

the Legal Reformer

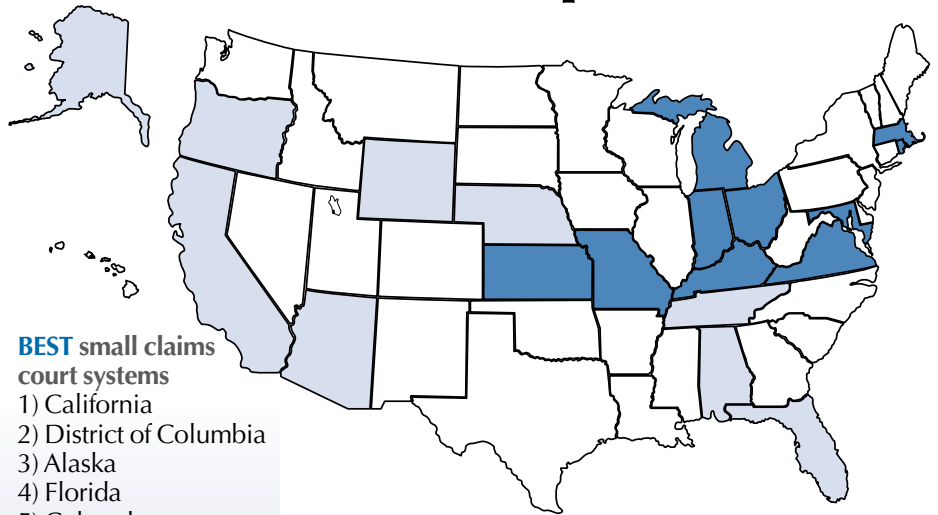
HALT'S MEMBERSHIP NEWSLETTER • Winter 2002

HALT Releases Small Claims Report Card

by Tom Gordon

HALT recently released its Small Claims Report Card for the fifty states and the District of Columbia. The report card paints a bleak picture of small claims court systems nationwide. Of the fifty-one jurisdictions surveyed, none earned A's, and only two (California and the District of Columbia) received grades in the "B" range. At the opposite end of the spectrum were four states — Kentucky, Virginia, Kansas and Rhode Island — receiving F's and four others receiving a grade of "Incomplete" for not having a small claims court.

The states were graded in nine categories: (1) dollar limit on claims, (2) availability of injunctive relief, (3) existence of an expedited collection process, (4) availability of advisors for litigants, (5) whether the court was open beyond the traditional 40-hour week, (6) existence of user-friendly complaint forms and guides to using the court, (7) amount of filing fees, (8) how much a court dis-



BEST small claims court systems

- 1) California
- 2) District of Columbia
- 3) Alaska
- 4) Florida
- 5) Colorado
- t6) Alabama
- t6) Tennessee
- 8) Arizona
- t9) Nebraska
- t9) Oregon

WORST small claims court systems

- | | | |
|-----------------|------------------|--------------|
| 1) Rhode Island | 5) Massachusetts | t9) Indiana |
| 2) Kansas | 6) Ohio | t9) Missouri |
| t3) Virginia | 7) Michigan | |
| t3) Kentucky | 8) Maryland | |

courages attorneys, and (9) availability of mediation. Half of a state's grade came from the amount and type of relief its small claims courts offered (the first three categories) and half came from the ease of access to

the court (the latter six categories).

The top two small claims systems were California and the District of Columbia, which received grades of B and B-minus, respectively. California,

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Brief Filed in Legal Discipline Case

In February, HALT filed an amicus curiae ("friend of the court") brief in an important attorney discipline case in Washington, DC, *In the Matter of Mark M. Hager, Esquire*. As HALT's brief explains (citations omitted):

"The issue presented in this disciplinary proceeding is whether the Court of Appeals will allow an attorney who enriched himself by betraying his clients' trust to continue to practice in

the District of Columbia. Through a covert agreement with the prospective defendant in a Moss-Magnuson Warranty Act lawsuit, Washington D.C. attorney and American University Law Professor Mark Hager accepted a secret payment of \$225,000, while his clients received \$10,000 to settle their claims.... In short, Hager sold his clients' case and stole 95% of the pro-

Continued on page 2

the Legal Reformer

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Report card, Continued from page 1 with an above-average dollar limit of \$5,000 and famously user-friendly courts, merited at least a “B” in all but two categories. The District of Columbia had similar scores to California, falling behind the Golden State largely because its small claims court judges cannot issue court orders; they can only resolve small claims disputes by awarding money. Rounding out the top five were Alaska, Florida, and Colorado, all of which received C’s.

