

MILD-MANNERED

C. Douglas Floyd

terms, made partner at a prestigious San Francisco firm after only four years, is a member of the American Law Institute, and has won the Professor of the Year Award at the BYU Law School five times, among other achievements and honors. Yet he still seems partial to a small plaque standing on his desk. The memento features a photograph of seven of his students and the words: “Presented to C. Douglas Floyd in Appreciation for Five Great Semesters. The Perverse Minority.” It was Floyd who christened the group “perverse” for enduring so many of his classes. However, the seven—William Calhoun,

David Cherrington, Christine Clark, Deborah Dunn, Gregori Pesci, Paul Werner, and Fred Williams—insist they would have gladly endured even more. Says Floyd’s close friend, colleague, and jogging partner Doug Parker, “They took every class he taught. If he had taught the law of beehives, they would have taken it.” Parker emphasizes that the seven were “top-notch students.”

In the estimation of both students and colleagues, Floyd is a top-notch teacher who perennially tackles non-user-friendly courses like civil procedure, federal courts, and antitrust. Of civil procedure Parker says, “Unlike a tort, no one has ever experienced a rule of procedure. Students have no frame of reference to relate to. It deals with the behavior of an attorney in conducting a trial.” Yet Floyd succeeds in “making theory and doctrine

Douglas Floyd served as articles editor for the *Stanford Law Review*, received the Order of the Coif, graduated second in his Stanford Law School class, clerked for Supreme Court Chief Justice Warren E. Burger for two

a reality rather than just rules and abstractions. Making that connection,” Parker concludes, “takes an excellent teacher.” This ability to discuss abstractions in an “applied sense” still stands out in his students’ minds. Says one of the “perverse,” Fred Williams, “I’ll be writing a brief or a motion and suddenly realize I’m applying Floydian analysis.” Those days, which occur frequently, “are the best I have in legal practice.” Debbie Dunn, another of the seven, agrees: “Even though I don’t work in any of the areas he taught, analytical skills I learned from him carry over into any substantive area of law.”

But the first semester with Floyd in civil procedure did not bode well for

Williams, who says: “His use of Socratic questioning was intense. I thought, ‘This guy’s going to be impossible. I won’t survive a semester.’” Paul Werner’s sister, who had taken Floyd’s civil procedure class years before, warned Paul, “For the first three weeks you think it is the worst class you’ve ever taken, but by the end of the semester you will consider Floyd one of the greatest men and best professors you’ve ever had.” Pesci hastens to explain, “He wasn’t mean, and he never tried to make students feel badly. He knew his subject so well and was so bright that you were in awe.” Concurs Paul, “It was the fear you have when you go into court before a great judge.”

All agree with David Cherrington, another of the seven, when he says, “I spent as much time studying for civil procedure as for all my other classes that year combined.” On the other hand, he adds, “I learned as much in that class as in all my other classes combined.” Says Werner, “Professor Floyd’s commitment to law and teaching was contagious.”

Surprisingly, considering his teaching skills and broad knowledge, Floyd’s teaching career is what he terms “something of an accident.” He originally intended to be a mathematician. Undoubtedly the fact that his first job in young manhood was law-related influenced his eventual change

by Lovisa Lyman

of direction. His father was an abstractor of land titles in Kansas. In the days before computerized searches, verifying a title to ensure ownership and the lack of any liens was a tedious process. Abstractors spent hours in courthouses examining instruments and tracing the entire chain of title, then summarizing or abstracting the data. An attorney examined the completed search. In Kansas the searches generally

bered, because in his hometown, Ness City, Kansas (near Dodge City), the local draft board knew everyone personally. He decided to volunteer for the Navy Judge Advocate General's Corps. Competition was keen; many, like Doug, hoped to use their legal talents while in the military. Ultimately, he was assured that upon completion of the bar he would be welcomed by the Corps. While he prepared

cross-country to Newport, Rhode Island, for officers' training. "I still have frostbite bumps on my ears," confides Floyd of the coldest winter he had ever experienced. In Rochester, New York, the pipes broke in the couple's hotel, and ice crystals formed in their car's oil. "They were thawing cars with blowtorches," he recalls.

Upon completing his training, he was assigned to the JAG office in Washington, D.C. That office supervised the Navy military criminal system, including the Marine Corps, and was responsible for formulating policy, appellate review of criminal cases from Vietnam and elsewhere, and unusual naval offenses, such as hazarding a ship. Besides high profile cases, the office dealt with many issues related to the scope of military authority and the right of free speech as military personnel protested the war.

After three years in the JAG, Doug received a clerkship with Chief Justice Warren Burger. He served during two terms, a memorable experience and a high point in his career. Notable cases at that time included the *Pentagon Papers* case and *Wisconsin v. Yoder*, dealing with religious free exercise.

