

2006 ANNUAL REPORT

INSTITUTE FOR THE
ADVANCEMENT
OF THE AMERICAN
LEGAL SYSTEM
UNIVERSITY OF DENVER

Re-building Trust in America's Courts





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"We should remake
our system with a new
commitment to
openness and public
service—a philosophy
and a process the
Institute calls building
'Transparent Courthouses.'
This is nothing short of a
paradigm shift, calling
not only for transparency of
process but also for
an overhaul of mindset in
the court system."

Rebecca Love Kourlis

Denver Post 11/06





Message from

THE EXECUTIVE DIRECTOR

I am pleased to welcome you and to express my thanks for your interest in the Institute for the Advancement of the American Legal System (IAALS) at the University of Denver.

The Institute opened its doors on January 17, 2006 as the brainchild of the University's Chancellor Emeritus Daniel Ritchie, local attorney and Bar leader John Moye, and United States District Court Judge Richard Matsch. I am also a founding member of the Institute and previously served for almost twenty years as a Colorado Supreme Court Justice and trial court judge.

Most of us have credentials as court and legal system veterans. This experience, coupled with the constant din of dissatisfaction voiced by our families, colleagues, neighbors and even strangers has reinforced our growing conviction that the legal system in America is indeed in crisis. Horror stories of cases involving staggering cost and delay have also become commonplace. But perhaps most disturbing of all is the realization that so many people have become resigned to the situation, feeling helpless in the face of an inflexible and entrenched system.

Our Institute was founded on a commitment to work toward a restoration of trust in our legal system for all Americans. In our role as a national, non-partisan legal reform group we have dedicated ourselves to targeting dysfunctional areas of the system and offering thoughtful recommendations for substantive reform.

Although we are a young organization, we have been gratified by the enthusiastic response to our mission and early initiatives. In the pages that follow you will find an overview of our journey to date. I appreciate the opportunity to share our vision and plans with you.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Love Kourlis". The signature is fluid and cursive.

Rebecca Love Kourlis



America's Judiciary under Siege

CONTEXT FOR REFORM

In 2006, a steady stream of headlines trumpeting a succession of attacks on America's judiciary surged to torrential levels during the mid-term elections in November. From coast to coast, these stories described sensational proposals to fire, impeach, recall or even jail some of the nation's judges.

- *Newsweek/MSNBC* "Get the Judges"
- *CNN* "State Ballot Measures Challenge Judge's Power"
- *Washington Post.com* "Bench Conference—Making Judges More Accountable"
- *Los Angeles Times* "Call of the West—Rein in the Judges"

In the run-up to the election, the Institute assumed a public role in the national debate over these punitive proposals. We felt obligated to refocus attention from the overblown rhetoric we were hearing to a more constructive conversation. That said, we had no intention of being apologists for the courts. We believe that Americans live in an era of unprecedented disillusionment with the legal system, disillusionment that spreads across demographic and geographic boundaries. Unfortunately, there is ample evidence to support that belief.

According to a 2005 survey by the American Bar Association, "more than half of Americans are angry and disappointed with the nation's judiciary." The same poll asked respondents to react to a statement by a congressman who called judges "arrogant, out-of-control and unaccountable." Twenty-one percent of those polled strongly agreed with this statement and another 25 percent somewhat agreed. Surveys like this are sobering, but they serve an important function by underscoring the urgent need to work for change.

"Even former U.S. Supreme Court Justice Sandra Day O'Connor acknowledged the disturbing groundswell of resentment against the courts when she admitted to sensing 'increasing indicators of unhappiness with judges and it was erupting all over the country.'"

CNN 11/06

Reform by Re-tooling the System

IAALS PROJECTS



“It is the most comprehensive treatment of the subject of judicial evaluation anywhere.”

Neal Ellis, Jr.

Chairman,

North Carolina Bar

Association;

Committee on Judicial

Performance Evaluation

During the first six months of 2006, the Institute’s leadership focused its energies on intensive research and outreach across the country to evaluate America’s legal reform universe in order to refine its own mission, programs and organizational structure. As a part of our fact-finding efforts, we traveled extensively to meet with other groups and individuals, and we hosted focus groups with attorneys from various areas of practice. This process also paved the way for the addition of staff positions in the key areas of research and strategic communications.

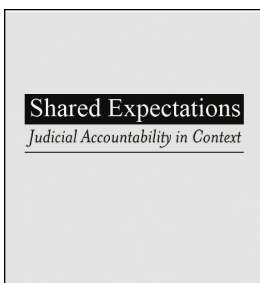
By late September and with the resources of a full-time staff of five, preparations were well underway for the release of the Institute's first report.

Entitled *Shared Expectations: Judicial Accountability in Context*, this national report features an exhaustive survey of judicial performance evaluation standards and showcases the best practices of programs in the nation.

The main premise of *Shared Expectations* is that judicial accountability and judicial independence can be compatible when fairness of the process—not the popularity of a judge’s decisions—is measured. Given the current climate of controversy over this issue, the report has been widely lauded for its relevance and reasoned analysis. Since its release in October, the Institute has received requests for copies from 75% of the states.

