Second Generation Diversity Issues Program
by Herma Hill Kay

Second generation diversity issues facing the legal profession got a hard look by the Section on Legal Education and Admissions to the Bar during its annual program this year. Using an innovative role-playing approach, the Section's presentation highlighted some of the subtle barriers still facing minority lawyers working in law firms and law schools. The program's message was clear: Majority and minority lawyers and professors perceive many workplace situations differently because they experience different realities and—quite literally—live in different worlds. The goal was to make these differences visible and, by putting them on the table, encourage open and frank dialogue about racism and stimulate a joint search for its solution.

Section Council member Marilyn Yarbrough, who served on the Planning Committee, introduced the program and explained its goals. The action began with two brief walk-on conversations, the first between two majority law professors (played by Section Chair and Minnesota Dean Robert Stein and N.Y.U. Dean Emeritus Norman Redlich) on their way to a faculty meeting to consider a proposal to tenure a minority faculty member, and the second conversation between two senior majority partners (played by Sharp Whitmore, of Gibson, Dunn and Crutcher, Emeritus, and Harold L. Rock, of Kutak Rock) lamenting the surprising loss of yet another of the firm's minority junior partners, an African-American woman named Sally.

The scene shifted to an informal after-work gathering of several minority law partners from different firms, discussing the decision of their friend Sally to leave the firm after ten years. Unlike the firm's two senior partners, they were not surprised at Sally's decision. Rather, they were surprised and frustrated that the firm had not realized how dissatisfied she had been with the lack of mentoring, the dearth of client referrals and the absence of credit she had received for the teamwork she had provided on firm matters. The minority partners voiced their own discomfort in recognizing that others thought they had "made it," while they themselves felt that they were not fully accepted by the firm. They also expressed frustration that the performance of one minority attorney too often became a barometer for judging the performance of all minority attorneys even when, as they perceive the situation, these attorneys are held to higher standards and are not provided with the same professional opportunities as their majority counterparts.

Following the conversation among the minority partners (played by Raymond C. Marshall, president of the Bar Association of San Francisco and a partner at McCutchen, Doyle, Brown & Enersen; Pauline Schneider, president of the District of Columbia Bar and a partner at Hunton & Williams; Luis A. Perez, a partner at Adams and Reese in New Orleans; and Joan Haratani, a partner at Crosby, Heafy, Roach & May in Oakland), Section member and Cali-
fornia State Bar General Counsel Diane Yu engaged the audience in candid conversation among themselves and with the panelists about the issues raised by the panel. Several members of the audience shared their own experiences which were similar to those related by the panelists. Others, primarily law deans, questioned whether panel members might be reluctant to take a chance by recommending to their firms minority students who did not attend the “top” law schools. Panelists replied that, as minority members of their firms’ hiring committees, they were judged far more often than their majority partners by the success or failure of their chosen candidates. There was general agreement that law firms and law schools should work together to broaden the definition of a “qualified” candidate. All concurred as well that the issues being discussed were realistic and important—and not easy to overcome.

The scene then shifted to the faculty meeting in which the African-American female dean (played by North Carolina Associate Provost and former Tennessee Dean Marilyn Yarbrough) proposed that an African-American male faculty member be given tenure. The candidate’s record was presented as middle-of-the-road on teaching (majority students think he spends too much time on issues that will not be testing on the bar examination, e.g., slavery and environmental justice); average on service contributions (but high on the time he spent with minority students); and slim on scholarly publications in top-flight journals (there was a chapter in a treatise by a minor publisher and several Op-Ed pieces in The New York Times).

The discussion among the faculty (played by Robert Stein, Norman Redlich, Harry Groves, professor at the University of North Carolina, and Nina Appel, immediate past section chair and dean of Loyola, Chicago) exhibited the well-known tensions between those who want to base promotion decisions entirely on what they view as objective standards of scholarly excellence and those who want to take account of diversity factors in judging a minority candidate whose record is different from what has traditionally been deemed necessary for tenure. The discussion illustrated that a law faculty lives through many tenure decisions, and that all too often faculty members tend to speak from well-established positions and to revisit prior tenure battles in the context of new cases.

Following the faculty meeting, AALS President and Oklahoma Professor Rennard Strickland led the audience discussion which focused on the institutional implications of these differing positions as well as the varied meanings of scholarly excellence. One dean made the point that, as between two equally qualified “very good” candidates, one majority and the other minority, the majority candidate was more likely to be described as “brilliant,” while the minority candidate was seen as not quite up to the mark. There was general agreement that the standards applied to majority and minority candidates are highly subjective, and that no uniform concept of excellence exists.

In an epilogue, Ray Marshall called attention to material prepared and made available to the audience by the Bar Association of San Francisco which offers concrete suggestions for dealing with some of the issues raised in the program. A videotape of the Section program will be available from the Section office. The planning committee for the program was chaired by Section member and University of California, Berkeley, Dean Herma Hill Kay and included Mark Bertelsen of Wilson, Sonsini, Goodrich & Rosati in Palo Alto; Dru Ramey, executive director of the Bar Association of San Francisco; Ray Marshall; Pauline Schneider; and Marilyn Yarbrough.