

the Legal Reformer



HALT'S MEMBERSHIP NEWSLETTER • July–September 2005

Illinois Supreme Court Prevents Monopoly on Legal Services

By Thomas Reuland

Handing down an important legal victory for consumers in April, the Illinois Supreme Court ruled in *King v. First Capital Financial Services* that mortgage companies which charge fees for document preparation are not engaging in the unauthorized practice of law.

By ruling that completion of simple mortgage documents does not require a lawyer, the court saved millions of dollars for homeowners.

HALT submitted an *amicus curiae* (friend-of-the-court) brief arguing that document preparation is legal for three reasons: the mortgage lender prepared all the documents for its own business purposes, it never provided legal advice, and it did not attempt to prevent customers from seeking independent counsel.

Agreeing that the unauthorized practice rule had not been violated, the court held that preparing real estate papers “required only the filling in of

By ruling that completion of simple mortgage documents does not require a lawyer, the court saved millions of dollars for homeowners.



lowing nonlawyers to prepare mortgage documents. HALT argued that forcing mortgage companies to pay lawyers to complete standardized fill-in-the-bank forms “would be a waste of an attorney’s expertise and add an unnecessary cost to the overall expenditure of purchasing a home.”

“The court has prevented a brazen attempt by the bar to increase its monopoly

power over legal services,” HALT Senior Counsel Gordon later commented. HALT applauds Illinois’ step toward reform and hopes to see even greater progress in the future. ■

A growing number of states are al-

blanks with simple factual data. ...[Which] coincides with the job the broker was hired to perform and which he or she is licensed to perform.”

Unbundling Legal Services Helps Lawyers and Clients

By Debra Topor

Many people believe that you can only hire a “full service” lawyer. But there is a new, less costly option that is increasingly available for consumers—purchasing “unbundled” legal services.

Unlike full service representation where the lawyer gives advice, conducts legal research, gathers facts, drafts all letters and documents, and attends every court appearance, unbundled services permits a lawyer to rely on the client’s knowledge of the case and provide targeted assistance.

Now written into the ABA Model Rules of Professional Conduct, unbundled services allow consumers to receive specific help in three main areas: generalized counseling and legal advice, limited court appearances, and preparation of motions, pleadings and discovery.

Consumers gain legal backing while still maintaining overall control of their case. Cases particularly suited for unbundling usually involve matters of estate planning, real estate and divorce.

Colorado, Maine, New Mexico, Nevada, Washington and Wyoming

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Members: Please include your address label when submitting address changes.

Postmaster: Send address changes to:
HALT, 1612 K Street, NW, Suite 510
Washington, DC 20006

Telephone: (202) 887-8255

Fax: (202) 887-9699

Web site: www.halt.org

E-mail: halt@halt.org

Unbundling Legal Services, *Cont. from page 1*

have all adopted versions of the ABA provision that allow consumers to purchase only certain legal services, rather than enlist a lawyer's help on handling an entire legal matter.

"Adopting more definite guidelines for consumers regarding unbundled services greatly improves access to the legal system for those previously entirely unrepresented by a lawyer," said HALT Senior Counsel Tom Gordon.

Two more states, New Hampshire and Virginia, now have proposals pend-

ing to allow for much needed consumer access to the legal system through unbundling. The proposed amendments seek to define the lawyer's scope of representation in order to allow for limited representation.

In written comments submitted to the New Hampshire Supreme Court and the Virginia State Bar, HALT argues that allowing unbundled legal services is a "win-win scenario." Consumers have more access to legal assistance and lawyers generate more business. Both states are expected to reach a decision by the end of this year. ■

Minnesota Should Adopt Legal Malpractice Insurance Rule

By Thomas Reuland

In June, the Minnesota Bar Association proposed a new rule that, if adopted by the state Supreme Court, would require lawyers to publicly disclose whether they have professional liability insurance. In recent comments, HALT urged the court to fully protect legal consumers and actually require attorneys to carry professional liability insurance.

"If a lawyer fails to carry liability insurance, a malpractice case is frequently worthless," explained HALT Associate Counsel Suzanne M. Blonder. "And when a client cannot collect for the losses caused by a negligent attorney, the malpractice case is often not even filed."

