

the Legal Reformer

HALT'S MEMBERSHIP NEWSLETTER • Fall 2000

HALT Names its Dirty Half-Dozen

The Sham of Client Compensation Funds

By Steve Serdikoff

Created by states to reimburse people cheated by their lawyers, the sad truth is that most so-called "client compensation" funds are a sham. These funds pay almost nothing to victimized clients, regardless of whether the fund is in a state with over 40,000 lawyers or a state with fewer than 2,000. HALT is calling attention to the utter failure of such funds by naming our "Dirty Half-Dozen"— Illinois, Texas, Mississippi, North Dakota, Wyoming and the District of Columbia — the six worst client compensation funds in the country.

"The combination of poor funding, lack of publicity, endless claims processes and ridiculously low payment caps produces a trickle of reimbursement for clients cheated by their lawyers," charges HALT Executive Director Jim Turner. "These six states represent the worst of this sad picture."

Recent statistics show just how little the organized bar cares about clients who have been cheated by their lawyers. The three jurisdictions in the

HALT's "Dirty Half-Dozen"					
<i>Client Security Funds by state: annual averages, 1996-1998</i>					
State	Number of Lawyers	Payout per Lawyer	Fund Total Income	Total Fund Payout	Fund Ending Balance
Texas	64,086	\$5.41	\$431,334	\$346,845	\$431,328
Illinois	72,749	\$4.94	\$497,215	\$359,333	\$278,000
D.C.	47,770	\$4.22	\$137,436	\$201,689	\$616,090
Mississippi	6,700	\$0.45	\$3,625	\$3,001	\$91,500
North Dakota	1,804	\$0.37	\$38,264	\$667	\$90,114
Wyoming	2,400	\$0.33	\$3,000	\$800	\$64,000

Source: *National Law Journal*, August 28, 2000

"Dirty Half-Dozen" with more than 40,000 lawyers — Illinois, Texas and the District of Columbia — each pay out less than \$6.00 per attorney. Compare that figure with New Jersey, a state with just under 70,000 attorneys, that pays out over \$50 per lawyer and New York, with 177,000 lawyers, that pays nearly \$45 per lawyer.

The three states in the "Dirty Half-Dozen" with small lawyer populations fared even worse — Wyoming, Mississippi and North Dakota — each paid less than fifty cents per lawyer. Wyoming deserves special mention as being one of only three states with a paltry \$5,000 per victim limit on recovery (New Mexico and Colorado are the others).

But this is a national problem. Consider Nebraska's compensation fund, which once offered only \$1,800 to a claimant who was cheated out of \$150,000. Not surprisingly, the cheated client refused the money. A few years

ago Nebraska lawyers even tried unsuccessfully to shut down their fund.

Or take the New Hampshire fund, formed in 1998, which has yet to even receive a claim, let alone pay out compensation on one. According to the fund's chairman, David Jordan, this is the case "largely because we don't tell anyone about the fund. Half the board doesn't want the public to know about the fund because it says that lawyers are crooks."

The problem hidden behind client compensation programs is the nationwide failure of the entire attorney discipline system. This problem is not a new one and HALT has been advocating for a wholesale overhaul of the system for many years. The most recent figures show why. According to the American Bar Association, in 1996, out of 118,891 complaints filed against lawyers nationwide, only one half of one percent, 542 lawyers, were disbarred.

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the Legal Reformer

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In the absence of a legitimate or effective compensation scheme, and with the discipline system incapable of acknowledging misconduct, cheated clients find no realistic alternative for recovery against their attorneys. Sue for legal malpractice and you face impossibly long odds. Sue a lawyer under consumer fraud laws and you soon discover that in most instances, lawyers are exempt. Try to use the professional code of conduct to prove that your lawyer acted improperly and you find that the code is usually inadmissible in court. Going after a lawyer is like getting the runaround at the DMV.

To achieve true attorney accountability, HALT continues to advocate in favor of eliminating the lawyer exemption from consumer fraud statutes. In fact, the national trend is toward allowing lawyers to come under the regulation of consumer fraud statutes. Yet

in many states the exemption persists, despite the fact that the U. S. Supreme Court rejected a similar argument for lawyer exemption from antitrust regulation a quarter century ago. Ironically,

lawyers claim that they should be exempt from consumer fraud statutes because client compensation funds already protect consumers.

