Remembrances of Jeffrey O'Connell

From Friends, Colleagues, and Students
Solicited by Peter Kinzler
Spring 2016

Kenneth Abraham

I first met Jeffrey O'Connell in the Spring of 1976, during what is now often referred to as the "first malpractice crisis." I had begun teaching Torts at the University of Maryland Law School, and we held a conference on the crisis. Jeffrey came, along with Guido Calabresi and Robert Keeton, among others. Of course I knew of Jeffrey as the co-inventor of no-fault auto insurance, along with Keeton.

Jeffrey stood out at the conference as the most vocal and articulate advocate of reform. The others adopted a distinctly academic, analytical tone. But Jeffrey was charismatic. In a bold and colorful presentation, he proposed shifting to medical no-fault in order to replace what he called the faltering medical malpractice liability system.

As we know, that did not happen. But he continued to advocate it. And in the years to come, he would train his sights not only on medical malpractice, but on other forms of accidental bodily injury as well. He was an indefatigable advocate of no-fault – elective, contractual, legislative. And he was creative. When a flaw was identified in one of his proposals, his next iteration addressed it.

When I came to UVA Law School in 1983, we became friends. He had arrived from Illinois the year before. We both taught and wrote about torts and insurance, so we had lots to talk about. He was an incredibly cordial and supportive colleague, despite the fact that he was essentially a loner. He once said to me, in words very close to these, "I am not one of the boys. I don't go to lunch. I come late to faculty meetings in order to signal that I am busy." But he was an incredible raconteur, and if you could get him to lunch or dinner, he could keep you spellbound.

Jeffrey's wonderful wife Virginia had something of the same attitude. At one of the first faculty cocktails parties we attended, Virginia, in a most cordial fashion introduced herself: "I'm Virginia O'Connell and I don't cook." What she meant was that she wouldn't be inviting us to dinner but that we shouldn't be insulted, because she wouldn't be inviting anyone to dinner. In fact, Virginia did cook, but only for Jeffrey. And while she cooked he read to her. Jeffrey was a voracious and omnivorous reader, though I think he liked biographies best, and she must have shared his love of reading.

My friendship with Jeffrey continued up to his death. We talked torts and insurance, we played golf from time to time – he walked nine holes most days up until a fall a few months before his death sidelined him – and we talked about whatever we were reading. I'm pretty sure that Jeffrey would have said that he'd had a great life, and I think he did. If his aspiration for no-fault never made it beyond the auto area, he was nonetheless an intellectual pioneer whose influence will continue for decades at least, and he had a lot of personal and professional gratification for all the years I knew him.

Herman Brandau

I have such fond memories of working with Jeff O'Connell. He was not only a brilliant legal scholar, but when faced with the practical realities of enacting or correcting legislation which incorporated his no-fault concepts, he was willing to suggest creative solutions to solve the problems and open to suggestions by others. His legacy endures, and in the future many of his ideas and concepts may be revisited. As automobiles become more automated and crashes are more the result of system errors than human mistakes, the concept of a no-fault compensation system may become even more attractive. Time will tell.

Lester Brickman

Long before I first met Jeffrey O'Connell, I was aware of his pioneering work (with Robert Keeton) on no-fault and tort reform. Surely, most law professors were similarly aware. In 1993, Michael Horowitz, then with the Manhattan Institute and later with the Hudson Institute, who had worked with Jeffrey on "auto choice" came to me and said he had read my articles on lawyers' fees, in particular, contingency fees, and wanted to partner with me to come up with a tort reform proposal to combat abuses that personal injury lawyers charging contingency fees regularly engaged in. Thus was born our "early offer" proposal that limited contingency fees to the value added by lawyers in cases where alleged responsible parties made early settlement offers before lawyers had added any significant value to the claims by their efforts. We called it the "early offer" proposal because it applied to personal injury litigation only if an alleged responsible party made an early offer of settlement that met strict time limits and disclosure requirements.

After making considerable progress in drafting the proposal, Horowitz asked if I would be willing to have another person who was knowledgeable about personal injury litigation join the two of us in completing the project and trying to sell it. That person was Jeffrey O'Connell. He suggested I take a few days to think about it. I responded without hesitation that I would be delighted to have Jeffrey join us and looked forward to meeting him. Thus began my relationship with the dean of tort reform in the United States.

Soon, we become enmeshed in fine tuning parts of the proposal that dealt with what disclosures the injured party would have to provide for the alleged responsible party, typically an insurance company, and what provisions to add to the proposal that would increase the likelihood of insurers actually making early offers. It was Jeffrey who came to the rescue. He had a vast knowledge of how liability insurers operated and arranged for us to meet with high level insurance executives.