Although Minnesota law currently mandates insurance for other service providers (including doctors and nurses), the proposed rule for lawyers

would only require filing of an annual form stating whether they carry malpractice insurance, which would then be posted on the Supreme Court Web site.

While mandatory disclosure has helped protect consumers in some states (when South Dakota adopted such a requirement, the share of lawyers with insurance quickly grew to over 90 percent), the best way to protect everyone is requiring universal coverage.

As HALT argued to the court, a policy of mandatory coverage does not place a significant burden on attorneys and actually reduces insurance rates. Oregon, the only state to mandate professional liability coverage for attorneys, enjoyed a decrease in rates after the state switched to a mandatory system in 1978.

The court expects to act later this summer. ■

Kudos to HALT

"Thanks for this information. I commend your organization, and agree with your principle of returning the legal system to its rightful owners—the legal consumer."

Antonio T. Docal
Broward County, Florida

[Mr. Docal recently received assistance from HALT's Legal Information Clearinghouse.]

Legal Reform News

PENNSYLVANIA EXPANDS ACCESS

A small but significant victory for legal access in Pennsylvania came on June 15, when the state's governor signed a new law which provides that claimants before the Commonwealth's Unemployment Compensation Board of Review "may be represented by an attorney or other representative" (emphasis added). In short, lawyers no longer hold exclusive access rights to speak for a party in front of the board.

This law overturns the 2004 decision in *Harkness v. Unemployment Compensation Board of Review*, which ruled that only attorneys can represent parties before the board.

Vigorously opposed by the Pennsylvania State Bar, this legislation's enactment represents a positive step towards a more open, accessible legal system.

"We are pleased to see that the governor has approved a piece of legislation aimed at diminishing the lawyer monopoly on representation, and that he did so despite the stringent objections of the Commonwealth's powerful bar association," said HALT Senior Counsel Tom Gordon.

ROBINSON'S CASE SHOWS VIRGINIA BAR'S LENIENCY

The shamefully mild "disciplinary action" taken against Virginia attorney and former state delegate William P. Robinson, Jr. serves as the most recent example of an attorney discipline system in need of a serious overhaul.

Despite a 10-year history of ethical lapses culminating in a court ruling in April that Robinson engaged in conduct "involving dishonesty, fraud, deceit or misrepresentation," Virginia's attorney discipline system treated him with kid gloves—suspending his law license for just 90 days instead of disbaring him. Robinson's repeated ne-

glect of cases has landed him before the attorney disciplinary body on numerous occasions, only to be sent away with sanctions even less severe than his latest.

With more than half of complaints against attorneys not even investigated by the state bar association, perhaps the complaint against Robinson was "lucky" to have been reviewed at all. However, the bar's token slap on the wrist comes as no surprise; of the few cases which do result in disciplinary action, 75 percent end in painless private admonition or reprimand. And, of those claims investigated, only two percent result in suspension or disbarment.

Virginians deserve an attorney discipline system that investigates promptly, deliberates openly and weeds out unethical or incompetent lawyers. This includes meaningful oversight of even the most well-connected attorneys.

CALIFORNIA POISED TO INCREASE BAR DUES

A recent analysis of California State Bar funding shows that without an immediate increase in revenue, it will face a \$2.7 million deficit at the close of next year. This would likely translate into fewer resources for California's attorney discipline system, the state's client security fund and other important services for consumers, such as the mandatory fee arbitration program.

To ward off this potential crisis, California assemblymember Dave Jones introduced Assembly Bill 1529 to provide sufficient funding for the bar to continue at its current staffing and operating levels, at least until 2007. The bill would fund the states' attorney discipline and client security systems by raising dues for inactive members the first time since 1985.

In the past, inactive members have paid substantially less than active

members while receiving nearly all of the same benefits. At HALT's urging, California's Senate Judiciary Committee passed this important legislation. Assembly Bill 1529 will now be voted on by the senate later this summer.

