
Remembering Floyd Feeney*

*Carol S. Bruch** and Edward J. Imwinkelried****

When Floyd Fulton Feeney died unexpectedly of a cough that had progressed to pneumonia on January 8, 2019, the School of Law lost a brilliant scholar, beloved colleague, and legendary teacher. The Homer G. and Ann Berryhill Angelo Professor of Law for International Legal and Communications Studies, Floyd had joined the faculty in January 1968 and taught his first classes that fall, just two years after the school admitted its first students. Fifty-one years later, at the time of his death, he was grading his students' fall semester criminal law exams and preparing for his summer 2019 research and his spring semester course in election law. He was eighty-five. As Dean Kevin Johnson said, "Floyd Feeney was the heart and soul of the law school, a person whose grace, respect for all, and commitment to excellence represented all that was great about Martin Luther King Jr. Hall."

Floyd was the son of Burla Leighton Feeney, a businessman, and Ona Marie McMillin Feeney, a botanist. Born in Indiana on September 26, 1933, he was reared in Charlotte, North Carolina, except for summers, which he spent with his mother's family on their farms near Franklin, Indiana. He was very close to his mother, who died suddenly following cancer surgery, just two weeks before his eighth birthday. But when he was nine, his father married Buena Criminger, a teacher, and he gained a loving step-mother.

Always understated, Floyd's remarkably accomplished life was the product of his gifts, determination, and hard work. A soft-spoken man with a stellar intellect, innate physical abilities, and a healthy sense of fun, he was also a natural leader. At Davidson College, he played varsity

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** Distinguished Professor of Law Emerita, University of California, Davis. Professor Bruch joined the faculty just five years after Professor Feeney. For many years, she served on the Advisory Committee of the Center on Administration of Criminal Justice, which he directed, was a principal program participant for two of the Center's civil law projects, and supervised Center research for graduate students in political science and child development.

*** Edward L. Barrett, Jr. Professor of Law Emeritus, University of California, Davis.

basketball, captained his varsity track team, was president of the student government, and graduated Phi Beta Kappa in 1955 with Honors in History. He maintained this combination of academic excellence, leadership, and athletic activity throughout his life. Most impressively, he never rested on his laurels or took anything for granted. Instead, he always worked longer and harder than anyone else, while reserving time for his family, friends, and sports — running, basketball, tennis, skiing, and finally, when illness or injury intervened, persevering until he could again walk a mile without difficulty. The result was an uncommonly busy, satisfying, and productive life.

A Root-Tilden Scholar at New York University School of Law, Floyd's studies were interrupted by military service that included a tour of duty in West Germany as an army second lieutenant. Hardly missing a beat, after his return he capped his studies as Editor-in-Chief of the *New York University Law Review* and, at his graduation in 1960, received NYU's Dean Sommer Award as the law school's Outstanding Graduate. Next, after a year of international law practice at Covington and Burling in Washington, D.C., he served as law clerk to Associate Justice Hugo L. Black during the United States Supreme Court's 1961 Term.

In the six years following his clerkship, Floyd held a series of prestigious government positions: 1962-1963 as Special Assistant to the Solicitor of Labor, a 1963 stint as Deputy Special Counsel to the President's Committee on Equal Employment Opportunity, and five years (1963-1968) as Special Assistant to the Administrator of the Agency for International Development (AID), one of which was spent on loan to serve as Assistant Director of the President's Commission on Law Enforcement and Administration of Justice.

That final position led to his career at King Hall, where, in January 1968, he became Professor of Law and Executive Director of a new interdisciplinary Organized Research Unit, the Center on Administration of Criminal Justice. Funded for its initial five years by a \$1 million Ford Foundation grant, the Center was proposed and formally co-directed by Edward Barrett, Jr., the law school's founding dean, and Lloyd Musolf, a political science professor and director of the campus' Institute of Governmental Affairs. They hired Floyd to supervise the Center's day-to-day operations, and it flourished under his leadership. His appointment was 67% in the Center and 33% on the law faculty.