Kentucky, Virginia, Kansas, and Rhode Island all received failing grades, with Rhode Island nosing out the other three for the dishonor of the lowest score. Among their many failings, these states have the lowest dollar limits in the country, ranging from Virginia’s \$1,000 to \$1,800 in Kansas. Another characteristic that these states share is a failure to provide advisors or to open for extended hours. Also, with the exception of a handful of counties in Kansas and Virginia, there is no mediation offered by any of these states’ small claims courts.

Beyond the states receiving F’s are the four states with “incompletes”: Delaware, Georgia, Mississippi, and

South Carolina. These states all claim to have a small claims system or “people’s court,” often with rather high dollar limits. However, upon closer examination, these courts do not have the simplified procedures that define a small claims court. “These states are

“These states are lucky to receive an ‘incomplete’. Perhaps their report card should have a notation for cheating, since they lie to the public about whether they have true small claims courts.”

lucky to receive an ‘incomplete’,” said HALT Executive Director Jim Turner. “Perhaps their report card should have a notation for cheating, since they lie to the public about whether they have true small claims courts.”

Data for the survey was collected by a telephone survey of a sampling of small claims courts in the four largest counties and six other randomly selected counties in each state. The survey was conducted over four months in late 2001. A copy of the small claims report card is available from HALT upon request and at www.halt.org. ■

Brief filed, Continued from page 1 ceeds for himself. This misconduct violates the most fundamental principles of professional responsibility — that an attorney owes undivided loyalty to a client and will not steal or convert a client’s financial assets. This Court has provided unequivocal guidance that disbarment is the appropriate remedy in cases where an attorney has misappropriated a client’s financial assets, . . . and amicus curiae HALT, Inc. respectfully urges that Hager be disbarred for his gross misconduct.”

HALT argues that sound public policy demands disbarment to protect the integrity of the legal profession and to deter similar conduct by other lawyers:

“Perhaps no circumstance tests the efficacy of a self-regulating legal discipline system more than when that system is faced with sanctioning an attorney clearly guilty of egregious misconduct. Approaching sanctions in such cases with ‘moderation’ justifiably gives the appearance that lawyers are loath to punish other lawyers and calls into question the very basis for attorney self-regulation. This is to say nothing of the damage it does to the public’s faith in lawyers as advocates worthy of their complete trust.”

Oral argument is scheduled in late March. A copy of HALT’s brief is available online at www.halt.org. ■

Legal Reform News

LAWYERS WORRY ABOUT ETHICS

More and more Florida lawyers are calling the Florida Bar Ethics Hotline. From July 1, 2000 to June 30, 2001, the Florida Bar's Ethics Committee answered a record 20,680 calls on their toll-free hotline. This number represents a 10% increase on the previous record for the 1998-9 year.

Bar Ethics Counsel Elizabeth Tarbert, one of eight attorneys fielding the calls, stated two reasons for setting the new record: hard-working attorneys on the Ethics Committee and a new telephone system which allows callers on hold to eventually leave a message, instead of just hanging up. Attorneys can also obtain ethics opinions by writing or emailing their questions to the Ethics Committee.

The most common questions fielded relate to conflict of interest inquiries, such as obligations to testify when former clients are involved. Other frequent inquiries said Tarbert, are confidentiality issues, and questions about what to do when an attorney believes their client or some witness has lied in court proceedings.

Tarbert would not comment on whether this increase in calls reflects an increase in ethical problems.

... STILL TRAGICALLY INDIFFERENT IN THE COURTROOM

In the Spring of 2001, *The Legal Reformer* reported on the case of Robert Waters, who collapsed in a courtroom and died ninety minutes later in front of District of Columbia Superior Court senior judge Tim Murphy. The Commission on Judicial Disabilities and Tenure voted to reinstate Murphy to the bench as a senior judge without a reduction in his \$120,000 salary. Fourteen days after the Nov. 13 decision,

Murphy returned to the bench.

