

Scholar's



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February 2010

**The California Judiciary: A Search  
for Justice in a Democratic Society**

**Saturday, February 20, 2010**

**1:30 p.m.**

Room 111-A Chancellor's Complex, UCSD Campus

Program

Our speaker and member, the Honorable Victor E. Ramirez, is a retired San Diego County Judge of the Superior and Municipal Courts

Judge Ramirez will offer an insider's perspective of the California Judicial Structure, how people become judges, and the division of labor between Civil and Criminal cases.

The talk will review criminal law according to US and CA constitutions, including: how someone becomes charged with a crime; investigations and questioning by police in the field; searches of cars and homes; Miranda Rights; constitutional rights and the numerous exceptions; plea bargaining (a search for the price to be paid); California's 3-Strike laws and prison populations; federal supervision of California prisons.

Judge Ramirez will speak about civil lawsuits (a search for who should pay), posing these questions: Are there too many lawsuits? Are lawsuits an alternative to the failure of government to regulate in an area of business or manufacturing of products? What is a duty of reasonable care? How can one get the right judge for a big case? Why aren't judges required to explain their decision(s) to the parties in a case? Is arbitration a false hope created by special interests? What role do juries play in the search for justice?

The future of justice in a democratic society depends on true Tort Reform, Criminal Justice Reform, and Judicial Reform. The judge will welcome questions from the audience.



## AT JANUARY'S MEETING

David Klein, a retired Foreign Service Officer, treated us to a banquet of memories during his talk at the January meeting. Mr. Klein had a varied career of government service beginning with the United States Army, which he entered in 1941, leaving active duty in 1946 after having attained the rank of Colonel.

He first attended Harvard Business School but then entered the Foreign Service where he was educated as a Russian Specialist. He served in a number of foreign posts including two stints in Moscow during the sensitive years of the Cold War. Along the way he qualified himself in German as well and became a Russian German Specialist, a unique and valued qualification given the sensitivity of developments in divided Berlin during those years.

Mr. Klein rose through the ranks to become U. S. Head of Mission in Berlin. He also served in Washington, where he worked closely with McGeorge Bundy; he was assigned to the White House during the Cuban Missile Crisis in October 1962. In short, Mr. Klein was an eye witness to many of the formative diplomatic developments of our era, and the candor of his presentation was refreshing.

David Klein's talk was very stimulating and refreshingly frank. Many from the audience lingered afterwards to engage with him in conversation.

Because of the historical significance of what he shared, we include a supplement to this issue of the Notebook beginning on page 5 of the electronic edition. It provides a fuller account of his remarks. Find it at [www.sdscholars.org/newsletter.html](http://www.sdscholars.org/newsletter.html).



## A THANK YOU TO OUR LEADERS

San Diego Independent Scholars is an all volunteer organization, from the officers to the directors to the speakers to the organizers of the various study groups and all activities that keep us vibrant.

Sometimes we forget to thank those who serve us so selflessly, so the Editor decided to pause here, just for a moment, to recognize the dedicated efforts of all who serve our organization.

Consider the effort involved in bringing to us the parade of outstanding speakers that contribute monthly to our edification. The Editor can only speak for himself in saying that the talks are ever an inspiration to him in his own work. Scholarship can be a lonely undertaking, and the SDIS interaction is invaluable. Kudos to all.

## STUDY GROUPS

### Works in Progress

**Works-in-Progress** most recently discussed a written article, a characteristic format. However, Judy Ramirez is working on a video presentation for a website. She will be our next presenter, although no specific date or place to meet is set. Nor do we know exactly how the materials will be distributed. *STAY TUNED*. And if you are contemplating some work you want to share, perhaps one in its early stages, contact Cathy Blecki.



### Colloquy Café

The next **Colloquy Café**, on **Wednesday, February 17, 2010 at 1:30 PM**, will be on the subject: *Self-Deception*. Those who are interested in attending can, as usual, contact Sam Gusman at [sagus@sbcglobal.net](mailto:sagus@sbcglobal.net).