During the nineteen-and-a-half years that the Center was in operation, several of its projects changed the face of this country's practices in criminal procedure. An early example — the Sacramento 601 Diversion Project — began in 1970 with the co-sponsorship of the

Sacramento County Probation Department. It instituted a pilot “diversion” program, sending juveniles and their families to family counseling instead of removing children from their families when they committed status offenses (i.e., did not obey their parents or misbehaved in other ways that would not constitute illegal conduct by an adult). Two of the Center’s staff, Roger Baron, a lawyer and Ph.D. clinical psychologist, and Floyd, developed the study with Warren Thornton, Sacramento County’s then Chief Probation Officer. One of just a handful of programs with documented success in reducing recidivism, in 1974 the U.S. Department of Justice (DOJ) selected it as the third of the Department’s first five Exemplary Projects and the only one in the juvenile justice field. Four years later, Roger and Floyd shared the prestigious Pepperdine Award for Outstanding Contribution to California Corrections from the California Probation, Parole and Correctional Association. It was the first time the award was given to a university or agency not functioning full-time in the correctional field. Although replication of criminal justice programs is rare, by 1994, more than 100 programs in forty states had been modeled on the Sacramento project, and rigorous evaluations of several of them confirmed its ability to reduce recidivism.

Another project that produced major changes in law enforcement was completed by Floyd, sociology professor Forrest Dill, and Adrienne Weir, the Center’s staff criminal justice and survey research specialist, under a National Institute of Justice (NIJ) grant. It compared methods of investigating and prosecuting felony cases and focused on why many cases were not carried to conviction. Just one of its several important findings explained more than 60% of the felony convictions, a three- to fourfold improvement over previous works. In an unusual move, NIJ disseminated 1,500 copies of the Center’s full 1983 report, *Arrests Without Conviction: How Many and Why They Occur* — not only its executive summary — to police, prosecutors, courts, state legislatures, and professional groups. In 1984, both the majority opinion and a dissent in the U.S. Supreme Court case *United States v. Leon*, 468 U.S. 897, cited the study’s finding that few robbery or burglary prosecutions are lost as a result of the exclusionary rule, which bars information that police acquire through unlawful behavior from evidence in the case.

Floyd’s research and sophisticated statistical skills were important to additional groundbreaking Center studies:

- on robbery, resulting in a five-volume 1973 report co-edited with Adrienne Weir for the National Institute of Law Enforcement and Criminal Justice,

- on California's bail reform, including work with the majority leader of the California Assembly and his staff in 1978-1979 to secure passage of legislation that enabled defendants to secure pretrial release by depositing a refundable amount in court that would otherwise have been lost through payment of a bail bondsman's fee, and
- on the advantages of citation in lieu of arrest for roughly 20% of those charged with misdemeanor offenses, a topic the Center had begun to study in 1970 and culminated in 1982, when Floyd published his book, *The Police and Pretrial Release*.

The interdisciplinary scope of the Center's work is suggested by the differing University of California departments from which faculty participants in Center projects came during just one five-year period — the Davis sociology, psychiatry, law, and political science departments, and its Graduate School of Administration (with several from most); the Berkeley and Los Angeles anthropology departments; and foreign universities. Floyd's commitment to such interdisciplinary and empirical work extended throughout his career, as he co-authored with sociologists, political scientists, statisticians, criminologists, a psychologist, and a probation officer.

Once the new Center and the quality of its work became known, organizations and agencies, including the California legislature, often sought its advice, especially in the areas of bail reform, juvenile justice, corrections, the problems of crime victims, and research methods and evaluation. One particularly significant project evaluated a state program that gave \$60 million per year for eleven years to encourage California counties to develop corrections programs that would reduce incarceration in state facilities. The three-and-a-half year study by the Center and a private consulting firm (Arthur D. Little, Inc.) identified model programs and found that many local programs were both successful and cost-effective in reducing recidivism and commitments to state institutions. But taken as a whole, most of the state funds had been used instead to support pre-existing programs that had lost funding when a 1978 ballot initiative known as Proposition 13 greatly reduced property tax revenues. Perhaps for that reason, the study also concluded that overall, the state program had failed to decrease commitments to state correctional institutions.

In the early 1980s, grant funds for criminal justice innovation and research decreased sharply, as changing ideology about criminal justice replaced earlier empirical and analytical work. Initially, the Center made modest forays into topics outside the criminal justice field.

Ultimately, however, extramural funding opportunities in both criminal and civil justice were too limited to sustain the Center, and it closed in 1987.

