Non-Fault in the Classroom: Involving Law Students in the Great Automobile Accident Compensation Controversy

Harvey L. Zuckman

The Catholic University of America, Columbus School of Law

Follow this and additional works at: http://scholarship.law.edu/scholar

Part of the Legal Education Commons

Recommended Citation
Harvey L. Zuckman, Non-Fault in the Classroom: Involving Law Students in the Great Automobile Accident Compensation Controversy, 23 J. LEGAL EDUC. 598 (1971).
LEGAL MISCELLANY NO. 2

MAURICE B. KIRK *

Where contradictory cases are not readily distinguishable, except possibly on a policy ground, use the following "form", from the opinion of Blume, Justice, in Stockwell v. Morris, 46 Wyo. 1, 22 P.2d 189, 194-95 (1933):

We think, accordingly, that the ______ in this case ought not to be held liable. Whether we should hold the same in a case similar to the instant one, but where ______, in accordance with what seems to be the rule recognized in ______, we need not say. Some criticism has been leveled at courts for their disagreement on this subject and for not finding a more decisive and clear-cut test. But it must be remembered that the rule that ______ is liable for ______—which is at the basis of the cases holding the ______ in cases of this character liable—is founded not upon a rule of logic, but upon a rule of public policy, and hence the digression, not constituting an abrogation of the rule, must necessarily also involve the question as to how far public policy requires the digression to be made, and it is not to be wondered at that one court answers the question one way, another another way.

Just fill in the blanks!

* Professor of Law, Texas Tech University School of Law.

NON-FAULT IN THE CLASSROOM: INVOLVING LAW STUDENTS IN THE GREAT AUTOMOBILE ACCIDENT COMPENSATION CONTROVERSY

HARIVT L. ZUCKMAN *

Reflecting the growing importance of the debate over the Keeton-O'Connell Plan and its variations, the Missouri bar examiners on their February 1970 examination asked for a discussion of the arguments for and against a non-fault automobile accident scheme.1 The action of the Missouri bar examiners poses a challenge to torts instructors to involve their students meaningfully in the debate over the present system of automobile liability insurance and attacks on that system. For that debate will certainly reverberate through the decade of the Seventies and beyond and threatens to change the face of tort law in this country.2

* The author is an associate professor of law at the Columbus School of Law of the Catholic University of America. He received his A.B. from the University of Southern California in 1956 and his LL.B. from New York University School of Law in 1959. The experiment in legal education discussed in this article took place at Saint Louis University School of Law in the spring of 1970, when the author was teaching at that institution.

1 In Missouri, the bar examinations are not released after the examination, and so the exact question cannot be quoted.

2 Already Massachusetts has enacted a non-fault plan for the compensation of victims of automobile accidents similar to that proposed by Professors Keeton and O'Connell.
I attempted to meet this challenge in a way which departed considerably from normal first-year casebook instruction. Basing my experiment in legal education on an idea for a practical course in legislative process put forward by two of my former colleagues at Saint Louis University School of Law, I divided my first-year torts class into three interest groups, i.e., "Kee-тон-O'Connell-Consumers Union Group," "Defense Counsel-Insurance Underwriters Group," and "Plaintiffs-Counsel American Trial Lawyers Associations Group." Each group was told to find out all they could about the positions taken by their real-life counterparts. Then they were to formulate in writing proposals for reform of the present system of automobile accident compensation which they believed their counterparts might subscribe to.

To these ends, each group was furnished with materials issued by the parallel groups. For example, the "Defense Counsel-Insurance Underwriters Group" received, inter alia, the Defense Research Institute's monograph "Responsible Reform," published in 1969, which makes eleven specific recommendations for reform but seeks the retention of the fault system. Similarly, the "Plaintiffs-Counsel ATL Group" received, inter alia, the ATL's "Preliminary Statement on Automobile Insurance to the Subcommittee on Antitrust and Monopoly," which also makes fairly specific proposals for reform and criticizes the then current "no fault" proposals. In addition, everyone in the class was furnished with a copy of the recent report of the New York Superintendent of Insurance Richard E. Stewart to Governor Nelson A. Rockefeller, "Automobile Insurance . . . For Whose Benefit?" and a hypothetical State of Saint Louis University Senate Bill No. 100, drafted by the author. This bill, hypothetically pending before the Senate Commerce Committee, contained the main outline of proposals for legislation made by the New York Superintendent of Insurance in his report together with certain specific sections designed to gore each interest group's ox.

