

the Legal Reformer

HALT'S MEMBERSHIP NEWSLETTER • January–March 2009

HALT Urges Wisconsin to Improve Access by Narrowing its “Practice of Law” Definition

Last October, HALT submitted its second round of comments to the Supreme Court of Wisconsin on a court rule that would broaden the definition of the practice of law.

HALT urged the Court to retain key new language added to the original proposal that defines the attorney-client relationship as one “where there is a client relationship of trust or reliance.”

“By being absolutely clear that it is regulating only activities that require an attorney-client relationship, the Court can allow innovative approaches by non-traditional legal service providers that meet consumers’ needs in Wisconsin,” HALT argued.

HALT also urged the Court to expand its list of exemptions to the definition to

include legal services like legal document preparers, independent paralegals, Web-based legal documents services and online attorney rating services. These options allow legal consumers a wider range of choices, often at lower cost than hiring an attorney, and represent the future of the legal profession—something that the Court ought to embrace.

The Court plans to continue reviewing the matter despite opposition from the bench. On October 28, a motion to dismiss the proposed rule by Justice Michael J. Gableman failed 4-3.

“I am struck by the absence of the numbers of citizens themselves who are complaining saying that they have

been duped or mistreated by the people who hold themselves out to be attorneys,” Gableman said. “I think the petition should be denied.”

Justice N. Patrick Crooks also expressed concern about the number of interest groups voicing opposition to the proposed rule, including the US Department of Justice and business and banking industries.

HALT has been active in encouraging state bars and courts nationwide to adopt a narrow definition of the practice of law, so that non-traditional legal services provided by nonlawyers will not be subject to regulation as unauthorized practice of law. ■

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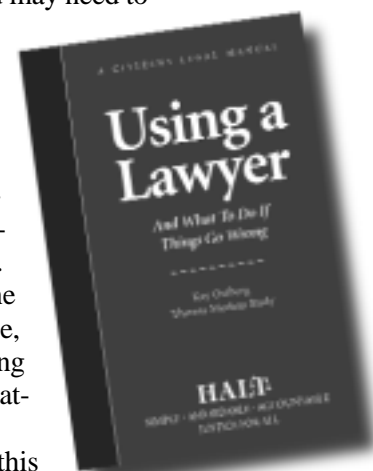
Using a Lawyer: Don't Hire a Lawyer Before Reading This Book

If you're planning to hire a lawyer or think you may need to in the future (to buy or sell a home, to settle an estate or to get other legal work done), we urge you to read *Using a Lawyer* before you sign a contract for legal services.

HALT has distributed over 150,000 copies of this award-winning guide, which helps legal consumers make wise decisions about who will represent them, under what conditions and at what cost.

Our new and improved edition, hot off the presses, explains new ways to find lawyers online, innovative fee agreements, methods for addressing lawyer misconduct and key elements for every attorney-client retainer agreement.

Using a Lawyer is being offered free in this year's membership renewal program, so don't forget to send in your 2009 membership contribution of \$25 or more. ■



Virginia Takes a Giant Step Backwards, see page 5

the Legal Reformer

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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

HALT Recommends Improvements to Ohio Attorney-Client Publication

As the publisher of many educational brochures on attorney-client relations, HALT offered comments to the Ohio Supreme Court on its proposed publication “A Consumer’s Practical Guide to Managing a Relationship with a Lawyer.”

On September 24, 2008, HALT commended the Court for educating Ohio residents about attorneys and their rights as consumers. “The Court’s publication does a great deal to serve the public interest by providing advice on where to find attorneys, outlining the duties and responsibilities of both lawyers and clients and explaining how

to avoid or deal with problems that may occur in this important relationship,” HALT acknowledged.

HALT’s specific suggestions for improvement included directing consumers to Web sites, like www.avvo.com and www.nolo.com that profile attorneys online, recommending specific questions consumers should ask before hiring a lawyer, encouraging both the attorney and client to sign a written fee agreement *before* work begins and explaining in more detail some of the problems attorneys and clients face and what can be done to avoid them. ■

Time to Renew Your Support for HALT’s Legal Reform Activities

By now you should have received your 2009 HALT membership renewal notice. If you haven’t already, please send it back with your contribution right away (or call us toll-free at 888-367-4258 and renew your membership over the telephone).