TEXAS REACHES OUT TO DOMESTIC VIOLENCE VICTIMS

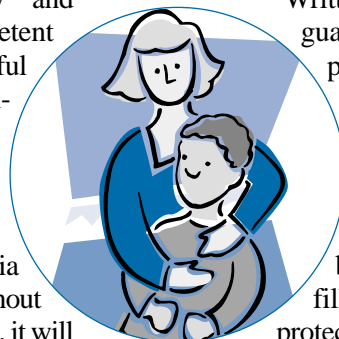
Victims of domestic violence in Texas have a new self-help tool to consult. Released in April 2005 and produced by the Texas Supreme Court Task Force, the *Protective Order Kit* helps increase access to protection under the law for those who need it most—battered women and children.

Written in plain-language, the kit explains what protective orders are and gives step-by-step instructions on how to fill one out. A blank (and sample filled in) copy of a protective order form is

included. It also acquaints the reader with the challenges ahead, offers advice on personal safety planning techniques, includes a section on preparing for court, and makes referrals to additional sources of help.

The task force plans to make the kit available at law enforcement agencies, domestic violence shelters, medical facilities, courts, and public libraries, as well as online at www.TexasLawHelp.org. In the next six months, copies of the kit should also be available in Spanish and Vietnamese.

—Compiled by Summer '05 Interns
Debra Topor, Alicia Krzyckowski,
and Thomas Reuland.



When Lawyers Misbehave

By Suzanne M. Blonder
and James C. Turner

If your boat was taking on water, would you try to save it by drilling new holes in the hull? Amazingly, that's exactly what a special Massachusetts Bar task force is trying to do with the state's attorney discipline system.

As the *Boston Globe* reported this spring, Massachusetts has the slowest attorney discipline in the nation, taking as long as eight years to deal with some cases ("Mass. lags in disciplining lawyers," April 20, 2005). With the average case taking over 30 months, our 2002 *Lawyer Discipline Report Card* could only give Massachusetts a B-minus despite its otherwise commendable commitment to protecting consumers with aggressive sanctions and evenhanded procedures.

Instead of addressing this crisis, the Massachusetts Bar task force proposes "reforms" that will:

- institutionalize new timeframes effectively guaranteeing that discipline cases will drag on for 18 months;
- adopt a special standard of proof for lawyers that will make it harder to sanction those who are dishonest or negligent;
- throw out all disciplinary complaints that aren't filed within five years of the lawyer's misconduct;
- ignore any disciplinary complaint that isn't submitted in a formal written document; and
- add new legitimacy to secret, non-public disciplinary proceedings.

Each of these proposals is a step in the wrong direction, protecting unethical lawyers, not victimized consumers. When an attorney victimizes a client, discipline should be swift and certain. Where the majority of the evidence shows a lawyer committed misconduct, the public deserves protection.

Whenever unethical behavior is discovered, the lawyer involved should be accountable. Clients should be encouraged, not discouraged from reporting misconduct through hotlines and e-mail. And all attorney discipline should be a matter of public record.

Does the Massachusetts Bar really believe that it needs 18 months to deal with an unethical lawyer? Mississippi, North Dakota and Wyoming all process cases in half that time, and Massachusetts' own medical board deals with complaints against physicians in less than a year.

If the bar is serious about fixing the Massachusetts discipline mess, it should adopt a strict timetable that moves from complaint to sanctions in nine months—90 days to investigate, 90 days to conduct a hearing and 90 days to impose sanctions. If Delaware, Maine, Rhode Island and eight other states can meet this timetable, why not Massachusetts?

Just as troubling, the bar apparently thinks the way to deal with the delays is to make it harder to prove misconduct. It would only discipline lawyers if there is "clear and convincing" proof (the standard courts use in quasi-criminal proceedings), instead of the "preponderance of the evidence" (the standard courts use in medical malpractice and other negligence cases). Lawyers don't need this kind of special treatment.

Another great idea from the bar: let's have a special statute of limitations for lawyers, and throw out any case that is more than five years old. Instead of improving the discipline system, this proposal simply stops valid complaints from being heard—hardly the right approach for the body that is supposed to remove unfit lawyers and protect consumers. Even

the often lawyer-protective ABA recoils at such proposals because "conduct of a lawyer, no matter when it occurred, is always relevant to the question of fitness to practice."

Yet another bar brainstorm: the Office of Bar Counsel should just ignore all oral communications from consumers because they "take an inordinate amount of time," and only consider written complaints that are submitted on an "inquiry form." In an age where telephone hotlines and Internet sites are greatly enhancing consumer access to protective services, the bar should be developing innovative ways to increase access like disciplinary officials in Colorado, who not only make time to deal with oral inquiries, but accept complaints over the telephone.

