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# Tribute to Professor Floyd Feeney

*Senator Robert M. Hertzberg\**

After an illustrious career dedicating himself to the law school, state, and nation he loved, Professor Floyd F. Feeney, a man I admired greatly, left us. In so many ways, Floyd Feeney was the paradigmatic attorney and law school professor, serving his students, the legal profession, and his community with unparalleled passion and generosity.

Professor Feeney arrived at UC Davis School of Law in 1968, mere months before Martin Luther King Jr. was assassinated on that tragic evening in Memphis. In a 2016 article in King Hall's *Counselor* magazine, Professor Feeney recounted how he witnessed as that event galvanized students to name the school after the civil rights leader. He wrote that King's assassination, and so many other events during that tumultuous time, "brought students and faculty together," and that "the close relationships helped to build a friendly, cooperative spirit," which "has endured and ever since been an important part of King Hall."<sup>1</sup> Though the professor writes as an observer, anyone who knew him can attest that the school and its students triumphed through that turbulent episode in American history in large part thanks to the guidance and wisdom of Floyd Feeney. The legacy of excellence and commitment he leaves at the institution he loved will no doubt serve as a strong example for those who follow.

In addition to his impact at King Hall, in California, and on legal scholarship nationally, Professor Feeney's international influence was substantial. During my time both as a public official and as a private person, I have had the privilege of traveling around the world several times over. Wherever I go, I endeavor to bring California's unique brand and forward-thinking perspective to those abroad, and learn from them

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<sup>1</sup> *King Hall Grieves Loss of Founding Faculty Member Professor Floyd Feeney*, UC DAVIS SCH. L. (Jan. 9, 2019), <https://law.ucdavis.edu/news/news.aspx?id=9205> [<https://perma.cc/QLM9-54YM>].

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in return. In this way, I travel a path already well worn by Floyd Feeney, a true California emissary.

Decades before I was first elected to the California State Legislature in 1996, Professor Feeney was a trailblazer in the field of criminal justice reform, a policy area to which I have been deeply committed during my career as a lawmaker. In the late 1960s, Floyd worked on President Johnson's Commission on Law Enforcement and Administration of Justice, and its recommendations shaped the important research program he led during his two-decade tenure as Executive Director of the UC Davis Interdisciplinary Center on Administration of Criminal Justice. His outstanding work there earned him several distinctions from the United States Department of Justice, and a Pepperdine Award for Outstanding Contribution to Corrections from the California Probation, Parole and Correctional Association. Given my own dedication to laws that serve youth, I have a special appreciation for his innovative work with Roger Baron on the Sacramento Diversion project, which became an international model for diverting juvenile offenders to family counseling.<sup>2</sup>

Much of my work as a California State Senator has centered around reforming California's pretrial justice system — the phase of the criminal process between arrest and trial — with a special focus on doing away with the state's profit-based bail system. In 2017, I authored Senate Bill 10, which was signed by Governor Brown in 2018, and will ultimately replace commercial bail with a system based on risk, if it survives a 2020 ballot initiative to repeal it.<sup>3</sup> My effort was the culmination of decades of progress in the pretrial reform field — progress that was based in large part on the impeccable research and thought leadership of Floyd Feeney. Beginning in the early 1970s, Professor Feeney authored a series of works and conducted numerous studies — many of which were the first of their kind — regarding arrest and pretrial release practices by law enforcement agencies in California and nationwide. His seminal work on the topic, *The Police and Pretrial Release*, published in 1982, was foundational in its analysis of the harm

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<sup>2</sup> See generally ROGER BARON & FLOYD FEENEY, JUVENILE DIVERSION THROUGH FAMILY COUNSELING (1976), <https://www.ncjrs.gov/pdffiles1/Digitization/32026NCJRS.pdf> [<https://perma.cc/SDX3-U988>] (explaining the project history and initial results).

<sup>3</sup> Referendum 1856 (18-0009), *Referendum to Overturn a 2018 Law That Replaced Money Bail System with a System Based on Public Safety Risk*, qualified for the November 2020 ballot. The referendum would have the effect of staying SB 10. The Judicial Council of California has suspended implementation of the legislation pending the referendum. *SB 10: Pretrial Release and Detention*, CAL. CTS., <https://www.courts.ca.gov/pretrial.htm> (last visited Oct. 22, 2019) [<https://perma.cc/V9MT-CPGH>].

to defendants' rights caused by pretrial detention, and in its data-driven conclusion that many of the detained can be released safely.<sup>4</sup>

Those notions are central to the modern movement for pretrial justice that has taken root not just in California, but across the country. States like New Jersey,<sup>5</sup> New York,<sup>6</sup> and Delaware<sup>7</sup> have started to rethink how arrestees are treated before trial and have developed new, evidence-based approaches to arrest and pretrial detention procedures. My sincere hope is that California continues to be at the vanguard of this issue and builds upon the invaluable work of individuals like Floyd Feeney — a leader both in ideas and in character.