Members who renew for \$25 or more will receive a free copy of *Using a Lawyer: And What To Do If Things Go Wrong*. Hot off the presses, this newly updated classic helps you save money and heartache by teaching you how to shop for and work with a lawyer. The latest edition also explains new ways to find lawyers online, innovative fee arrangements, methods for addressing lawyer misconduct and key elements for every attorney-client retainer agreement.

Providing top-quality resources such as *Using a Lawyer* is just one way that HALT is empowering citizens to become self-reliant in handling their legal affairs. The self-help books we publish and distribute, the wide array of educational materials we make available on our Web site, www.halt.org, and the help we share through our Legal Information Clearinghouse provide Americans with the tools they need to take control of their legal and financial affairs.

Renewing your membership will also give us the finances we need to move ahead on our advocacy plans for next year, so please continue your commitment to legal reform by renewing your 2009 membership today. ■



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Legal Reform News

LAW FIRMS FEELING FINANCIAL PINCH

The current economic crisis has sent a ripple through law firms across the country as clients are having more difficulties paying their legal fees.

As more law firms close, merge or lay off attorneys, tough financial times have forced them to adapt to this new environment. Among the changes, some law firms are switching from billable hours to fixed fees, as many clients can no longer afford the uncertainty of paying for the amount of hours their lawyers work. Smaller firms are also feeling the pinch because it is taking longer to collect fees from clients.

“What we’re finding is that people who normally pay every 30 days stretch it out to 45 or 50 days. People who normally pay every 45 days stretch it to 60 or 75 days,” said Sam Klewans, a partner at Grad, Logan & Klewans.

PRO SE DIVORCES RISE IN OHIO

An increase in available resources paired with the worsening economy has resulted in a surge of self-representation in Ohio divorce court. The bailiff of one domestic relations judge estimated that one third of litigants in divorce cases are *pro se*, or self represented.

Couples find that going *pro se* is less expensive than hiring a lawyer, and the paperwork is relatively hassle-free, especially with the aid of Web sites such as *divorcesyourself.com*.



The increased interest in *pro se* representation has led the Supreme Court of Ohio to sponsor workshops that answer litigants’ questions. Additionally, domestic court officials in Franklin County, Ohio plan on setting up a center for *pro se* assistance.

ILLINOIS SUPREME COURT DENIES ACCESS TO LAWYER NAMES

Attorney rating site *Avvo.com* has run into a major roadblock in Illinois. In July, the Illinois Supreme Court ruled that the Attorney Registration and Disciplinary Commission (ARDC) did not have to disclose a roster of its nearly 85,000 registered lawyers.

Seattle-based *Avvo* is currently working to compile a national directory containing ratings, educational information and career history for the country’s lawyers. The Illinois ARDC claims that the information is readily available to anyone seeking background on a specific attorney, but the registry is not available for commercial use.

“Consumers are the real losers here,” said *Avvo* General Counsel Josh King. “The Supreme Court’s action means consumers will be less informed when making critical life decisions that involve hiring lawyers.”

NEW YORK SETS FIRST GUIDELINES FOR MEDIATORS

In August, New York’s Chief Administrative Judge issued statewide guidelines for the qualifications and training of mediators in New York courts.

The new guidelines ensure that mediators have at least 24 hours of training in basic mediation skills and at least 16 hours of additional training in

mediation techniques in the types of cases assigned to them. Also, neutral evaluators must have practiced law or served as judges for at least five years.

The new guidelines come as New York courts see an increase in the use of alternative dispute resolution (ADR). “We thought that the ADR program in this state had reached a point of maturity and acceptance where it made sense to have uniform standards for all mediators in the state,” said Chief Administrative Judge Ann Pfau. “I think this will be very helpful in continuing to develop this very vibrant ADR program that we have.”

MORE AMERICANS REPRESENT THEMSELVES IN COMPLEX LEGAL MATTERS

As we enter into a recession, a growing number of Americans are choosing to represent themselves in court, even when there are complex legal issues at stake.

Cases in which people choose to go *pro se*, or unrepresented, are no longer limited to small claims matters or uncontested divorces. More Americans are now handling child custody cases, bankruptcies and major lawsuits themselves.