One provision of the early offer proposal kept Jeffrey and I at loggerheads. A fundamental ethical proposition, on which the proposal is based, is that lawyers' contingency fees had to be at least roughly consonant with the risks that the lawyer was bearing. It was that "risk" that ethically justified lawyers' charging a premium for assuming that risk. The title to my first article on contingency fees encapsulated that ethical principle: *Contingent Fees Without Contingencies:* HAMLET *Without The Prince of Denmark*? A lawyer who did not undertake any meaningful risk was not ethically entitled to change a risk premium. This ethical precept is routinely ignored by contingency fee lawyers. Based on that thesis, our proposal impacted lawyers' contingency fees in two circumstances: (1) if an "early offer" was made and accepted; and (2) if an "early offer" was rejected and there was a subsequent settlement or verdict for a higher amount. As to the former, based on the fundamental underpinning of our proposal that charging a contingency fee required a real contingency, we incorporated the proposition that an "early offer" of

settlement was a marker of the market value of the claim before any significant value-adding efforts had been made by an attorney. Accordingly, the lawyer for the plaintiff could not legitimately apply a contingency fee against this amount. Instead, he could charge an hourly rate which was set at the time the lawyer was retained, for the time required to investigate the claim, assemble relevant medical records, lost wage claims and other material to be sent to the alleged responsible party. Having labored extensively to come up with this provision, I was wary of any attempts to tamper with it. Jeffrey urged us to replace it with one that simply limited the lawyer's fee to 10% of the amount of an accepted "early offer." His argument was that the simpler the proposal, the greater the chances of its being adopted. I insisted on keeping the hourly rate feature because I wanted to emphasize the point that the accepted early offer fee was not a contingency fee because there was simply no contingency, harking back to my "Hamlet" article.

I prevailed but it would turn out to be a pyric victory. Over the years, multiple state legislators expressed an interest in our "early offer" proposal. Each time I explained the proposal and the mechanism if an "early offer" was accepted, I sensed some loss of interest by the legislators.

Over the years, I have thought long and hard about Jeffrey's preference for simplicity over my insistence on ethical purity. It took over a decade but I was finally won over by his argument. Jeffrey had been through the no-fault and other tort reform wars and his wealth of experience outweighed my determination to uphold the principle that lawyers could not charge contingency fees in the absence of any realistic contingency. It just took me a (long) while to realize that he was right.

I admired Jeffrey not simply because of his work and his vast knowledge and experience but also because of his integrity. When the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 94-389 in which it trashed our "early offer" proposal in response to a request for ethical guidance as to whether lawyers could charge standard contingency fees in cases where there was no meaningful liability risk, I wrote a scathing critique of the ABA Opinion.

In the course of writing my critique, I found a "Gotcha" that supported my argument that the ABA frequently if not routinely favored the interests of lawyers over the interests of the public. It involved the ABA's indifference to consider supporting the adoption of no-fault auto insurance plans which would significantly lower auto insurance costs (and lawyers' fees).

Gleefully, I called Jeffrey to share my "find" and looked forward to his approval. It was not to come. Jeffrey, of course, was deeply involved in the discussions on no-fault. He explained to me that there was a rational economic basis for the statement that "lowering the cost of driving is not necessarily socially desirable." I had to be content with arguing that the ABA's position in opposition to the no-fault "auto choice" plan that he and Horowitz were pursuing was at least in part, born out of the bar's self-interest in maintaining the funding of automobile accident litigation through mandatory insurance coverage laws that inextricably bound first-person (no-fault) coverage with "pain and suffering" coverage, thus generating billions of dollars of contingency fee income.

There were many other instances where Jeffrey declined to take a partisan position, instead hewing to what the data would support. Jeffrey was a gentlemen, a scholar and a man of great integrity that I was privileged to work with.

Guido Calabresi

It is said that Thomas Huxley was Darwin's bulldog. That is, he was the person who took Darwin's theories and made them both intelligible and unavoidable to people at large. When I first met Jeff - we were both very young - he was, without doubt, Bob Keeton's bulldog. He was the explainer, the developer and the broadest and most effective proponent of 1st party,

No Fault Auto Insurance. And, in a way, he remained that all his life, long after Bob Keeton had moved on to other things, including a distinguished federal judgeship. Similarly, years after theoreticians, like me, had become more and more intrigued with the niceties of the relations between Law and Economics and had seemingly lost interest in Keeton and O'Connell's specific reforms, Jeff remained on the firing line for changes which, had they been fully adopted, would have made automobile accident law both fairer and much less expensive.