Finally, the bar wants to expand its policy of imposing private sanctions on unethical lawyers with new secret appeals procedures. Such secrecy is one of the main reasons so many people tell us that they don't think their complaint will be fairly heard. Continuing and expanding secrecy is not the way to speed-up complaint processing, but it is a certain way to further erode public confidence. If Massachusetts really wants a disciplinary system that is trusted and used by consumers, it should embrace principles of sunshine and transparency by opening all proceedings and sanctions to public view.

Despite its chronic delays, our 2002 *Report Card* rated the Massachusetts attorney discipline system as the best in the nation because of its openness, accessibility and consumer protection. Sadly, if the bar's proposals are adopted, the state will plummet to one of the worst. The citizens of Massachusetts deserve better. ■

When an attorney victimizes a client, discipline should be swift and certain.

Probate Survey Now Online

HALT's first ever survey of probate court Web site resources is now been posted on www.halt.org under the Legal Information Clearinghouse tab.

Our survey found that 11 states (Idaho, Indiana, Mississippi, Montana, Nebraska, Nevada, North Carolina, Ohio, Pennsylvania, Tennessee, and West Virginia) offer absolutely no information, 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.

"Probate is a billion dollar industry, so it's not surprising that lawyers perpetuate the myth that it's too difficult to handle alone," stated HALT Program Director Theresa Meehan Rudy. "Yet consumers file their own taxes, write

their own wills, set up businesses and handle a variety of other legal tasks on their own. Given the right information and forms, people can also be empowered to handle probate."

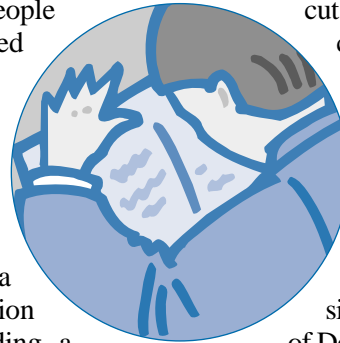
At least two states are filling the information gap. Vermont scored highest in HALT's survey because its site features a wealth of information about probate, including a step-by-step guide to administering and settling an estate, links to local probate courts, links to necessary forms and instructions for using them, and a complete explanation of Vermont's special rules for expedited small-estate administration. Maryland came in second and offers links to local registrars, a comprehensive "General Estate Information Guide" and over 45 forms for probating an estate.

While no state matched Vermont or Maryland, New Hampshire offers

forms and a useful online publication, *Administering an Estate*, complete with timelines and checklists. Connecticut offers several online publications about probate, forms and information about court fees and costs. And, the District of Columbia provides forms, general information, frequently asked questions and links to sites like the D.C. Recorder of Deeds.

Information on all 50 states and the District of Columbia is available through a convenient scroll down menu on HALT's Web site.

HALT plans to send a "Best Practices" letters to the administrative offices of each court to encourage states to follow Vermont and Maryland's lead. HALT believes that comprehensive information about how to settle an estate (especially estates that qualify for small-estate administration) should be made available to residents of all states. ■



CHEERS One-half of a cheer goes to the Tennessee Supreme Court, which announced in May that it is abolishing a "gag" rule that held complainants in contempt for disclosing that they had filed a complaint against a judge. This overdue reform was implemented because a similar "gag rule" was struck down by the court last year dealing with complaints about lawyers.



JEERS In March 2005, the Massachusetts Bar voted against a proposed rule that would have required lawyers to disclose whether they are covered by malpractice insurance. The House of Delegates' decision marked a rejection of a recent American Bar Association model rule that requires disclosure. HALT is urging the bar to reconsider, pointing to states like Illinois, which recently enacted a rule requiring malpractice insurance disclosure.

