

the Legal Reformer



HALT'S MEMBERSHIP NEWSLETTER • April-June 2005

States Provide Few Probate Resources

By Todd Chatman

Probate is the legal process by which you prove a will is valid and settle an estate. Because probate is among the most common legal procedures in the U.S., you might think that states provide information and resources to help people. Most don't.

In fact, HALT's survey of online probate resources found that a dozen states (Hawaii, Idaho, Mississippi, Montana, Nebraska, Nevada, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee and West Virginia) offer no information whatsoever, while the vast majority offer little more than a basic definition of probate, leaving consumers with little choice but to hire an attorney and pay expensive legal fees for what is usually a simple and routine procedure.

A handful of states, however, are attempting to fill the information gap. For example, Vermont scored highest in our survey because its state court Web site (www.vermontjudiciary.org) features a link to its probate courts right on the front page. From there, consumers can find a wealth of information about pro-

bate, including a step-by-step guide to administering and settling an estate, links to local probate courts, links to necessary forms and instructions for us-

Simplifying procedures and providing assistance to nonlawyers would make probate more user-friendly and help more people avoid unnecessary legal costs.

ing them and a complete explanation of Vermont's special rules for expedited small-estate administration.

While no state quite matched Vermont, three other states (Maryland,

New Hampshire and Connecticut) and the District of Columbia also provide useful information. Maryland's Web site (www.registers.state.md.us) offers general information on probate and more than 45 forms for probating a regular or small estate. New Hampshire (www.courts.state.nh.us/probate) offers forms and a lengthy online publication called *Administering an Estate*, complete with timelines and checklists. And the District of Columbia's Web site (www.dccourts.gov/dccourts/superior/probate/forms.jsp) provides forms, general information, frequently asked questions and links to sites like the DC Recorder of Deeds.

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Consumer Federation of America Unanimously Adopts Key Legal Reforms

At its annual meeting held in Washington, DC, from March 9 through March 12, the Consumer Federation of America (CFA) adopted legal reform proposals recommended by HALT. The resolutions adopted by the CFA reflect HALT's core advocacy mission of creating a more accessible and accountable civil justice system.

"Making the legal system more user-friendly is a shared goal of HALT and the Consumer Federation of America," stated HALT Associate Counsel Suzanne Blonder. "Calls for increased oversight of judges, additional legal resources for seniors, written fee agreements and improvements to small claims courts are long overdue."

As Chair of the CFA's Vulnerable Consumers Subcommittee this year, HALT's Blonder successfully urged the Federation to incorporate legal reform provisions into its *2005 Policy Resolutions Manual*. The HALT-backed resolutions focus on expanding access to the civil justice system through the implementation of small claims court advisers and the creation of free legal hotlines for low-income seniors. Targeting the need for increased accountability in the civil justice system, HALT's remaining resolutions recommend gift receipt restrictions for federal judges and requirements that professional fee agreements be written in plain-language and clearly

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States Provide Few Probate Resources, Cont. from page 1

To determine the usefulness of states' probate Web sites, we started with the simple question: If you need to probate an estate in any U.S. state, can you find resources online to help you complete the process without a lawyer? Specifically we looked for:

- reliable information about the probate process in the state via a standard Internet search engine;
- clear and easy-to-find directions for determining which court handles probate and contact information for the clerk of that court;
- step-by-step instructions for probating an estate in any of its jurisdictions;

- online probate forms, along with detailed instructions for completing those forms; and
- clear and easily accessible information about small-estate, informal, or non-probate estate administration.

Probate is not the complex, intimidating process many people believe it to be. For years HALT has encouraged states to simplify their probate process—especially for small-estate administration. Simplifying procedures and providing assistance to non-lawyers would make probate more user-friendly and help more people avoid unnecessary legal costs. We applaud Vermont's steps in this direction and urge all states to follow its lead. ■

CFA Adopts Key Legal Reforms, Cont. from page 1

outline clients' rights.

"We hope that the Consumer Federation of America's endorsement will galvanize decision-makers to consider and implement these important reforms," stated Blonder.

CFA works to advance pro-consumer policy on issues like energy, financial services, health and safety, government accountability and telecommunications. At the annual meeting, member organizations discuss and vote on policy resolution proposals submitted by the Federation's Policy Resolution Committee, comprised of chairpersons of various subcommittees that meet each year to evaluate new policy ideas and propose resolutions. CFA resolutions help set the policy agenda for the courts, Congress and the White House, as well as federal and state regulatory agencies.