In 1972, after four and a half years in D.C., the Floyds returned to the Bay Area, where Doug rejoined Pillsbury, Madison & Sutro. "The firm was an excellent place to practice law," he observes, "with a full-scale litigation and business practice." Drawing on his naval and clerkship experiences, Doug specialized in appellate litigation, arguing numerous cases in federal and state appellate courts. Antitrust was another major area of his expertise.

The Floyds' two children were born after they returned to California—Ches in 1975 and Emily in 1977. Ches is now a senior majoring in English and art at the University of Virginia, and Emily is a sophomore studying biology and performing arts at Smith College.

In 1980 Doug discussed the possibility of teaching for a year with Francis Kirkham, a member of the board of visitors in the early days of the BYU Law School and senior partner at Floyd's firm. Kirkham was a man Doug respected highly and over the years had become a close friend and mentor. A Utah boy, Kirkham



led back to a patent land grant. During high school, college, and his first year of law school, Douglas worked summers for his father and ultimately became certified as an abstractor himself. Fortunately, before graduating from MIT with a mathematics major, he decided that the world of theoretical mathematics wasn't for him. As he explains, "A lot of the math out there was too abstract for me." Instead, he opted for Stanford Law School.

When he graduated in 1967, the Vietnam War was well under way. He knew his days as a civilian were num-

bered, because in his hometown, Ness City, Kansas (near Dodge City), the local draft board knew everyone personally. He decided to volunteer for the Navy Judge Advocate General's Corps. Competition was keen; many, like Doug, hoped to use their legal talents while in the military. Ultimately, he was assured that upon completion of the bar he would be welcomed by the Corps. While he prepared

for the exam, he worked for Pillsbury, Madison & Sutro, a large San Francisco firm. Another important event occurred that year: he married his wife, Barbara Beach. They had met during his final year of law school while she was completing a master's in special education at San Francisco State, leading to a career in teaching the visually disabled. Barbara's family was from Berkeley.

In December of 1967 the Floyds loaded their old Pontiac (inside and on top) with all their worldly possessions and headed

had distinguished himself in many ways, including clerkships at the Supreme Court under Justices Sutherland and Hughes. Kirkham helped to arrange a one-year appointment. "Barbara and I enjoyed it so much we stayed," says Floyd of that experience. He concludes that it was his relationships with students and faculty that made the year so congenial.

Some law students never get past the demanding Floyd of their first year. Others, who don't have him for civil procedure, may simply discount him as the quiet man he seems to be. "He's an undervalued asset," attests Williams. "He's a lot like Clark Kent until you get to know

would often say, "Which sentence catches the flavor of this point of law?"

When Pesci and Werner were second years, they recall that Professor Floyd offered a dinner at the Public Interest Auction. Dinners with other professors went for \$20 and \$30, but bidding went crazy for the meal with Floyd. Several of the "Perverse Minority" vied for the opportunity, but it finally went to another student for \$350. In class the next day, Paul told Floyd, "We tried to get your billable hour, but that was as high as anyone would go." Floyd pondered what he could possibly do to deserve that much money. In reality Floyd's good word is worth a

Such expressions of caring and reassurance are typical of Floyd. "It was a great privilege to have him say, 'I want you in my class,'" says Cherrington.

Between 1980 and 1985 Doug taught full-time. Then from 1985 to 1991 he taught an occasional course while practicing law and living in Berkeley. In 1991 he returned to full-time teaching, commuting to Utah to allow his children to finish high school in California, where they were offered "a broader exposure to different ways of looking at things."

Glad to be back to teaching full-time, Floyd views "teaching as more satisfying than practice in a number of ways,"

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him. Then you see him as one of the finest professionals and finest professors you've ever had." Parker agrees: "He's not a flamboyant person. He's always soft-spoken, but when he does speak, he doesn't dissipate a lot of conversational energy on unimportant thought."

It is in their second- and third-year courses that students get to know the real Douglas Floyd. Says Williams: "He taught the lessons we needed to learn as 'first years.' During his second- and third-year classes, he treated us as equals as we informally discussed the appointed topics." He hastens to add that "the material is still rigorous, but Professor Floyd is much more approachable." Both Pesci and Werner comment on Floyd's good humor. Dunn describes Floyd as "intellectually entertaining and personable. He isn't there to show the world how much he knows and how little we know." Cherrington corroborates: "Some people that bright make you feel little around them. Mr. Floyd always makes you feel better about yourself and that you have worth." He goes on: "Each class was a delightful exchange if you were prepared. He has such a mastery of the areas he teaches that he knows each case down to individual sentences. He

great deal in the profession. He has helped many students find jobs and clerkships through his contacts and colleagues. Never self-aggrandizing and the last to point out his accomplishments, Floyd is nevertheless widely known and respected.