But, many times, uninformed litigants do not fully understand the legal procedures involved or how they can best present their evidence to ensure a positive outcome. HALT provides *pro se* litigants with legal guides to assist them in these matters.

“It’s not just that poor people can’t afford lawyers. This is really a middle-class phenomenon,” said Sue Talia, a California judge. In California, 80 percent of people go *pro se* in civil family law cases, a trend which is consistent throughout the country.

Compiled by Lina Peng, Katelynn Eckert and Sarah Wohl.

Judicial Accountability Best Practices

by *Suzanne M. Blonder*

Systems of judicial accountability should be transparent, rigorous and publicly accessible. We have identified ten best practices from around the country that will help transform state and federal disciplinary mechanisms into systems that uphold the integrity of our nation's judiciary and protect our most vulnerable citizens.

1. Release information about a judicial ethics complaint at the conclusion of a preliminary investigation.

In an era that embraces principles of sunshine, it is critical that the nation's mechanism of judicial accountability maintain a transparent structure. An open system would publicly disclose information about a judicial ethics complaint once a preliminary investigation has been completed.

2. Replace closed-door sanctions against judges with formal, public discipline.

To successfully deter judges from abusing their positions of power and to provide citizens with access to a judge's complete disciplinary history, all sanctions must be formal and public.

3. Provide conduct commissions with the authority to impose a wide range of public sanctions to address a broad spectrum of judicial transgressions.

Judicial conduct commissions should have the authority to publicly censure, reprimand, fine, suspend and remove incompetent, negligent and abusive judges. Without this broad latitude, commissions are often forced to dismiss complaints that allege minor wrongdoings and correct serious offenses with weak penalties.

4. Remove abusive judges from the bench.

Although thousands of ethics complaints are filed against dysfunctional state and federal judges every year, few members of the judiciary are removed from the bench. Last year, only nine judges in the country were no longer permitted to serve.

5. Clarify that complainants and witnesses have the right to speak freely about a judge's misconduct and disciplinary proceedings.

Litigants are often reluctant to bring a judge's misconduct to the attention of a local judicial discipline body because the rules of many jurisdictions "gag" individuals from disclosing information about an ethics complaint they have filed against a judge. To respect the rights of ordinary citizens and ensure that the system of oversight is operating effectively, conduct commissions should allow individuals to speak freely.

6. Host an easily navigable Web site that provides clear information about how to file an ethics complaint against a judge and allows the public to search for a judge's disciplinary history.

In today's Internet-driven culture, most individuals look for information online. Every state and circuit should host an easily navigable site that includes a clear explanation of the disciplinary process, a downloadable complaint form, past commission rulings, links to ethics standards and other critical resources.

7. Give ordinary citizens a meaningful role on the panels that decide complaints against members of the judiciary.

One way to ensure impartiality and to increase public confidence in the judicial oversight system is to include meaningful participation by ordinary citizens, yet judges and lawyers typically dominate judicial conduct commissions. Laypersons outnumber judges and lawyers in only six states.

8. Require judges to annually file comprehensive financial disclosure reports.

To determine whether a judge possesses an economic conflict of interest in a case, citizens should have the right to review comprehensive financial disclosure reports. Judge's annual filings should include information related to

their outside employment, compensation, board affiliations, investments and real property. The economic interests of the judge's spouse and dependents should also be included.

9. Guarantee convenient and affordable public access to judges' financial disclosures.

To satisfy the purpose of annual reporting, court administrators should make disclosure statements available to the general public. So that litigants will not face retaliation, their identities should not be revealed to a judge when they wish to review that judge's filing. Individuals should have the option of reviewing the reports online or at their local courthouses, and copy fees should be less than \$0.50 a page.

