

ALFRED CONARD

*Jeffrey O'Connell**

Al Conard has what a late, great peer of his in legal academe, Harry Kalven, called "bite." Harry meant that as an almost ultimate compliment, and it *is* a great compliment. But one problem with people with bite is that they — well, bite. Al has bite, and he does bite and he'll go on biting, I'm sure, for a long time to come. I say that as one who has teeth marks on my hide based on his reviews of some of my work. In fact, though, it is a great privilege to be criticized by Al because he is one of a very rare breed; one of the few truly superb stylists in legal academe, along with Grant Gilmore, Harry Kalven, and a very few others. Al writes a lucid, supple, graceful prose — with bite. I recall hearing Jim Morgan,¹ the senior author along with Al, speak of their seminal book, *Automobile Accident Costs and Payments*.² It does not have a very large paperback sale on newstands, I'm told, but it is a great book — a book of which the University of Michigan, and the University of Michigan Press which published it, ought to be very proud. That study anticipated, as Terry Sandalow has indicated, so much of whatever reform in auto accident cases has been achieved. (It is hardly a coincidence, I suggest, that Michigan has incomparably the best no-fault auto law in the country.) I remember shortly after it was published, the United States Department of Transportation announced that it was going to conduct about a two million dollar study on the same subject. Those of us who knew much about all this knew instinctively that the government's efforts would substantially replicate what Conard, Morgan, *et al.* had found. And that's just what happened — often almost to the decimal point. Jim Morgan, in speaking of Al's role in that study, indicated that Al was rigorous and vigorous in excluding *any* statistician's jargon. Al insisted every sentence be in clear, polished, readable prose. The result was, in my view — having been afflicted with reading many empirical studies — the best piece of empirical research and writing that I have ever read.

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1. James N. Morgan, Professor of Economics, University of Michigan.

2. A. CONARD, J. MORGAN, R. PRATT, C. VOLTZ, & R. BOMBAUGH, *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS: STUDIES IN THE ECONOMICS OF INJURY REPARATION* (1964).

My tribute to Al is in many ways heightened in its content because my subject — insurance — is something that he has dealt with using only his left hand, just occasionally spending time with it. Other subjects — corporations and comparative law — have obviously been his main interests. But when he has focused on insurance — for instance, in a piece called *A Behavioral Analysis of Directors' Liability for Negligence* in the 1972 *Duke Law Journal*³ — the result was, I think it is fair to say, as fine a piece on the nature and impact of insurance as anybody has *ever* done.

Let me close by giving you an example of his insightful and incisive style *and* substance. A scandal in the law has long been that the common-law tort system encourages accident victims to hug and nurture their wounds in order that some years later they can appear before a jury as pathetically handicapped as possible. In large measure, tort law frustrates those charged with administering rehabilitation therapy to accident victims, the prime object of which is to put the injury or illness behind the victim — to move forward to the maximum extent possible. Yet here we lawyers are, doing exactly the opposite! Al Conard summed up this dolorous tale as only he could: he spoke of “the schizophrenic choice [that the law forces on accident victims] between ‘recovering’ in the medical sense and ‘recovering’ in the legal sense.”⁴ That phrasing tells you something about the elegance and thrust of his lovely mind. It is, I suggest, a typically masterful phrase from *such* a master.

3. 1972 DUKE L.J. 895.

4. Conard, Book Review, 13 UCLA L. REV. 1432, 1433 (1966).