As the years went on, Jeff went far beyond 1st party No Fault Auto Insurance, and generalized that reform into a whole series of proposals which, true to his and Keeton's original insight, would have bettered tort law everywhere and altogether. Though battered by self-interested parties on both left and right, he never wavered. And his honesty and courage - always combined with a totally cheerful demeanor and fantastic teaching skills -- became a model for us all.

People sometimes doubt whether one can be more than one of three things; a great scholar, a magnificent teacher and a true advocate for reform. Jeff demonstrated that, if one has his character, skills and devotion, one can be all of these at the highest level, while remaining, at the same time, a lovely human being and friend.

I miss him enormously!

Diane Cronk

I worked as a faculty assistant at UVA Law School for 28 years. In my years there I worked with many professors, including Jeffrey O'Connell. Jeff was a pleasure to work with. He was always polite, thoughtful and fun. Jeff was ready to help anyone with insurance questions or problems. The funniest memory I have was when his neighbor called me concerned as Jeff's car was still in his driveway with the car door open and no Jeff! We had discussed him trading in his car so I called many local dealerships and sure enough I found Jeff. The dealership had picked him up and in his hurry, he had forgotten to shut the car door. That was something we laughed and teased about for a long time. Jeff was a wonderful man who I miss and think of often.

Michael Dukakis

Auto insurance was one of the major political issues in Massachusetts when I was a state legislator in the 1960's. Premiums just kept going up and up. Nobody had any answers. The system was full of fraud and phony claims. Insurance companies paid off claimants with what they called the nuisance value of the claims, and that usually guaranteed a thousand dollars or more for the flimsiest of claims.

Then Jeff and Bob Keeton, my former law school professor, published Basic Protection, and I grabbed it as fast as I could and began pushing their no-fault plan in the legislature. I met with Bob and subsequently with Jeff, and to the surprise of a lot of people in the State House, we passed the first bill in the country to reflect their work.

By that time I had met and gotten to know Jeff, and we worked together on no-fault and a number of other equally creative proposals that he and Bob and then he alone,when Bob became a Federal judge, came up with to reform our insurance laws and policies. To say that it was a delight to work with him was a huge understatement. Bright as a whip; politically savvy; endlessly creative as we dealt with real or imagined political problems we faced, he was as good as anyone I have ever worked with-- and lots of fun as well.

These days, of course, I am an academic myself and enjoy working on public policy issues with many of my academic colleagues, Jeff set the standard. He was a scholar who loves the political game and, more than that, made a real impact in every policy area he worked. I

I still miss him and the wonderful enthusiasm he brought to the task of making this a better world.

Nora Freeman Engstrom

Starting with Basic Protection for the Traffic Victim—and throughout his long and storied career—Jeffrey O'Connell's work was undeniably radical. But he was much more than an agitator. He was a sharp-eyed pragmatist, a shrewd political operator, a canny technician, and an ambitious, prolific scholar, who managed to blend a social scientist's cool rigor with a humanitarian's expansive heart.

Jeffrey O'Connell's brilliance was in being profoundly multidimensional, in a unique, delightful, and insightful way. Refusing to be pigeonholed, O'Connell transcended the confines of academe to make a broad and enduring imprint on public policy, our civil justice system, and how we see and define our commitments to one another. His path-breaking efforts set a shining example for us to follow and a daunting challenge for us to match.

J. Robert Hunter

In the 1970s, I served as Chief Actuary and later Administrator of the Federal Insurance Administration. During that time period I was tasked with finding out the reasons for high and rising costs for automobile insurance in the 1970s at the request of the White House. I partnered in this work with the Department of Transportation, which agency engaged in a major review of auto insurance.

As we studied this topic, it became apparent that the most important research done to explain some of the major problems in the auto insurance market was the landmark book written by Professors Jeffrey O'Connell and Robert Keeton, "Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance." The book documented the serious shortcomings of the extant system, calling it "too little, too late, unfairly allocated, at wasteful cost and through means that promote dishonesty." The volume also proposed a solution to the overarching systemic problems: no-fault auto insurance.

As part of our research, I had the honor of meeting Professors Keeton and O'Connell and worked over the years particularly with Jeff. We succeeded in getting both the Ford and Carter White Houses to support no-fault auto insurance (Ford supported no-fault conceptually and called for all states to enact it; Carter went further, supporting national no-fault legislation). Jeff O'Connell was a critical player in getting the no-fault idea advanced this far (and adopted in many states). Sadly, the efforts at the national level failed.