Lawyers are no better and no worse than any other professionals in the United States. They have simply used their inside access to the legal system to protect themselves from punishment, a luxury

afforded no other profession in this country. Thus, the solution to this problem is surprisingly simple; make lawyers subject to the same laws as all other professionals. After all, lawyers can only hide behind their false concern for so long before the trickle of money leaking from client compensation funds is recognized as nothing more than the legal establishment's crocodile tears. ■

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Referral Network Gets Update

By Tom Gordon

HALT's Legal Information Clearinghouse & Referral Network is being updated. The network is a resource for people in need of legal assistance, providing them with referrals to individuals and organizations that can help them with their legal problems. We currently have a database of over 100 organizations and 200 attorneys nationwide. However, we are still seeking attorneys from several states, including Alabama, Alaska, Arkansas, Delaware, Hawaii, Montana, Nebraska, North Carolina, Tennessee, Utah, West Virginia, and Wyoming. If you are an attorney and are interested in joining the network, or if you know an attorney whom you would like to refer to us for inclusion,

please write to us with the contact information for the potential network member. We also welcome information from any organizations that provide legal services and wish to be included in the network.

If you need assistance from the network, please write, fax, or email a brief (no more than two pages) summary of your situation and we will respond in writing within two weeks. We regret that our limited resources prevent us from responding to requests by telephone. All inquiries to HALT's Legal Information Clearinghouse & Referral Network can be mailed to: HALT, 1612 K St., NW, Ste. 510, Washington, DC 20006; faxed to (202) 887-9699; or emailed to: halt@halt.org. ■

Legal Reform News

ILLINOIS LAWYERS PROTECT THEIR MONOPOLY

Illinois State Bar President Herb Franks is on a mission. "Let me be blunt: our profession needs to refocus its efforts on issues of importance to our members in the trenches. There is no more important issue right now than the unauthorized practice of law," wrote Franks for the October issue of the *Illinois Bar Journal*. Franks has instructed a 22-lawyer Task Force on Unauthorized Practice of Law to aggressively review and document instances of the unauthorized practice, and to propose appropriate action, even if that means "filing lawsuits."

While Franks concedes that one of the bar's main motivations for stamping out unauthorized practice is "the loss of potential income from clients," he claims he is primarily worried about the burgeoning growth of self-help law and specifically cites that it's now possible for "unwary consumers to log on to the Internet to find forms and for a fee, advice on how to fill them out."

DISCIPLINED LAWYERS ON DEATH ROW

One out of every four attorneys appointed to represent indigent convicts on death row have been subject to discipline by the Texas State Bar. Half of those appointed had been subject to bar discipline *before* receiving their appointment. Defending the state's practices, Judge McCormick of the Texas Criminal Court of Appeals stated that a disciplined lawyer is not necessarily a bad lawyer.

DISBARRED ... NOT!

Attorneys disbarred by the Massachusetts State Bar Association are returning to practice at an alarming rate even after committing egregious breaches of the public trust. One attorney returned to

practice after serving jail time for conspiring to burn down several apartments to reap the benefits of increased property values. A seven-year-old child died in the fires. Disbarred in 1982, he returned to practice law seven years later, only to be suspended from practice in 1994 on other complaints. According to the Supreme Judicial Court of Massachusetts, an attorney criminally responsible for the death of a seven-year-old girl needs only seven years to completely regain the public trust.

ARONS CASE TO U.S. SUPREME COURT

Public Citizen's Litigation Group has taken Marilyn Arons' unauthorized practice of law case to the U.S. Supreme Court. In October, Public Citizen filed a petition for writ of certiorari with the U.S. Supreme Court. A decision on whether the court will accept the case is expected later this year.

Arons and her Parent Information Center of New Jersey suffered defeat last July when the Delaware Supreme Court ruled that she was practicing law without a license when she served as a special education advocate in due process hearings. In a 20-page opinion the Justices agreed with Delaware's Office of Disciplinary Counsel's interpretation that the federal Individuals with Disabilities Education Act grants parents the right to be "accompanied and advised" by special education advocates but not "represented" by them as the term is applied to counsel.