After gasps for air, screams for assistance, and requests for medical attention, Waters was allowed to lie on the floor of the courtroom as Murphy indifferently explained, "Well, if you'd quit yelling, maybe you could get some air." Ten minutes later, Waters was dragged to a cellblock by U.S. Marshals where he died.

Questioned about the incident, Murphy claimed that he had had, "an extremely heavy workload," and that Waters had "looked like a street person" who was probably faking his gasps for breath. Apparently, Murphy did not consider his code of Judicial Conduct applicable with regard to this "street person". The Commission, however, found him in violation of the "applicable provisions of the Code of Judicial Conduct," which, "eroded public confidence in the judiciary," but nonetheless reinstated him.

UNBUNDLED IN FLORIDA

Family law attorneys in Florida may soon be allowed to offer limited representation in divorce and custody disputes. A new proposal, issued by the Unbundled Legal Services Special Committee and already approved by the Florida Bar Board of Governors, recognizing "a need for limited representation in family law matters" is headed to the state's Supreme Court for a ruling.

This Committee asks the court to direct the Family Law Rules Committee to draft a rule allowing lawyers to represent specific issues in court. Two other states, Arizona and Colorado, already allow limited representation outside the courtroom. Among the more poignant conclusions the Committee reached include a Supreme Court directive to in-

struct the Family Law Rules Committee to draft a law, and a need to display the importance of limited representation in the courtroom. Limited representation (also known as unbundled legal services) would allow attorneys to perform only certain specific tasks as opposed to the case as a whole.

One committee member, Michael Gora, explained that the rule drafted will "increase ... access to legal services." He believes it is "a benefit to the legal system [and] to our customers."

UNLICENSED TO SERVE

Who acts like a lawyer, talks like a lawyer, looks like a lawyer, but isn't a lawyer? Saamir "Sam" Kaiser. After five years of working on the legal staff of the D.C. Financial Control Board, Kaiser was promoted to the prestigious lawyer position of general counsel to the D.C. Chief Financial Officer.

A background check into his credentials showed, however, that Kaiser was not licensed to practice law, nor did he ever attend law school. Despite that fact, those who dealt with Kaiser say he was "exceptionally good" and even "superb" at what he did. Daniel A. Rezneck, the general counsel who brought Kaiser to the board, explained that Kaiser never appeared in court, but instead acted as more of a research assistant, giving information on board matters. Rezneck further noted that Kaiser's lack of credentials would in no way affect his ability to act on the control board. Regarding his promotion to general counsel, Chief Financial Officer Natwar M. Gandhi said that Kaiser's five year tenure on the control board removed Gandhi's need to even request a resume.



HALT Supports Reform to the Individuals With Disabilities in Education Act

The efforts of non-lawyer Marilyn Arons to provide free or low-cost representation to children with special educational needs continue in several states throughout the country, but not in Delaware. Arons is prevented from providing services in Delaware because of the decision of the U.S. Supreme Court not to review a Delaware Supreme Court decision that prevents her from doing so.

Arons and her Parent Information Center of New Jersey provide representation to children at hearings mandated by the Individuals With Disabilities in Education Act (IDEA). Without a statement from the Supreme Court on whether the federal law allowing lay practitioners trumps state unauthorized practice laws, Delaware may continue to prohibit lay practice in this forum. "More impor-



tantly," explains HALT Associate Counsel Tom Gordon, "the Supreme Court's refusal to hear the Arons case may embolden state bars nationwide to push for a ban on non-lawyers at IDEA hearings. Such efforts need to be stopped before they start."

This issue was one of the topics at a December 6 hearing before the Department of Education Office of Special Education and Rehabilitative Programs at which Gordon testified. The hearing was held to gather information for the comments that the Department of Education will submit to Congress when the IDEA is up for reauthorization later this year. Many organizations attending the hearing supported HALT's proposal that the IDEA be amended to specifically affirm the right to be represented by a non-

lawyer at IDEA hearings. Other organizations also echoed HALT's testimony that "[o]ften the most qualified representative in such cases will be a non-lawyer specialist in special education, since such specialists have greater familiarity with the substantive issues in such hearings."

HALT's testimony also emphasized the importance of allowing consumers to make informed choices about who will provide services for them, stating that "this freedom is consistent ... with the principles of a free economy." The testimony also noted that most unauthorized practice complaints come from the attorneys opposing lay practitioners in hearings, not from consumers.