HALT successfully urged the Consumer Federation of America to incorporate the following legal reform provisions into its *2005 Policy Resolutions Manual*:

CFA Endorses HALT Recommendation of Gift Receipt Restrictions for Judges. CFA supports strict limitations on the gifts that federal and state judges

may accept. Judicial standards should parallel the standards imposed upon the executive and legislative branches, not to exceed *de minimis* amounts.

CFA Endorses HALT Proposal to Require Written Professional Fee Agreements. Any professional licensed by the state must provide clients with plain-language written fee agreements and send itemized monthly statements when fees are incurred.

CFA Endorses HALT Recommendation for the Creation of Free Legal Hotlines for Low-Income Seniors. CFA supports the establishment and generous public and private funding of free legal hotlines for low-income seniors, staffed by licensed attorneys and covered by legal malpractice insurance. Senior hotlines should exist nationwide.

CFA Endorses HALT Recommendation for the Implementation of Small Claims Court Advisors. CFA supports expanding the availability of legal self-help through small claims court systems. Such expanded access should include small claims advisors. Small claims advisors are individuals other than clerks with an understanding of small claims procedures whose primary duties are to explain those procedures to small claims litigants and guide them through their cases. ■

Legal Reform News

VIRGINIA GOES A STEP FURTHER TO PROTECT LEGAL CONSUMERS

In a move that will provide consumers with up-to-date, critical information about attorneys, the Virginia State Bar recently decided to increase the frequency with which lawyers must report their malpractice insurance status.

For many years, Virginia has been one of only a tiny handful of states to require attorneys to disclose whether they are covered by professional liability insurance. Following a recommendation from HALT, the state bar will now have lawyers report their current status every 30 days—adding sharp teeth to an important rule.

In written comments, HALT urged the bar to go a step further by urging that every attorney carry some minimum level of insurance. In Oregon, HALT pointed out, attorneys have been required to carry a minimum level of malpractice insurance, currently \$300,000, for decades.

“Although we would prefer that the Virginia Bar eliminate the need for disclosure altogether by requiring all attorneys to have insurance, the bar’s new ‘regular reporting’ rule is good news for consumers,” stated HALT Associate Counsel Suzanne Blonder.

VIRGINIA TARGETS SOCIAL WORKERS

The Virginia State Bar is currently considering a measure that could dramatically restrict access to the state’s small claims courts, by ruling that a social worker preparing forms for self-represented litigants in small claims court is engaged in the unauthorized practice of law. HALT submitted written comments, urging rejection of the proposal, which threatens to hurt those who already have the least access to courts.

Virginia’s small claims courts already rank among the nation’s worst, receiving a “D” grade in HALT’s 2004 Small Claims Report Card. If adopted, the Virginia Bar proposal would further undermine the value of small claims courts as a place where ordinary people can take charge of their legal affairs.

“Virginia’s small claims courts are on the verge of going from bad to worse. The forms that small claims litigants need to fill out are more complicated than a tax return and have fewer accompanying instructions,” stated HALT Senior Counsel Thomas Gordon. “If the Virginia Bar has its way, consumers will not be allowed any assistance in filing in small claims court. At least with a tax return, H&R Block can help you complete it.”

JUDGE’S TEMPER TARGETS PRO SE LITIGANTS

King County Judge Judith R. Eiler was recently reprimanded by the Washington State Commission on Judicial Conduct for “engaging in a pattern or practice of rude, impatient and undignified treatment of *pro se* litigants in the courtroom.” Eiler violated the Code of Judicial Conduct with her tendency to interrupt and verbally intimidate *pro se* litigants, who are “entitled to time in front of an impartial and courteous judge, not one who threatens to base her ruling on a litigant’s smirk or attitude.” While conducting court business, Eiler also had a tendency to drink coffee from a mug displaying the phrase “Annoying People Annoy Me” and to wear a T-shirt that proclaimed “Wanna Piece of Me?”

Judge Eiler, who has been ordered to attend sensitivity seminars, receive behavioral therapy and cease wearing and using items with intimidating

phrases, blames her short temper on “bench stress,” which has been on the rise due to such factors as heavy case-loads and ill-prepared or highly emotional or stressed litigants. Ironically, the Washington State Bar Association has a Judicial Assistance Program, which is the only program in the country that provides continuous confidential psychotherapy to judges who are stressed out.

LAWYERS FIGHT OVER LEGAL FEES

On March 14, 2005, a Manhattan judge admonished a lawyer and the law firm he hired for failing to execute a written fee agreement.

