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AFAN strives to protect the constitutional and legal rights of astrologers everywhere, overturn anti-astrology ordinances, and inform astrologers of their legal rights and responsibilities. AFAN also maintains archives of trials concerning astrologers and others prosecuted under fortunetelling and other statutes.

If you or someone you know needs our assistance or information on local laws, please contact us at legal@afan.org.

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The Law and Astrology by Jayj Jacobs

Laws from the past still restrict those who see the future, but astrologers are successfully challenging the laws that inhibit their profession all across America. Four major court cases have been won, and dozens of cities have changed their laws on the "occult." The Association for Astrological Networking (AFAN) is committed to overturning every law that overly restricts the practice of astrology. AFAN has legal briefs prepared that with little modification can be filed to challenge anti-astrology laws in all their various forms.

The laws astrologers object to include bonding requirements of up to \$10,000, business license fees that range from \$300 per year to as much as \$100 per day, and even total prohibitions on the practice of astrology for a fee. Labeled "fortune-telling," and lumped in with all manner of archaic "occult arts" and metaphysical practices -- as well as the complete pantheon of New Age philosophies -- astrological practice is restricted by many cities in most states in this "Land of the Free."

Lead by AFAN's Legal Information Committee, activist practitioners of the stellar science have racked up an amazing, unbroken string of victories from California to Florida. AFAN is engaged in conversations or confrontations with city councils, state legislatures, and courts from Washington to Florida and New York to California.

IMPORTANT LEGAL VICTORIES AND CHALLENGES

The California Supreme Court overturned, as an unconstitutional infringement of free speech, an Azusa, California, ordinance that completely banned "fortune-telling." [\(1\)](#) (*Spiritual Psychic Science Church of Truth, Inc., et. al. v City of Azusa L.A.* 31926). The Court held that astrologers and "fortune-tellers" have the same constitutionally protected right to express and charge for their opinions as other mainstream forecasters.

The Omnibus Counseling Act, which would regulate social workers and therapists in Washington State, was stopped in the state senate -- for three years in a row -- by astrologers dissatisfied by its potential restrictions on their profession. The bill finally passed when unconstitutional provisions restricting astrology and other counter-culture approaches to well-being were deleted from the bill. Threatened by lawsuits filed in Federal District Courts, cities in Georgia and Florida have redrafted their ordinances regulating astrology to allow astrologers to obtain business licenses for the modest fees required of other professions. A \$6 million law suit has been filed against the City of Yonkers and New York State by AFAN astrologers arrested at a "psychic fair." Battle Creek, MI, is being sued after halting mini-readings at a local restaurant. Michigan

repealed its ban on "fortunetelling" and New Jersey refused to enact one after AFAN's efforts. Los Angeles County refused its Sheriff's request to reenact an ordinance banning occult arts after AFAN lobbied the Board of Supervisors and presented its case in public hearings. Concord, in Northern California, in response to AFAN's orchestrated public presentation and after reading the AFAN attorney's un-filed brief, redefined "fortunetelling" so that only those who "purport to influence future events" (which no reputable astrologer does), need apply for a fortune-telling permit. AFAN raised the defense fund for an astrologer arrested in San Jose, California, and during her trial Networkers gave testimony on astrology's major influence on Western Civilization. Testimony by an astrologer helped win a Federal court victory for a tarot card reader charged under an ordinance that also banned astrology. (2) (*Stergo v. City of Highland Heights*).

THE LOCAL ORDINANCE PROBLEM

"Fortunetelling" ordinances usually include astrology in a 20-30 item list of proscribed or restricted practices that contains every method of prognostication or character reading from augury to necromancy, and from clairvoyance to witchcraft. The laws often include psychology and hypnotism and the "furnishing of any information not otherwise obtainable by the ordinary process of knowledge." The catchall phrase "or any similar business or art" is appended to the list to include anything esoteric with which the drafters of the ordinance were unfamiliar. They may not know what "fortunetelling" is, but they know they don't like it.

Most city ordinances are "void for vagueness." They do not define the proscribed practices so that a reasonable person would know what was prohibited or if they were in violation of the law. Almost everyone is surprised and many are dismayed to learn that astrology and related arts, so much a part of popular culture, are illegal. By lumping together numerous related and unrelated practices under the name "fortunetelling" these same laws are fatally flawed because they are "overbroad." Thus, they are relatively easy to overturn in higher courts -- once considerable time and money are invested to bring the case to trial and then, often, to appeal.

AFAN's astrologers have generally preferred the quicker and less expensive route to revision -- that of lobbying city and county governments by writing letters, meeting with representatives in private, and making public presentations. They confer with police officers, city attorneys, and city councils, dispelling stereotypes and fear of the unknown. When persuasion fails, the astrologers resort to the court system.

Law enforcement officers and many elected officials cling to the stereotype that astrologers are "gypsies," vagabonds and con artists. Although this is unacceptable it is understandable, because the police deal primarily with the criminal element; their experience of "astrologers" is limited to the small fraction of the con-artists who guise

themselves in pretensions of "fortunetelling." They are unaware that most astrologers are ordinary people: taxpaying, property-owning, voting, citizens who are often positively active in their communities.

Anti-astrology laws are predicated on the false assumptions that, without exception, "the business of fortune telling is inherently fraudulent" so that "its regulation or prohibition is required in order to protect the gullible, superstitious and unwary." (3) (in re *Bartha* (1976) 63 cal. App.3d 584)

THE RULE OF LAW

The above argument, (which has been frequently cited), was discredited by both the Appellate Court and the Supreme Court in California in the *Azusa* case. In *Azusa*, a minister of the church sued the city to block enforcement of their "fortunetelling" ordinance -- a total ban on all metaphysical practices. The city won in Superior Court, based on the above *Bartha* precedent, but lost at the next two levels, where the Justices could overturn incorrectly established precedent and rule newly, and strictly on Constitutional issues.