In later years I served as Texas Insurance Commissioner or as a consumer advocate. I continued to have significant contact with Jeff as he pursued ways to improve the consumer's lot when buying and using auto insurance (some of which I agreed with and some of which I did not). It made life a lot easier to be on the same side on an issue as Jeff but, even though fighting him on an issue was very heavy lifting, Jeff was always a great gentleman and friend.

Jeff was a man of particularly strong attributes, among which were his brilliance, his dedication and his passion as he worked tirelessly to help America improve the auto insurance system.

Peter Kinzler

I was recently going through 40 years of work calendars, starting in 1975, the year I began working on federal no-fault insurance legislation for the Consumer Protection Subcommittee of the House Commerce Committee. As I read through the calendars, I found the number of notations for "Jeff O'Connell" increased exponentially as the years passed, as I was privileged to collaborate with Jeff and many others on two major efforts to reform the country's broken auto insurance system. The more I worked with Jeff, the more I appreciated his intelligence, tenacity, perseverance and magnificent ability to frame a complicated subject in ways that most people could understand. These qualities are sorely missed now, while the need remains to reform the auto insurance system and the other areas of tort law where Jeff fought tirelessly to provide simpler, more equitable and less expensive ways to compensate people for their injuries.

I joined the no-fault fray in April of 1975, ten years after the publication of *Basic Protection for the Traffic Victim* by Jeff and Professor Robert Keeton. I had just joined the staff of the Consumer Protection Subcommittee and was tasked by Lionel Van Deerlin (D-CA), Chairman of Subcommittee, to handle the hottest consumer issue before the U.S. Congress – no-fault insurance. Little did I know that this innocent assignment would lead to a 40 year effort to reform the nation's grossly flawed auto liability and insurance system, an effort in which I was privileged to work with Jeffrey O'Connell, who, as noted, had started on the project more than 10 years before!

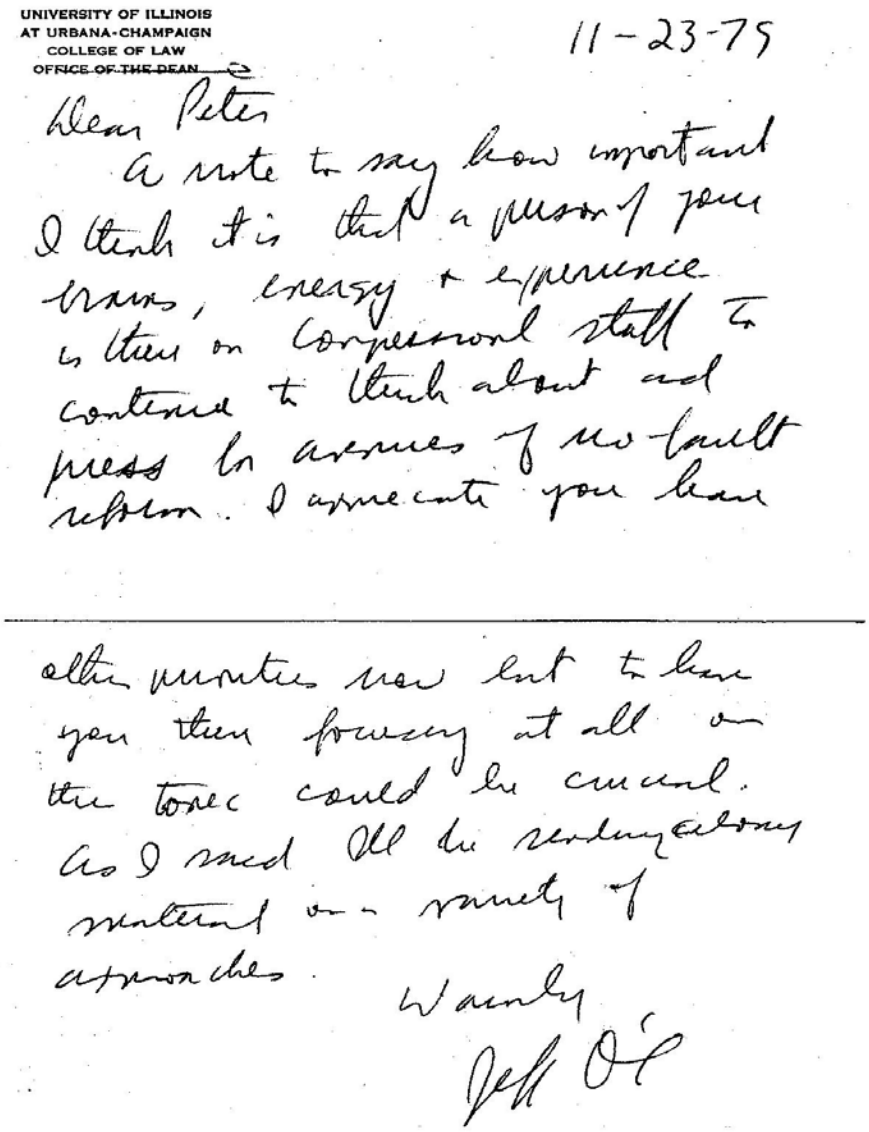
After receiving the assignment from Van Deerlin, I spent two months reading everything on the subject I could get my hands on, starting with the Keeton-O'Connell book. I also invited the major interested parties – labor unions, consumer groups, the U.S. Department of Transportation, insurers (pro and con), and trial lawyers and defense lawyers (both con) – to provide me with up to 100 pages of materials that best supported their positions. After two months of study, I decided that the no-fault concept was brilliant and just needed a little more work politically to push it across the finish line. To say that I underestimated the power of the trial bar would be a gross understatement. You will also note in later paragraphs some of the bad luck that thwarted federal legislative efforts at key times.