After the three groups had met and formulated their own proposals as substitutes for those features of Senate Bill No. 100 objectionable to them, the hypothetical Senate Commerce Committee met to hear the testimony of two representatives of each interest group. The committee was composed of three faculty members and two senior law students. The members of the committee were told to be hypercritical of all proposals made by the interest groups. Heated exchanges between the student witnesses and members of the committee were plentiful. I hoped that through close questioning of all proposals made by the interest groups, the students (all of whom were required to attend all hearing sessions) would come to realize the complexities involved in attempting sweeping change of the present automobile accident compensation system.

Following the hearings, the committee met in executive session and voted out, with only minor changes, the unpopular Senate Bill No. 100. Copies of the bill as modified were then distributed to each member of the class.

This did not end the experiment. The students were then divided into two legislative parties, i.e., the "Left" or majority party and the "Right" or minority party, and the legislative leaders and officers were appointed. The students were told that Senate Bill No. 100 was deemed "an administration measure" and that the majority party leadership in the Senate supported the

3 Party designations were made on the basis of the physical division of the classroom and had nothing to do with political philosophy.
bill while the minority party leadership opposed it. This meant that some of the students who opposed the bill as members of one or the other of the interest groups would now have to think of persuasive reasons to support the "no-fault" proposal. From a pedagogical point of view, I believe there is nothing so effective as requiring law students to think through more than one side of a case, be it a judicial or legislative one.

Each party was allotted two hours for offering amendments to and debating the merits of the bill. Approximately five or six members from each party formally took part in the debate. In addition, a number of students asked friendly or hostile questions of the debaters. In an attempt to insure a semblance of order and legislative efficiency during the debate, I acted as speaker and altered Roberts Rules of Order to eliminate appeals from the rulings of the chair.

The highlight of the debate came on a vote on a motion by a member of the "Right" party to eliminate the no-fault provisions from the bill, thereby effectively gutting it. The vote ended in a tie and what I expected to be a nonpartisan speaker was required to cast a tie-breaking vote. I rationalized the speaker's vote against the amendment on the basis of his obligation as a member of the majority party to support the position of that party. No other major amendment came as close to being adopted. Following the debate a roll call vote was taken and the "no-fault" bill was defeated by a slight margin. During the debate the most frequently voiced objection to "no-fault" was not that it tended to undercompensate automobile accident victims by eliminating damages for pain and suffering but that it would permit the negligent driver to benefit from the plan despite his own fault. Apparently even first year law students, who are trained to question the legal status quo, seem to believe that fault is a desirable concomitant to tort liability in most cases.

In order to determine how the students viewed the experiment and how much they profited by it, evaluation sheets were given to the students for their anonymous comments and a final examination question was based on the New York Insurance Commissioner's proposals for legislative change. By and large the students were favorable to the experiment but had specific suggestions for changes in or criticisms of the procedures employed. A number of students believed that the legislative committee should be made up of their classroom peers and a few protested the manner in which the speaker controlled the legislative session. As for the students' performance regarding the final examination question dealing with the subject matter of the experiment, their answers were somewhat more knowledgeable here than they were regarding questions relating to materials covered by the more conventional casebook method.

On the basis of the comments from the evaluation sheets and student performance on the relevant portions of the final examination, I am convinced that as a result of this experiment, the students who participated will be well prepared to face the question of automobile accident insurance, liability and compensation reform which looms today as perhaps the major issue in the field of tort law.