Floyd is particularly interested that his most promising students have the opportunity to know what he knows, as he told one student: "You're going to be working for the next 40 or 50 years of your life. This is your last opportunity to roam in the fields of the law." Greg Pesci tells how he signed up for Floyd's federal courts course but got cold feet. Everyone in the class was on law review or in the top 10 percent of the class, and Greg wasn't sure he could compete. He didn't go the first day of class and fully intended to drop the course, until he ran into Floyd in the hall and was invited into his office. Greg excused his plans with, "I'm not one of the anointed." He remembers Floyd's reassurance, "You'll do just fine." His words gave Pesci the confidence he needed to take not only that class but three more. Says Paul Werner, who remembers the incident, "Mr. Floyd treated all his students the same. If he knew who was in the top 10 percent, he didn't show it."

though practice and teaching have been mutually beneficial over the years. "In teaching you can focus on your self-directed interests rather than on the needs of clients. You can take a neutral, dispassionate approach," he says. Floyd is active in publishing law review articles, and this year his new treatise, *Private Antitrust Actions*, was published by Little Brown.

Two years ago, the Floyds moved back to Utah. The couple still maintain their home in Berkeley, where they live in the summer to keep up with family and enjoy the advantages of metropolitan life. Meanwhile, their Utah home at Sundance is ideal for many of their family interests, including hiking, skiing, and snowshoeing. Though Doug doesn't accompany them ("I prefer a softer bed") his children bring friends for an annual Uinta backpacking trip. He and Barbara prefer day hikes.

No one could be more pleased with his decision to make Utah and the BYU Law School his permanent home than the "Perverse Minority." Cherrington sums up for the rest, "No one is a better friend to the students than Professor Floyd. He is demanding and at the same time rewarding: a tremendous role model of a scholar and an academic."

OZ AGAIN?

Marguerite Driessen

unlike Dorothy, Marguerite, the daughter of an army officer, also *began* her life in an alien place—Wurzburg, Bavaria, in West Germany. “I was born in a country that no longer exists,” she quips. At 11 months she experienced her first move. For the next 15 years, she lived in only two houses for more than a year as her father, a colonel in army intelligence, followed orders. “Everyone should have to move every year,” she insists. “I didn’t notice it at the time, but when I was in high school and when I taught high school I witnessed some definite advantages to my frequent adjustments.” Marguerite feels she was

more mature socially than students who had lived their whole lives in one or two areas. Peer pressure—the kind that says, “Do this, and I’ll be your friend forever”—had no impact. “Since I knew I was only going to be there a year or so, I wasn’t easy to coerce with that strategy.”

She and her four siblings learned to be adaptable. When she returned to Germany to live from ages 10 to 13, she adjusted very well to the different country and language. It was a little harder when they were later transferred to the southern United States, which “seemed more foreign than Germany.”

Over the years, she learned to be selective of her friends. “You don’t want to waste time on poor friendships.” She forged lasting friendships because she knew from experience what to look for.

But though she learned how to be attached to people, she had to learn not to be attached to things. “I had a weight allowance and knew I would soon have to give away anything superfluous to stay within it.”

She admits there was a downside to moving, however: “I never know where to say I’m from. I feel like I’m a citizen of anywhere and everywhere.”

When it came time for college, the world had literally been her campus. Without knowing that motto graces BYU’s entrance, she started to investigate the school. It wasn’t the obvious choice, since she wasn’t LDS at the time, and her home in Dale City, Virginia, was far away. Nevertheless, BYU appealed to 16-year-old

Remember how Dorothy in the *Wizard of Oz* gets whisked away from her simple life in Kansas by a tornado and plopped down in a strange place? That, until recently, was Marguerite Cephas Driessen’s life story. But

Marguerite and one of her girlfriends. They had both been labeled “goody goodies” in every school they had attended, and knowing the reputation of BYU, they concluded they would fit in better and less conspicuously there than at any other school. They were a bit put off by the part of the application that required an interview with a bishop or an ecclesiastical leader. Neither had a clergyman she felt particularly attached to, but Marguerite remembered that a boy in her Spanish class had mentioned his father was a Mormon bishop. They located that ward’s executive secretary

She also dreams of starting the annual J. Reuben Clark Law School musical.

and made appointments. After their interviews, the bishop suggested they might try attending a meeting. They would have done so long before had the meeting times been posted, one of Marguerite’s pet peeves: “Lots of passers-by would feel more welcome and less intimidated if the Church would do that.” Provided with the needed information, the girls gladly went. A family in the ward invited them to dinner after the meetings and did the same the next week—this time the missionaries were invited as well. Before she and her friend left for Provo the following year, they were both baptized. “My folks were happy I was going to a Mormon school,” she says. So pleased, in fact, that later they sent her younger sister to BYU as well.

