

Degree of Guilt

by Richard North Patterson
 and A. Knopf, 201 East 50th St.,
 New York, NY 10022. 548 pp., \$23.

Reviewed by Nancy Hollander

Most people like to read about lawyers. Trial lawyers like to read about trials. When you read *Degree of Guilt*, you will think we're looking in a mirror. The book into the mirror that this compelling book creates is to examine the essence of what makes us trial lawyers.

Degree of Guilt is a courtroom thriller. A young television journalist, Mary Carelli, is accused of murdering a world-famous novelist. She says she killed the novelist in self-defense—that he was trying to rape her.

Her defense lawyer, Christopher Paget, does almost everything right. He prepares his case thoroughly and methodically. He interviews every witness, even searches for potential witnesses on national television.

Author Richard North Patterson lets us follow Paget through his preparation, making sure he dots the *i*'s and crosses the *t*'s. I found myself reading as though I were preparing for the murder trial—looking for answers to unanswered questions. Were Carelli's panty hose off or on? Did the run in the hose match the scratch on her leg? Did the novelist's scratches or hers cause the scratches on her leg?

Paget is not perfect. For example, we see him as he sweats through the examination of a witness made excruciatingly so through Paget's failure to ask the correct question during an interview. But, for the most part, Paget does what we all should do—he develops a coherent theory and works his case, or at least tries to, in the face of his client's constant reticence to provide him with the facts he needs. He lays out his case, as he believes it to be, before the prosecutor, seeking an early and just disposition and hoping to avoid exposing his client to the ordeal of a murder trial. When that fails, he faces the preliminary hearing as though it were for the most important trial in his professional career. But he makes one big mistake by vio-

lating a critical tenet of a good trial lawyer. He becomes involved in a case in which his emotions may cause him to choose a dangerous course. Carelli is an old romantic interest. The relationship ended abruptly 15 years earlier, after the intrigue of a U.S. Senate hearing in which both of them were involved and after Carelli announced that she was pregnant with Paget's child. Paget has raised the boy, Carlo, alone. Carlo meets

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his mother for the first time on the eve of her indictment for murder.

Paget's relationship with Carelli and their son is the core of the case and of the book. Paget struggles to remain true to his familial loyalties to Carlo; to his professional loyalties to Carelli, who insists that he represent her; and to the ethical principles of his profession. But he learns facts about the case more slowly than a trial lawyer would like and soon realizes that he may not be able to remain loyal to all.

Paget must deal with the worst conflicts a lawyer can encounter in representing a client—personal ones. He knows too much, he feels too much, and he needs too much. It is the nightmarish decision every trial lawyer hopes to avoid: What to do when a family member or friend asks for help.

The conflicts created by Paget's defense of Carlo's mother remind us of the foolhardiness of deciding to represent friends and family members. Paget must constantly check his loyalties, decisions, and instincts. Is he doing what is best for his client or what is best for their son? Can he trust what she tells him? Who is she looking out for, and why?

These conflicts are developed by the author slowly, painstakingly. Patterson lets the reader know what will happen next just often enough to keep things interesting. Sometimes he lets us know more than Paget knows, and we wonder

whether Paget is paying attention.

Each character is drawn in detail. For example, Paget's new associate, Teresa Peralta, begins as a minor character and assumes more and more importance as the plot develops. She is involved in the case's preparation and trial. Her role becomes increasingly important and her perceptions increasingly crucial to the outcome of the case. She struggles to be a good trial lawyer and a good mother to her young daughter, and she is criticized by her husband when she cannot fill both roles adequately. When she learns of Paget's familial conflicts and finally discovers their importance to the case, she realizes that she too must face conflicts.

Although the dust cover made this book sound as though it would be unnecessarily complicated, it was not. It bogs down in detail now and then, but generally reads quickly and coherently. It is a complicated story and it is detailed, but the detail gives the reader a clear mental picture of events. And it reminds us that a good trial lawyer, like a good novelist, uses detail to paint a client's story in vivid color. □

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Disability Discrimination in the Workplace

Edited by Gary Phelan and Janet Bond Arterton
 Clark Boardman Callaghan, 155 Pfingsten Rd., Deerfield, IL 60015. 600 pp., \$105.

