1972

The Injury Industry: And the Remedy of No-Fault Insurance by Jeffrey O'Connell

Charles A. Williams

Follow this and additional works at: https://uknowledge.uky.edu/klj

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol60/iss3/12

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
a fine line between innocence and deceit, and it would take a most unusual congressional investigation to make the boundary clear.

If one ever wished to make criticism of television but never really crystalized the thought, or precise words, here they are said in a factual and plausible manner from a speaker on the inside. To the average reader, To Kill a Messenger affords a contemporary kaleidoscope of television's development in this country with which the average American viewer can identify. Criticism is precise and objective, presenting to the reader a picture that provides answers to the many questions one has no doubt had about television journalism in this country.

Melvin M. Belli


Based on the significant lack of common understanding of the problems of humanity demonstrated in this book one might say college law professors have little practical judgment. Such sweeping statements would be as wrong as O'Connell's efforts to blame all lawyers for the few bad apples in the barrel. Space nor time will permit an analysis of the book on a chapter by chapter basis but it is fitting that we point out some of the many glaring rash and erroneous statements in the book. We can only hit the high spots.

He engages in outright fabrication when he cites as a rule that the lawyer settles the case to the lawyer's advantage and not to the client's. Any lawyer who settles a case without his client's approval is certainly in violation of his contract as well as the canons of ethics. Lawyers are simply not the criminals that this man would seek to make them. O'Connell should be in the arena and he would find out that actually the degree of honesty in the ranks of the trial bar are apparently much, much higher than in the ranks of the professors of the law schools. Members of the trial bar would never attempt to make such gross inaccurate statements to a jury, as are made in this

* Member of Los Angeles and San Francisco bars, Past President of American Trial Lawyers, and author of Modern Trial Lawyer. Mr. Belli is with the firm of Belli, Ashe, Ellison, Choulos and Lieff.
book. A most provincial jury would see through such chicanery very quickly and condemn it immediately. For example, O'Connell states, "Some researchers suggest that there might be a degree of exploitation here that is not found elsewhere in legal work." (emphasis ours). Let's paraphrase "Some students suggest that there might be more bastards in the teaching ranks than others." Professor, would it make it so?

He condemns lawyers on the ground that they will not ordinarily take a personal injury case other than on a contingent fee basis. He should be in the field and learn that the rich as well as the poor, prefer the contingent fee basis. They prefer an arrangement whereby the lawyer will get paid more based on the amount of the recovery. Really, few areas of the profession can make the same boasts. Even O'Connell goes on and cites (while condemning the contingent fee contract) a study in New York City revealing that in 90 percent of the cases where lawyers were employed the clients came out better after paying the lawyer's fee than they did without employing a lawyer. In other words, based on a 1/2 contingent fee contract, the client gets $2.00 for every $1.00 the lawyer gets. The client spends $1.00 and makes $2.00, not bad odds. Can the corporate lawyer make this boast? What other profession can?

Gadzooks, now he condemns the insurance adjusters for trying to keep the claimant from employing an attorney and complains that adjusters in routine cases try to get away with paying only the claimant's out-of-pocket loss "paying nothing for pain and suffering and nothing for loss already paid by other insurance, although in fact as we know, the claimant is entitled by law to both." His cure for this little malady is to recommend a law that would make it necessary that all of us (no matter how innocent we were or how badly we were injured) accept just what the adjuster tried to get the claimant to accept without an attorney. In other words, we can reduce robbery by making it legal to steal! O'Connell goes on and states that any lawyer can report heartrending cases where adjusters have taken advantage of badly injured, ignorant and desperate victims. There is nothing in the no-fault bill that will eliminate this, nothing short of legislative enacted rules that will make any such release invalid so that once the claimant does wake up to the fact that he has been defrauded, he can obtain counsel and the release can be set aside and justice can be obtained.

Any competent attorney would welcome a remedy for ambulance chasing which would include an education of the public to the fact that someone soliciting business for a lawyer should be a signal not to
employ that lawyer. And some sort of system should be set up whereby the claimant could ascertain and find out who a competent lawyer was so that he could employ the man that is best suited for the job. This is one of the big problems that the legal profession must necessarily face, either with or without "no-fault." We simply must provide a medium for the public to determine the lawyer who has the specialty that he needs.