HALT intends to continue to work with Arons to help her assist children in need of special education. HALT's testimony before the Department of Education is available on its website at www.halt.org. ■

Western Gem: San Francisco Superior Court

by Tom Gordon

California's courts are among the most accessible in the nation. California boasts an expansive online self-help center. It also has the best small claims system in the country, according to HALT's recent small claims report card.

Among the jewels in California's crown is San Francisco Superior Court — a model for access to the civil justice system. A trip to the court begins with the clerk's office, which features seven windows for small claims along with many other clerks to assist in the filing of civil cases. Staff speaks several languages, including English, Spanish and Mandarin, and



numerous self-help pamphlets are available in various languages.

One particularly impressive branch of San Francisco Superior Court is its Family Court. In conjunction with the San Francisco Bar Association, the Family Court has set up a well-staffed

self-help center where court staff help people represent themselves in divorce and child custody matters. The self-help center even has a professionally staffed day care center (with an enormous assortment of toys) to ease the burden on parents using the court. With the majority of participants in family law proceedings nationwide representing themselves, projects like this are needed in courts across the country. ■

Get connected!
Visit
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Do You Need to Join a Legal Service Plan?

Most people, if they can swing it, buy health insurance to protect themselves and their families. The cost of joining a plan is typically picked up in whole or at least part by their employer. If they have to finance it on their own, costs can be formidable.

The same is not true for “legal” insurance. Legal service plans, while not really insurance, do offer help for legal problems and situations at reasonable rates — in most cases for less than \$20 a month. Most of the people who participate do so in a “group” legal service

plan that is offered through the workplace (for example, through a union, trade association or private employer.) The employer picks up the cost of your participation as an employee benefit.

Plans that allow individuals to join are growing in number and are sold directly to the public (an invitation to join the plan comes to you through the mail). Like group plans, these private plans offer a variety of services for a set annual membership fee including: unlimited phone counseling, help

in selecting a lawyer, phone and letter follow-ups, document drafting and review and reduced rates on legal representation not included in the membership fee.

Before you buy into any plan, ask yourself whether you need the kind of services offered. Some people rarely need legal assistance, or have a family lawyer they trust when legal needs arise. For more information on the types of plans offered, what’s covered and questions to ask before joining any plan, write for a free copy of *Joining a Legal Service Plan*, HALT, Inc., 1612 K St., NW, Ste. 510, Washington, DC 20006 or download it from HALT’s website: www.halt.org. ■



What are HALT’s policies about its member lists?

HALT fully subscribes to the Rules of Business Ethics and Practices issued by the Association of Direct Mail Fundraising Counsel and the Direct Marketing Association Non-profit Council. This means that we will not make use of mailing information of any members who request that their names not be used for exchange or rental purposes with other organizations. Although our special member-only mailings are an integral part of HALT’s education and advocacy programs, upon request from any member, we will limit our mailings to one each year. Please contact our membership department if you wish to take advantage of either of these policies. ■



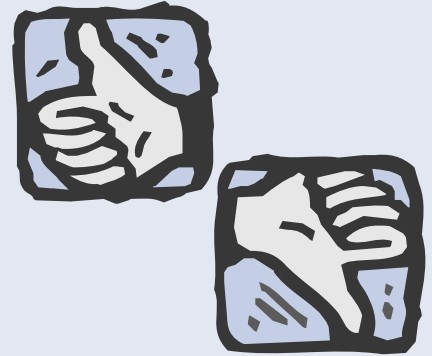
Cheers and Jeers

by Tom Gordon

CHEERS TO CATHERINE ELIAS JERMANY

On September 22, 2001, Benchmark Institute honored Elias Jermany at the Third Annual Community Celebration for her involvement in providing legal services to low-income people. Serving as an advocate and Director of the National Self-Help Law Project, she emphasizes the role paralegals and community advocates can play in delivering quality legal services, and empowering others with legal knowledge. Elias Jermany designs legal training techniques and models, which have influenced the Benchmark Institute, a non-profit educational institute that trains public interest lawyers, paralegals and others needing legal information.

Catherine is a HALT Board member, and co-author of *The Independent Paralegal’s Handbook*. She is committed to helping others by instilling self-reliance and building other capabilities to use as vehicles out of poverty. From community advocate to



training designer, she is a pioneer in her field and an inspiration to all.