Freed from the Center's heavy administrative and research obligations, Floyd assumed a full-time teaching load, and his research incorporated new fields. Recognizing that much can be learned from studying similar problems in differing settings, he applied comparative analysis both domestically and internationally, and in both criminal procedure law and a new interest, election law. Together with his co-author, political science professor Philip Dubois, he recommended reform of California's initiative process, which provides a way for voters to initiate and enact legal change without recourse to the legislature. Their 1992 report for the California Policy Seminar, *Improving the California Initiative Process: Options for Change*, focused on the law of California and its sister states. Then in a 1998 book, *Lawmaking by Initiative: Issues, Options and Comparisons*, the authors added international comparisons, emphasizing Swiss law, and — to a lesser degree — the laws of eleven additional nations. The value of their expertise was recognized in 2000-2001, when Floyd served as Legal Advisor to the Speaker's Commission on the California Initiative Process. By then, he and two political science professors, Philip Dubois and Edmond Costantini, had also provided a 1993 report to the California Secretary of State on another election law topic, their survey of voters concerning the state's Ballot Pamphlet.

Floyd's international comparative law work had begun in 1983-1984, when he took leave from the Center to spend three semesters as Director of the London office of the Vera Institute of Justice. There, he worked closely with the United Kingdom's Home Office, serving as the monitor for a pilot scheme he helped design to test methods for providing the greater disclosure of the prosecution's case to the defense that a new law mandated. He also studied and authored a report on ways that interagency cooperation could be improved between the country's police, magistrates' courts, probation service, and prisons.

He continued his comparative law work as a 1995-1996 Fulbright Scholar at the University of Augsburg, where he compared the processing of German and American criminal prosecutions. First, he made a statistical comparison of prosecutions in the two countries for the U.S. Bureau of Justice Statistics. Later, co-authoring with the criminal procedure expert who had been his host in Augsburg, Professor Joachim Herrmann, he published a book that has become the model for comparative work in the field, *One Case — Two Systems: A Comparative View of American and German Criminal Justice*. The book

uses a hypothetical case to illuminate the often dramatically different approaches of the Common Law and Civil Law systems to the same legal problem. First published in this country, the book was later translated into Japanese under the supervision of Professor Morikazu Taguchi, and into Chinese, with an additional chapter that explains the book from a Chinese perspective by Professor Liling Yue, a criminal procedure expert at the China University of Political Science and Law (CUPL). With her, Floyd also co-edited a book (published in Chinese), *Selected Classic Materials and Cases on American Criminal Procedure*.

During this period, Floyd also began his seventeen-year tenure as the founding director of the law school's LL.M. program. Because he understood the challenges of living abroad and speaking a foreign language, he made sure that LL.M. students felt welcome and helped them however he could — in their studies and career planning; with visa, housing, or personal problems; and by ensuring that they had a Thanksgiving dinner, a trip to the legislature, and opportunities to see Northern California. Initially, most students came from Europe, with smaller numbers from the Americas and the Far East. As increasing numbers of Japanese and Chinese students came, so did the graduates who returned to those countries. Many former students remained in contact with Floyd, whom they admired for his intellect and kindness.

When these young judges, government officials, and scholars returned home, and their countries undertook law reform, they turned to Floyd for his expertise, and he lectured in Germany, Greece, Italy, Japan, Mexico, and the United Kingdom. He also taught in the People's Republic of China (PRC), at the China Youth College for Political Science (1997) and CUPL (2004), the country's largest law school. Beginning in 1997, Floyd contributed numerous papers and articles to assist the PRC's reform of its criminal justice system. In addition, his numerous ties to the CUPL faculty were later instrumental in creating the current exchange program between CUPL and King Hall.

Floyd's dedication to his students and participation in law school service were so great that few realized he was technically only a part time faculty member until 1987. Almost twenty years earlier, upon completion of the law school building in 1968, he had moved into his first-floor faculty office overlooking the law school's courtyard, the office he would occupy until his death. Because its window was visible from the path that students leaving the library often used late at night, they saw how frequently his light was still on. Even more remarkably, his office door was usually open, even then — his signal to students that, although he was hard at work, they were welcome to interrupt, whether to discuss the law or seek personal advice.

As a teacher, Floyd excelled. He received the law school's Distinguished Teaching Award in 1986 and again in 2008, making him one of only three faculty members to have received the award twice. Five classes invited him to speak at their graduation, and several more chose him as one of the two faculty marshals who would hood them during the ceremony, most recently in each of the last three years.