10. Place clear limitations on the gifts that judges can receive in connection with privately sponsored trips.

Corporations and special interests frequently use expense-paid trips to lavish settings in a thinly-veiled effort to lobby judges. Rigorous ethics rules would provide clear guidance to judges about what they may and may not accept from private entities by placing strict monetary caps on the funds that judges may receive. ■

HALT's Fall Interns

Last fall, HALT welcomed two interns for the semester. **Katelynn Eckert** is a junior Government and Politics major at the University of Maryland, College Park. **Lina Peng** is a senior at the University of California, Berkeley, majoring in Political Science. ■



Lina Peng and Katelynn Eckert

As Foreclosures Explode, Some Groups Respond

By Lina Peng

With foreclosures reaching an all-time high, governments, courts and legal groups are taking action to reduce the number of people forced out of their homes. According to a July report by *Realtytrac.com*, a leading online marketplace for foreclosure filings, the national foreclosure rate has risen 53 percent in the past year. The good news is some help may now be available, depending on where you live.

In New York, the state court system has established a mediation program

where lawyers and judges help lenders and borrowers avoid foreclosure by negotiating new mortgage terms. Also, some state bar associations have called on lawyers to provide *pro bono* support for new initiatives to help homeowners facing foreclosure. With 1.6 percent of Floridians currently late on their mortgage payments, the Florida Attorneys Saving Homes (FLASH) program has over 10,000 *pro bono* attorneys.

On July 30, 2008 new federal legislation allowed about 400,000 homeowners to trade in their current mortgage for

a 30-year fixed loan from the Federal Housing Administration. Whether you will be able to take part in the program will be up to your lender. The program is designed to help people who have been spending at least 31 percent of their income paying off their mortgages, and who received their loans before Jan. 1, 2008.

In early November, the Federal Deposit Insurance Corporation proposed a \$24 billion plan offering government assistance to lenders to offset losses from loan modifications. ■

If You're Disabled, Know Your Legal Rights

Jack Davoll, a Denver police officer, was injured in the line of duty. He asked to be reassigned to a vacant job that he was well qualified to perform, but was turned down.

Donald Galloway was called for jury service in the District of Columbia, and was enthusiastic about performing his civic duty. But after he arrived at the courthouse, he was told that he was ineligible because he was blind.

Joan Abbati wanted to pay by check at her local department store, but the store would not accept her state-issued ID card because it was not a driver's license. She has epilepsy, and cannot drive.

These people, along with hundreds of others, have taken action under the Americans with Disabilities Act which prohibits discrimination against the disabled in employment, state and local government services, public accommodations, commercial facilities, transportation and telecommunications. Employers and organizations must provide reasonable accommodations, and they must comply with architectural and design standards to ensure equal access for individuals with disabilities.

If you believe your rights have been violated, you should file a complaint. The Equal Employment Opportunity Commission, the U.S. Department of

Justice and the Federal Transit Authority have the ability to enforce different parts of the Act. For more information, visit www.ada.gov, or call (800) 514-0301 (voice) or (800) 514-0383 (TTY). You must generally file a complaint within 180 days of the date of discrimination.

To learn more about the Act, get HALT's *Everyday Law Series* article "Americans with Disabilities Act (ADA)" online at www.halt.org, or write for a free copy to HALT, 1612 K St. NW, Suite 510, Washington, DC 20006. ■

Virginia Takes A Giant Step Backwards

Last year, the Virginia Supreme Court ordered the state bar "not to post any information about disciplinary complaints against lawyers" until the time for filing an appeal expires.

In HALT's 2006 Lawyer Discipline Report Card, Virginia earned a shameful C-, ranking 33rd in the entire country. But, we praised Virginia for posting attorney disciplinary cases online. With this system no longer in place, Virginia now ranks among the worst in the nation when it comes to open and transparent attorney discipline.

Virginia State Bar President Howard W. Martin agrees. In a letter to Chief Justice Leroy Rountree Hassell Sr. last spring, Martin asked the court to reconsider its decision. "We believe the inability of Virginians to readily ascertain the discipline information via the bar's website during the appeal process signifi-



cantly impairs the bar's important efforts to protect the public," Martin wrote.

"Taking disciplinary information offline only serves to make the process more secretive and deprives Virginians of their rights to access the information they need to make educated decisions about the lawyers they hire," said HALT Program Director Theresa Meehan Rudy. "The Court should follow the Bar's wise counsel and reconsider its decision."

Last July, at HALT's urging, the California State Bar's Board of Governors voted to post pending attorney disciplinary charges online. ■

Dealing with Debt Collectors

Most people carry debt in credit cards, mortgages and other loans. Although many never have a problem paying, more and more consumers are finding themselves the target of aggressive debt collectors, especially if they miss a payment or are sometimes late on making payments.