HALT Welcomes Mary Thuell

HALT's newest staff member, Program Assistant Mary Thuell coordinates outreach for our Legal Information Clearinghouse, conducts research in support of our advocacy and education programs, and regularly contributes to our publications. A summer



2003 HALT intern, Mary earned a bachelor's degree in sociology with a minor in legal studies at Kenyon College and worked as an Honors Paralegal for the Federal Trade Commission's Bureau of Competition. All of us welcome Mary to our team. ■

Kudos to HALT

"Thank you for your recent editorial in *The Washington Post*, dated May 18, 2005. I had been a victim of a lawyer not returning a fee for failure to appear in court, and had given up hope. Thanks to your editorial, I logged on to your Web site and read your online brochures, and will pursue action."

Chris Martin,
Falls Church, Virginia

Ruth Fought the Law and Ruth Won!

Ruth Drollinger has been trying to divorce her abusive husband and keep their four children safe for eight years. In her long journey, she has encountered unethical attorneys and indifferent judges, but she's also found help from surprising sources and encouragement from battered women who, she hopes, will benefit from her trailblazing efforts.



Ruth Drollinger

Ruth's first lawyer took on her divorce case at the last minute for \$5,000 and then did little at trial except "draw cartoons on his legal pad." Unable to find a suitable replacement and frustrated with a legal system that seemed to favor her husband, Ruth decided to take matters into her own hands and act as her own advocate in the courtroom. Armed only with a sample brief, resources from the Internet and some free coaching by another attorney, Ruth successfully persuaded the Montana Supreme Court to end the unsupervised visits because of concerns for her children's safety.

In the years since her first victory, Ruth has had to represent herself numerous times to keep herself and her children safe. In 2003, Ruth again went *pro se* before the Montana Supreme Court, this time in order to move her child custody case to Washington, where she felt safe. In a landmark ruling, the court agreed with her and held that domestic violence is reason enough to move a case into another state if a victim is better protected there.

Today, Ruth is still trying to finalize her divorce and acting as her own lawyer. She's encountered setbacks along the way but now considers her-

self as good a lawyer as any she's been up against. Recently HALT Program Associate Amy Dieterich talked with Ruth Drollinger about her experience, the lessons she has learned and what's on the horizon.

Why did you decide to proceed pro se?

I felt I didn't have any other choices. I was denied Legal Aid and had already dealt with a lawyer who took \$5,000 and didn't do any work. I decided the law was available for me to use—as it is available to everyone—and I was going to use it, with any help I could find to arm myself.

What would you tell other consumers who are trying to bring their case pro se?

First, get your emotions out of it. Be totally rational in presenting your case. I think that's a problem with many people going *pro se*, especially in family law cases. When you walk into a courtroom *pro se* you're automatically discriminated against. But if you're rational, have your facts and can apply the law in your case, you will have a credible record to appeal if the judge treats you unfairly. That's what I ended up having to do.

Have your experiences changed your perspective on lawyers and their role in the civil justice system generally?

My view of lawyers is not totally skewed. The two lawyers who had the guts to help me, Michael Kakuk, who helped me win my Supreme Court case in 2003 and whose only pay was one

of my white German Shepherd puppies, and Suzanne Marshall, who took my case in 2004 to help me obtain a hearing on my property, are lawyers who are interested in more than just making money.

I like how Abraham Lincoln practiced law. He once told a prospective client whose case for \$600 would bankrupt a widow and impoverish her six children, "Some things that are right legally are not right morally." Lincoln refused to take the case and added "I advise an energetic sprightly man like you to try your hand at making \$600 in some other way." I think lawyers have abandoned those principles and lost their moral compass for the sake of greed.

How did HALT help you?

I think the information that HALT provides is just phenomenal. I just can't get over the work that you've done and the success you've had in bringing to light the abuses occurring in the legal system. I found the brochure "*I Have a Problem with My Lawyer, What Do I Do Now?*" and *The Legal Reformer* really encouraging. Just knowing that I wasn't the only one and that there was an organization out there going to bat for people like me was great.

Where will you go from here?

When I'm finally done, I hope to be able to go out and speak on a platform of exposing these crimes against women in the legal system and also promoting legal reform. In the quiet rural communities of this country there are victims of crime that are being re-victimized by the legal system. I think we can't be afraid of these people—the judges and lawyers who think they are all-powerful. They're just people and as long as you're fearless, you can win. Eventually I want to write a book and turn it into a screen play. I've been told my story is better than Erin Brokovitch's! ■

Visit HALT's Web site
WWW.HALT.ORG

Small Claims Roundup

Many state legislatures are still in session, and important legislation may have progressed since press time. Check www.halt.org for the latest updates on these and other bills.