JEERS TO ILLINOIS SMALL CLAIMS COURTS

Small claims courts in Illinois have some of the highest filing fees in the country. For example, for a case brought in DuPage County for up to \$250, the filing fee is \$66. This means that a person with a claim of \$125 would pay half that amount merely to bring the case to court. In addition, at least one county — Lake County — requires an “appearance fee” of \$63 or \$83 for a defendant to contest a case. They call it an appearance fee; we call it an exorbitant price to pay to defend yourself in court. ■

An Interview with Shelley Broderick

HALT interviewed Shelley Broderick, Dean of The University of the District of Columbia, David A. Clarke School of Law and HALT Board member.

by Theresa Meehan Rudy

Why is a law school dean involved with HALT?

HALT is in the vanguard of desperately needed law reform much of it impacting low and moderately income people. The mission of our law school is to open up the legal profession to a diverse student body, folks underrepresented in the bar and to train students to be public-interest, public-policy, public-service lawyers.



I'm very interested in the kinds of policies that HALT is interested in. Small claims reform is just one example. Unfortunately, small claims courts don't work for the vast majority of people. If we can reform these courts by raising their dollar limits, justice will be done for far more people, in a timely way. I also agree with HALT's stand that lawyers should be governed by consumer laws. When a lawyer fails a consumer, that lawyer should be accountable under consumer laws. HALT is working to hold lawyers accountable and I support that.

How does the way law is taught impact the legal system?

The vast majority of legal education is still the Lang Bell method, developed in the late 1800s. Law students learn the law by reading appellate cases. And what that means is, first someone writes a bad contract, then they lose at trial and now they're on appeal. And so the law student is taught to understand only a litigation model. When you talk about the the-

ory that went wrong in a case, rather than teach law students how to draft good tight contracts, you let them down because they graduate with little or no

practical experience on how to represent people. Most law students, even with the advent of clinical legal education, finish law school without knowing how to interview clients, do fact investigations, and so on. They're not prepared to provide effective representation.

Does your law school do things differently?

Our law school has the most significant commitment to clinical legal education in the country.

Every student in their first year, begins with a course called Law & Justice. Students meet advocates for the homeless, talk about cutting edge issues of the day that invoke justice — from immigration reform to affirmative action, to racial profiling — you name it. Every first year law student does 40 hours of community service under the guidance of their faculty advisor. Every faculty advisor in this law school is deeply engaged in community service.

So in the very beginning of law school, students are acting as testers in race discrimination housing cases, are taking intake at Whitman Walker Legal HIV/AIDS Clinic, they're learning about secret evidence at the Arab anti-defamation league, and they are working with the homeless. In the second and third years every law student does 350 hours of legal clinic — we have a juvenile special education clinic, HIV clinic where we primarily represent women and children in the multitude of legal issues they face, a housing clinic, a community development

clinic, small business clinic. In all of these clinics, the law students do the legal work under the supervision of faculty attorneys.

What's happening with other law schools? Are they beginning to incorporate clinical education into their curriculum?

Most law schools have a small third year elective clinic in which a small number of students participate. Law schools are still overwhelmingly skeptical about clinical legal education. I attended new dean training four years ago and we were given an exercise in which we were told to cut our budgets by "x" percent. Every group but mine immediately eliminated their clinic. And that's deans in 1999 and 2000.

Why is that?

Because it's expensive. Take a contracts class. You sit in a class with 150 people and one teacher. If you take clinic you've got more like a 10 to 1 student teacher ratio. So that costs money.

What do you think has been the biggest improvement in the delivery of legal services for ordinary people?

I think the biggest improvement is the advent of technology — both computers and the Internet. Just look at the databanks now available. If you're a legal services provider, instead of you having to maintain a whole library, it's accessible at your finger tips. Instead of you having to have all the materials you need on cutting edge legislative events and trends — it's on the computer. So, from clients being able to use the computer to do their own legal work, to lawyers having access to so much more information — and being able to do their work so much faster — technology is really transforming the delivery of legal services. ■

Online Estate Planning Newsletter

A new estate planning newsletter, *Lifetimes: A Financial and Charitable Planning Guide* is now available through HALT's website. Written in plain-language, it offers a veritable encyclopedia of estate planning, financial and health-related information.