### Literature

The **Literary Group** will meet on **Monday, February 22, 2010 at 10:30 a.m.** in the home of Larry and Carol Gartner in Valley Center. *Don Quixote*, by Miguel De Cervantes, is our chosen work. Discussion, to be led by Marla Jensen, will center on a number of selected chapters. Contact Harry Boyle, [hhboyle28@cox.net](mailto:hboyle28@cox.net).



### Science (aka Brain Study Group)

The **Science Group (AKA Brain Study Group)** will meet on **Friday, February 5th, 2010, at 3 P.M.** at Bea Rose's home. They will finish their reading and discussion of the Richard Feynman book, *The Pleasure of Finding Things Out*, and will choose their next adventure in learning. Visitors are welcome.

For further information call Bea Rose (858) 458 - 9263.



### Member's Corner

Sandra Joss has been busy with her teaching at SDSU. And she offered "An Invitation to Anthropology", a fall semester course through the Osher Program at UCSD: "The series of lectures introduces participants to the discipline of anthropology and its key notions of culture and identity, followed by a case study in Dr. Joss' area of expertise: Australian indigenous artists and their issues of identity."

Jean Mayer recommends a fundraising theatrical event, *The Revenger's Tragedy*, by Thomas Middleton. On Thursday, February 18, 2010 Dr. Arthur Wagner, founding Chair of the UCSD Theatre Department, together with Director Christopher Ashley will introduce the drama at 6:30 pm followed by a performance at 8pm. Contact Jean at (858) 622-1230 for information.



## From the President

The days lengthen, and our annual hibernation will soon end. We continue, however, to pull our woollens a little closer. In a few days Punxsutawney Phil will announce the groundhog version of a weather report. But you still have time – until the last day of February – to apply for a Helen Hawkins research or travel grant. Let me know if you need application materials.

Speaking of awards and grants, as members of an NCIS affiliate organization, you are eligible to enter their 2010 Awards and Grants Competition. See their website if you are interested: [www.ncis.org](http://www.ncis.org).

An independent researcher contacted me and wants "to garner interest and support" in his research. He is a member of NCIS and the National History Club. His project involves the Beale Papers and cryptology, Ralph Waldo Emerson and mysticism, Ben Franklin, Captain MacPherson, Edgar Allan Poe, and a stash of eighteenth century French gold pieces buried in a Philadelphia mansion. Let me know if you are interested in more.

-- Donna Boyle, January, 2009

### MARCH Meeting

The March meeting will be  
**Saturday, March 20, 2010.**

The speaker and topic were not yet announced as  
we went to press.

### About SDIS

**San Diego Independent Scholars** (SDIS) supports unaffiliated writers and researchers and welcomes everyone who appreciates creative and intellectual activities in the humanities, science, and the arts. SDIS is a non-profit organization and an affiliate of the National Coalition of Independent Scholars.

**Donna Boyle, President**, [dboyle101@cox.net](mailto:dboyle101@cox.net)

*Scholar's Notebook* is the newsletter of SDIS. Please send your news for the *Notebook* to **Jack Cumming**, the *Notebook* editor: [jbcumming@aol.com](mailto:jbcumming@aol.com) or by mail to 2855 Carlsbad Blvd N116, Carlsbad, CA 92008. The deadline for submissions is the 25<sup>th</sup> of the month prior to publication date.

[www.sdscholars.org](http://www.sdscholars.org)

**To the reader:** The January talk is thought by the Editor to have historical significance as part of the oral history record of the 20<sup>th</sup> century. Hence, this supplement to the Notebook is included here in the electronic edition as a service to the larger global community of historical scholars.

## January's Meeting

### The American Foreign Service and American Foreign Policy

David Klein promised to give us an inside look at the practicalities of American Foreign Policy during his career, and he didn't disappoint. David Klein is the kind of person one wants as a friend for life. Hearing him recount his experiences and his interactions with historical personalities was like being honored with the confidences of a friend. Mr. Klein is an easy person to get to know, and it soon seems clear why he was so successful at his diplomatic calling. But he didn't start out life as a diplomat.