CALIFORNIA: Two bills promoting wide-ranging small claims reform are advancing quickly through the legislature. Assembly Bill 1459 and Senate Bill 422 would each increase the small claims dollar limit from \$5,000 to \$7,500 for individuals bringing suit. (The limit would remain at \$5,000 for corporate plaintiffs.) The bills would also expand the state's small claims advisory service, and require additional education and training for small claims court judges. Each bill has passed one chamber of the legislature and is now being considered by the other. HALT has been



involved in the effort to get this small claims reform enacted for several years, and has testified before numerous California legislative committees in favor of such reforms.

MASSACHUSETTS: HALT recently submitted testimony to the Massachusetts Joint Committee on the Judiciary supporting House Bills 716 and 937. The bills would raise the state's small claims jurisdictional limit from \$2,000 (second lowest in the nation) to \$10,000. At a June 28 hearing, the committee considered these bills as well as a number of other bills that would raise the limit to \$5,000. Several members of the committee voiced support for an increase in the dollar limit. In 2003, legislation to increase the dollar limit received a committee hearing at which HALT testified, but the bills failed to reach the floor of the legislature.



CONNECTICUT: Legislation raising the small claims dollar limit was signed by Connecticut Governor Jodi Rell after HALT sent her a letter supporting the increase. Effective October 1, 2005, the legislation increases the state's small claims jurisdiction to \$5,000, which is the national median. Previously, the state's small claims dollar limit was \$3,500.



INDIANA: As of July 1, the state's small claims dollar limit is \$6,000. Legislation mandating the increase from \$3,000 was passed in 2003, but was not scheduled to take effect until two years after passage.



LOUISIANA: Legislation increasing small claims jurisdiction from \$3,000 to \$3,500 will take effect on August 15. ■



HALT's Summer Interns for 2005

HALT is pleased to have the services of five summer interns.

Debra Topor has a B.A. in Political Science from Rutgers College and has completed her first year of law school at University of the District of Columbia. She plans on using her law degree to enhance awareness and reform in the field of public interest.

Nida Zada finished her first year of law school at University of Baltimore. She has a B.F.A. from the University of Kansas in Lawrence and is interested in emerging Internet technologies law.

Thomas Reuland is a senior at Brown University concentrating in So-



(Left to right) Debra Topor, Tom Reuland, Nida Zada, Henry Mak and Alicia Krzyczkowski.

ciology and Philosophy. He has previously worked at the Center for Disability and Elder Law as an Arthur Liman

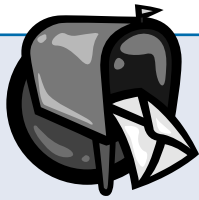
Public Interest Fellow.

Henry Mak, a senior at Harvard, is an East Asian Studies concentrator specializing in modern China. He serves as Executive Director of the Small Claims Advisory Service in Massachusetts, and is also an Exxon-Mobil Community Summer Jobs Program Intern.

Alicia Krzyczkowski will be a senior at the University of Michigan. She is studying Political Science with a cognate in Psychology, and is in the process of writing an honors thesis on water diversion law in the Great Lakes region. She plans to attend law school in the fall of 2007.

Compiled by Thomas Reuland.

From the Mailbox



Dear HALT,

I desperately need an attorney to help me appeal the cutoff of my Social Security retirement benefits. I don't have money to pay an attorney, and I am not eligible for legal aid because I own my own home. Can you help?

Sincerely,
Senior in Selma

Dear Senior:

You might be able to get help from one of the many legal aid programs, senior hotlines or other agencies specifically designed to serve the elderly. Most of these programs impose an age, not income, restriction. Typically, you have to be 60 years or older to receive free help.

State agencies on aging can act on your behalf to help you resolve problems with governmental or private institutions. For example, they can contact the Social Security office on your behalf and to get answers to questions you have about your benefits or rights. You can find the listings for your local agency on aging in the Yellow Pages, under the government section. You might also try calling AARP (1-888-687-2277) or the National Senior Citizens Law Center (1-202-289-6976) for information and referrals to legal aid offices and other agencies in your area.

Sincerely,
HALT

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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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