

## **Diversity and the State of our Union**

In his January, 2004 State of the Union address, President Bush spoke, in part, about what he sees as the critical national importance of promoting “the sanctity of marriage” and promoting abstinence over extramarital sex. It would not be difficult to assert that these portions of the State of the Union address reflect a very different attitude towards respect for diversity than appears to be enshrined in Oregon’s diversity CLE requirement for lawyers. So were the recent critics of the diversity CLE requirement right when they bemoaned the ostensibly too-politically-correct nature of this requirement and its ostensible impingement on lawyers’ First Amendment rights?

We think not. On the other hand, we also think it is time to place the diversity CLE requirement into clearer focus.

No one should be forced to be indoctrinated with the political views of others, and neither the diversity CLE requirement nor the substantive ethics rules require such indoctrination. On the other hand, we are a multiracial, multireligious, multiethnic and multi-pretty-much-everything-else society. And as Ben Franklin said at the time of the American Revolution, we must all hang together or, most assuredly, we will all hang separately. That being so, several things follow:

1. During the course of their practices, almost all lawyers will come into contact with diverse individuals as clients, opposing parties, opposing counsel, members of the public, judges and so forth. Lawyers who have been trained on how to approach individuals who are different in one or more ways are more likely to be successful in addressing and dealing with those differences and are therefore more likely to represent their clients competently and effectively. This is at least the implicit premise behind all educational efforts. For example, we learn about the lawyer conflicts rules in the hope and expectation that our learning will help us avoid conflicts.
2. A nation whose daily life and publicly stated philosophy depend, in significant part, upon the rule of law must do what it reasonably can to make sure that the rule of law, and not rules of prejudice, will prevail and will be seen to prevail. If lawyers do not perform in a manner that is manifestly fair and inclusive, rather than unfair and exclusive, with respect to the treatment of those with whom they come into professional contact, both respect for and compliance with the rule of law will be likely to suffer. Put another way, our society and our clients are likely to suffer from inattention or insufficient attention to diversity issues.
3. Lawyers often reflect or even lag behind the views of the wider society rather than leading those views. For every lawyer who, for example, participated in the civil rights struggles that began to take hold in the 1950s, there were far many more who sat this matter out or who sought to use unauthorized practice rules, anti-solicitation rules and other “rules of ethics” to halt or derail this struggle. If society today is in many ways more tolerant of diversity than it used to be (and we submit that it is), lawyers must change merely to keep pace.

We don't wish to espouse any particular political or moral agenda or to imply that we know just how much diversity is enough. We do want to state, however, that there is a strong case to be made for considering diversity training to be an important part of a lawyer's, and our country's, skill set regardless of the lawyer's personal or political views. In other words, learning to deal with diversity is a part of both our duties of competent representation and our duties as officers of the court.