Abusive debt collectors are a major problem and are responsible for nearly 20 percent of complaints handled by the Federal Trade Commission. Fortunately, there are limits, under the Fair Debt Collection Protection Act, as to what debt collectors can legally do and steps that you can take if they cross the line.

WHAT COLLECTORS CANNOT DO

Unless they sue and obtain a court order, collection agencies cannot compel you to pay your debt. They can, of course, ask you to pay, but there are strict limits under the Fair Debt Collection Act on how they are allowed to ask. For example, there is a long list of things debt collectors cannot do including calling you at inconvenient times, calling your employer or others about your debt, using obscene language, threatening to sue you, or threatening to harm you or your property. If a debt collector breaks the law, you have several options.

- **Ask not to be contacted.** Under the Act, if you submit a written request asking to be left alone, bill collectors may not contact you, except to inform you that they have ceased to recover the money and/or that they will pursue legal action.

- **Keep a log.** Note what happened, when it happened and who else was there. If possible, you should have someone present or on the phone to corroborate your story. You cannot record someone's telephone conversation unless expressly permitted by your state's law (contact your state's consumer protection agency to learn what's legal).

- **File a complaint.** Once you have documented evidence of illegal activ-

ity, you can complain to the Federal Trade Commission. In your complaint, be sure to note the name of the debt collector, the collection agency and its address, the date and time of the offending conversations and any witnesses who were present. Also attach copies of any written material and audio tapes that support your case. Send these to the FTC, 6th and Pennsylvania Aves., NW, Washington, DC 20580. You may also lodge a complaint online at www.ftccomplaintassistant.gov, although this may reduce your ability to submit supporting documents. The FTC may sanction the collection agency if there have been past abuses, but be aware that this is a slow process that will not get immediate results.

- **Speed your response.** Often individual states respond more quickly than the federal government, so you should also forward your complaint to your state's attorney general. A list of attorneys general can be found at www.naag.org, or you can go to the



statehouse for contact information. Also send a copy of the complaint to the collection agency and original creditor. If the agency or creditor is concerned about being sued or shut down, it may offer to cancel your debt.

For more information, view the entire article "Dealing with Debt Collectors" online at www.halt.com, or request a copy by writing to us at HALT, 1612 K St. NW, Ste. 510, Washington, DC 20006. ■

Virginia Bar Rejects Legal Malpractice Insurance Requirement

In October, the Virginia State Bar Council voted 60-11 against a proposal to make legal malpractice insurance mandatory for private practice attorneys. The rejection is a blow to Virginia legal consumers who will potentially have to absorb the damages of their attorneys misconduct.

In comments to the Virginia State Bar in September, HALT gave its full support to the proposal. "A policy of mandatory coverage would benefit attorneys and clients alike by ensuring full protection to legal consumers and helping to make insurance rates more affordable for attorneys," HALT said. When a lawyer who commits misconduct fails to carry professional liability insurance, a

client often has little recourse because malpractice attorneys are often unwilling to take cases with such a small chance of recovery.

According to *Virginia Lawyers Weekly*, Chairman of the Committee on Lawyer Malpractice Insurance R. Paul Childress Jr. believes that the proposal is "a cure for a non-existent problem," with most lawyers already having the insurance.

While nearly 90 percent of Virginia lawyers carry malpractice insurance, even a small number of uninsured attorneys can cause problems for consumers. Ten percent of uninsured lawyers were responsible for 25 percent of unpaid legal malpractice claims in Virginia last year. ■

Legal Reform in 2008

HALT won some critical victories for legal consumers in 2008.

Shedding a Light on Judicial Accountability — On the 50th Anniversary of Law Day, May 1, 2008, HALT issued its 2008 Judicial Accountability Report Card, a scathing indictment of toothless judicial ethics standards and the closed-door systems charged with disciplining judges. Of the 51 state systems surveyed, more than half received marks below a C. HALT's Report Card garnered a great deal of media attention, including coverage in the *Washington Post* and the *Connecticut Law Tribune*.