IMPEACHED JUSTICE RETURNS TO BENCH

In October, the New Hampshire Senate rejected four impeachment articles filed against State Supreme Court Chief Justice David Brock. In the historic impeachment trial, which began September 18th, Brock was accused of using his position on the court to influ-

ence the outcome of several cases. In one incident, Brock allegedly placed a call to a lower court judge and informed the judge that the defendant in the case was a state senator. In another impeachment article, Brock was accused of attempting to remove a judge from former Supreme Court Justice W. Stephen Thayer's divorce panel after Thayer expressed displeasure with the judge. Thayer has since plea-bargained a resignation to avoid criminal charges for his own separate misconduct while on the court. Despite the severity of the charges against Brock, no one article of impeachment received more than five votes, well short of the 15 required to convict. "For us to convict, there must be serious misconduct," Senator Burt Cohen asserted. "Poor judgment is not enough."

HONORARIA BAN PRESERVED

A provision buried deep within a Senate appropriations bill that would have lifted the ban on federal judges receiving fees for speaking engagements is now permanently buried. Senate negotiators dropped the unpopular provision after it was roundly criticized from both sides of the aisle as a threat to judicial integrity. The ban was adopted in 1989 for most federal judges, including the Supreme Court, with the intent of preventing judges from receiving special interest money. The move to lift the ban started with Chief Justice William Rehnquist, who wanted to effect a pay raise by allowing judges to collect the speaking fees. After the Chief Justice's proposal was rejected, Senate Ethics Committee Chairman Pat Roberts stated that if the federal judiciary deserves a pay raise, "we ought to do it up front, not through the back door."

— Compiled by Theresa Meehan Rudy and Steve Serdikoff

ABA Ethics 2000 an “Abject Failure” for Consumers

Final drafts of the much-ballyhooed ABA revisions to the Model Rules of Professional Responsibility have one gaping loophole – lawyers don’t have to tell their clients anything about the new improved rules.

“The strongest ethics rules in the world are worthless, if consumers don’t know about them,” stated HALT Executive Director Jim Turner. “On this score, the ABA’s latest ethics revision is an abject failure; nowhere in the hundreds of pages of new rules is there a requirement that lawyers inform potential clients about their ethical duties. Requiring lawyers to include basic con-

sumer information in retainer agreements will do more to improve legal ethics and enhance lawyer accountability than any other action that the ABA could take.”

Clients should be fully informed about their lawyer’s ethical responsibilities. For example, clients should know in advance what they will be charged, what is and is not acceptable attorney behavior, and where they should turn if problems develop. Ethics rules in New York, Illinois and Florida already require lawyers to provide such important consumer information to their clients, and are the basis for HALT’s

Legal Consumers Bill of Rights, a plain language summary of attorneys’ key ethical obligations.

HALT is also calling on the ABA to clearly state that lawyers have an ethical duty to communicate with clients in a full, timely and comprehensive fashion; to condemn the abusive practice of value-based fees in probate; to provide sample fee agreements in the Model Rules; and to recognize the legitimate role played by non-traditional legal service providers that enhance consumer choice. HALT’s full ABA submission can be viewed at <http://www.halt.org/LAP/Ethics2000.html>. ■

Small Claims Reform Project Moves Forward

by Tom Gordon

Building on the legislative success of the 1999-2000 state legislatures in bringing about increases in small claims court dollar limits, HALT's Small Claims Reform Project is already working to move forward in the 2001-2002 legislative cycle.

In the last year, Connecticut passed a law raising the small claims limit from \$2,500 to \$3,500 by an overwhelming margin. Idaho enacted a law, also passed by a huge margin, increasing its limit from \$3,000 to \$4,000. Indiana raised the small claims dollar limit for Allen County (in which Ft. Wayne is located) from \$3,000 to \$6,000. Louisiana raised the limit in its Justice of the Peace Courts (the state's rural small claims courts) from \$2,000 to \$3,000. And Michigan, which had had the fourth lowest jurisdictional limit in the country, raised its limit from \$1,750 to \$3,000.