His conscientious, creative class preparation was legendary. Perhaps his favorite class was one he varied somewhat over the years. In an early version, he arranged for two women, staff members students were unlikely to know, to wear sweat suits and hats as they burst into class, yelled a few words he had provided, stole a portable radio from his desk, and raced out of the room. Floyd then asked his startled students to describe them and recount what had happened. Students inevitably disagreed about many details, while failing to recall many others. Later that hour, dressed in their work clothes, the women returned with three or four others for a lineup. In the three years that his Center's secretary, Donarae Reynolds, participated, students failed to identify either thief. Course coverage on the reliability of eyewitness testimony had begun.

In unrecorded service to students, year in and year out, Floyd volunteered to judge moot court arguments and assist teams as they prepared for regional and national competitions. He also loved taking part in humorous skits at the annual student talent show.

Deeply committed to self-governance, Floyd took on significant roles in many settings. At the law school, he chaired J.D. and LL.M. Admissions Committees, Tenure Committees for junior faculty members, and the Faculty Recruitment Committee. For the Faculty Association, he served as a member of the Board of Directors for well over a decade. And after his faculty appointment went to 100%, he added demanding Academic Senate positions, most notably the Committee on Academic Personnel (CAP), which he also chaired; Privilege and Tenure, for which he also served as a Hearing Officer; and the Committee that chose the campus' Distinguished Research Award recipients.

Floyd's service to courts, the California legislature, and other public bodies was similarly extensive and important. In addition to positions that were directly related to his work on juvenile justice, criminal procedure, and election law, for many years he was a member of the California Attorney General's Research Advisory Council and the Steering Committee of the California Bureau of Criminal Statistics. He was also an early president of the California Association for Criminal Justice Research.

At the national and international levels, he was a life member of the American Law Institute (ALI) and served as Consultant to the United Kingdom's Home Office, the Commission on Revision of the Federal Court Appellate System, the U.S. Bureau of Justice Statistics, the Ford Foundation's Beijing Office, the National Center for State Courts, the Police Foundation, the ABA's Central and Eastern European Initiative, and, frequently, NIJ. He was also a member of Project Advisory Committees for the National Conference on Family Counseling and Juvenile Diversion and for several NIJ projects.

Floyd was a thoughtful analyst with exceptionally balanced judgment. Because he understood the importance of politics to law, he was willing to take a public stance even when it might jeopardize his future opportunities. An example was the memorandum he and Barry Mahoney, another former Director of the Vera Institute's London Office, co-authored, "The Lawfulness of Robert Bork's Firing of the Watergate Special Prosecutor" (1987). Their carefully researched paper, which they distributed to a handful of influential senators, illuminated a previously murky incident as the U.S. Senate considered and ultimately rejected Bork's nomination to the United States Supreme Court. As this suggests, Floyd was no ideologue. He neither expected nor wanted anyone to accept his positions merely because he believed in them. Rather, he based his arguments on careful scholarship and, whenever possible, empirical research, believing that, in the long run, such arguments were more persuasive and more likely to garner bipartisan support.

As a colleague, family member, or friend, Floyd was upbeat, adventurous, fun-loving, generous, supportive, or consoling, as the circumstances dictated. An ardent fan of college sports, he would regularly stop by the offices of longtime colleagues to chat about SEC football or ACC basketball. He had a standing March Madness bet with Alan Brownstein — Floyd's ACC teams (including Bob Hillman's Duke Blue Devils) against "the Field" — and was as graceful in defeat as in victory.

To appreciate the magnitude of Floyd's scholarly legacy, one need only consider the volume, diversity, and cogency of his publications, and the generations of students he trained. Floyd Feeney was one of the great legal academics of his time. As a family member, he treasured his daughters, Elizabeth Feeney of Ampthill, England, and Linda Feeney Fessler of Fresno, California; their husbands, Robert Smith and Steve Fessler; his grandchildren, William Benn, Michael Fessler, Rupert Smith, Zachary Smith, and Kaitlyn Fessler; his sisters, Margaret Feeney Mattison of Spartanburg, South Carolina, and Dorothy Feeney

Matthews of Houston, Texas; their husbands, Joe Mattison and Frank Matthews; and his extended family. Talking to them gave him great joy; spending time with them meant everything.

Floyd Feeney will be sorely missed by his family, the entire law school community, and his friends and colleagues around the globe.

