

Jailhouse Lawyers: Nuisance or Necessity?

By Angus R. Love

Jailhouse lawyers are individuals who are usually self-taught, probably well-educated and have decided to utilize their legal talents on behalf of themselves and others seeking legal assistance in the prison environment. They often work in the prison law library and are occasionally paid officially or unofficially for their efforts.

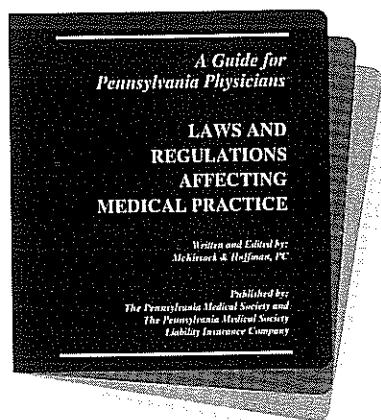
Gary Rock is one of the best jailhouse lawyers in Pennsylvania. While serving a life sentence he has educated himself not only in the area of criminal law while fighting his conviction but also in many other important areas of the law, including due process and civil rights.

He has litigated cases for fellow inmates on access to the courts, freedom of association, due process and criminal appeals. He has authored the *Self Defense Manual for Pennsylvania State Prisoners Accused of Misconduct*. The self-help guide has received much praise from some of the leading practitioners in the field. He has also worked as a paralegal with several criminal-defense lawyers. Gary's legal efforts have even drawn praise from his opponents in the state Attorney General's Office for his professional demeanor and intellectual honesty.

Angus R. Love is executive director of the Philadelphia-based Pennsylvania Institutional Law Project.

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Much controversy surrounds the role of the jailhouse lawyer in our criminal-justice system. The controversy over inmate litigants ranges from reports of frivolous lawsuits clogging up our court system to accolades for the Davids who conquer Goliath with a legal sling shot.

Inmates, tired of petty nuisances and perceived harassment, often resort to litigation to resolve these minor problems. A lawsuit challenging the loud noise of a

deliberate indifference in an Eighth Amendment context; and the recent decision of *Helling v. McKinney* recognizing the dangers of prolonged exposure to environmental tobacco smoke.

What is the reality of the plight of jailhouse litigants? There is little doubt that our system of justice requires access to the courts for all persons regardless of their social status or financial resources. If we are to have a legal system that dispenses justice, all must be included. Thus the question becomes one of access. How can an individual who is poor, incarcerated and has a legitimate legal claim gain access to our court system? "The plight of the man in prison may ... be even more

It will always be preferable to pick up a pen and seek the assistance of our courts to resolve a grievance than to pick up a club or a knife and resort to the law of the jungle.

train passing a prison, a litigant with dozens of lawsuits pending, a slap suit utilized as harassment against a prison official — these have all given the jailhouse lawyers a bad name.

On the other hand, jailhouse lawyers have succeeded in bringing monumental cases that have shaken our legal foundations. *Gideon v. Wainwright* established an indigent's right to counsel in a criminal proceeding, paving the way for the creation of public-defender programs. *Gideon* handled the case until the U.S. Supreme Court granted the certiorari petition and appointed Abe Fortas as counsel. Keith Hudson, an inmate at Angola State Penitentiary in Louisiana, recently prevailed in the Supreme Court, affirming the principle that any injury suffered as a result of a guard's beating, regardless of its severity, states a claim under the Eighth Amendment prohibition against cruel and unusual punishment. The recent 3rd Circuit affirmation of Judge Maurice B. Cohill Jr.'s scathing condemnation of the conditions of confinement at the State Correctional Institute at Pittsburgh, *Tillery v. Owens*, was initiated by a group of inmates. Other Supreme Court decisions initiated by jailhouse lawyers include *Johnson v. Avery*, allowing inmates to assist one another on legal matters; *Wilson v. Seiter*, further defining the meaning of

acute than the plight of a person on the outside," opined the late Justice William O. Douglas in *Johnson v. Avery*. "He may need collateral proceedings to test the legality of his detention or relief against defective detainers against him which create burdens to his incarcerated status. He may have grievances of a civil nature against those outside the prison. His imprisonment may give his wife grounds for divorce and may be a factor in determining custody of his children; and he may have pressing social security, workman's compensation, or veteran's claims," Douglas adds.

While the demand may be heavy, the supply of legal assistance is minimal. For civil matters, legal counsel is almost nonexistent. For criminal matters it is sparse. While the American Bar Association recommends one lawyer for every 500 inmates, the ratio in our state for civil matters is closer to one full-time lawyer for every 10,000 inmates. Our office has received as many as 40 requests for service in one day. Legal-aid programs have been sharply curtailed in the last decade. When the legal community fails to provide the prison with the legal counsel it demands, the prison generates its own. It is especially important, as the late U.S. Eastern District Judge Joseph S.

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JAILHOUSE LAWYERS

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Lord III noted in *Para-Professional Law Clinic v. Wade*, for the many who are illiterate, unable to understand English and for those held in isolation. The jailhouse lawyer fills the vacuum.

While many will continue to complain about frivolous lawsuits, our system of justice depends on the efforts of such persons as Gary Rock to fill this gap and to give as many persons as possible access to the courts. Frivolous lawsuits can be easily weeded out by a trained clerk or paralegal at the earliest stage of litigation, leaving only the legitimate claims for the judge's attention. While it may be a tedious task akin to finding a needle in a haystack, the alternatives leave little choice. If we are committed to equal justice, we must provide a system that allows for it to occur. It will always be preferable to pick up a pen and seek the assistance of our courts to resolve a grievance than to pick up a club or a knife and resort to the law of the jungle. For these reasons, jailhouse lawyers serve a vital function in the mechanics of our legal system. □

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