The Appellate Court overturned the *Azusa* City ordinance and discredited the above assumptions based on Article I, section 2 of the California Constitution, which states: "Every person may freely speak, write or publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

The appellate judges added, consequently, "one need not have a scientific basis for a belief in order to have a constitutional right to utter speech based on that belief." Not only does the broader California Constitution protect astrology but, in addition, the judges found, "the telling of fortunes and prophesying about the future to be a category of speech protected by the United States Constitution." (4)

The City of *Azusa* then appealed the case to the California Supreme Court, asking for either a review (hoping to overturn the appellate ruling), or a retrial on the facts (including the merits of fortunetelling), and lost again. The California Supreme Court ruled that astrology is not "inherently fraudulent" nor "mere commercial speech" but rather, "protected speech" -- as fully protected by the Constitution as any other idea.

The Supreme Court majority held that "some persons believe they possess the power to predict what has not yet come to pass. When such persons impart their belief to others, they are not acting fraudulently; they are expressing opinions which, however dubious, are unquestionably protected by the Constitution."

"It must also be noted that there are many persons other than professional fortunetellers who purport to predict the future; e.g., astrology columnists in daily newspapers, economists who prognosticate interest rates and other business conditions, investment counselors who forecast stock market trends, sportswriters and odds makers who predict winners of athletic contests, horse race handicappers, pollsters who forecast election returns, and clergymen who describe the concept of a hereafter." Astrologers have the same rights and responsibilities as other persons and professions who arrive at their opinions and predict the future by more mundane means.

"Under the First Amendment there is no such thing as a false idea," the California Supreme Court said. "However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." The Court did not rule on the validity or the value of astrology, nor separate it from other metaphysical philosophies or occult arts. It leaves those tasks to the marketplace of ideas, and the test of time and events. It is not the Court's job to judge ideas, but to protect them. Under the First Amendment all ideas are created equal.

In so ruling, the Court -- throughout its decision -- cited Federal precedent: cases which were decided based on the protections guaranteed by the First Amendment to the U.S. Constitution. However, they added a footnote at the beginning of their decision stating that their frequent use of the term First Amendment was "merely illustrative" and that the ruling was based on the California Constitution.

With *Azusa*, the Supreme Court has established a new specific precedent regarding metaphysically-based speech. It's ruling has become a "controlling decision" in California. Both the state and local governments, and lower courts in California are bound by its ruling. The decision is "persuasive" in other jurisdictions. Courts and governments outside California are not bound by it, but they will be influenced by its arguments, and they are bound by the same Federal cases cited in *Azusa* (see [appendix](#)). Since the Court's cogent arguments are so persuasive in the intellectual sense as well as the legal one, and since the decision cites federal precedent, we can rely on other state courts' ruling in accordance with the decision in the *Azusa* case. To emphasize this point we next recount both the arguments presented to the Court and its response to them.

ARGUING THE CASE LAW

In disputing arguments from the cities of Azusa and Los Angeles (which filed an amicus curiae, or friend of the court brief), the Court responded to the arguments and ruled as described below. These same arguments, counter-arguments, and rulings will certainly be used in subsequent cases; even though the arguments attempting to limit the constitutional rights of astrologers have been thoroughly repudiated.

The cities argued, quoting from the Bartha ruling, that "fortunetelling" "for a fee" is strictly a commercial enterprise. The Court rejected this and held that "fortunetelling" is protected speech not "mere commercial activity." "It involves the communication of a message directly from the fortune-teller to the recipient. That words are used is not critical; the key is that the words convey thoughts opinions and, sometimes, fiction and falsehoods."

The cities also argued that restricting the various arts only when they were practiced for a fee was not undue restraint. The Court declared that argument, and the ordinance, void because, "...[I]t is manifest that speech does not lose its protected character when it is engaged in for profit. (5) 'It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge... Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.'" (6)

When the cities claimed that the First Amendment was originally meant to apply solely to political discussion and that expressions of opinion about the future were not important or relevant discussion, the Court replied: "It is impossible to say that fortunetellers impart no political message in their communications. In their vision of the future there may be a view of society as they perceive it may one day be. Such communication conceivably could contain the spark of a political flame. Secondly, fortune-telling may fire the imagination and stimulate discussion of the future." As is clear from precedent, the Court continued, "... [T]he life of the imagination and the intellect is of comparable import to the presentation of the political process; the First Amendment ... protects in addition the interest in free interchange of ideas and impressions for their own sake, for whatever benefit the individuals may gain." (7)

Responding to the Azusa City Attorney's implication that there existed a consensus of disdain for "fortune-telling" among rational, intelligent persons, the Court stated: "That some -- even a majority -- may find this mode of communication distasteful, ridiculous or corrupt is irrelevant to constitutional concerns. Thus any prohibition or regulation of fortunetelling must be given full scrutiny under the Constitution." The First Amendment was specifically designed to protect unpopular ideas, and ideas that are favored by one segment of the population and not another.

NOTE: The national media, in November 1994, reported on a nationwide survey that found 47% of people believe in astrology and that it "has some scientific validity."

The cities contended that fortunetelling falls into a category of speech (falsehoods) that is not entitled to free speech protection by quoting Bartha: "It is within the police power of the municipality and province of the legislative body to determine that the business of fortunetelling is inherently deceptive. ...[A]nd when as here the legislative body has done so, the speech is not protected." (3)

The Court apparently bristled at that suggestion, stating, "First it must be emphasized that the ordinary deference a court owes to any legislative action vanishes when constitutionally protected rights are threatened. Thus we would abandon our constitutional duty if we took at face value the municipality's determination that fortunetelling is inherently deceptive and not protected."