During my tenure as Speaker of the California State Assembly from 2000-2002, I convened several Speaker's Commission task forces, including the Speaker's Commission on the California Initiative Process. The goal of these commissions was to bring together the best and the brightest minds to think through some of the most difficult problems we were facing in California. It came as no surprise to me that Professor Feeney would be interested in engaging on the crucial issue of initiative reform, considering his involvement in major public policy issues outside the criminal law field earlier in his career. I think, for example, of his work from 1962 to 1963 as deputy counsel for the President's Committee on Equal Employment Opportunity, and from 1963 to 1966 as special assistant to the administrator of the Agency for International Development. Decades later, Professor Feeney's considerable insight and analysis contributed significantly to the initiative reform conversation and helped bring to the forefront a thoughtful perspective regarding this highly nuanced issue.

Years before my election to the state legislature, Professor Feeney, in March 1991, coauthored *The California Ballot Pamphlet: A Survey of Voters*, which discussed several ideas to improve the state ballot pamphlet.<sup>8</sup> That survey was part of a body of research I relied on heavily in forming my Speaker's Commission on the California Initiative

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<sup>4</sup> See generally FLOYD FEENEY, *THE POLICE AND PRETRIAL RELEASE* (1982).

<sup>5</sup> See N.J. STAT. ANN. §§ 2A:162-15 to -26 (2019).

<sup>6</sup> New York accomplished bail reform via amendments in its 2019-2020 fiscal year state budget. See 2019 Sess. Law News of N.Y. Ch. 59 (S. 1509-C); see, e.g., N.Y. CRIM. PROC. LAW § 530.40 (2019) (demanding release on recognizance or with non-monetary conditions with exceptions for certain serious crimes).

<sup>7</sup> DEL. CODE ANN. tit. 11, §§ 2101-2116 (2019) (encouraging Delaware courts to impose nonmonetary bail conditions when feasible).

<sup>8</sup> PHILIP DUBOIS, FLOYD FEENEY & EDMOND COSTANTINI, OFFICE OF THE SEC'Y OF STATE OF CAL., *THE CALIFORNIA BALLOT PAMPHLET: A SURVEY OF VOTERS* (1991).

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Process in October 2000.<sup>9</sup> Professor Feeney served as a key advisor to the Commission, and his academic research provided a strong foundation for the Commission's detailed recommendations to improve our democracy.<sup>10</sup> That foundation remains firm to this day. I am grateful to have had the honor of working so closely with Professor Feeney, and California is a better place because of it.

The impact Floyd Feeney has made in our communities, in our state, and in our nation will live on through all of us. It was an honor to learn from Professor Feeney's work on pretrial reform and to collaborate with him on initiative reform, and I will always admire the commitment and devotion he demonstrated throughout his marvelous career. It has been said "there is no exercise better for the heart than reaching down and lifting people up" — words that explain why Floyd Feeney was teaching classes and giving of himself up to the day of his passing. We should all strive to have as generous and benevolent a heart as that man did.

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<sup>9</sup> ROBERT M. HERTZBERG, CAL. STATE. ASSEMBLY, THE SPEAKER'S COMMISSION ON THE CALIFORNIA INITIATIVE PROCESS (2002), <http://www.iandrinstitute.org/docs/CA-Commission-Final-IandR-Report-IRI.pdf> [<https://perma.cc/7AQN-ENFA>].

<sup>10</sup> The Commission cited several of Professor Feeney's works in its final report: PHILIP L. DUBOIS & FLOYD FEENEY, LAWMAKING BY INITIATIVE: ISSUES, OPTIONS AND COMPARISONS (1998); PHILIP L. DUBOIS & FLOYD F. FEENEY, IMPROVING THE CALIFORNIA INITIATIVE PROCESS: OPTIONS FOR CHANGE (1992); FLOYD FEENEY, LEGAL RESTRICTIONS APPLYING TO THE CALIFORNIA INITIATIVE PROCESS (2000).