Mr. O'Connell is presently willing to eliminate lawyers by the simple procedure of eliminating the rights of the injured people. Perhaps some lawyers need chastening and we do not for a minute defend the miscreant, but the real problem is whether the injured victim of the automobile accident should be the one punished. We could as well argue that one way to reduce hospital costs is to abolish hospitals. People do not have to go to hospitals, they could die at home or they could be treated at home or in the doctor's office, certainly not as well, but nonetheless, if you abolish the hospital, you would abolish the hospital cost. This is what Mr. O'Connell seeks to do with the automobile accident cases.

He then wails about the insurance industry; the way they cancel policies and the way the rates have gone up. If the insurance industry cannot be controlled at the present stage, how on earth can it be controlled by simply abolishing coverages of the rights of the people that are entitled to certain rights. There is nothing in the "no-fault" proposals of Mr. O'Connell that enforce any incentive on the part of the insurance companies to suddenly become virtuous and anxious to pay all claims. Any lawyer can recall instances where clients have been mistreated by their own insurance companies, either as a result of a fire loss or collision loss or some other type of loss, when they tried to adjust their loss with the insurance company.

O'Connell contends that "no-fault" will lower the insurance rates by 10 or 15 percent, but, he fails to mention that the claimant will thereby give up his right to recover the full measure of damages. He also complains that 35 states have laws against group automobile insurance. The amazing thing is if group automobile insurance is such an inviting thing, why hasn't it happened in the other 15 states that have no law against it? He goes on to state that in the handling of "no-fault" insurance, as well as in other things, the insurance companies are "very professional experts at setting their odds in their own favor" and then makes the amazing statement: "as they ought to be if we are to avoid an insolvent insurance system." Herein lies the real reason for this book. This book certainly favors the insurance industry and most assuredly was not written for the consumer.
O'Connell quotes from insurance companies statements that the elderly would be better able to obtain insurance under the “no-fault” plan. Certainly, this would be so because under the “no-fault” plan, anyone having insurance or medical coverage from any other source would not be able to collect from his own insurance company and, of course, would not be able to collect from the negligent party’s company. Therefore a person over 65 would be entitled to medicare so he couldn’t recover his medical expenses from the negligent party and since he probably would be retired and not drawing any wages he wouldn’t have any lost wages or loss of earnings so there would be nothing he could recover under “no-fault.” Why should the elderly even carry insurance? The simple fact is that as one gets older he is a higher risk to others and should pay a higher rate.

O'Connell admits that there is now wide spread “no-fault” in the form of collision insurance on automobiles. He should try to settle some of these collision losses with his own insurance company. He also comes full circle and finally admits that the decline in automobile injuries and death in 1970, the most significant ever, have been attributed by experts mainly to engineering advances. He overlooked, of course, the stepped up law enforcement by all states throughout the country. He then cites a professor of Yale Law School who says that the accident rate is “almost entirely a problem in engineering.” This, of course, is diametrically opposed to the National Safety Council and the United States Department of Transportation (the sacred cow of Mr. O'Connell) that say that 50 percent of the accidents are contributed to by alcohol and the drinking driver. We are unable to understand how this can be a problem of engineering and we are also unable to understand how the “no-fault” that Mr. O'Connell advocates could have any sort of therapeutic effect on the horrible toll that our highways take in life and limb each year.

To say that Professor O'Connell has used half truths and even opposing reasoning to try to prove his point is a gross understatement. In the last several years, we have gone all out in this country to guarantee to the man who takes a gun and holds up someone that he shall have every facility, even free legal counsel, to see that he gets his day in court. Now this man advocates that in order to cut down on the number of cases in court, we should just by law decree that highway accident victims have no rights in court. Thus the man who takes a pistol and robs a bank and in the process of his get-a-way, runs over the innocent victim on the highway will have unlimited access to the courts, while his innocent victim, who seeks to collect on his tort claim, will be denied access to the courts. Pray tell us, Mr.
O'Connell and Chief Justice Burger, how this gets to be justice under the American System?

Charles A. Williams*