SDIS member Bea Rose introduced him to an overflow audience. Bea has known David and his wife, Anne, since 1994. He grew up in Sheepshead Bay, an enclave nestled by the Atlantic Ocean near Brooklyn. It has a small town feeling even though it's part of the City of New York. Over lunch Mr. Klein spoke of returning the Sheepshead Bay to see how it had changed since he left it in 1935. He found it hard to reconcile the later visit with his earlier life.

Contrary to what one might expect for a person who seems so naturally a diplomat, Mr. Klein started his professional life as a warrior. It was 1941 and the United States was drawn into a

struggle for its existence. Mr. Klein served on active duty in the Army from 1941 to 1946, separating ultimately as a Colonel (ret.) in the Army Reserve. From there he went to Harvard to seek an MBA, but he took the Foreign Service Exam in 1946. For those who don't know, just passing the exam to be accepted into the U.S. Foreign Service is a major accomplishment. It is not a trivial exam. Entry into the Foreign Service interrupted his studies at Harvard, though he did return to the university forty years later to qualify in 1988 for an MBA.

In the meantime, though, Mr. Klein earned a master's degree at Columbia University in 1952. The Foreign Service had slotted him for preparation as a Russian specialist, so with the end of his studies he was off to Moscow where he served as aide to George Kennan, the author of a famous long telegram that became the basis for the U.S. post-war policy of containment. Kennan's 1952 tenure in Moscow was brief. Mr. Klein outlasted Mr. Kennan and remained two years in Moscow. From there Mr. Klein went on to assignments in Mozambique, Burma, the Soviet Union (twice), Germany (Berlin and Bonn), and Washington (Soviet Desk, The White

House, and Arms Control and Disarmament Agency). The description of these postings is brief. The significance of Mr. Klein's presence during the great events of our time is immense.

Mr. Klein opened his presentation by giving a context for the development during our lifetimes of American policy toward the rest of the world. Until 1924 the Foreign Service was a gentleman's club of wealthy white males able to support the lifestyle expected of a diplomat. That changed with the passage of the Rogers Act which structured the Foreign Service, merging the diplomatic and consular services. U. S. consulates became more than just passport and visa offices.

The Rogers Act also introduced the concept of a professional corps of highly educated, trained diplomats. A fundamental nuance here is important: The Foreign Service is not a generic term referring to all who serve abroad. Instead it is a very specific corps, defined by statute and staffed with select, highly qualified officers. The Foreign Service, as we know it, was defined by the Foreign Service Act of 1946 which set up three classes of employees: Foreign Service Officers, Foreign Service Reservists, and Foreign Service Staff. Officers are commissioned officers of the United States, available for worldwide service. Foreign Service Staff handle administrative duties.

When Mr. Klein entered the Service there were three groups involved in advising on and implementing policy, only one of which was the Foreign Service. There was the Civil Service, people whose jobs were permanently in Wash-

ington and who lived relatively settled lives including tenure protection. There were Political Appointees, accountable to the elected officers of government, and who often believe that they have a mandate from the electorate to determine policy regardless of long term commitments. And there was the Foreign Service Officer Corps, described above: a select group of highly educated people who initially served almost entirely overseas.

Mr. Klein was part of this third group. Foreign Service Officers do not have tenure protection. When Mr. Klein began, they were subject to a strict "up-or-out" system. Foreign Service Officers were evaluated by those above them in rank and by others laterally with whom they interacted, including the Civil Service Officers in Washington. A promotion board reviewed this evaluative data and Officers were either promoted or released from service. The stringency of this system softened somewhat after women began to enter the Service in large numbers. Women sometimes challenged the harsh judgments of the promotion board, asserting unjustified discrimination, and were often successful.