AMICUS CURIAE: ASTROLOGY AND PHILOSOPHY

There have been no "findings of fact" before any governmental body or court, above the Municipal Court level, as to the validity or accuracy of "fortune-telling," or the ability and sincerity of fortune-tellers. These questions belong not in law or government, but in the branch of philosophy known as epistemology. Epistemology is the study of the nature, origins and limits of knowledge. It asks: What is knowledge? How do we know? How do we know that we know? What is knowable and what is unknowable? Which is truth and which is opinion? Epistemology deals with the continuing question "What are the 'ordinary processes of knowledge'?" in a profound way that the legislature and the judiciary cannot, and may not, preempt.

The amicus curiae AFAN prepared for *Azusa* stated: City of Azusa presents as fact its a priori assumption that the future cannot be forecast, and therefore attempts to do so are "inherently fraudulent." City of Los Angeles [thereby] raises questions as to the validity of knowledge and the means of apprehending truth and opinion. City of Los Angeles states its opinion (assuming 'everyone' shares it) as if it were a fact, that the proscribed practices are "totally unreliable methods" of learning. This has not been, and cannot be, determined in a court of law. As the Appellate court demonstrated "... scientists at major universities, as well as philosophers, are actively engaged in the question of can we learn through more than the five physical senses."⁽⁴⁾ If those experts whose careers are dedicated to discovering the limits of the human mind are undecided, how can the City... hope to decide the issue by either decree or trial testimony? Retrial would air the opinions of "experts" on matters of opinion about which there can only be opinions. As Mortimer J. Adler states, "Reasonable men can agree wherever knowledge is possible, but there are many matters about which even reasonable men can only entertain opinions." (see [appendix](#))

As long as competent investigators in the field disagree, as they do, on what constitutes evidence, and as long as opinion and philosophical prejudice masquerade as fact, as long as men and women continue to ask questions about the nature of reality and of knowledge -- as long as there is philosophy -- the efficacy of fortunetelling is an open question that neither the courts nor municipalities are at liberty to decide.

Astrology is the philosophy that postulates a relationship between relevant celestial phenomena and/or processes and certain terrestrial affairs. Astrology fits perfectly within the (*Encyclopaedia Britannica*) definition of philosophy: "The efforts of man to

reflect deeply in a rational, methodical, and systematic way upon those aspects of experience that are of the greatest concern to man."

The Court recognized implicitly, that, "Philosophical systems are never definitively proven false; they are simply discarded or put aside for future use... [as] a continuing source of philosophical inspiration and suggestiveness to those who philosophize in any succeeding age."[\(8\)](#)

The Supreme Court re-affirmed the decree that: "under the First Amendment there is no such thing as a false idea." [\(9\)](#) The Appellate Court also ruled that "One need not have a scientific basis for a belief in order to have a constitutional right to utter speech based on that belief; belief may be so absurd as to be unworthy of scientific investigation, yet be an appropriate subject of constitutionally protected speech." [\(4\)](#)

These rulings echo the sentiments of the eminent American philosopher William James. In *Will to Believe*, (1897) he said, in effect that "Men have the right to believe even in the face of inconclusive evidence and that, since knowledge is an instrument for the sake of life, the true test of a belief is the practical consequences that it entails."[\(8\)](#) Astrology has withstood this test by people from all walks of life, and in every culture, throughout, and even prior to, recorded history. After food, sex and politics, astrology is mankind's oldest fascination.

LEGAL OPINION

In *Azusa*, the California Supreme Court quoted: "Predictions of the future have been characterized as expressions of opinion, not actionable unless the speaker knows the opinion is unwarranted or induces reliance on the opinion as if it were an expression of fact."[\(10\)](#) The Court then stated: "It must be conceded that many persons practicing the 'art' of fortunetelling are engaging in fraudulent activity. Many fortunetellers have no belief in their powers to predict the future. If such persons obtain consideration for their services, the activity could be deemed fraudulent; their statements would be false statements of fact, for they are not expressing what they truly believe will happen in the future."

Statistically, the number, or percentage, of fraudulent "fortune-tellers," is unknown, and we must assume it is quite low. In 1974, California recorded -- statewide -- less than two dozen cases of fraudulent fortunetelling, and the state no longer keeps an accounting of these few offenses.

What is obvious, given the large number of practicing astrologers, psychics and metaphysicians (and their membership in professional associations) is that, as the Court continues, "... it is also true that some persons believe they possess the power to predict what has not yet come to pass. When such persons impart their beliefs to

others, they are not acting fraudulently; they are communicating opinions which, however dubious, are unquestionably protected by the Constitution." (1) It should also be obvious that the opinions of many professional astrologers are not so dubious, given the positive results their clients increasingly recount, as reported in numerous newspapers such as the highly reputable *The Wall Street Journal*, *The New York Times* and others

It is important to note that the Uniform Criminal Code does not criminalize astrology. There are no Federal statutes that restrict astrology. The only known mention of astrology in Federal documents is in the Department of Labor's *Dictionary of Occupational Titles*:

ASTROLOGER: Prepares and analyzes horoscopes to advise clients regarding future trends and events: prepares horoscopes by computing the positions of planets, their relationship to each other and the zodiacal signs, based on factors, such as time and place subject was born. Analyzes horoscope to advise clients, such as person or company, regarding conditions which lie ahead, course of action to follow, and probability of success or failure of that action.

It is not so obvious to many that many astrologers simply do not predict. Whether they consider they can or not, they prefer not to. In their professional practices, many astrologers emphasize counseling regarding inherent qualities and tendencies and current conditions, to the exclusion of actual prediction.

In spite of assuming that occult fraud was a more pervasive problem than it is, the California Supreme Court cited the United States Supreme Court ruling: "precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.(11) Regulation 'Whether aimed at fraud or other abuses, must not trespass upon the domain set apart for free speech and assembly.' (12) Regulation is suspect, therefore, if it prohibits protected expression, even though it guards the public from fraud."

