

A TRIBUTE TO JEFFREY O'CONNELL

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JEFFREY O'Connell's remarkable career as a lawyer and academic has spanned portions of seven decades. Jeff graduated from Dartmouth College in 1951 and Harvard Law School in 1954. He was a trial lawyer at the Boston firm of Hale & Dorr before teaching at the University of Iowa and University of Illinois law schools.

Jeff is a leading authority on both insurance law and torts. Although this combination has been impressively symbiotic, it came about largely by accident. Like most new law professors, Jeff decided he should add a first-year course to his repertoire. He decided on torts. In his own words, Jeff "quickly became aware, through the writings of Fleming James, of what a disaster tort law was and how much reform was needed."¹ And he concluded that reform was needed most of all at the intersection of tort and insurance law.

Thus, in 1965 Jeff and Robert Keeton published a book titled *Basic Protection for the Traffic Victim: A Blueprint for Reforming Auto Insurance*.² The book advocated the use of a first-party insurance system similar to workers compensation for property damage and injuries resulting from minor auto accidents. The book had a substantial impact. Between 1970 and 1976, twenty-six states adopted no-fault insurance laws either as a mandatory or optional system.³

Jeff was far from a bystander to these developments. He frequently met with legislators and bar associations and committees,

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¹ Christopher J. Robinette, Tuesdays with Torts Masters: Jeffrey O'Connell, TortsProf Blog, Feb. 22, 2011, <http://lawprofessors.typepad.com/tortsprof/2011/02/tuesdays-with-torts-masters-jeffrey-oconnell.html>.

² Robert E. Keeton & Jeffrey O'Connell, *Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance* (1965).

³ James M. Anderson et al., *The U.S. Experience with No-Fault Automobile Insurance: A Retrospective* 40 (2010).

provided draft legislation, and helped make the intellectual and political case for no-fault insurance.

Throughout his career, Jeff continued to advocate the use of no-fault insurance as the solution to what he called the “lawsuit lottery” in a broader array of situations.⁴ By changing the focus of casualty policies from protection against third-party claims to first-party coverage of demonstrable losses, he argued, the insurance industry could reduce the risk of uncompensated loss while simultaneously reducing the amount of litigation. In a series of articles, Jeff identified the doctrinal and institutional hurdles in the way of a robust system of no-fault insurance and their solutions.⁵ Jeff thus did precisely what most academics only dream about—he identified a social problem, proposed solutions, and saw those solutions widely implemented. Despite some setbacks in the legislative arena, twelve states continue to operate under a mandatory no-fault system today.⁶

Jeff’s prominence as an insurance and tort law theorist brought him to the attention of the Virginia Law School faculty, which he joined in 1980. Since then he has introduced generations of students to legal study through his torts class, a perennial favorite with first-year students. A student from his torts class in 2009 summed it up nicely by calling Jeff “the essence of UVA law.” Nor is his retirement a reflection of a loss of ability—as one of his students from last semester put it, “he hasn’t lost a step.”

Jeff hasn’t lost a step in scholarship either. He continues to write extensively on tort and insurance reform and is the first retiring professor I can recall to ask me for continued funding for research assistants. His recent scholarship proposes an “early offer” system for tort liability in which a potential defendant could offer within a short time after an accident to reimburse all the injured party’s out-

⁴ Jeffrey O’Connell, *The Lawsuit Lottery: Only the Lawyers Win* (1979).

⁵ See, e.g., Jeffrey O’Connell, *A Model Bill Allowing Choice Between Auto Insurance Payable with and Without Regard to Fault*, 51 *Ohio St. L.J.* 947 (1990); Jeffrey O’Connell & Robert H. Joost, *Giving Motorists a Choice Between Fault and No-Fault Insurance*, 72 *Va. L. Rev.* 61 (1986); Jeffrey O’Connell et al., *The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance*, 54 *Md. L. Rev.* 281 (1995).

⁶ Insurance Information Institute, *No-Fault Auto Insurance*, Aug. 2012, http://www.iii.org/issues_updates/no-fault-auto-insurance.html.