Reviewed by Robert A. Destro

Disability Discrimination in the Workplace is one of a number of recent treatise-style offerings designed to make the Americans with Disabilities Act (ADA) less formidable. Aimed at litigators, it delivers what it promises: a relatively concise guide for legal practitioners needing a crash course in the lore and arcana of disability rights law. The ultimate goal of the book is, in the words of the

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editors, "to enable practitioners to both provide education [concerning the rights of people with disabilities] and conduct litigation" under the ADA.

The 28-chapter volume is divided into four parts. After a brief historical overview of the ADA, the 16 chapters of Part I cover the Rehabilitation Act of 1973 and the key issues under the ADA:

- (1) What is a "disability"?
- (2) Who is a "qualified individual with a disability"?
- (3) What steps must employers take to assure compliance?

Attention is given to alcoholism, drug-related disabilities, and HIV-related diseases. One chapter addresses the seemingly futuristic, yet very real, possibility that once technology provides accurate information at a reasonable price, discrimination based on one's genetic profile will become inevitable. The rest of Part I deals with retaliation and the mind-numbing but critically important issues of how the ADA affects insurance and employee benefits, collective bargaining agreements, and workers' compensation schemes.

Part II contains a thumbnail sketch of the disability-rights laws of all 50 states and the District of Columbia and serves as a reminder that the ADA, for all its complexity, is not the only show in town. Though very informative, the state-by-state listing could have been improved by following the model of another Clark Boardman Callaghan offering, John J. Coleman's *Disability Discrimination in Employment: Law and Litigation*.

It goes without saying that lawyers who are unfamiliar with the terrain of employment law practice should take great care before advising any client on employment discrimination law. This is especially true when the issue is discrimination on the basis of disability. Because of their very nature, disability claims stand in a class all their own. The underlying conditions can be attributable to heredity, trauma, disease, age, or other factors that may affect physical or mental abilities. Sometimes the underlying conditions are apparent; many times, they are not.

These conditions often arouse deep-seated emotions and fears in employers, not only of the unknown (including

any costs that may be related to employing a person with a disability), but also of how making reasonable accommodation will affect the dynamics of the workplace. But one fact remains: All of us, at one time or another in our lives, will probably meet the statutory definition of a person with a disability—whether or not we have occasion or need to use the law to protect our rights.

The ADA is designed to force employers (and society at large) to face the issue of disability head-on, and it does so by attempting to transform the American workplace. It attacks the tendency to design work and other environments around the capabilities of "people with 'normal' physical and mental abilities" (to quote the 1983 report of the United States Commission on Civil Rights, *Accommodating the Spectrum of Individual Abilities*) and replaces it with an affirmative obligation on the part of employers and employees to make "reasonable accommodation" to the special needs of people with disabilities.

This task alone makes it clear that the skills of even experienced advocates for both employers and people with disabilities will be sorely tested. "Reasonability," like beauty, is often in the eyes of the beholder.

The ADA is, without question, one of the most significant, far-reaching, and complex pieces of civil rights legislation ever enacted in this country. Though its intended beneficiaries are the 8.2 million people with disabilities, it will be lawyers skilled in advocacy and negotiation who will hammer out the myriad applications of the ADA to specific workplace environments and people. As a result, it should not be surprising that the act's most immediate beneficiaries are those who have expertise in the field of disability law.

The heart of this book is Part III ("Litigation of Claims") and Part IV ("Management and Compliance"). For the practitioner unfamiliar with the practice and strategy of disability rights law, Part III provides a useful overview of settlement negotiations and strategy and litigation from the perspective of both employer and employee. I found the chapter entitled "Representing an Individual with a Disability" the most useful. That chapter makes clear that

this treatise is for those lawyers who represent people with disabilities. The chapters address the party's needs and are very informative. The chapters are written by lawyers who understand the ADA client.

A number of chapters address client questions, damages summaries, document preparation, and a list of deposition.

Part IV ("Management") contains effective management claims. These are not nearly as explicit as the tools.

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Robert A. DeLoach
law at The Center
in Washington

Trial Management Hedonic

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This treatise is designed primarily for those lawyers who will be representing people with disabilities.

The chapters focusing on the charging party's needs are lucidly written and informative. They provide a realistic appraisal of the difficulties facing those lawyers who undertake to represent an ADA client. These chapters contain a number of checklists and forms, including client questionnaires, fee agreements, damages survey, suggested interrogatories, document production requests, and a list of areas for exploration in deposition.