Putting protection of the First Amendment (where it belongs) above making easier the jobs of legislatures, city councils, and police departments, the Court ruled "'Mere legislative preference for one rather than another means of combating substantive evils' is not sufficient to justify an overbroad ordinance. It is irrelevant that punishing fraud may be less convenient than prohibiting all situations in which a potential fraud exists."

The Oregon Appellate court in *Marks v. City of Roseburg* (13) held similarly that, "Laws must focus on proscribing the pursuit or accomplishment of forbidden results rather than on the suppression of speech or writing either as an end in itself or as the means to some other legislative end."

THE COURT'S CONCLUSION

In summation, the California Supreme Court in *Azusa* stated that the state statute prohibiting fraudulent fortunetelling (Penal Code section 332) was valid and sufficient to protect the public interest. "Thus there are methods to prevent fraudulent fortunetelling that would impose less drastic restriction on protected speech. Any marginal interest the City may have in a more complete and convenient regulation in this area by a total ban on fortunetelling for compensation is outweighed by the interest in free and open speech on all subjects."

"Therefore the (Azusa) ordinance fails both the least drastic means test and the balancing of interests tests. Before us now is an enactment that is invalid in its essence."

WHAT CITIES CAN AND CANNOT DO

No city in California can ban astrology, or the related and unrelated metaphysical practices with which it was previously outlawed. Equally, cities cannot unduly restrict or overly regulate any metaphysically based speech about character or about the future. Cities in all other states will soon have to deal with the same question of whether and how to regulate "fortune-telling." They will in the process have to consider the California Supreme Courts persuasive arguments, and the extensive list of controlling federal precedents cited in *Azusa*. What can cities do? Here are some of the options many cities have tried prior and subsequent to astrology's liberation, and the problems with each of them:

Business License Fees of up to \$100 per day:

This is clearly an attempt to enact a de facto ban on esoteric practices. It is impermissible because it violates the Fourteenth Amendment's equal protection clause; it is "differential taxation." Fees must be the same for similar businesses, judged on conduct, not content. This attempt is manifestly an impermissible "content-based restriction" of Free Speech.

Special Classifications:

Creating a special classification such as "Occult Arts" or requiring only "Fortune-tellers" to undergo fingerprinting, mug shots, or police background checks and submit to complex and time-consuming hearings also violates the equal protection clause. Astrologers and other metaphysical consultants must be fairly classed with mundane consultants, such as analysts, attorneys, clergy, counsellors, and brokers, i.e., by nature of business rather than content of speech

Zoning Restrictions:

By creating "white-light districts" to concentrate occultists, (in industrial areas?! or just

off the main streets) or mandating a certain separation from each other and from churches and schools, the cities are in violation of the equal protection clause of the U.S. Constitution. Zoning attempts would fail to meet the standard of serving a "compelling state interest".

Bonding:

Many cities have resorted to requiring "fortune-tellers" to post a surety bond "to ensure fair dealing" with the public. This amounts to prior restraint, i.e., punishment before the crime, or in effect, paying the fine before the conviction, which is clearly impermissible under the U.S. Constitution.

Additionally, almost all bonding companies refuse to issue these bonds, either saying they recognize the legal and practical flaws inherent in these ill-conceived ordinances, or implying that they accept the "gypsy fortuneteller" stereotype that astrologers and the like are "inherently fraudulent" and not good risks for bonds. Requiring a surety bond when none can be purchased, for whatever reason, amounts to instituting a de facto ban on the practice.

Two California cities, El Cerrito and San Pablo, blatantly attempted to circumvent the Court's intention by using bonding requirements to enact a de facto ban. When El Cerrito City Council members were informed that surety bonds were both unavailable and of questionable legality, they attempted to bypass the issue by requiring a personal bond that could be paid in cash to the city, and in an amount greater than a legitimate bond would cost -- even if it were available. These proposed ordinances were void for a variety of reasons.

Professional Examinations:

Atlanta, Georgia, requires astrologers to pass a professional-level certification examination before acquiring a business license. Atlanta has a City Board of Astrological Examiners that writes its own exam for astrology, which may be permissible.

Requiring that practitioners meet the competency standards established by the profession as a whole may be permissible. However, such regulation must not restrict competition nor bar entry into the profession. Cities must make allowances (in zoning requirements as well) for the normal process of business development and career change which is to begin a part-time practice from one's home before becoming a full-time practitioner.

Special Requirements:

Some cities require "fortune-tellers" to register their fee schedule with the police department, and to inform officials of any proposed changes in fees before they occur. Practitioners must also post both their fees and consumer protection notices, e.g.: "This

business is prohibited by law from requesting fees above those posted for specific services." This unequally taints a lawful and law-abiding profession.

Fortunetellers are also prohibited from accepting any property or thing of value in addition to or in lieu of fees, and from asking that such be transferred into the "safekeeping" of another. This is a gray area the courts have not directly dealt with. There may be a reasonable basis for this departure from "equal protection." These regulations may amount to prior restraint and may also constitute undue governmental interference in business practices. However, if they directly address activities that have frequently lead to fraud, they may be construed as permissible regulation. (see below)

RECOMMENDATIONS AND ACTIONS

AFAN recommends that cities follow-in-full the spirit of the *Azusa* decision, and the United States Constitution. This means that they issue business licenses to astrologers under the same standards and fees that apply to other consultants and prognosticators. This should be done under a generic heading such as "consultant" or "alternative counselor" and not under a pejorative title like "fortune-teller." Many cities have done exactly this, and have experienced no increase in fortune-telling related fraud.

Since some cities may actually have an existing problem with, or a reasonable basis to anticipate extensive problems with, fraudulent fortunetelling, special solutions may need to be developed or applied due to extenuating circumstances. This must be done with great care and with a demonstration of legislative intent to allow, and safeguard, constitutionally protected speech. A unique solution was developed in Concord, California. In response to the Appellate Court ruling re *Azusa*, and in anticipation that the California Supreme Court would uphold it, Concord repealed its archaic ordinance and eventually enacted in its place a model law that gives the public additional protection from fraudulent "fortune-telling" while permitting legitimate metaphysical forecasters to operate without undue restriction.