Shortly after the release of this work, the Institute published a companion report entitled, *Transparent Courthouse™: A Blueprint for Judicial Performance Evaluation*. This report provides a detailed guide for courts interested in establishing a robust judicial performance program or in improving their existing process. It has also been touted as a ‘must-have tool box’ for jurisdictions nationwide.

The Institute is using the trademarked concept of a Transparent Courthouse™ not only as a platform upon which to organize current and future projects, but also as a rallying cry, calling for a new openness and accountability in America’s courts.



Commitment to Action

IMPLEMENTATION & POLICY REFORM

Although we are pleased by the overwhelmingly positive response to our release of *Shared Expectations* and the *Transparent Courthouse*™ reports, our work on these issues is far from over.

We have been contacted by several courts or existing judicial performance commissions requesting follow-up. Based on their feedback, we understand that there are jurisdictions looking at reframing or implementing judicial performance evaluation for whom our work is a crucial guide. Given this, we are committed to supporting these entities by providing further assistance and resources.

Throughout the year, Institute staff have also made presentations at forums sponsored by leading national organizations such as The Performance Institute *Summit on Performance Management for the Judiciary* and the U.S. Chamber of Commerce *Conference on the State of the American Judiciary*.

The Institute is strongly committed to being a voice for legal and judicial policy reform. In 2006, we shared our research and expertise with key constituents in two state legislatures and have provided substantive input to other entities seeking judicial policy change.

This year, the Executive Director offered written testimony to the New York Assembly Committee on the Judiciary to provide background and analysis on the benefits of aligning strong judicial performance evaluation standards with an appointive process. New York's method for selecting its judges was ruled unconstitutional and the Institute has been pleased to make recommendations that may aid them in choosing a viable, new system.

Following is a partial list of leading organizations that have requested IAALS reports:

American Bar Association

American Judicature Society

CNN News

Federal Bar Association

National Center for State Courts

New York State Assembly—Committee on the Judiciary

New York Times

NYU School of Law

U.S. Chamber of Commerce

University of Chicago Library

Wall Street Journal

Framing the Debate

EDUCATING THE COMMUNITY



"I think there is a foam along the top of the wave that I'd attribute to people who believe the courts are too activist. I do think that happens on occasion, but far less than the media would suggest to the average reader. When you look at the millions of cases around the country each year, the number that bubble up to the appellate system where the result could be political is really de minimis."

Rebecca Love Kourlis

Newsweek 10/06

The media have played a major role in reinforcing the popular notion that the rising tide of resentment against the judiciary stems mainly from reaction to high-profile cases such as the Terry Schiavo matter or *Bush v. Gore*.

Our research has demonstrated that Americans are angry because their *personal contact* with the system, whether it be in small claims or traffic or divorce court, often proves to be a kind of trial by fire. Ultimately, most Americans feel that the legal system costs too much, takes too much time and produces inconsistent results.

But we also believe that the media can play a crucial role in focusing the national dialogue on these issues in a more constructive way. As a consequence, the Institute devoted considerable resources in 2006 to connect with journalists on a *proactive* basis to provide them with the tools they need to tell the story of court system dysfunction and proposals for reform.

We have been gratified by their willingness not only to listen, but also to write about a subject that seems overwhelming, complex and even arcane at times to the general public.

Since its inception, over one hundred stories have been written that cite the Institute. Well over half of that coverage has included descriptions of our mission and initiatives, and has showcased our Executive Director as a national voice for legal reform.

In addition to a program of strategic media relations, the Institute began to host a series of signature forums to bring together respected members of America's judiciary, as well as celebrated experts in academia, government and public policy.

The Institute's inaugural forum featured respected U.S. District Court Judge Richard Matsch and Philip Howard, author of *The Death of Common Sense* and *The Collapse of the Common Good*, speaking on "The Appropriate Role of the Legal System in American Society."

LOOKING AHEAD TO 2007

Although the Institute has rapidly emerged as a credible, national voice for legal reform, we understand that our journey has really just begun. In the coming year, we plan to capitalize on the momentum achieved in 2006, while also making strategic choices about resource allocation.

We will continue the important work begun this year to develop and disseminate ground-breaking research on issues that address reform of our legal culture and system in America. The Institute will also continue to work directly with jurisdictions and other entities that seek to strengthen judicial selection and appropriate accountability on the state level.

Educating all Americans about the true role and relevance of the courts in their lives is a crucial part of the Institute's mandate moving forward, as is our willingness to take a public stance on the issue of increasing threats to our judiciary and the need to focus the spotlight on viable solutions.

Our ambitious 2006 agenda has provided a strong foundation for the Institute's concept of a Transparent Courthouse™. Looking ahead, that foundation will be further strengthened by a host of *new* initiatives in 2007.

Following is an overview of plans as of February 2007 when this report was published:

"People believe the system is inefficient, extraordinarily costly, unpredictable and slow. I think the other general cause is a pretty widespread lack of understanding about what courts are supposed to do..."