In addition to supporting these successful reform efforts, HALT also supported legislation that would have raised the small claims dollar limits in several other states. The Missouri legislature introduced a bill that would have raised its limit from \$3,000 to \$10,000. Wisconsin also saw legislation raising its limit to \$10,000, from the current \$5,000. Indiana, which raised its limits for Allen County, failed to pass legislation that would have raised the limit statewide from \$3,000 to \$7,500, and for Marion County (Indianapolis) from \$6,000 to \$10,000. In Kansas legislation was introduced to raise its limit from \$1,800 (now fourth lowest in the country) to \$2,500. Finally, in New York, for the first time in six years the Assembly Rules Committee passed a bill raising that state's limit (from \$3,000 to \$5,000), but the bill did not make it to a vote on the floor. HALT will work to have these measures introduced again and passed in the upcoming legislative term.

As part of the continuing efforts of the Small Claims Reform Project to increase access to small claims courts,

HALT recently wrote to the governors of five key states where small claims reform is urgently needed, asking each governor to support legislation raising his state's small claims dollar limit to \$20,000. The states contacted were California (with a current limit of \$5,000), Michigan (\$3,000), New York (\$3,000), Pennsylvania (\$8,000), and Texas (\$5,000).

HALT's letters emphasized that many common consumer problems cost consumers far more than the small claims limits in these states. The consumer is thus forced to either resolve the claim for far less than adequate compensation, or to hire an attorney to take the case to the state trial court – a generally fruitless search, since most attorneys will not take cases for such small amounts.

The letters then went on to point out that several states have recently raised their small claims dollar limits by up to fifty percent, while others have introduced legislation that would more than double the limit. (In 1997, the California legislature passed a bill raising its limit to \$7,500, but it was vetoed by

then-Governor Pete Wilson.) Some of the states to which we wrote have not raised their limit in many years (New York, for example, has not raised its limit since 1978), so a substantial increase would be necessary just to keep pace with inflation, which has raised prices an average of fifty percent since legislation was passed in these states.

The letters conclude by pointing out that consumers do not consult a lawyer with regard to the purchase of a new car, which costs about \$20,000, and that it is therefore unreasonable to expect them to hire a lawyer to resolve legal disputes with a similar dollar amount at stake.

Of the five governors' offices, only Pennsylvania and Texas have responded to our letter so far. We eagerly await responses from the other three states, and will work hard for reform in all five of these important jurisdictions. In the meantime, HALT's Small Claims Reform Project will continue to work to increase access to small claims court in these and other states in their 2001-2002 legislative sessions. ■



Recent Press Coverage

- WTTG-TV FOX 5, Washington, DC (October 21, 2000) HALT Executive Director Jim Turner appeared on the evening news broadcast to discuss legal insurance.
- *The National Law Journal* (October 9, 2000) HALT Executive Director Jim Turner and Associate Counsel Steve Serdikoff, argue that lawyers and the legal system need to be held accountable under consumer fraud statutes.
- *The Washington Times* (July 20 and 21, 2000) HALT was included in "The Rule of Law," a five-part series by Frank J. Murray on the legal profession's increasing grip on America. Two of the parts focused on HALT's efforts to hold lawyers accountable,

- and how the Internet and other technological advances are changing the practice of law in the U.S.
- *New Haven Register* (August 20, 2000) HALT Program Director Theresa Meehan Rudy is quoted in an article on self-representation in court.
- District of Columbia Public Access (August, 2000) HALT appeared in a Washington Council of Agencies series entitled "Non-Profits: Front and Center." The half-hour program aired throughout the month of August, and focused on HALT's Legal Information Clearinghouse & Referral Network.
- *The Roanoke Times* (March 5, 2000) HALT Executive Director Jim Turner was quoted in an article about judicial integrity and judges' conflicts of interest in multi-million dollar cases. ■

Planning for Disability Has Never Been Easier

By Theresa Meehan Rudy

Planning for one's disability may be difficult to think about, but it's never been easier to do. All you need is a simple legal document called a durable power of attorney. Most estate planning experts agree that next to a will, it's the most important legal document you can have in your estate plan.