AFAN opposed the original redraft of the Concord ordinance, and voiced its objections in a city council hearing. Following AFAN's standard procedure in these matters, local citizens and activists from nearby communities testified as to astrology's historic role in society, its acceptance and use in everyday life, and the upstanding nature of the vast majority of amateur and professional astrologers.

AFAN's attorney then asserted that "serious constitutional questions" were raised by the proposed ordinance. He asked for, and was granted, time to prepare a formal legal brief, which was to be submitted to the city, rather than filed in court, so the parties could negotiate an equitable solution to the problem.

Several weeks of conferring with AFAN Legal Information Committee members and the attorney led to the unique solution of redefining "fortune-telling." Now, in Concord, the protected act of speaking about the future is not regulated. However, the questionable practice of making claims to be able to change the future for another by means of occult powers or metaphysical practices, while not banned, is regulated. The present ordinance directly addresses practices that either are fraudulent or directly lead to defrauding the public. Persons who "purport to influence future events" must undergo a police investigation and post a bond before obtaining a "fortune-tellers" permit, which requires the posting of fees and notices as described above. Because this ordinance is carefully drafted and narrowly targeted to practices rather than speech, it could withstand a challenge based on California or U.S. Constitutional issues.

AFAN offers the Concord ordinance as a model of effective legislation that protects the rights of the public while respecting the rights of astrologers and metaphysicians. AFAN and its core of dedicated activists stand ready to work diligently for justice for astrologers and respect for astrology anywhere, anytime, and likewise to work to protect the public from fraud and incompetence in astrology. AFAN's activist Networkers and several committees (most notably, Legal Information, Education and Professional Development, Media Watch, and Coordinators) are committed to these ends.

RESOURCES

There are experienced LIC members around the country ready to contribute their know-how to protect their colleagues' rights to believe in astrology and to freely express their opinions about the future based on the stellar philosophy. For legal information support, legislative action advice, and referral to local committee members, contact the Legal Information Committee at legal@afan.org.

You may also contact any member of AFAN's [Steering Committee](#) or AFAN's Regional and Local Coordinators or Voice Mail: 1-800-578-AFAN. For a current list of Steering Committee members and Local Coordinators, please see the AFAN website at www.afan.org.

Additional copies of "The Law and Astrology" in printed format are available from the LIC for \$5. (payable to AFAN) AFAN's legal action and lobbying guide: "What To Do In A Legal Crisis" will be included at no additional cost.

AFAN produces and distributes a comprehensive Legal Information - Legislative Action Kit (LI/LAK). This document is the primary tool Networkers have used to win AFAN's legal and legislative victories. It contains good, bad, and mediocre ordinances, the relevant case law, selected briefs, sample letters, and the legal action and lobbying guide: "What To Do In A Legal Crisis." The LI/LAK is available for \$25 (payable to AFAN)

APPENDIX: TABLE OF AUTHORITIES

- (1) *Spiritual Psychic Science Church of Truth, Inc., et. al. v City of Azusa L.A.* 31926 [see 201 Cal.Rptr.852 (Cal.App.2Dist. 1984) for extensive cites not listed below]
- (2) *Stergo v. City of Highland Heights, OH*, United States District Court, N.D. Ohio July 31, 1984, No. C80-1910)
- (3) in re *Bartha* (1976) 63 cal. App.3d 584
- (4) 201 Cal.Rptr.852 (Cal.App.2Dist. 1984)
- (5) *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council Inc.* (1976) 425 U.S. 748, 761 [etc.]
- (6) *Murdock v. Pennsylvania* (1943) U.S. 105, 111
- (7) In re *Giannini* (1968) 69 Cal.2d 563, 569-570 395 U.S. 910
- (8) Albert W. Levi, "History of Western Philosophy," *The New Encyclopaedia Britannica*, 1979.
- (9) *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-340
- (10) *Richard P. v. Vista Del Mar Child Care Service* (1980) 106Cal.App.3d 860, 865-866.
- (11) *N.A.A.C.P. v. Belton*, 371 U.S. 415, 438, etc.
- (12) *Thomas v. Collins*, 323 U.S. 516, 532, etc.
- (13) *Marks v. City of Roseburg* 65 Or. App. 102, 670 P.2d 201 (1983)

ADDITIONAL REFERENCES

(used generally in the preparation of this paper and specifically in AFAN's amicus curiae in re *Azusa*)

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Robert Maynard Hutchins, "The Great Conversation: The Substance of a Liberal Education"

Mortimer J. Adler, *The Great Ideas: A Syntopicon of the Great Books of the Western World*

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What to Do in a Legal Crisis

by Jayj Jacobs

These are the proven strategies, tactics and procedures to follow in order to successfully defend against an arrest or citation for practicing astrology (or "fortune-telling"), or to over-turn an ordinance that bans or overly-restricts the practice of astrology.

Always keep complete notes throughout the process. Take accurate and thorough notes on all conversations. Be sure to ask for and record the correct name and title of the person(s) you speak to. Record their phone number, the agency or department they are with, and its address. Outline your points before making important calls.

WHO DID WHAT? TO WHOM? WHEN AND WHERE? WHY AND HOW?

1. Verify the Source

When you first hear of a crisis find out where the story originated. Go to the original source. Track down the first person involved: get first-hand information. If the story was printed in a newspaper, call and talk to the reporter. If it was a TV or radio account, call and talk to the announcer or the reporter. Be persistent, don't be put off, don't give up. If an official notice was sent, look at the original and photocopy it. At the very least have it read to you and copy it verbatim.

2. Verify the Action

Was an arrest made? Was it by the Police or Sheriff's Department? Was a citizen's complaint filed? Or, were the officers acting on their own authority, or under instructions from their superiors? Who? Was the person taken into custody? Are they still in jail? Can they, or you, or several of you raise bail?