To her surprise, Marguerite managed to graduate in eight semesters. (She jokes, “I was still single, but they didn’t give my tuition back.”) Her plan to go to law school had influenced her decision as a freshman to change her major from math to political science. “I knew with that major I’d have to finish law school or starve.” Though law school was already in her plans, she had been so occupied with graduating that she hadn’t had time to take the LSAT and send out applications. She taught high school the next year while she took care of those tasks.

She freely admits she was on the dweeb end of the scale at Stanford, serving as an associate managing editor of the *Stanford Law Review* and doing moot court her first year. On the low end of her dweeb continuum was a gospel choir she cofounded with five other students. (The choir later expanded to eight.) It started with two girls singing in the vestibule; a guy joined them, and so on. The group performed at the first-year talent show. They enjoyed practicing so much that they continued to meet, and the law school continued to find occasions for them to perform. Their final performance was at graduation. They chose nonsectarian hymns “low on the Jesus meter,” since one of the members was Jewish. Marguerite sang soprano. The

choir kept her sane while she worked hard at moot court and law review.

Another sanity preserver was the musical produced at Stanford almost every spring. Using any familiar tunes, students substituted lyrics relating to the law school experience. Most of Stanford’s 450 students, plus many law school personnel, got involved in directing, acting, dancing, playing in the band, making scenery and costumes, and applauding the performance. Because they were in the “cool down stage,” with jobs ready and waiting for them, the third-year class always organized the annual show, but lower classmen were welcome to participate, and Marguerite did. When she was a third-year herself, she not only produced the show but was the star. Fittingly, it was a take-off on the *Wizard of Oz*.

That year she had to make an extremely hard decision: where to work. She chose Beveridge & Diamond, a D.C. environmental law firm. When she had been there two years, the United States Sentencing Commission contacted her. They were particularly interested in Marguerite because they were revamping environmental guidelines. She welcomed the chance to move on to a job where she could be influencing policy rather than just responding to it. Balancing the needs

federal sentencing guidelines, instructing courts on the sentencing ranges that apply for violations of federal criminal laws. Marguerite felt that helping to develop criminal justice policy on sentencing would have more meaning in the universe than divvying percentages points of superfund liability. Plus, the hours were shorter. She was glad to make the move.

In D.C. she was active in the single adult ward. For her, single did not equate with miserable, though some of the other

unsuitable suitors, "If you were the last man on earth, I might consider having your children, but I'm not that far gone." Even so, she was invariably surprised when LDS men told her they were intimidated by her and afraid to ask her out.

It was on an outing in 1993 that she first met James (Jamie) Driessen. Jamie, who two years earlier had joined the Church after calling an 800 number to get a Book of Mormon, was a single custodial parent. That summer while his daughter, Amanda, was visiting grandparents in Wisconsin, Jamie decided to attend Marguerite's singles' ward. At first he didn't seriously consider Marguerite as a potential spouse, but whenever he heard her teach or speak, he thought, "I'd like to date someone like her." Finally he asked himself, "Why not her?" Marguerite had reservations as well. After all, Jamie had only been an enlisted man in the army. Was he worthy of the colonel's daughter? And he had not yet completed his engineering degree. He made a commitment to do so, however, and with her father's blessing, they were married in January 1994, and she moved again—to his home in Maryland, 55 miles from D.C. and a four-hour round-trip commute to work.

Michael Goldsmith, a current member of the BYU Law School faculty, who was appointed to the Sentencing Commission in 1994, knew that the Law School was searching for new faculty and asked Marguerite if she had considered teaching law. At that point in her life, the summer of 1995, such a change was particularly appealing because the Driessen's new baby, Samuel James, had joined the family in January of that year. She contacted BYU Law School, and the rest is history.

Marguerite can now walk to work in less than 10 minutes. She rejoices in the fact that Utah has "no grand scheme of problems" and is a place where she can confidently raise her step-daughter Amanda and son Sam. With that in mind, Jamie is designing their home, so at least one more move looms in the future.

Marguerite teaches criminal law, evidence, and a sentencing seminar. She also dreams of starting the annual J. Reuben Clark Law School musical. Dorothy to the last.



of the environment against the needs of a developing society, Marguerite found herself working primarily in the area of civil litigation in which various responsible parties were fighting over their relative levels of culpability. This basically translated into a battle over money. Though she realized that this type of battle may be very important to some, she could also see that it would not be a personally fulfilling career choice for herself. The Sentencing Commission drafts the

women in the ward felt that way. She saw women who were simply waiting to get married, eschewing further schooling, taking low-paying jobs so they wouldn't be better employed or educated than their potential spouses, and then growing bitter as their lives proceeded to go nowhere. Marguerite made a conscious decision not to let that happen to her. She never felt, as some did, "When all else fails, lower your standards." Even as she neared 30, she could still say under her breath about particularly