A durable power of attorney authorizes someone you choose to make medical and financial decisions if you become physically or mentally unable to make them. Typically, two separate legal durable powers of attorney are created (one for health and one for managing finances) although some states allow one person to make both financial and medical decisions.

Previously, all powers of attorney terminated if you became incapacitated, thus creating the need for a time-consuming and potentially expensive court proceeding known as a conservatorship or guardianship.

The law changed to allow powers of

attorney to remain in effect even if you became incapacitated. Called a durable power of attorney, it ends only when revoked or upon your death.

An important aspect of a durable power of attorney is its flexibility. You get to decide in advance when your durable power of attorney takes effect and when it ends. You can also grant broad or limited powers to the person you appoint (known as your *agent* or *attorney-in-fact*).

Some people create durable powers of attorney to go into effect *only* if they become incapacitated. This is called a "springing durable power of attorney." As long as you remain healthy, the durable power of attorney never goes into effect. If your health takes a turn for the worse, the power of attorney automatically "springs" into effect. (Note: Some states do not accept springing powers of attorneys.)

More common is creating a durable power of attorney to go into effect at a specific time or for a specific situation.

For example, if you know you're going in for major surgery and expect a lengthy recovery. Or, if you know you have a degenerative disease, like Alzheimers.

Your attorney-in-fact can be given broad or limited powers over your financial assets or health care decisions or both — depending on state law — since both will have to be taken care of should you become incapacitated. You decide in advance what restrictions you want to place on your attorney-in-fact. For example, you can include a provision that your attorney-in-fact has no power to sell your home to be sure that you retain it as long as you live. Or you can decide that your attorney-in-fact does not have the authority to pull the plug on life-sustaining equipment should you need it.

Deciding who will act as your attorney-in-fact is the most important decision you will make. Because that person will have great powers should you become incapacitated, it should not only be someone you know and trust but someone you think is capable of making financial and health decisions wisely.

Durable powers of attorneys are generally easy to prepare if you have the right information and legal forms. Today you can obtain a lot of information and sample durable powers of attorney forms in do-it-yourself legal books and software, from legal stationery stores, off the Internet and in some banks. Before undertaking this legal task on your own, be sure you spend time reading up on the topic, deciding who will be your attorney-in-fact and what he or she will be allowed to do.

If you decide to work with an estate planning professional, know that in addition to a will and trust, a durable power of attorney for finances and or health care is typically included in the overall price. ■

HALT Welcomes New Additions

HALT is pleased to announce the addition of two members of our program staff, Thomas M. Gordon and Steven E. Serdikoff.

Thomas M. Gordon — Before joining HALT, Tom served as Executive Director of FEAR (Forfeiture Endangers American Rights) — a national nonprofit advocacy organization dedicated to reform of asset forfeiture laws. At FEAR, Tom was responsible for running all aspects of the organization and for supervising over 50 volunteers. Tom also worked as a staff attorney with the ACLU of the National Capital Area and serves as an Instructor with Kaplan Education Centers. He received his JD

from Northwestern University School of Law in Chicago and his BA from the University of Pennsylvania.

Steven E. Serdikoff — Steve is a 2000 graduate from the University of Pittsburgh School of Law and a member of the Pennsylvania Bar. He joined HALT in September. During his law school career, Steve worked as a research assistant, a teaching assistant and as a summer associate with a Philadelphia law firm. Steve also serves as a volunteer editor of the U.S. Legal News section of *JURIST: The Law Professor's Network*, an award-winning and internationally recognized legal website. ■



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It's Time To Stand Up and Be Heard!

If you've ever been the victim of shoddy products or services and thought "There's no use complaining!" think again. A well-crafted letter can reap you satisfaction, apologies and money, all without a lawyer's help. How to write an effective complaint letter to a local drycleaner, a major corporation or anyone else is explained in detail in Ellen Phillip's book *Shocked,*

Appalled and Dismayed: How to Write Letters of Complaint That Get Results.

It starts with the general dos and don'ts of writing effective complaint letters (stick to the facts, remain calm, be polite) and continues with chapters that target specific problems like dealing with bureaucratic HMOs, handling sticky landlord/tenant disputes, confronting poor airline service and more.

Each chapter includes letter writing tips, illustrative anecdotes and sample letters. The book also includes useful contact information and guidance including the names and addresses of over 600 major companies.