For those interested in planned giving, the newsletter explains the vari-



ous ways you can give to your favorite charity (now or sometime in the future) and exactly how to do it. A handy "gift calculator" allows you to determine, for example, the amount of annuity you would receive each year, and your annual income tax break.

For more information, visit HALT's web site and click on the Breaking News section or find it under the "About HALT" page. ■

"HALT is the magic that made my duty as executor a successfully completed though, at first, a seemingly impossible job. Thank you!!!"

Ms. Jean Gavin
Philadelphia, PA

Brian Joins HALT Board of Directors

HALT is pleased to announce the election of Danielle Brian, Executive Director of Project on Government Oversight, to its Board of Directors.

Danielle Brian has been the Executive Director of the Project on Government Oversight (POGO) since 1993. She has testified before Congress numerous times and is frequently quoted in the na-

tional media on POGO's investigations. Before becoming Executive Director, she worked with POGO from 1986-1990 as a Senior Research Associate. She has also worked as a producer for television documentaries and as a policy analyst at the Arms Control and Foreign Policy Congressional Caucus. She is currently the President of Voters to Stop Sprawl,

and is on the Advisory Board of the Virginia League of Conservation Voters.

"All of us are delighted to welcome Danielle to our Board," stated HALT Board Chair Conrad Martin. "Her enthusiasm for reform, commitment to accountability and government savvy, will be real assets for HALT's legal reform efforts." ■

From the Mailbox



Dear HALT,

I just contracted to have aluminum siding put on my house, but am having second thoughts. What can I do?

Perturbed in Peoria

Dear Perturbed:

It depends. Did you purchase the siding from a door-to-door salesperson that came to your home or did you contract for the service at the sales person's place of business?

If you signed the contract at your home, you may be covered by the "Cooling-Off Rule" which gives you three days to cancel purchases of \$25 or more—even if work has already begun on your home.

Mandated by the Federal Trade Commission, the "Cooling-Off Rule" allows you to return for a full refund most purchases (and or services) made in some place other than the permanent place of business of the seller — for example, services sold to you at your home, workplace or a temporary residence like a hotel room.

The salesperson should have given you a notice about your cancellation rights. If he or she didn't, you can write your own cancellation notice. Either way, you must express your desire for a refund in writing and it (your letter or the cancellation notice) must be signed, dated and post-marked by the third business day after purchase.

The Cooling-Off Rule does not cover purchases that are: made by phone, mail or e-mail; are the result of prior negotiations at the permanent lo-

cation of the seller; or are those needed to meet an emergency, such as a hole in a roof. The FTC recognizes that people hearing a sales pitch in their homes ought to be given time to "cool-off" before deciding that what they purchased was what they really wanted. If you have a complaint about sales practices that involve the Cooling-Off Rule, write: Consumer Response Center, Federal Trade Commission, Washington, DC 20580.

If you bought the siding at a store, check to see if they have a cancellation policy and whether you can get a full or partial refund. If the company begins work despite your protests, consider taking them to small claims court.

For more information about contracts and your rights under them, write to HALT for a copy of *Sign Here: How to Understand Any Contract Before You Sign* (available for \$15.00). ■

Nolo Book Bargain

HALT and Nolo.com have joined together to provide a special offer for legal reform supporters. Purchase any of the legal self-help books listed under the "Specials" page at HALT's website at a discounted Internet price and Nolo will support HALT with a 10% contribution of your purchase. Among the books available are *How to File for Bankruptcy*, *Small Business Legal Pro 4*, *Child Custody*, and *Every Tenant's Legal Guide*. Each of these books has been rated a "Do-it-Yourself Best Buy" in HALT's guide, *Do-It-Yourself Law*. This is an Internet only offer. ■

Wear Your Support for Legal Reform

Show your support for legal reform by purchasing a HALT t-shirt.



Exclusively designed for HALT, this comfortable 100% preshrunk cotton tee depicts a vibrant design. Available in Large (42-44) or Extra Large (44-46). Cost, includes shipping: \$12 for members, \$15 for non-members.

Please allow 4-6 weeks for your order to arrive. To order, call our toll-free number 888-FOR-HALT, or send a check, money order, or credit card number to our mailing address. ■

Winter 2002

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