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of-pocket losses.⁷ Should the injured party reject the offer, the defendant would benefit from a more favorable burden of proof and standard of care in any later litigation over the accident.

Jeff has also continued to keep a foot in the world of practice as well as the academic world. He has 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. He received Guggenheim fellowships in 1973 and 1979. In 1992, he received the Robert B. McKay Award for Tort and Insurance Scholarship from the American Bar Association.

Jeff's interests and knowledge are so wide ranging that he has not limited himself to scholarship in his main fields. He is an essayist and reviewer who writes with vim and wit. Of the dozens of short pieces he has penned, several with his brother Tom, my personal favorite is *Ike and Adlai Revisited—Mirror Images Reversed?*, a 1990 review of Porter McKeever's biography of Adlai Stevenson that Jeff and Tom wrote with Charles Elson, a 1985 graduate of the Law School.⁸ The essay begins with Jeff and Tom's frank admission that they were among the many liberals who loved Adlai in the 1950s. To many of their contemporaries, it was self-evident that Adlai was superior to Eisenhower in intellect, erudition, conscience, and leadership. Adlai was described in historian Herbert Muller's 1967 biography as "a thoroughly civilized man, sensitive, reasonable, gracious, humorous, urbane and a man of true style."⁹ Eisenhower, meanwhile, was viewed as "an unlettered boob," in the review's wry phrase.¹⁰

But Jeff and his co-authors go on to observe and document with care the remarkable change in historians' views of the two men

⁷ See, e.g., Joni Hersch, Jeffrey O'Connell & W. Kip Viscusi, An Empirical Assessment of Early Offer Reform for Medical Malpractice, 36 J. Legal Stud. S231 (2007); Jeffrey O'Connell & Patricia Born, The Cost and Other Advantages of an Early Offers Reform for Personal Injury Claims Against Business, Including for Product Liability, 2008 Colum. Bus. L. Rev. 423; Jeffrey O'Connell, The Large Cost Savings and Other Advantages of an Early Offer "Crimtorts" Approach to Medical Malpractice Claims, 17 Widener L.J. 835 (2008).

⁸ Jeffrey O'Connell, Charles Elson & Thomas E. O'Connell, *Ike and Adlai Revisited—Mirror Images Reversed?*, 40 DePaul L. Rev. 903 (1990) (reviewing Porter McKeever, *Adlai Stevenson: His Life and Legacy* (1989)).

⁹ Herbert J. Muller, *Adlai Stevenson: A Study in Values*, at xi (1967).

¹⁰ O'Connell, Elson & O'Connell, *supra* note 8, at 907.

from the 1960s until today. Drawing on more recent scholarly and popular literature, they matter-of-factly conclude that Eisenhower was the well-read thinker and Adlai the intellectually incurious clubman. Telling you these conclusions, unfortunately, does not nearly do justice to the piece. Unlike the typical book review, dashed off quickly and as quickly forgotten, Jeff, Tom, and Charles sift through a great body of work. Their review, one is tempted to say, is thoroughly civilized, sensitive, reasonable, gracious, humorous, and urbane. And those traits characterize many of Jeff's essays and reviews.

Jeff's scholarly career has been noteworthy for another reason. He is one of a handful of law professors routinely to invite his research assistants to become co-authors of the articles they work on.¹¹ In this Jeff practices what most Law and Economics scholars only preach—by having skin in the game, his research assistants work with particular care and diligence. They also develop an unusual degree of affection and loyalty to the senior author.

Jeff's career has been an inspiration to generations of students, research assistants, co-authors, and colleagues—and it's clear that there is more to come.

¹¹ See, e.g., Jeffrey O'Connell & Christopher J. Robinette, "Choice Auto Insurance": Do Theories of Justice Require Linkage Between Injurers and the Injured?, 1997 U. Ill. L. Rev. 1109; Jeffrey O'Connell & Christopher J. Robinette, The Role of Compensation in Personal Injury Tort Law: A Response to the Opposite Concerns of Gary Schwartz and Patrick Atiyah, 32 Conn. L. Rev. 137 (1999).