Part IV ("Management and Compliance") contains three chapters on cost-effective management of employment claims. These chapters were informative but not nearly as detailed as treatises that are explicitly designed as management tools.

Given the number of recent publications on the ADA, the prospective buyer would be well advised to study their contents carefully before buying. *Disability Discrimination in the Workplace* is a worthwhile addition to the list of books aimed at professionals who will bear the primary responsibility for translating the reasonable accommodation required by the ADA into the reality of an accessible workplace. □

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Trial Manual for Proving Hedonic Damages

Monty L. Preiser, Laurence Bodine, and Stanley E. Preiser
West Group, P.O. Box 5024,
Columbus, OH 43262-0024. 265 pp., \$85.

Reviewed by James I. Seifter

A fundamental objective for all trial attorneys engaged in personal injury and wrongful death litigation is to maximize the clients' recovery of damages. In *Trial Manual for Proving Hedonic Damages*, Monty Preiser, Laurence Bodine, and Stanley Preiser provide the trial bar with a comprehensive and practical guide to recovering hedonic damages—more

commonly known as damages for loss of the enjoyment of living.

The treatise, which is handsomely packaged in a three-ring, loose-leaf binder, is divided into five chapters covering the major subject areas.

The first chapter, "Legal Principles," addresses the historical and legal support for the concept of the enjoyment of living. The theme of this chapter is that there is more to life than making money

Hedonic damages are separate from damages for pain and suffering.

and that when the enjoyment of living is taken away by the tortious acts of others, something very meaningful and valuable has been lost. The authors discuss various economic theories that enable economists to put a price on life itself and on the value of the loss of enjoyment of living.

The second chapter deals with various judicial views regarding the recovery of hedonic damages. The authors analyze state and federal cases that have allowed plaintiffs to recover for the loss of enjoyment of living. There is an excellent discussion on state and federal case authority recognizing hedonic damages as separate from damages for pain and suffering. Because of their disparate nature, pain and suffering and hedonic damages are not duplicative, and the injured plaintiff is entitled to recover for each of these.

There is also an interesting examination of recent state court decisions that are split on the issue of whether a plaintiff must be fully aware of the loss of enjoyment of life in order to recover damages. Recovery is also analyzed within the context of wrongful death and survivor actions, as well as under federal civil rights law.

The heart of the book is the chapter entitled "Trial Strategy: Proof and Defense." It includes a well-organized list of state cases upholding the recovery of hedonic damages. The authors address proof problems and outline the role of the plaintiff's economic expert, the admissibility of expert economic testimony,

and the anticipated objections to this testimony. (These include that the expert is not qualified, that no expert testimony is necessary since the jurors are qualified to value life, that the testimony will be speculative and unreliable, and that the testimony will be prejudicial or will confuse the jury.)

The authors' counterarguments to these routine objections are indispensable to any plaintiff's attorney who must combat a motion to exclude expert testimony outright or to restrict its scope and content.

A short chapter is devoted to appellate issues involving these awards. The cases cited provide a wealth of legal authority to not only substantiate the claim for hedonic damages at trial but also preserve an award on appeal.

The longest chapter, "Sample Forms and Questions," contains much practical help: sample complaints, memoranda, interrogatories directed to the plaintiff, economic expert reports, voir dire questions, opening statements, direct and cross-examination questions, closing arguments, and jury charges. The chapter is an excellent blueprint for attorneys who must present hedonic damages at trial.

The final section, collectively entitled "Appendices, Table of Cases, and Index," is a gem. It contains edited versions of actual direct and cross-examinations of plaintiff's economist Michael Brookshire taken in a 1990 West Virginia trial in which the jury returned a substantial award for the loss of enjoyment of living. There is also an edited version of the testimony of economist Stanley Smith taken in a 1983 medical negligence case where an Illinois jury also returned a substantial award for a plaintiff's hedonic damages.

The *Trial Manual for Proving Hedonic Damages* is a welcome addition to any trial attorney's library. Although I would have liked to have seen more from the authors on trial strategy, proof, and defenses, the treatise will give trial attorneys involved in the prosecution of plaintiffs' personal injury and wrongful death cases a comprehensive overview of hedonic damages. □

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