Overseas the U.S. has embassies, consulates, vice consulates, and missions. Until 1950 we also had legations with smaller delegations. Aside from the grand negotiations which most people associate with diplomacy, there is a great deal of routine work responding to seamen who get into trouble, tourists who encounter challenges, missionaries and other nongovernmental organizations (NGOs), and businessmen

who want their work facilitated. The expectations on foreign staff can be formidable and unexpected. When Mr. Klein was heading the American mission in Berlin, there was musician who was used to being housed in the official residence during his stays there. That had been possible earlier; but now Mr. Klein had six children, and there was no room. The musician had to be turned away, and he promised to complain to higher officials. In the end a compromise was reached and the musician mollified.

On another occasion a visiting Congressman learned of a special transit train connecting Berlin with Bonn. The train was available to support American operations but was operated by the Bundesbahn and paid for by the German government under the terms of the occupation. The Congressman saw political capital in denouncing what he considered wasteful expenditure. The result was that the transit option was discontinued and the cost was shifted to the American government, which thereafter had to pay for flights between Bonn and Berlin.

Until 1941 the United States was not a major player in diplomatic circles. The U.S. opted out in 1919 when it decided not to participate in the League of Nations. The U.S. between the two World Wars was isolationist in its foreign policy. When World War II ended the U.S. was suddenly the big power, but the State Department and the government wasn't organized to be a big power. During this period we deferred to the more experienced British who proved to be our very close partners. The North

Atlantic Treaty Organization (NATO) was a British idea. The Marshall Plan, too, originated with the British.

There is a surprising uniformity of structure among the major diplomatic players. All have permanent professional officers handling much of the day to day diplomatic activity. However, in the U. S., the political arm of government reaches deeper into the process than is the case with other diplomatic powers. Other than that the operations are quite similar.

Mr. Klein's observation over many years is that political people don't know much about foreign policy. Most politicians come to the Presidency with little background to prepare them for their foreign policy role. They have to turn for help to the Foreign Service. Mr. Klein recounted one instance in which a question of policy came up that would be expected to come from the President. Ambassador David Bruce speculated that Washington wouldn't know what to do, so the embassy offered some suggestions to stimulate thinking with the idea that policy could evolve from that.

Today, in the absence of the Soviet Union as a disciplined foe, American foreign policy has taken on a hubris that wasn't possible earlier. If the Soviet Union were still strong, it is unlikely that we would be in Iraq or Afghanistan with the same kind of engagement as we now have. The worst prototype for a President is someone who is definite about what he thinks he knows.

Truman, for instance, knew what he didn't know and he trusted people. With his elitist pretensions, Dean Ache-

son was an unlikely advisor for Truman. Yet, Truman worked with him and Acheson later praised Truman, saying, "Harry Truman knew how to select advisors." Truman was able to use the brains of brilliant people to fashion a better policy.

Truman could rely on people like George Marshall and Dean Acheson. They understood the limits of our influence as a superpower; mindful of those limits, they built alliances that still persist today. The Berlin Wall came down due to the combined effect of the Marshall Plan, NATO, and consistent containment.

Kennedy, too, liked advice and used it well. He surrounded himself with brilliant advisors, many from the Ivy League. Kennedy could collaborate to improve a result. When crafting a speech, he would work closely with his speechwriter, Ted Sorenson, to reach a more appealing, more centrist message. This changed when Lyndon Johnson came into office. Johnson thought the Ivy League advisors were arrogant and he didn't listen to them. Johnson took the approach, "This is what I want to do. How can I do it?" This cut off all discussion. He allowed no objections to the direction that he first set. The resulting escalation in Vietnam might have been avoided with more circumspect leadership.

When he came into office, Jimmy Carter was unprepared to be President. His speechwriter, James A. Fallows, was unable to get the access to the President he would need for them to have worked interactively. Speeches and speechwriters are critical to the success or lack the-

reof for a President. The major components of American foreign policy are Western Europe, the Middle East, Asia and Latin America. All else is secondary.

As a young Foreign Service officer, Mr. Klein was posted to Portuguese East Africa, which later gained independence in 1974 as Mozambique. In Mr. Klein's time there Portugal was a dictatorship under António de Oliveira Salazar. Mr. Klein recounted an instance in which later, at the central post office in Lisbon, he recognized a friend of his who was part of the opposition. The friend rejoined that Mr. Klein must be mistaken, and later told him that the moment had been an excruciating one; he was not supposed to be in Portugal at all, and here he was being recognized publicly in the post office. It is hard for a diplomatic officer to maintain the sensitivity that the vocation requires.