Solo practitioner Steven B. Shapiro hired Fensterstock & Partners in 2001 to defend him against accusations of legal malpractice. In court, Shapiro argued that he and Fensterstock orally agreed to limit Shapiro’s legal fees to \$75,000.

Fensterstock, which was denied a summary judgment in the case, countered that the \$75,000 would serve only as an initial retainer and that the firm would charge its customary hourly rate, even after exhausting the deposit. Fensterstock claimed that Shapiro amassed \$300,734 in charges for attorney fees and disbursements, leaving an outstanding debt of \$225,734 after the firm applied the retainer.

“This case is a textbook example of the trouble litigants can cause themselves when lawyer and client fail to execute a retainer agreement—even [when], as in this instance—both lawyer and client are attorneys,” wrote Acting Supreme Court Justice Louis B. York in his decision.

—Compiled by Suzanne Blonder,
Tom Gordon and Nichole Paulding
(a senior at Amherst College).



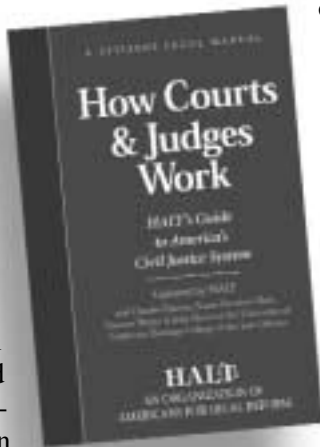
HALT Releases Updated Manual on Courts and Judges

Are you a fan of Judge Judy? Ever wonder what happens in a courtroom? HALT's **Citizens Legal Manual**, *How Courts & Judges Work: HALT's Guide to America's Civil Justice System* provides the inside story.

It looks closely at the people who work in a courthouse—judges, magistrates, court clerks and other personnel. Find out how state and federal judges are selected and under what circumstances they can be sued or disciplined.

Learn the difference between a justice of the peace, a magistrate and a special master. When can these judicial officers hear your case, and what decision-making authority do they have?

You'll also learn how a case enters the court system and where, if appealed, it ends up. You may think you have a case for the U.S. Supreme Court, but, like it or not, all cases enter at the lowest rung and work their way up a well-established hierarchy. A thorough discussion of our nation's court structure, at both the federal and the state court levels, and organizational flow charts of each state's court system are included to help you understand that hierarchy.



HALT's newest offering, compiled with the assistance of Charles Marcus, Susan Nevelow Mart, Vincent Moyer and Julie Horst of the University of California Hastings College of the Law Library, takes the mystery out of going to court and guides you to other resources, such as mediation and arbitration, that can help you resolve your legal issues.

Although HALT encourages people to avoid litigation whenever possible, the truth is, most of us will need to deal with a legal matter that involves a court and a judge at some point. Whether it's probating an estate, serving on a jury, contesting a parking ticket, or resolving a dispute with your landlord, you need to know your rights and be familiar with how our court system works. This is especially true if you're considering representing yourself (*pro se*).

"At \$100, \$200 and even \$300 an hour, lawyers have priced themselves beyond the reach of average Americans," said Program Director, Theresa Meehan Rudy. "That is why we have added a new chapter, *Going Pro Se*, and a comprehensive Appendix of *Pro Se Resources* in our update."

If you expect to be involved in a lawsuit or other court proceeding, and whether or not you have an attorney represent you, the information in this manual will help you understand how

the American judicial system works. *How Courts & Judges Work* sells for \$12 plus shipping and handling. For more information, contact HALT toll-free at 888-367-4258, or visit us online at www.halt.org. ■



CHEERS to the Nevada Bar for implementing a new program that could increase the compensation consumers receive from the Clients' Security Fund. With local attorneys offering free collection services, the bar hopes to increase the Fund's assets and compensate injured clients faster.



JEERS to the Wisconsin Board of Bar Governors, which vetoed a proposal by the Court's Ethics Committee that required written fee agreements. As HALT Executive Director Jim Turner points out, "An attorney's first advice to a client is often 'get it in writing,' but the board is keeping a gigantic loophole for lawyers. Legal ethics should include sound business practices like written employment contracts for lawyers. Until they do, it's still buyer beware."



Another JEER to Ohio attorney Frank W. Green, who thinks only lawyers should host seminars on living wills. Green complained to the disciplinary counsel of the Supreme Court of Ohio about a seminar on living wills facilitated by Karen Phillips, a registered nurse at Fairfield Medical Center in Lancaster. His letter stated, "It appears as though [the seminar] constitutes practicing law without a license." Phillips is now being investigated for the unauthorized practice of law.