Once Van Deerlin decided to proceed with no-fault, I started looking for witnesses for hearings. I called Jeff, who was then teaching at the University of Illinois at Urbana - Champagne. Our relationship did not get off to an auspicious beginning. Jeff, frustrated by the failure of the federal no-fault bill to become law in 1974 (when it passed the Senate but was not voted on in the House, in large part because of its preoccupation with the impeachment of Richard Nixon), rather brusquely stated that he didn't want to waste his time testifying unless I could assure him no-fault would move. As I could make no such assurance, Jeff declined the Subcommittee invitation to testify and I invited Professor Keeton to testify instead.

I felt the absence of Jeff's immense debate skills at a hearing that focused on a debate over the merits of no-fault between Professor Keeton and Craig Spangenberg, the trial lawyer's chief advocate. It didn't go well. Keeton answered questions in very few words; kind of a "just the facts" approach. By contrast, Spangenberg used every trick in the book. To distract the Subcommittee members while Keeton was talking, he loudly fiddled with papers in front of him. To keep the focus on the trial lawyer's arguments, he gave lengthy answers. Finally, I got so frustrated that I used my time for asking questions as counsel to challenge Spangenberg's false statements. In later years, I found that Jeff could more than hold his own in such debates.

Jeff and I spoke from time to time between 1975 and 1978, until the federal no-fault effort ended in failure. In the fall of 1978, I discovered that neither of us was prepared to give up the fight. The Congressional staffers who had worked on no-fault, including myself, did after-action analyses of why the bill had not become law. We concluded that the trial lawyers' most effective argument against the bill was that, by replacing all state laws, it would deprive motorists of the choice to remain under the tort system. In response, in late 1978, I hosted a meeting of no-fault supporters to see if they could reach consensus on supporting a choice system. There was no consensus, as the insurer supporters believed it would be too complicated while the consumer and labor supporters believed the insurers would rig the choice to encourage people to stay in the tort system. But the end of no-fault planted the seed for the rise of auto choice.

At the same time, I discovered that Jeff had not given up either. On November 20, 1978, he asked me to review some materials on the trial lawyer's lobbying effort that he was preparing for a book on the general subject of fault. A year later, on November 23, 1979, Jeff sent me the following note encouraging me to continue to work on no fault:



UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN
COLLEGE OF LAW
OFFICE OF THE DEAN

11-23-75

Dear Peter

A note to say how important I think it is that a person of your brains, energy & experience is there on Congressional staff to continue to think about and press for avenues of no-fault reform. I appreciate you have other priorities now but to have you there focusing at all on the topic could be crucial. As I said I'll be sending along material on a variety of approaches.