Were they given a citation or a cease and desist order? Was it a summons or a notice to appear? From what department? For when?

Is a hearing scheduled? If so, on what day, at what time, at what address? Before which officials of what department or agency? What can you find out about these individuals (personalities, political leanings, affiliations, or aspirations, religious orientation, etc.)? Is the hearing open to the public? Do you need to sign-up or schedule an appearance beforehand? Do so if you can. Do you need to present a petition or papers in writing? Can you? Is it possible/advisable to file formal legal papers at the hearing? What

agency initiated the action? Is this the same one, or was it transferred to the one holding the hearing? What level of government -- City, County, Regional, State -- is involved?

WHAT'S NEXT? BE CERTAIN YOU UNDERSTAND THE PROCESS, PROCEDURE & TIME-TABLE

3. Contact AFAN

Contact your local and/or regional area Coordinator. Contact any local members of the Legal Information Committee. The coordinator should know who in your area has legal information, and experience in activism and organizing. Contact the Chair of the LIC: legal@afan.org.

4. Get Legal Information

Ask for a copy of AFAN's pamphlet "The Law and Astrology" which is available from the LIC for \$2, or which you can view and download [here](#). Check first if someone locally already has a copy. Better yet, order one now, before you need it. Get copies of the ordinance(s) invoked. Go to City Hall and ask for them, or go to the County Law Library for copies. Ask for information and assistance. The clerks are there to help you, they won't hassle you or take your name. If someone has been arrested (which is rare) call the LIC chair immediately (with as much complete information as possible) and ask for a copy of AFAN's Legal Information - Legislative Action Kit (LI-LAK). It is available free to anyone facing charges, or for \$25.

5. Get Legal Assistance

Contact your attorney. If you do not have one, find out who in the astrological community is an attorney, or works for one. Ask for pro bono representation. Contact any Legal Aides, Paralegals, or legal secretaries with ties to the astrological community you can locate. They can be very helpful. Contact the local or nearest chapter of the American Civil Liberties Union (ACLU). This is a matter of infringement on Constitutional rights: that's what they deal with. Ask for help. Other chapters have helped astrologers before. Contact the attorney referral service of your local Bar Association. Tell them the situation and ask for information and advice. You can also get a half-hour consultation with a specialist for around \$25, and s/he may want to take the case. Contact the "Department of Human Rights," the "Ombudsman" or the equivalent in your state. This is a human rights/civil rights issue.

6. Mobilize the Community

Call your AFAN coordinator. You or they should contact the astrology groups in the area. Have them call their members. Call all the astrologers you know. Ask them to call their friends and clients, call yours.

ASK EVERYONE TO CALL THE AGENCY INVOLVED AND PROTEST

The more calls you make, the more influence you have. Find out who is in charge of the agency or department. The organizer (coordinator or whoever is appropriate) should call and ask for him by name. Sound like you expect him to talk to you, as if he were expecting your call. Offer to discuss a resolution to the issue. If you can't get through, ask for his aide for legal issues. Introduce yourself, even to the receptionist. Anonymous calls aren't worth much. If you have membership or titles within any organization use them.

Whatever the agency is, call your elected representatives, i.e. City Council or County Board and protest to them. Their jobs are on the line. Be civil and yet express emotion. Project controlled outrage, indignation, and/or something like, "how dare you..." or "you can't be serious," or "this is ridiculous," or just "I object!"

If an arrest has been made call the District Attorney or County Counsel and ask that charges be dropped. Ask for a meeting. You may not get it but it expresses serious commitment and they will likely respond with more willingness to talk on the phone. Use the Legal Information/Legislative Action Kit. Tell them about other cities and AFAN's successes. Say we are a national organization, this is part of a national campaign to reform or repeal these antiquated laws. Make notes of points to be covered before making any important calls. Get all your questions answered, make all your points. Be sure to get their points. Do your best to understand their point of view and their values. Discuss do not debate! You can only sell or enroll someone else based on their values. People "buy" because of the value or pay-off they see for themselves, and never because of why you would buy. Listen to how they are listening to you. Pay attention to them, and how they react or respond to you. Be with them.

7. Manage the Media

Call the local newspapers, radio and TV stations. Ask them to cover the story. Tell your side calmly, succinctly, quotably. Ask all the stations for "Free Speech" airtime. Write "Letters to the Editor." Keep them short and to the point. Charges that the bureaucrats and police are wasting their time and our money usually get published. Try different approaches. Write several letters. Set up a letter-writing campaign. Tell it from your

point of view: put the proper "spin" on the story. Define the issues for them: Free Speech, equal protection, free assembly.

8. Set Up a Private Meeting

Much can be accomplished in private, away from the glare of the TV lights, out of public scrutiny, without the temptation to grandstand and without the need to look good (in control, informed, etc.) in public. Come prepared, as if for a hearing (below). Contact: Sympathetic and influential Council members. The City/County Attorney; s/he advises as to the proper form and structure -- and constitutionality -- of ordinances. The District Attorney; s/he decides which cases to prosecute, plea bargain, and which charges or cases to drop. The Police Chief or Sheriff. Other possible contacts: Judicial review or ordinance review committees, The Presiding Judge.

