(4) Be a great associate. If you produce quality work, you will be respected. Partners and associates will want to work with you, and the firm will recognize your value regardless of any "accommodation."

Who's Responsible?

Who bears responsibility for the successful integration of a religiously observant young lawyer?

Law firms as entities are responsible for setting policy that protects the observant individual. Partners will (almost) always say the right thing, but actions speak louder than words: Supervising lawyers are responsible for creating an environment in which religious observance is acceptable.

Who bears responsibility for the day-to-day enactment of such lofty goals? Ultimately, it is borne by the rank and file. In the situation described above, the associates took responsibility for themselves: they had the courage to disclose; they had the maturity to speak up in a timely fashion before it became a crisis; they had the foresight to make a plan that led to an invisible resolution—not merely invisible to the firm, but invisible to the product, and therefore invisible to the client.

Peer Group

Finally, and perhaps most overlooked is the responsibility of their peers. Your fellow associates are undoubtedly the ones most negatively impacted by your religious observance, fearing (as they inevitably and quite humanly will) that they will bear the burden for your faith. Why don't I get every Friday night and Saturday off? Why can't I "rest" every Sunday? Unfortunately for associates who are not religiously observant, there is no federally protected right to a little "R and R." However, in the spirit of quid pro quo, to the extent that you accommodate your fellow associate's religious observance by covering and transitioning, generally you will find the same opportunity awaits you when you need it, if you just ask. And when you receive that benefit, you won't have to spend your day observing a Sabbath, fasting, attending Mass or participating in community outreach.

Is the secret to a prosperous firm religious diversity? Arguably, diversity broadens and varies a firm's access to knowledge and expertise, making it more competitive in an ever-expanding global market. Indisputably, religious diversity—like any other diversity—helps a firm recruit and retain gifted associates who will otherwise seek employment at institutions willing to address their needs.

The Big 'So What'

What happens to the top-10 East Coast law school? The firm certainly cannot abandon this angle on its upgrade program, and it certainly would not ask the observant associate to waive observance for the good of the firm. Someone else must attend. The school will lose the benefit of any observant Jewish or Catholic mock interviewers, but maybe that is a big "so what"—after all, there would be no observant Jewish or Catholic interviewees either!

If the firm, the prized associate, and the student do not bring this situation to the attention of the law school, shame on them. And if the school does not react and think harder next time around, shame on the school.

We all know that everyone in the legal community must cooperate if we are to live—and work—together in a high-pressure environment. The big "so what," it turns out, is that it's relatively easy for religious observance to be respected by all parties in the legal world...nothing that a little forethought, patience, creativity, tolerance and a few major religious texts won't solve.

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