GUEST COLUMNIST

Exposing Unethical Lawyers in New Jersey

By John Paff

Our organization, Citizens for Justice in New Jersey, Inc., fully supports HALT's efforts to make our legal system more open and accountable to the public. To further this goal, our web site at www.cjnj.org features the "New Jersey Bartender" — a comprehensive list of New Jersey attorneys who have been formally charged with or punished for violations of the Rules of Professional Conduct.

Unfortunately, the Bartender, while useful, only reveals the tip of the iceberg. Out of the roughly six thousand grievances filed annually against New Jersey lawyers, only a few hundred result in a formal complaint being filed. The vast majority of the grievances are rejected at some point in the ethics process.

To make matters worse, New Jersey has a "gag rule" that prohibits rebuffed grievants from telling anyone that they have filed a grievance. Although this gag rule is probably unconstitutional (see, for example, *Doe v. Supreme Court of Florida*, 734 F.Supp. 981 (S.D. Fla, 1990)), it hasn't been challenged, and it effectively muzzles thousands of people whose grievances are rejected by ethics authorities every year. It is uniquely challenging to reform a system when those who have

been failed or abused by it are not allowed to speak about their experiences.

Please stop by our web site to read more about the gag rule (www.cjnj.org/html/gagrule.html) or to read about ethics officials who have misused their limited screening function to reject legitimate grievances against attorneys (<http://www.cjnj.org/html/prcrpage.html>).

If New Jersey's attorney ethics system has failed or abused you, and you either don't care about the gag rule or feel that you can describe your experience without running afoul of it (perhaps by not disclosing the identity of the lawyer you complained about), please contact us at P.O. Box 646, Martinsville, NJ 08836, or at cjsc@pobox.com. *Note: if you breach the gag rule, you may also shed your immunity from defamation suits by your former lawyer. See N.J. Court Rule 1:20-7(f).*

If you believe that the gag rule should be repealed, write to the Supreme Court of New Jersey, Professional Responsibility Rules Committee, Attn: Paula T. Granuzzo, Secretary, P.O. Box 970, Trenton, NJ 08625. We would appreciate it if you would share copies of your correspondence to and from the Committee with us.

— John Paff is President of Citizens for Justice in New Jersey, Inc.

Members who renew their membership in HALT for the year 2001 will receive a free copy of *Shocked, Appalled and Dismayed: How to Write Letters of Complaint That Get Results.*

"We selected this book because we think it's a great find for our members," said Program Director Theresa Meehan Rudy. "Not only is it immensely readable, consumers who have followed Phillip's advice have won hundreds, even thousands of dollars for their efforts." ■

Time to Renew



In a few weeks you'll be receiving a letter asking you to renew your membership in HALT for the year 2001. We have big plans for the coming year, including a greatly expanded web site, continued work in our five reform projects and new educational books and pamphlets. We can't do our legal reform work without your contribution and continued support.

When you receive your membership renewal notice, 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 will receive a free copy of *Shocked, Appalled and Dismayed: How to Write Letters of Complaint That Get Results.* ■

From the Mailbox



Dear HALT,

I ordered a book over a month ago and still haven't received it. What's the matter?

Frustrated in Framingham

Dear Frustrated:

Unfortunately we have had too many members complain about not receiving their books in recent months. We decided that was unacceptable and that it was time for a change. Beginning in September of 2000, HALT has hired a professional firm — Whitehurst & Clark out of Edison, New Jersey, to process our book orders. They've been in business for over thirty years and have a great reputation for quality service. From now on, if you order a book from HALT it will be sent via UPS ground (usually a three to five business day turn around from the day we receive your order) or if being mailed to a P.O. Box number, by U.S. Priority Mail.

If you need to know what the status of a future book order is, please call us toll free at 888-FOR-HALT and let us know what book you ordered, when you ordered it, and where you sent your payment (e.g., to HALT's 1612 K St., Washington, DC address or to HALT's P.O. Box 96691). That information will help us track down your order more quickly. Thanks. ■

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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, N.W., Suite 510, Washington, D.C. 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. D.C. residents add 6% sales tax.

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Fall 2000

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