9. Organize for the Hearing

Meet beforehand. Map out a strategy. Plan your presentation. It is best if several people make short presentations, and one person acts as organizer/spokesperson. Their job is to introduce the issue, stating the main points that each person will address, then sum it up at the end. Get everyone, including friends, family and clients, to show up at the hearing. They count bodies, but they do not take names. Dress for Success. Traditional with a little flair, but no baubles, bangles, beads or jeans. Pick your most articulate people to testify. Stay calm, be dignified, rational, respectful. Treat the hearing like a business meeting. Present yourselves as responsible members of the community, remind them that you are. Come prepared. Have your talks outlined. Prepare material to be submitted. Use the LI/LAK. Ask for what you want: Your Rights. Suggest alternatives, give them options. ALWAYS give them a way out, a way to win or save face. Support their desire to protect the public, you share it. Suggest a better alternative, a more direct, fairer approach. Don't give up. Don't be too impatient. Councils often postpone matters and schedule second, even third hearings. Even if you lose the first hearing, you can usually appeal. In the meantime you can lobby behind the scenes. This is usually what matters. A delay will usually work to your advantage. Repeat #6, above, as appropriate.

10. Celebrate and Share the Victory

11. Report to the Community

Make sure the media reports the outcome (or progress) accurately. Volunteer for an interview. Call or write the stations and the papers. Put the final "spin" on the story.

Contact AFAN's Legal Information Committee (legal@afan.org) and our Newsletter Editor (publications@afan.org). Report on what happened, what worked and what didn't, and what is next. Others need to know about what you have done and to learn from your experiences.

Complete Text of AFAN LIC Presentation to Denver Public Safety Committee

**The Issue of Unconstitutionality:
Denver's Violation of the First Amendment Protection of Free Speech
Denver Municipal Code, Section 38, Paragraph 100**

PRESENTATION TO THE SAFETY & PERSONNEL COMMITTEE PUBLIC MEETING

Cathy Reynolds, Chair
Wednesday, September 13, 2000, 9:30 AM

Prepared by Jayj Jacobs and Carleen Thom

The issue on the agenda today involves Denver Municipal Code, Section 38, Paragraph 100, as follows:

[Sec. 38-100. Fortune telling.

It shall be unlawful for any person to ask or receive any compensation, gratuity or reward for practicing fortune telling, palmistry or clairvoyance; provided, however, that the provisions of this section as it relates to clairvoyance shall not be applicable to bona fide participation in religious worship of any legally constituted religious body which has been exempted by the United States Treasury Department under the Internal Revenue Code from paying federal income tax.

(Code 1950, Section 841.8)]

This is an archaic law (hereinafter referred to as "DMC § 38-100") which has existed in the Denver Municipal Code for 27 years, but its basis is prejudice, and stereotypes that are many decades, even centuries, old. The incident that has called our attention to this law was detailed in an August 22, 2000, Denver Post article, which described how the Denver City Police raided three metaphysical bookstores on Colfax Street in a failed attempt to arrest offenders.

We respectfully demand that the City and County of Denver submit legislation immediately for the complete repeal of DMC § 38-100. Revision or limitation cannot save the ordinance; it must be stricken from the Municipal Code. The following enumerated items will illustrate our position on the matter:

1. DMC § 38-100 is content-based restriction of speech, prohibited by the First Amendment to the Constitution of the United States. It bans certain opinions from the Marketplace of Ideas, from the discourse that shapes the society of a free people, by making it unlawful to charge for those professional insights that have a metaphysical or psychic foundation. That the practitioners charge for their interpretations does not reduce those opinions to mere 'Commercial Speech' - Thomas Paine, the father of the American Revolution, charged for copies of "Common Sense." Speech may be sold, and still be "Fully Protected."

2. The ordinance is vague, even misleading. Fortune telling is not properly defined. Is it crystal ball reading, as illustrated in many cartoons? Is it card reading? If it refers to card reading, then is it tarot cards or playing cards? Astrology is sometimes mislabeled fortune telling; is it also prohibited - by false definition? Does the language of the ordinance mean any prediction of the future, such as economic, political or meteorological forecasts? Is only the forecasting of "fortune" prohibited? What about the forecasting of "fate"? Fortune and fate are very different concepts from a philosophical perspective. How can a reasonable police officer or any reasonable person determine from the language of DMC § 38-100, which of these behaviors is prohibited?

3. In addition to being vague, the ordinance is overly selective. It singles out palmistry and clairvoyance. Does Denver intend to proscribe only those mantic arts and endorse in their place chieromancy, phrenology, clairaudience, clairsentience, and psychometry? Does Denver endorse all other psychic, metaphysical disciplines and counseling practices by virtue of their specific exclusion in DMC § 38-100? In fact, the Body & Soul Conference of 1998 was held in Denver at the Adams Mark Hotel. Twenty-five hundred people attended the highly publicized event, pouring thousands of dollars into Denver's economy. They also paid money to attend James Van Praag's demonstration in which he communicates with "departed souls." Since Denver failed to send in the SWAT team to incapacitate him, should we then assume that Denver does indeed endorse Mr. Van Praag's particular version of spiritual advice for compensation?

4. The City and County of Denver has limited resources for fighting serious and violent crime. The harassment of metaphysical counselors, spiritual advisors, and other similarly situated persons is an unacceptable expenditure of the city's time, funds and other resources.

5. There is no compelling State interest in suppressing speech of this type. Denver has not shown -- by any scientific method or by any socially important way -- that the

practice of metaphysical counselors (which is nothing more than speaking their opinion) materially harms its citizens.

6. Tax-paying, voting, property-owning citizens desire the services of astrologers and psychics. Although many metaphysical counselors are ethically bound to protect the privacy of their clients, they will tell you that their clients consist of politicians, attorneys, judges, doctors, scientists (yes, scientists), teachers, brokers, corporate executives and other people from so-called conservative professions and all walks of life. We have no doubt that there may be people on this committee or in this room who have sought the services of the very counselors that Denver seeks to incarcerate. These consumers require the same Right of Association and protection of Free Speech and willingly pay fees for these services at rates that are fairly determined in the market. The national media has reported that 46% of the people in this country believe that the practice of astrology has merit. That translates to well over 150 million possible consumers. There are more believers than there are voters.

7. Other remedies, Constitutional ones, exist to combat the alleged ills that this poorly crafted ordinance is presumably designed to address. Laws that infringe on speech must be targeted and narrowly focused. They must be the "least drastic means" and have the minimum possible impact on speech. This ordinance fails that Supreme Court mandated test, and is thereby invalid and void.