Warmly

Jeff O'C

After some considerable head scratching, here is my best interpretation of Jeff's always challenging handwriting (!):

"Dear Peter,

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Warmly,

Jeff O'C"

The note demonstrates Jeff's ability to keep others involved in his efforts. A corollary skill was to appreciate the good ideas of others and to work with them to bring these ideas into the public domain. This skill was key to the Auto Choice reform effort. What was left hanging in the late 1970s' failed effort to secure support for a choice no-fault bill was the vital practical question of how to find an equitable way to resolve the cost of injuries from accidents between drivers who had chosen the tort system and those who had chosen no-fault. That question was answered brilliantly by Jeff and Bob Joost, a former Senate staffer, in a 1986 article published in the University of Virginia Law Review, *Giving Motorists a Choice Between Fault and No-fault Insurance,* 72 VA. L. Rev 61. The article proposed that a person who had chosen the tort system who was injured by a person who had chosen the no-fault system should recover from the uninsured motorist coverage of the tort electee. Subsequent work by Steve Carroll and the Rand Institute for Civil Justice confirmed the equity of such an approach.

The idea of auto choice was first discussed at the federal level during the 1992 presidential campaign, when President George H.W. Bush, in October of that year, announced that he would send Auto Choice legislation to the Congress, if re-elected. Alas, there was the rub. When Mr. Bush was defeated, however, bills were introduced in several state legislatures and one was adopted in New Jersey.

Then, in late 1996, Senator Mitch McConnell (R-KY) introduced the first federal Auto Choice bill. It was the byproduct of another of Jeff's many skills, the ability to work across political party lines. Republican support for auto choice was, in substantial part, the result of Jeff's ability to secure support from Michael Horowitz of the conservative Hudson Institute. While auto choice bills enjoyed some bipartisan support, in contrast to the 1970s no-fault effort, most of the support came from conservatives who appreciated the bill's emphasis on cost savings and choice – between two insurance systems, drivers as to the amount of coverage, and by states as to whether to permit choice in their states. The liberal consumer and labor supporters of the 1970s, faced with opposition from the trial bar, ran for cover. And with them went most Democratic legislators. Ironically, support had moved largely from left to right, failing to land in the all-important political middle.

After the introduction of the McConnell bill, I hastily created a private sector coalition in order to testify at a Senate Commerce Committee later the same year. The first person I called to join the coalition was Jeff O'Connell – and he became the first member. For the next six years, Jeff and I worked closely together on the effort, and the number of "Jeff O'Connell" entries in my calendars multiplied exponentially.

We testified, we (with others) redrafted the bill multiple times, we spoke at conferences, we met with Members of Congress, and we published several jointly written articles. One of those articles was a section-by-section analysis of the Auto Choice bill [*A Federal Bill, with Commentary, to Allow Choice in Auto Insurance,* Jeffrey O'Connell, Peter Kinzler, and Hunter Bates, 7 Connecticut Insurance Law Journal 2 (2000-2001)]. But it was not the typical dry recitation of the meaning of each section. Instead, it was a lively discussion of how the system would work and included refutations of the specious arguments against the bill. Those articles reflect not only does Jeff's outstanding scholarship, they demonstrate his brilliant conceptualization and the ability to present complicated issues clearly. They are written in such a way that an intelligent human being, with no background in the area, could understand the system and its importance.

Jeff brought the same skills and passion to the classroom, where he also made the case for no-fault. As Lynley Ogilvie, a student of Jeff's at UVA, says in her remembrance, "By the end of term, all of us were ready to march on Washington to demand no-fault insurance laws."

The last article Jeff and I wrote together was published in 2011 [(*No-Fault Insurance at 40: Dusting Off an Old idea to Help Consumers Save Money in an Age of Austerity*, Jeffrey O'Connell, Peter Kinzler, and Dan Miller, Issue Analysis, NAMIC (December 2011)]. It started with what has turned out to be a dubious premise – that the Affordable Care Act would become the accepted law of the land! Working from that assumption, we proposed having all medical claims for auto accidents run through the injured person's health insurance coverage, with all the cost controls so often missing from no-fault system and completely lacking under the tort system. The savings would be substantial for consumers, a particular benefit for low-income people. The idea may well have political legs if the Democrats win the presidency in 2016. But, as usual, Jeff did not stop with that idea. Realizing that removing coverage for medical claims from the auto insurance system would eliminate much of the bodily injury premium, Jeff went further and proposed that motorists also be given the option of eliminating the right to sue for pain and suffering. Anyone who chose to limit recovery to economic losses only (which is the most common kind of insurance) would save even more. And we proposed these ideas in an insurance industry publication!

In sum, working with Jeff was a constant pleasure. He had a brilliant, highly creative mind and a wonderful wit, accompanied by great compassion and dogged determination. Over the nearly 40 years I knew and worked with Jeff, our relationship evolved from one of mentorship to one of friendship. Upon learning of his death, I found myself in tears for the first time since my father and mother died nearly two decades earlier.