The route to advancement can sometimes be unpredictable. For various reasons, while Mr. Klein was in Moscow, his wife had to spend the last months of her pregnancy in Germany. As a result he formed many contacts with Germans. This led somewhat unexpectedly to his being reclassified from a Russian Specialist to a Russian German specialist, a relatively scarce combination. New opportunities opened for him. He was then sent to Washington to work with McGeorge Bundy, who Mr. Klein characterizes as the most brilliant man he ever knew. Shortly after his arrival, Bundy challenged him about a memo that he, Mr. Klein, had written. Mr. Klein held his own and there ensued a

close and productive working relationship between Mr. Bundy and himself.

Mr. Klein closed with some thoughts concerning his involvement with the Quadripartite Agreement of September 3, 1971, relating to Berlin. Berlin was embedded deep within the Soviet Zone of Germany, although the City itself was under the combined oversight of the four victors from World War II. For many years after World War II there was harassment and more by the Soviets and their East German allies against shipments between West Germany and the Western Sectors of Berlin. When Willy Brandt, a Social Democrat, became Chancellor of West Germany in 1969 he wanted détente with East Germany. This resulted in negotiations. Unknown to the professional Foreign Service Officers working on the negotiations, though, Henry Kissinger, President Nixon's National Security Adviser, opened a direct negotiating channel with the Russians through Egon Bahr, a political adviser to Willy Brandt, offering concessions that the professional negotiators were not authorized to place on the table. This produced embarrassment and a difficult position for Secretary of State William Rogers. In 1989 just before the Berlin Wall fell, Mr. Klein published his book, coauthored with James S. Sutterlin, [\*Berlin: From Symbol of Confrontation to Keystone of Stability\*](#).

In the question period Mr. Klein was asked if a professional Foreign Service Officer is permitted to have personal political opinions. The answer is, of course, but those personal opinions cannot influence professional actions. Once the U.S. policy is determined, the

professional task is to support and advance that policy. "You can't have a private foreign policy," responded Mr. Klein. Concerning today's diplomatic outlook, Mr. Klein observed that China is an emerging superpower. It will be much more productive for us to deal with them diplomatically than to throw our weight around militarily. Military response is much more costly than diplomatic action. We now have to deal with China, not as an enemy, but as a power that must be taken seriously.

This listener was struck by the scope of Mr. Klein's career. It began in the turmoil of war caused by a breakdown of great power diplomacy in an era in which the United States sought to remain isolated from world affairs, seemingly insulated by ocean barriers. By the end of his career the United States had emerged as the global hegemon in an era of globalization. Gone were the colonial empires that had nourished the great powers of the past. In their places emerged a leadership that rises and falls on the basis of its success as a moral force winning the hearts and minds of the world's peoples. This is an ongoing process, Mr. Klein observations make clear that diplomacy is more effective and less costly than military dominance, and that this view is likely to persevere.

Outside his formal talk, Mr. Klein shared another anecdote illustrating this progress from a divided world of competing interests toward a global society with a cultural consensus reflective of the whole. Mr. Klein was the duty officer in the White House one night during the Cuban missile crisis when a cable arrived from Premier Khrushchev.

That era is now long ended, the memoirs written... and forgotten. But few people know of the cable from Khrushchev counseling that the two confrontational powers agree to keep the encounter limited strictly to Cuba and related issues. Already then, an understanding was evolving that the earth was fragile - the atomic bomb had made that fragility all too evident. And so these two leaders, Khrushchev and Kennedy, in a brave moment of engagement, were able to agree to put the

interests of global society before the particularist interests of the governments they led. A new global awareness was then dawning, and that sense of the whole is still evolving in our time.

Mr. Klein's talk was very stimulating and refreshingly candid. Many from the audience lingered afterwards to engage conversationally with Mr. Klein.

--The Editor