Increasing Transparency in Attorney Discipline — In a victory for California's legal consumers, the California State Bar's Board of Governors voted to post lawyers' pending disciplinary information online for legal con-

sumers to view. HALT, consumer advocates and reform-minded lawyers strongly supported the bar's proposal to increase discipline transparency while many in the legal community resisted it, arguing that legal consumers were incapable of evaluating disciplinary information.

Strengthening Consumer Protections — HALT supported proposals in both Virginia and Colorado that would require private practice lawyers to disclose whether they maintain legal malpractice insurance. Malpractice disclosure requirements already exist in Alaska, New Hampshire, Ohio, Pennsylvania and South Dakota.

Increasing Small Claims Courts Dollar Limits — South Dakota increased its small claims dollar limit from \$8,000 to \$12,000. The state now holds the third highest dollar limit in the country.

Advocating Probate Reform — HALT released *Small Estate Best Practices* — a list of 10 reform recommendations aimed at improving the way small estates are settled and is encouraging probate court administrators and judicial council offices across the country to support rule or legislative changes that implement our common-sense reforms for small estate administration.

Limiting Lawyers Monopoly — Thanks to HALT's efforts, bar-sponsored proposals to broaden the definition of the practice of law in both Hawaii and Wisconsin struggled to see the light of day in 2008. Strong opposition to the new practice of law definition was also voiced by the U.S. Justice Department, legal document preparers, accountants, realtors and businesses, forcing bar associations to take a step back and reconsider their proposals. Stay tuned. ■

South Carolina Looks to Improve its Discipline System

On November 20, HALT submitted comments to the Supreme Court of South Carolina on the ABA Consultation Team's recommendations regarding South Carolina's Lawyer

Discipline System. Many of the ABA's recommendations mirror HALT's suggestions from our *2006 Lawyer Discipline Report Card*.

While HALT's Report Card ranked

South Carolina's disciplinary system the 44th worst in the entire nation, the Court's decision to have the ABA review its system shows a commitment to reform and progress. HALT agrees with many of the ABA's recommendations, including increasing public participation on lawyer conduct commissions (currently only two of the Commission's 44 members are non-lawyers), speeding up processing time for discipline cases, implementing random audits of trust accounts, and giving complainants more rights to appeals.

HALT disagrees with the ABA's recommendation to expunge dismissed disciplinary records, however. "Expunging dismissed records will create an aura of suspicion and distrust around the system as well as opening the door to the possibility that misbehaving attorneys will have their slates wiped clean," HALT said in its comments. ■



HALT in the Media

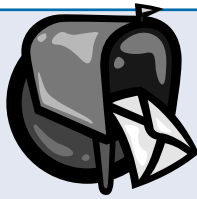
- *South Carolina Lawyers Weekly* quoted Executive Director Jim Turner on South Carolina's judicial discipline system in its article "ABA: Public Trust Would Grow if Justices Did Not Discipline Their Own" (November 10, 2008).

- *WTOP News* highlighted HALT's *Living Will Clearinghouse* in a short radio segment promoting HALT's free downloadable living will forms in every state (October 3, 2008).

- *The Joplin Independent* quoted Senior Counsel Suzanne Blonder on Missouri's judicial discipline system in its article "The Missouri Bar to select judges? Oh, no!" (September 25, 2008).

- *The Examiner* published Senior Counsel Suzanne Blonder's op-ed "Local Systems Don't Hold Judges Accountable" about Maryland, DC and Virginia's judicial discipline systems and their performance in our 2008 Judicial Accountability Report Card (August 27, 2008). ■

From the Mailbox



Dear HALT,

My attorney wants me to sign a retainer agreement. What is this?

Confused in California

Dear Confused,

A retainer agreement spells out the terms of your relationship with your lawyer and the fees you can be charged. A well-written agreement includes the services to be provided, the rights and responsibilities of you and your lawyer, how legal fees and expenses will be calculated, how often you will be billed, how the lawyer can be terminated and how disputes will be resolved. You should never hire a lawyer without one, because if a dispute develops, it's your word against the attorney's.

Additional information on the fees lawyers charge and the contracts they use can be found in HALT's newly revised book *Using a Lawyer: And What To Do If Things Go Wrong*. Renew your membership for 2009 and receive a free copy! ■

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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