I hope this and other remembrances will provide readers with a fuller picture of Jeffrey O'Connell – scholar, professor, vigorous advocate in the public arena, friend and father (see the family remembrance). He was a very special person indeed and is missed every day by so many.

Roger Henderson

It gives me great pleasure to nominate Jeffrey O'Connell, Samuel H. McCoy II Professor of Law, at the University of Virginia School of Law for the William L. Prosser Award. Professor O'Connell has spent over four decades steadfastly laboring in the field of torts and accident compensation systems and in doing so has made outstanding contributions in scholarship, teaching, and service. Moreover, he has undoubtedly been the most original and creative legal scholar in critiquing and proposing innovative solutions to many of the serious shortcomings that have arisen regarding compensation for accident victims in modern society. And all the while, he was also writing and commenting on a wider variety of societal issues and matters in a most engaging manner.

After graduating from Harvard Law School, Professor O'Connell was a trial lawyer in Boston with the firm of Hale & Dorr. He came to Virginia in 1980 after 16 years at the University of Illinois, having begun his academic career at the University of Iowa some years earlier. He also has been a visiting professor at Northwestern, the University of Michigan, Southern Methodist University, the University of Texas at Austin, the University of Washington, and Oxford and Cambridge universities in England. He was the recipient of Guggenheim fellowships inl973 and 1979. In 1989 he was the Thomas Jefferson Visiting

Fellow at Downing College, Cambridge University and, in 1991, the John Marshall Harlan Visiting Distinguished Professor at New York Law School.

As to Professor O'Connell's scholarship, he co-authored with Professor Robert E. Keeton the groundbreaking study and principal work that proposed no-fault automobile insurance: *Basic Protection for the Traffic Victim.* This work quickly became the blue print for the first enactment of such a plan in Massachusetts and approximately one-third of the jurisdictions that followed suit. During his career, Professor O'Connell has authored or co-authored twelve books, over 100 articles, more than a dozen book reviews, and a number of statements submitted to congressional committees considering tort reform proposals. Based on these contributions, the *American Lawyer* in 2000 named him one of "The Lawyers of the Century." Additionally, in 1992, he received the Robert B. McKay Award for Torts and Insurance Scholarship from the American Bar Association.

Professor O'Connell has gained a well-deserved reputation as a classroom teacher and public speaker. His students at the University of Illinois affectionately dubbed his classes in torts as "Crash I" and "Crash II." His public lectures and other speaking engagements are legendary for their insights, humor, and forcefulness. Over his career, thousands of law students have benefitted greatly from his engaging and effective style of teaching.

In closing, I want to emphasize Professor O'Connell's tireless devotion to public service in his attempts to improve the tort and compensation systems in the United States. He has testified before Congress and many state legislative committees, not to mention the great number of panels on which he has participated in a variety of settings, legal and nonlegal, explaining, cajoling, imploring, and otherwise reasoning with other participants as to the merits of his proposals regarding tort reform. He has played both formal and informal roles in advising a myriad of organizations about the benefits and even the detriments of alternative methods of compensating accident victims. And he has also served on the board of directors of Consumers Union, the Educational Advisory Board of the John Simon Guggenheim Memorial Foundation, and the Medical and Safety Committee of the NCAA.

There is no doubt that recognition is deserved by a number of those who have made significant contributions to the field of torts and compensation systems and who are worthy candidates for the William L. Prosser Award, but at this time Jeffrey O'Connell, in my opinion, is chief among them for the next Award. The mold was broken after he was made.

Robert Detlefsen

My first exposure to Jeffrey O'Connell's prodigious scholarship on the tort liability system and its no-fault alternatives came from my reading of Accidental Justice: The Dilemmas of Tort Law, an extraordinary volume he co-authored with Peter Bell at the close of the twentieth century. Accidental Justice was a masterful work, providing a comprehensive overview and even-handed critique of the American tort system. Written in engaging and accessible prose, the book employed the ingenious device of a fictitious lawsuit involving an attorney whose promising career is ruined when a commuter train injures him, partly due to the lawyer's own fault.

Viewing the workings of the tort system through the experience of a realistically-drawn protagonist served to humanize the discussion of the tort system's virtues and flaws in ways that figured prominently in Prof. O'Connell's tireless advocacy of no-fault alternatives to tort liability. A constant

theme of Prof. O'Connell's work was his desire to improve the welfare of ordinary consumers and accident victims.