Looking For a Few Good Malpractice Lawyers

HALT's Legal Information Clearinghouse is being updated. We would like to expand our database of legal malpractice lawyers—a resource for HALT members and consumers nationwide. So, if you know a lawyer who deals with plaintiffs' legal malpractice claims, share the wealth! Send us that attorney's name and contact information, and we will contact him or her about participating in our referral network.

HALT, 1612 K St. NW, Ste. 510, Washington, DC 20006

HALT Creates Living Will Clearinghouse

Responding to the unprecedented public interest in advanced health-care planning triggered by the Terri Schiavo tragedy, HALT has posted free state-specific living wills, durable powers of attorney and health-care proxies for download on www.halt.org. In addition, every HALT member will be receiving hard copies of these documents in the mail this month.

HALT believes that empowering people so they can exercise self-determination in these most personal of decisions is part of our fundamental mission. Whatever your decisions are about your health-care wishes, you and your family should be in charge, not lawyers, judges and politicians.

Filled out properly, living wills, durable powers of attorney and health-care proxies are powerful tools to en-

sure that you receive only the care you want if you become unable to express your wishes. HALT's Living Will Clearinghouse provides detailed information about what these documents do, who should know about them and where the documents should be stored.

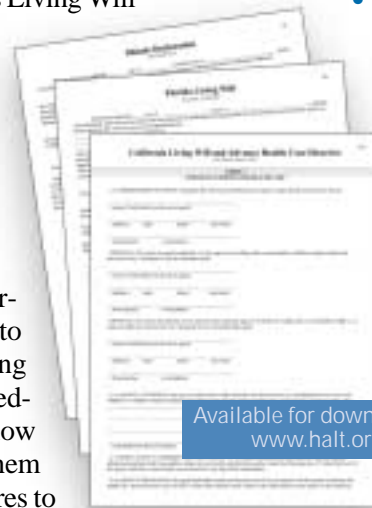
Whether you personally would like to have doctors prolong your life as far as medical science will allow or would not want them to take certain measures to keep you alive, protecting your family from experiencing the kind of tragedy experienced by Terri

Schiavo's family basically requires you to do two things:

- put your health-care wishes in writing, and
- name someone to speak for you if you become disabled.

Even if you already have these documents, this is a good time to review them and make sure they still do what you want them to do. If you haven't created these important documents, a visit to HALT's

Living Will Clearinghouse allows you to accomplish this important goal in just a few quick minutes. ■



IN MEMORY



Sol M. Linowitz
1914 – 2005

On Friday, March 18, 2005, lawyer, diplomat, and dedicated public servant Sol M. Linowitz died at the age of 91.

In the last two decades of his life, Linowitz called for reforms that would bring respect and honor back to the legal profession, explaining, "We are supposed to be members of a learned society of professionals bound by ethical standards, morals and manners," but that instead, "we have transformed it into a huckstering business operation."

At the age of 80, Linowitz wrote

The Betrayed Profession, where he argued that lawyers have abandoned their duty to defend the Constitution and the Bill of Rights in order to make money. Linowitz

wrote extensively on legal reform, urging lawyers to help improve access to the legal system and advocating for simpler and less expensive procedures, including refining the small claims court system.

HALT deeply regrets the loss of a fellow reformer so dedicated to restoring the integrity of the legal profession.

Young Lawyers Polled

A recent poll of hundreds of lawyers born after 1978 revealed that their aspirations for their professional lives may differ from those of their older colleagues. The poll, which surveyed both partners and associates, showed that many young lawyers have a long-term focus on "doing something other than practicing law."

The poll revealed that the number one motivator for young associates was time for personal life. This result may be due to the fact that the demand for billing hours, especially in the United States, is continually on the rise. The poll noted that 73 percent of associates in the United States work in firms requiring 1,800 billing hours per year or more, compared with an average of 1,400 to 1,600 billing hours throughout the rest of the world.

As one associate explained, "I would rather earn less money and have a life." ■

An Interview with Consumer Advocate John Reigle

By Geraldine Doetzer

HALT interviewed consumer advocate John Reigle, author of *When Death Occurs: A Practical Consumer's Guide to Funerals, Memorials, Burial, Cremation and Body Donation*.

Are most funeral homes now operated by big corporations?

