Pony-tailed lawyer tweaks justice in 'Taking Back the Courts'

BY DON PESCI
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"Taking Back The Courts What We Can Do To Reclaim Our Sovereignty"
By Norm Pattis; Sutton Hart Press; $22.95

Attorney Norm Pattis, the author of "Taking Back the Courts: What We Can Do to Reclaim Our Sovereignty," is viewed by other lawyers as a cross examination impresario. If this particular talent is a gift, it is one that in Pattis's case has been honed throughout his years practicing law as a criminal defense attorney in Connecticut. Pattis is used to thinking outside the box — very quickly. He is disputatious, capable of mastering a complex briar patch of facts and legal precedents in quick time and effortlessly applying the relevant points in his summations.

And he has a pony tail.

Pony tails, however, may be deceptive. They evoke the silly 1960s, free love, pot and the slow evisceration of the antique morality of benighted backward looking parents of the Woodstock generation. But as Pattis' ponytail swishes through the chapters of his book, it moves disturbingly right and left.

Consider chapter 14, "Too Many Lawyers: Time to Revisit the American Rule." The premise of this chapter — a surfeit of lawyers desperate for work increases costly suits — will not likely be embraced warmly by lawyers desperate for work and hungry for big verdicts:

"What most lawyers will acknowledge, privately, when only other fellow lawyers are around, is that there are too many of us. The result is that many lawyers are desperate for work.

"And what do desperate lawyer do? They sue people. Why not? Access to the courts is inexpensive, and here is no downside. You might always hit a big verdict. And even if they lose, the so-called American Rule has transformed the American civil justice system into the equivalent of a roulette wheel. Why not spin the wheel when the costs of doing so are low?"

The obvious solution to this problem, and the one recommended by Pattis, is to attach sanctions to losing. In most human endeavors those who lose pay and those who win carry home the trophy: "I see no justice or fairness in requiring defendants, whether they be corporations or individuals, to pay unwarranted legal fees. Why shouldn't a loser be required to cover the winner's costs?"

There are 21 chapters in the book, all crafted in layman's verbiage, some of which have been lifted from Pattis' columns in The Connecticut Law Tribune. The last two chapters are devoted to Pattis' ardent opposition to the death penalty, and here he is less convincing than Albert Camus, the author of "Reflections on the Guillotine," a passionate assault on the death penalty in France.

As a defense lawyer, Pattis is concerned chiefly with the part that has been played in a particularly gruesome Connecticut case by a husband who was the lone survivor of a murderous assault on his family, Dr. William Petit. Following the murders of his wife and two daughters, Petit has not gone quietly into the good night that shrouds the victims of heinous crimes, and Pattis fears that remarks made by Petit to the media might prejudice a jury now considering the case.

On the question of the marginalization of juries, a theme that runs throughout many of the chapters, Pattis, who provides a much needed in-house view of court proceedings, is informative and convincing. In the real world of courts, judges, juries and trials, justice is sometimes a victim of process, tedious and endless, or experts who lack expertise or judges who lack judgment or infantilized juries.

In Chapter 13, "Experts for sale," a title one likes to think may have been drawn from Lucian's savage second century satire "Philosophers For Sale," Pattis has some fun with expert testimony, which is often based, he says, on very questionable science.

Pattis points to a National Academy of Science (NAS) report on the forensic use of science that splashes cold water in the faces of prosecutors who use junk science to obtain convictions. The report recommends that forensic labs and investigations should be independent of "law enforcement efforts either to prosecute criminal suspects or even to determine whether a criminal act has indeed been committed... With the exception of nuclear DNA analysis ... no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source," heady and cautionary stuff.

Pattis has more than once heard prosecutors at trial urge judges to admit contested evidence: "'The state cannot prove its case without the evidence, your honor,' the argument goes. To which I typically respond: 'So what?' The rules of evidence require reliable evidence. The trial deck is not supposed to be stacked in favor of conviction. But the deck is so stacked. And few judges seem prepared to do much about it."

Impatient with conventional nonsense and cant, Pattis' pony tail swinging like a baseball bat, here offers some necessary correctives.

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