For me, Prof. O'Connell's scholarship and public advocacy in regard to no-fault automobile accident compensation were especially salient. In 2011, I had the privilege of editing a monograph, "No-Fault at 40: Dusting Off an Old Idea to Help Consumers Save Money in an Age of Austerity" of which Prof. O'Connell was the lead author. Though a dedicated champion of no-fault, he was hardly dogmatic: "No-Fault at 40" acknowledged the failure of no-fault to fully realize its promise (for reasons he and his co-authors skillfully diagnosed), and thus offered a menu of options for reforming the tort system in ways that could achieve some of the same benefits for auto insurance consumers and accident victims that could be expected from a properly designed no-fault system. If the dominant interest groups worked to prevent the revival of no-fault, Prof. O'Connell was willing to compromise to enhance the welfare of citizens imperfectly served by the extant tort system.

Lynley Ogilvie

Professor Jeff O'Connell represented the stuff from which great law professor legends are made -- wonderful stories, probing questions, a bone-dry sense of humor, and a genuine and infectious love of his subject matter. As faculty advisor for my first-year section, O'Connell walked a fine line between rigorous instructor and supportive mentor, putting each student in the hot seat during class and then inviting the entire section to his home for cocktails. Everyone remembers his colorful descriptions -- the jurist's "shock of white hair" and war stories from the trenches of tort reform. By the end of term, all of us were ready to march on Washington to demand no-fault insurance laws. He inspired, entertained and cared for hundreds of lucky students over the years, and his legacy lives on through the many minds he helped shape.

Christopher J. Robinette

Since Jeffrey died last Sunday, there have been several notices. The New York Times and UVa Law both ran good obituaries. His accomplishments as a scholar are fairly well-known, and I want to share glimpses of Jeffrey that are more personal.

He was a virtuoso classroom teacher. Jeffrey was so entertaining behind the lectern that you had to listen. In this way, you learned and learned painlessly. He told me that too many teachers neglected the performance aspect of teaching. He studied drama, and even taught it while he was a Harvard Law student, and he used the techniques to enhance his teaching.

He had a fantastic sense of humor. One way he was so entertaining is that he was funny. One day, as his research assistant, I was waiting for him to finish class so we could work on an article. When he finally came out of the classroom, he winked at me and said, "Sorry I'm late. The students like to ride me around on their shoulders after class."

He worked. A lot. I have vivid memories of him in his office. He liked to work standing at a lectern and listening to classical music. At one point in the early 2000s, he told me that he thought he had finished writing. It lasted a few months. In 2008, on the verge of turning 80, he co-authored 3 books.

He was centered in family. He spoke often and lovingly of his family. His Christmas cards in the later years featured him surrounded by numerous family members and very happy. I returned from his funeral yesterday, and the family's deep affection for Jeffrey was obvious.

He was generous. One word I hear over and over about Jeffrey from others is that he was generous. In working with him, Jeffrey was always more concerned that I get credit for my work than he was about credit for his. Over the weekend, I heard a story about his experiences as an associate at Hale & Dorr in Boston. One of the firm's clients was a man who had escaped the Holocaust in Germany. He built a financial empire in the United States, but was illiterate. On his own time, Jeffrey took dictation from the man so he could send letters back to his family in Europe.

He was compassionate. His fundamental idea was to make compensation more readily available to the injured. Regardless of your view of his proposals, and we disagreed on several occasions about how to best accomplish the objective, he was motivated by a basic compassion for people.

Farewell, my friend. You will be missed.

Victor E. Schwartz

Professor Jeffrey O'Connell helped teach me how to be both a good law professor and gracious, because that is exactly what he was and more. He opened the door for my being able to write my first book “Comparative Negligence”. It is now in its fifth edition, but it would have never been but for Professor O'Connell’ giving my name to a publisher in 1970.

Professor O'Connell would often call and share his ideas which were always filled with insight. Just walking with him in a city like New York opened up portals that I did not know about because he would observe architecture and other elements of life that brought joy, "Look at this Victor!" It was always worthwhile to follow his guidance.

Although Professor O'Connell was much more learned than I am, he never talked down to me, but rather made me feel as if I might have had an idea or even two.

I miss him greatly.

Andrew Tobias

About 1% of us are in the top 1% on a scale of intelligence. About 1% are in the top 1% on a scale of candor and integrity. And about 1% are in the top 1% on a scale of cordial, charming persistence and dedication. Easily qualifying in all three categories, Jeff O’Connell was – give or take, allowing for my back-of-the-envelope math skills – pretty much one in a million.