In many of the major metropolitan areas, most of the funeral homes are owned by a large corporation. Many times consumers can't tell who owns the business, and it becomes very difficult to comparison shop. Just because a funeral home is part of a large corporation doesn't make it a bad funeral home. There are many small funeral homes that actually do a worse job than the large corporate chains.

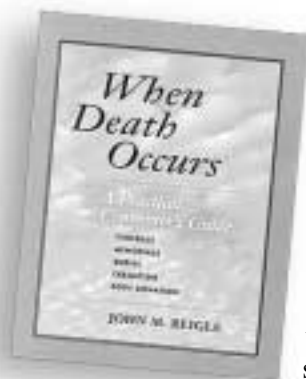
Why did you decide to write *When Death Occurs*?

The funeral home industry had become very commercialized. A lot of times consumers were being pressured, and didn't really know what their options were. If you think about it, the only place to get information about the funeral home industry is the funeral home industry. The book isn't anti-funeral home, it's pro-consumer. It shows people all of their options, and gives them ways to comparison shop. That's something that wasn't available, and I saw a tremendous need for it.

Why are funerals, burials and other services for the deceased so expensive?

Well, they needn't be. People can have meaningful, memorable and valuable services for a very reasonable price. I don't encourage pre-paying, but I encourage pre-planning. It takes

an hour to pre-plan and to think through your options. By not doing so, consumers end up in the hands of the funeral home industry and they're usually sold things they don't need or want.



What can people do to "pre-plan" for their own death or that of a loved one?

The very first thing that they can do is sit down with their family and talk about what their wishes are. There are two sides to each funeral story: what the deceased or soon to be deceased person may want to have, and on the other side of the story are the survivors. You really want to combine those two things. America is in denial. Consumers think, "It's not going to happen to us. We're going to deal with that when it comes up." When somebody dies, you're not in the mood to sit down and talk things over. You're in

the mood to just get through it. That's why it's important to do a little bit of pre-planning.

What do you think is the most common mistake made by consumers dealing with the practical aspects of the death of a loved one?

Number one, they don't comparison shop funeral providers. The other big mistake is they don't comparison shop attorneys. There are a lot of attorneys who really don't know that much about planning an estate. Then, they forget to ask that magical question: "How much is it going to cost?" A lot of times, the prices change just because you ask. I don't think it's embarrassing at all to ask: "How much is this going to cost?" or "What is your experience in this field?" A lot of very expensive mistakes can be made, and the families are the ones that end up paying for them.

(Geraldine Doetzer, a senior at the University of Maryland, interned at HALT during the spring of 2005.)

Nonlawyer Licensing Requirements

Last March, the Arizona Board of Legal Document Preparers proposed amendments to the Arizona Code of Judicial Administration that would add a potentially onerous written examination to the current requirements for licensed legal document preparers. That proposal is now before the Arizona Supreme Court.

The current examination requirement tests whether document preparers know the legal and ethical restrictions governing their profession. The new exam, by contrast, could cover substantive legal knowledge.

HALT filed comments on the proposed amendments with the Arizona Supreme Court stating that it is unne-

cessary for preparers to know substantive law, since they are merely completing documents, not providing legal advice. HALT noted that the Court justified its original regulation of legal document preparers in July 2003 based on a tiny number of complaints against them, and that the new regulatory framework has not been in place long enough to provide a basis for further change.

"Arizona's regulation of legal document preparers has always been a model for the rest of the country," said HALT Senior Counsel Tom Gordon. "We hope that the Court will continue to allow document preparers to serve the public by declining to place unnecessary burdens on the profession." ■

HALT Board of Directors Welcomes Jake Warner and Sally Greenberg

Beginning in May 2005, HALT's Board of Directors will include two new members, Jake Warner and Sally Greenberg.

Jake Warner, former co-founder of Nolo Press, the California-based publisher of legal self-help books and software, is a strong advocate of "delawyerizing" many aspects of people's legal affairs. Jake believes that giving people the proper plain-language materials and simplified processes will enable them to do much of their own legal work. Before launching Nolo, Jake worked as a staff attorney for Contra Costa Legal Services and clerked for the chief judge of the U.S. Court of Appeals for the Ninth Circuit.

Sally Greenberg brings over 20

years of consumer advocacy experience to HALT's Board of Directors. For more than a decade, Sally worked



Jake Warner



Sally Greenberg

for the Civil Rights Counsel for the Eastern States for the Anti-Defamation League in Boston. During this time period, she also served on the Governor's Hate Crimes Commission, the Governor's Commission on Technology and Computer Crime and the Governor's

Commission on the Status of Women. Sally is currently Senior Product Safety Counsel at Consumers Union, working to ensure that consumers receive the best possible information about the safety of their cars, appliances and other consumer products.