8. Mere "police preference" for a law cannot be asserted to trample the right to free speech and open discourse. The expression of opinion, including metaphysical opinion for compensation or otherwise, is clearly protected speech. Law enforcement professionals must enforce the law when a violation has actually occurred. They may not exert "prior restraint" through laws that address speech, especially when that speech may only be peripherally related or inferred to be associated with crimes of fraud, misrepresentation or larceny.

9. The government, at any level, has no business inserting itself into the marketplace of ideas -- thereby endorsing some ideas, arts, and philosophies while denigrating others. The TV personality, Dr. Laura, has maligned entire classes of persons in this country, freely conducts her radio and television enterprises, and is well-paid for her opinions. The Nazi Party may demonstrate, hold seminars and collect money for its activities and do so with impunity. If their offensive speech is protected then certainly our uncommon speech is also protected. Denver cannot limit its citizens to paying for psychological counseling from Freudian psychologists and not allow Jungian ones. Denver may not permit the practice of psychology but then categorically deny the practice of astrology, which Jung called "the psychological knowledge of antiquity." Denver may not order the legality of Democratic consultants and yet prohibit Republican consultants from charging fees merely because Denver believes Republican opinions are false. The First Amendment specifically prohibits the City and County of Denver from legislating its biases and thereby muzzling its citizens.

10. You all swore an oath to uphold and defend the Constitution of the United States of America, which obviously incorporates the Bill of Rights. We trust our elected officials to do so. That oath requires that you not let stand, and immediately repeal, an ordinance, DMC § 38- 100, which is in violation of our Constitution, and which endangers our basic protected freedoms.

Respectfully submitted
Carleen Thom

For herself, and for Jayj Jacobs, Chair of the Legal Information Committee, Association For Astrological Networking (AFAN)

With the request that this document be entered into the minutes of this meeting of the Public Safety and Personnel Committee and into the public record

State-by-state list of actions concerning the practice of astrology

- Alabama:** Blocked enforcement of Huntsville ordinance. Mobile.
- Alaska:** Astrology legal.
- Arizona:** Pre-AFAN repeal.
- Arkansas:** - -
- California:** Appellate and Supreme Court Azusa decisions overturn ordinances and legalize astrology, etc. Case dismissed against arrested astrologer Shirley Sunderbruch after AFAN court testimony (and Azusa decision). Blocked reenactment in L.A. County and new ordinance in L.A. City. Repealed ordinances in Salinas, Chula Vista, Redondo Beach, Pleasant Hill, etc. Modified ordinances in San Pablo, El Cerrito, Pacifica. Model ordinance enacted in Concord: astrology, etc., legal, persons who claim to alter behavior or the future require bond and license. Restrictive Burbank licensing ordinance (\$200 fee) enacted over AFAN, community protests. Sued Albany in federal district court; city repealed ordinance and enacted AFAN-drafted "Alternative Consultants" business license ordinance.
- Colorado:** Blocked omnibus counseling bill. Blocked ordinance in Boulder.
- Connecticut:** Astrology legal. Fortune-telling legalized 1993.
- Delaware:** - -
- District of Columbia:** - -
- Florida:** Overturned or revised ordinances in Tampa, St. Petersburg, Gulfport (after federal court filing), Ft. Lauderdale, Satellite City and Brevard County.
- Georgia:** Astrology license exam in Atlanta. ACLU files for injunctive relief in federal court: ordinances repealed in surrounding area (to avoid court ruling).

- Hawaii:** Astrology Legal. Challenged University of Hawaii policy against astrology, etc.
- Idaho:** - -
- Illinois:** Astrology legal. AFAN fighting proposed zoning restrictions in Elmhurst.
- Indiana:** - -
- Iowa:** - -
- Kansas:** No state statute. AFAN Challenging ordinance in Topeka.
- Kentucky:** - -
- Louisiana:** - -
- Maine:** - -
- Maryland:** Overturned ordinance in Baltimore.
- Massachusetts** Overturned ordinance in Arlington.
- Michigan:** Successfully challenged state statute: repeal of statute passed and signed; charges dropped in Bay City; Battle Creek ordinance fought in court after arrests at restaurant "Psychic Night."
- Minnesota:** - -
- Mississippi:** - -
- Missouri:** No state statute. Sikeston ordinance repealed. Charges dismissed and ordinance overturned in Independence. Action pending in St. Louis.
- Montana:** - -
- Nebraska:** - -
- Nevada:** - -
- New Hampshire:** Ordinances overturned.

- New Jersey:** Reenactment of statute blocked by AFAN, NCGR in Senate testimony. Ordinance blocked in Ramsey.
- New Mexico:** - -
- New York:** Lawsuit filed after arrests in Yonkers.
- North Carolina:** - -
- North Dakota:** - -
- Ohio:** Legalized by federal court ruling (N. District of Ohio) in Highland Heights case. Ordinance blocked in Toledo.
- Oklahoma:** Oklahoma City ordinance challenged/repealed.
- Oregon:** Appellate ruling Marks v. City of Roseberg legalizes astrology, etc. Local ordinances repealed in Ashland, Eugene, Springfield, Bend, Salem, etc.
- Pennsylvania:** Repeal of state statute stalled by division in astrology, etc., community in spite of legislators' support.
- Rhode Island:** - -
- South Carolina:** - -
- South Dakota:** - -
- Tennessee:** - -
- Texas:** Ordinance challenged in Austin.
- Utah:** - -
- Vermont:** - -
- Virginia:** - -
- Washington:** State statute repealed. Astrology, etc., exempted from omnibus counseling bill.
- West Virginia:** - -
- Wisconsin:** Ordinance repealed in West Allis. Ordinance blocked in Milwaukee.

Wyoming: - -