"The Devil's Advocate"

> dev'il's ad'vocate, a person who advocates an opposing or unpopular cause for the sake of argument or to expose it to a thorough argument.[1]

How do you become a jailhouse lawyer? After spending a decade behind bars reading law and everything else that I could get my hands on, successfully making the difficult transition from jailhouse lawyer[2] to paralegal[3] and reviewing countless pleadings prepared by prisoner litigants either pro se or with the questionable assistance of other inmates holding themselves out as writ writers or "pro se paralegal technicians," I have determined that a willingness to learn is the primary factor in becoming an able jailhouse lawyer.[4]

Unfortunately, post-GED education has been callously eliminated in American gulags and the functional illiterate armed with the outmoded legal texts he has stumbled through, more often than not, culminates in giving the jailhouse lawyer the knack of spewing out platitudes and nebulous generalizations, such as proclaiming a prison rule to be unconstitutional (without being able to identify the underlying constitutional provision supposedly involved) and the impressive ability to rattle off more latin than a fifth century Roman Praetor -- which serves the "con" well when castigating the judicial system during yardbird seminars to attract clients -- but the documents he prepares on behalf of others for filing with the courts are found wanting.[5] Caveat emptor.[6]

Like a duly licensed member of the bar, a jailhouse lawyer's toolbox is stocked with words. Jailhouse lawyering like any skilled trade is an art and to be over-qualified in oral advocacy as most inmates are -- or at least seem to be -- doth not a jailhouse lawyer make. To reach the acme of the art requires first and foremost that one be able to write and write well at that. Writing is a highly specialized form of thinking: For the jailhouse lawyer it is thinking for a specific audience and a specific reason. The judge and the purpose behind a pleading. A good jailhouse lawyer must first master the fundamental principles of writing and then move on to the dynamics of certain areas of the law.[7] Strong writing skills will enable the jailhouse lawyer to clarify thoughts in an analytical way that simply mulling over them can not. Writing per se imparts critical thinking; teaching the jailhouse lawyer to perceive murky legal issues. An effective jailhouse lawyer well-versed in composition is a thinker and a problem-solver, capable of extracting the relevant issues from any agglomeration of facts and drafting concise creative pleadings.

Because educational opportunities are virtually non-existent for all but the fortunate few prisoners who can afford to take correspondence courses, an in-depth study of english composition text books is deemed advisable for the jailhouse lawyer who already has some writing talent and wishes to enhance it and absolutely necessary for those who lack writing skill and are serious about developing some. All of the general libraries at the 27 facilities I was housed at during my tour de force of the Michigan Department of Corrections carried excellent selections of books on writing, composition, and style, dictionaries and thesauruses.[8] Indeed, many were like new (although dusty) from lack of use.

A great way to learn how to write is by conducting interviews because it helps the jailhouse lawyer ascertain his or her particular writing style and amplify it. And of course, the inmate interviewer never wants for subjects or topics either for that matter.

Yet another way to improve or increase writing skill is by completing the study lessons in composition books.

An ideal method for developing and/or strengthening one's writing is by doing book reviews. For example, in the MDOC "[a] prisoner in general population may submit uncensored manuscripts to publishers and may serve as a literary reviewer for newspapers or other publications."[9] From personal experience, I know that book reviews are one way to build up a valuable collection of books, law or otherwise, for the paltry cost of a few postage stamps. I also know that an active jailhouse lawyer can never have too many law books.[10]

My preference for developing the highly-technical skills that an outstanding brief writer needs is by honing my pen on short stories. The local rules of the United States District Court for the Eastern and Western Districts of Michigan impose page limitations on briefs,[11] as do the rules of the United States Court of Appeals for the Sixth Circuit.[12] Ditto for Michigan tribunals.[13] The page limitations on briefs established by the federal judiciary are comparable to the submission requirements on word length set by short story publishers. Thus, by confining yourself to the restrictions publishers impose on word length, in relatively short order, you learn to be constrained and economical in what you write and how you write it.

Writing short stories mandates that the writer be succinct and innovational. This expertise not only carries over into brief writing but enhances it. The comparison between 4
writing briefs and short stories dovetails nicely with a point declared by the leading expert on prisoners' rights: "In everyday language, the word 'brief' means short."[14] The following array of testimony supports terseness:

With or without divine assistance, the most venerable of all authorities, Saint Paul observed in I Corinthians XIV v. 9: "So likewise ye, except ye utter by the tongue words easy to be understood, how shall it be known what is spoken? for ye shall speak into the air."

Strunk & White, The Elements of Style: "Omit needless words. Vigorous writing is concise."

Chekhov: "The art of writing is the art of abbreviation."

Emerson: "Nothing is more simple than greatness; indeed, to be simple, is to be great."

F. Scott Fitzgerald: "All good writing is swimming under water and holding your breath."

Philip J. Bailey: "Simplicity is Nature's first step, the last of Art."