"We are very proud and happy to welcome Jake Warner and Sally Greenberg to our board," stated HALT Executive Director Jim Turner. "They bring a special expertise in defending consumer rights and a longstanding commitment to improving access and accountability in our legal system—a combination that will strengthen both our advocacy and our education efforts. All of us look forward to working with them to protect and empower America's legal consumers." ■



HALT in the Media

In recent weeks, HALT's advocacy for reforms that improve accountability and increase access within the civil justice system has garnered media attention in news outlets across the country. Here are highlights of HALT's recent press coverage:

- HALT Executive Director Jim Turner and Associate Counsel Suzy Blonder published "Corporate Lobbyists Influence Federal Judges Too," which was distributed by Minute-man Media and appeared in numerous newspapers, including *The Topeka Capital-Journal*, *The Gilmer Mirror*, *The Newtown Bee*, *Madera Tribune* and *The Star-Democrat*.
- In March, *The Oklahoman* conducted a review of Oklahoma's attorney discipline system and cited endless delays, underfunding and leniency. The article included HALT's

call for the state bar to use revenue from a recent increase of annual dues to address a burgeoning backlog of complaints against lawyers.

- *The New York Times* recently reported on attorney discipline reforms implemented in Connecticut in 2004, and ran HALT's letter to the editor in March, which called the recent reforms a victory for legal consumers, while also outlining the need for further changes to the state's self-regulated system.
- Following HALT's testimony in support of an increase in Illinois' small claims jurisdictional limit in January, the *State-Journal Register* (Springfield, IL) published an article outlining HALT's small claims reform agenda.

To view HALT's complete archive of press coverage, please visit our online Press Room at www.halt.org.

Congratulations Shelley!

On Thursday, April 21, Katherine (Shelley) Broderick, HALT Board Member and Dean of the University of the District of Columbia's David A. Clarke School of Law, was honored as a "Servant of Justice" by the Legal Aid Society of the District of Columbia at its 16th

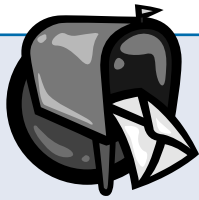


Shelley Broderick

Annual Servant of Justice Awards Dinner in Washington, DC.

"Shelley labors tirelessly in the trenches of reform and makes a real difference for legal consumers, law students and public interest advocates across the country," stated HALT Executive Director Jim Turner. "All of us join in adding our congratulations for this well-deserved honor." ■

From the Mailbox



Dear HALT,

From time to time, I see an article in my local paper that mentions HALT. For instance, I recently read about the grade my state received in HALT's 2004 Small Claims Report Card. Are you interested in receiving copies of articles such as this?

Sincerely,
*Reading the News
in North Carolina*

Dear North Carolina,

We're delighted to hear you've seen local media coverage of HALT. Yes, please send us a copy. Because HALT works on behalf of legal consumers in all 50 states and the District of Columbia, regional media coverage can be difficult to track. We depend on our members to send us clippings from their community publications that mention HALT.

We look forward to reading the article you saw about small claims courts in your area. If you or any of our members see articles about HALT in the future, please mail us a copy at 1612 K St. NW, Ste. 510, Washington, DC 20006. We will be sure to add the clip to our online press archives, which you can view at: www.halt.org/about._halt/press_room.

Sincerely,
HALT

Book Sale

To purchase any of the titles listed, mail in the [Publication Order Form](#) along with a check, money order, or your credit card information to: HALT, 1612 K Street, NW, Suite 510, Washington, DC 20006. Or, if it's more convenient, call us toll-free at (888) 367-4258 and charge your order. Please allow 4-6 weeks for delivery. DC residents add 6% sales tax.

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USING THE LAW LIBRARY

Learn how to do your own legal research with this plain-language guide. Includes a list of law libraries open to the public. **\$12.95**

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Everything you need to know if you've been named as an executor in a will or trustee in a trust. Learn what you have to do right away, in a month and what can wait till later. **\$34.99**

LEGAL RESOURCE DIRECTORY

Lists over 25 years of HALT's best contact information, including addresses, Web sites and other resources for meeting your everyday legal needs. **\$12.00**

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Combined Federal Campaign/United Way # 2206

April-June 2005

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