Rebecca Love Kourlis

Newsweek-MSNBC 10/06



“We should absolutely
be expecting
accountability...
They need to be
accountable for being
impartial, for not
discriminating against
people on the basis of
race or socioeconomic
status or even on the
basis of who their
lawyer is...”

Rebecca Love Kourlis

CNN 11/06

Judicial and Court Performance Evaluation Efforts

- Institute support for merit selection of judges in the national debate over how states pick their judges, and the role of judicial performance evaluation in that equation
- Institute-authored article to be published in the national journal, *Judicature*, on the need for robust judicial performance evaluation in every jurisdiction
- Supporting judicial performance evaluation implementation across the country, including improvements in Colorado
- Endorsing measurements for a civil justice system that allow baseline and comparative evaluation of courts across the nation
- Undertaking a study of case management practices in participating federal district courts around the nation

Civil Rules Reforms

- April Judicial Leadership Roundtable on civil justice reform in America, featuring Lord Harry Woolf—the architect of major modern civil justice reform in England
- Institute primer on issues surrounding electronic discovery
- Institute paper on reforming a family law rule in Colorado and the implications for families and the court system

Continuing to Assess the Problem

- Compiling data regarding actual costs of litigation and preparing a report for publication
- Undertaking a proprietary survey of alternative dispute resolution providers to determine why litigants settle cases rather than try them
- Institute Summit on case management best practices and challenges

IAALS

STAFF & BOARD OF ADVISORS

As 2006 came to a close, the Institute learned that it had been dubbed “Rookie of the Year” by a respected legal reform organization. We appreciate the recognition by our peers but believe that our early success is due to the combined efforts of our staff, Board of Advisors and extended family of supporters. We have been fortunate to attract a highly experienced staff comprised of men and women who have achieved recognition in their former roles as judges, lawyers, academics and journalists.

The Institute has also been fortunate to secure the support of an extraordinarily diverse and accomplished Board of Advisors. They have consistently provided sound strategic and tactical direction across a broad spectrum of issues.

- **E. Osborne Ayscue, Jr.**, Helms, Mulliss & Wicker
- **Justice Michael L. Bender**, Colorado Supreme Court
- **Judge Kevin S. Burke**, Hennepin County District Court
- **Chancellor Robert D. Coombe**, University of Denver
- **Thomas J. Donohue**, President and C.E.O., U.S. Chamber of Commerce
- **Philip K. Howard**, Covington and Burling; Chair, Common Good; author
- **Dean José R. Juárez, Jr.**, Sturm College of Law, University of Denver
- **James M. Lyons**, Rothgerber Johnson & Lyons LLP
- **Lynn M. Mather**, Professor of Law and Political Science, Director of the Baldy Center for Law & Social Policy, University at Buffalo Law School
- **Karen J. Mathis**, McElroy, Deutsch, Mulvaney & Carpenter LLP
- **John E. Moye**, Moye White LLP; former President, Colorado Bar Assoc.
- **Daniel L. Ritchie**, Chancellor Emeritus, University of Denver
- **Justice Patricio M. Serna**, New Mexico Supreme Court
- **Diane Gates Wallach**, business and community leader
- **Russell R. Wheeler**, President, Governance Institute of the Brookings Institution and former deputy director, Federal Judicial Center

In addition, **Senior District Judge Richard P. Matsch** of the U.S. District Court for the District of Colorado serves as a consultant to the Institute.



Front row, left to right:

*Pamela A. Gagel
Assistant Director*

*Rebecca Love Kourlis
Executive Director*

*Dallas N. Jamison
Director of Marketing
& Communications*

IAALS

STRUCTURE & FUNDING



Back row, left to right:

*Jordan M. Singer
Director of Research*

*Mac V. Danford
Policy Analyst*

*Kim A. Seidman
Office Manager*

The Institute is very proud to be a part of the University of Denver. We are housed on campus, and have the benefit of a network of staff, faculty and students at the University. In return, we are committed to participating in and enriching the life of the University in any way we can.

All staff work for the University. The Executive Director is employed by the Board of Trustees of the University, and is overseen by an Executive Committee consisting of the Chancellor and Chancellor Emeritus Daniel Ritchie. John Moye also sits on the Executive Committee. For purposes of daily operations, the Executive Director is governed by University policy and reports to the Provost.

The Institute benefits from gifts donated to the University for the use of IAALS. None of those gifts have conditions or requirements, other than accounting and fiduciary responsibility. The funds are held by the University.

Initially, the University received an operating expense grant of \$3 million from the Charles and June Gates Family Fund for the benefit of the Institute. That grant was matched by donations from eight original donors.

At present, IAALS is committed to raising an endowment that will allow its continued existence into the future. If you would like more information or have an interest in supporting the Institute's mission and work, please contact us at:

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The task of serving as a catalyst for change in the system is not one that will be completed in a year or five years or ten years. It is a commitment to the future of America's legal system. We greatly appreciate your interest and support. Thank you.



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