Lucile Vaughn Payne, The Lively Art of Writing: "Style ... is the ability to say in writing, with clarity and economy and grace, precisely what you want to say."

Longfellow: "In character, in manners, in style, in all things, the supreme excellence is simplicity."

The advent of reprehensible legislation such as the Prison Litigation Reform Act of 1995[15] proves that now more than ever, there is a pressing need for competent jailhouse lawyers to ensure access to the courts for all prisoners. A careful reading of the poorly written Prison Litigation Reform Act leads me to conclude that artful draftsmanship is the key to the courthouse door.

END NOTES

1 Webster's, Encyclopedic Unabridged Dictionary of the English Language (Revised Updated Deluxe Edition 1996).

2 Black's, Law Dictionary (6th ed 1991) defines "Jailhouse lawyer" as "Inmate of a penal institution who spends his time reading the law and giving legal assistance and advice to inmates, especially to those who are illiterate. Johnson v. Avery 393 U.S. 483; 89 S.Ct. 747; 21 L.Ed.2d [(1969)]."

3 Ibid., defines "paralegal" as "A person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills. Paralegal courses leading to degrees in such specialty are now afforded by many schools."

4 See Manville, Prisoners' Self-Help Litigation Manual (3rd ed 1995) Ch. I, § B at p. 3 ("We don't have any magical answers on how to become a successful jailhouse lawyer. This is only achieved through hard work on your part.")(emphasis added).

[5] See Knop v. Johnson, 667 F. Supp. 467, 488 (W.D. Mich. 1987) ("... the often-fabled jailhouse lawyers or writ-writers are, at least in the Michigan system, too few and often too uninformed to provide adequate assistance to the inmates."). 6

[6] Let the buyer beware!

[7] See Knop, 667 F. Supp. at 486 ("I have reviewed numerous prisoner petitions, some of which were well-written and well-researched, and others of which reflected a complete lack of legal knowledge and of the ability to write coherent sentences and paragraphs.").

[8] For example, as of December 1998, the following material was available at the Marquette Branch Prison general library: Hoover, Making Your Writing Count; Leggett, Prentice-Hall Handbook for Writers; McGraw-Hill, Write to Succeed; McCarthy, The Way a Writer Reads; Neeld, Grammar & Usage; Payne, The Lively Art of Writing; Strunk & White, The Elements of Style; Schor, Random House Guide to Basic Writing; Vert, Writing, Reading & Research; Webster's, Standard American Style Manual; Webster's, Guide to Business Correspondence; McCormick, Guide to [redacted] Reference Materials; Newman, Reading, Writing and Self-Esteem; Buckley, How to Write Better Business Letters; Capek, Writing in Context; Cowan, Plain English Please: A Rhetoric; Elbow, Writing with Power; Elecan, Elements of College Writing; and numerous issues of Writer's Digest magazine.

[9] Michigan Administrative Code, R 791.6605(2).

[10] See Knop, 667 F. Supp. at 496 ("No person, not even a trained attorney, can prepare an effective complaint without adequate access to law books.").

[11] See E.D. Mich LR 7.1 ("The text of the brief, including footnotes and signatures, shall not be more than 20 pages."); 7 See also W.D. Mich. L.R. 28(b) ("Any brief filed in support of or in opposition to a nondispositive motion shall not exceed ten (10) pages in length, exclusive of cover sheet, tables, and indices."); cf. with W.D. Mich. L.R. 29(b) ("Any brief filed in support of or in opposition to a dispositive motion shall not exceed twenty-five (25) pages in length, exclusive of cover sheet, tables, and indices.").

[12] See Fed. R. App. P. 28(g) ("Except by permission of the court, or as specified by local rule of the court of appeals, principal briefs must not exceed 50 pages, and reply briefs must not exceed 25 pages, exclusive of pages containing the corporate disclosure statement, table of contents, table of citations, proof of service, and any addendum containing statutes, rules, regulations, etc."); See also 6th Cir. R 10(g) (same).

[13] See Michigan Court Rule (MCR) 2.119 (Circuit Court 20 pp.); 7.212(B) (Court of Appeals 50 pp.); and 7.304 & 306 (Supreme Court 50 pp.).

[14] See Manville, Prisoners' Self-Help Litigation Manual (Rev. 2nd ed. 1992) Ch. III, § E at p. 41. See also Fry, Modern American Law: Pleadings and Practice in Civil Actions Vol. VI (1996 ed) Ch. 9 at p. 144 ("A brief is a printed document.... and is generally intended to state concisely the questions upon which a ruling of the reviewing court is desired.") (emphasis added)

[15] Pub. L. № 104-134 (1996).

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This article is dedicated with love and respect to Grand Rapids, MI lawyer James R. Rinck, the living epitome of Christian charity and the best lawyer I've ever met, and Rev. Emmett M. Norden who practices what he preaches.

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THE END