

2009 ANNUAL REPORT

WE MUST WORK TO FULFILL THE PROMISE OF A CIVIL JUSTICE SYSTEM
THAT IS JUST, SPEEDY AND INEXPENSIVE FOR ALL AMERICANS.



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MESSAGE FROM THE EXECUTIVE DIRECTOR



IAALS was established a little over four years ago to help make one institution—our civil justice system—the very best it can be. Our work at present centers on two areas of the system: procedural reforms that impact how civil cases are handled, and judicial selection and performance evaluation.

In the procedural area, it becomes ever more clear that the language of Rule 1 of the Federal Rules of Civil Procedure is our guidepost. We are trying to establish a system that is “just, speedy and inexpensive”—a system that is genuinely accessible. But, access is not just about getting in the front door of the courthouse—it is about being able to stay the course to a resolution on the merits or a fair settlement.

The ability to “have a day in court,” whether as an individual or a business, is threatened by a system that can be prohibitively expensive. The 72-year-old Federal Rules of Civil Procedure that guide that system can result in a bloated process that is rife with gamesmanship. What we hear from litigants around the country is that they cannot find lawyers to take smaller cases (“smaller” being defined as less than \$100,000 at issue), and that the large cases can devolve into situations where the legal fees and costs outpace the amount at issue, and where the process itself is intrusive and corrosive.

These problems can be aggravated by the electronic age. The search for the smoking gun, that one piece of evidence that might make or break a case, made sense when all of the documents relevant to a claim fit into a few cardboard boxes. Today, more and more evidence is electronic, and the courts struggle with assuring appropriate but proportional searches among hundreds of thousands of emails and text messages. The bottom line is that as long as too many Americans can’t afford the price of admission or the price of preparing a case for trial, there is no real access to our civil justice system.

The good news is that in 2009, support for reform surged to new highs. Leaders dared to challenge the entrenched, business-as-usual mentality by engaging in a passionate and increasingly public debate over legal system problems and solutions. And debate is evolving into action as judges, lawyers and court staff roll up their sleeves to undertake the nitty-gritty work of piloting reform in the real world.

The same energy is bubbling in the area of judicial selection reform. Due to a few United States Supreme Court cases and the rising costs and nastiness of judicial elections, more states are becoming receptive to change. IAALS has teamed up with Justice Sandra Day O’Connor to assist coalitions across the country.

In all of our work, we are privileged to partner with attorneys, judges, litigants, businesses and academics who are all driven by one dream—to make good on the promise of a system of justice that can be trusted by all Americans. As you will see in the pages to come, in 2009 we took some important steps to bring us closer to realizing that dream.

I deeply appreciate your interest in these important issues and in our work. Thank you.

Rebecca Love Kourlis

Rebecca Love Kourlis

STORIES FROM THE TRENCHES

The phrase “access to justice” gets bandied around quite a bit in our culture, evoking different meanings depending on where you sit. But for us, the definition is fairly straightforward. It means that any citizen with a valid claim or defense can look forward to a process that is just, speedy and inexpensive. It means that “justice” has been served, not because the case outcome necessarily benefited one litigant over another, but because the parties intuitively understood that the system worked.

Unfortunately, that’s not how many Americans feel about our system of civil justice. The process has become so bogged down in cost and delay that there is a pervasive sense on the part of everyone involved—litigants, attorneys and judges—that something has gone terribly wrong. But it is the men and women who experience our legal system as litigants, or those who never get their day in court at all, who feel the greatest disillusionment. Ultimately, those of us who strive to improve the legal system work for them. We thought it important to share some of their stories, to provide our readers with a visceral sense of what’s at stake.



“ I was admitted to a hospital and while there suffered negligence that left me physically, emotionally and financially destroyed. I approached five lawyers to see if they would take my case and was told that it would cost \$200,000. My husband and I are not wealthy people and so we couldn’t go forward. We were left with tens of thousands of dollars in expenses not covered by insurance. This experience has left me feeling not only victimized by the hospital, but by our legal system. It would bring me great closure if justice could be had, but that isn’t going to happen.”

Cindy Donovan

“ We own an automotive racing supply business and had a dispute with our landlord that we thought would be resolved in a few months, but the legal process took 2½ years. We were awarded \$100,000 but our legal fees totaled over \$130,000 so it ended up being a loss for our company. The legal system failed us because it took so long and actually damaged our business in the end. Even though we won, we lost.”

Tom & Missy Sandal

“ My wife was pregnant with our third daughter and one week before she was due we lost the baby because of some preventable complications. We contacted an attorney who said that we had a case, but were told it would cost about \$200,000 to bring the case to court—roughly what we could hope to recover in damages. Ultimately, we decided not to pursue a lawsuit. We thought that the legal system would protect us and found out that we were wrong.”

Gill Lobel

“ My father was a defendant in a civil wrongful death case. He won, but the case took 9 years and cost \$800,000 in attorney fees. He was 80 when it started and 89 when it was all over. He lost a lot, but most of all, he lost time—the most important commodity at that age. We often think back on why it took so long. The attorneys kept filing volumes and volumes of responses. In my heart of hearts, I really think some of the attorneys played the game.”

Connie Theos

CIVIL JUSTICE REFORM CHANGE THROUGH COLLABORATION

Our two-year collaboration with the American College of Trial Lawyers Task Force on Discovery and Civil Justice moved into an exciting, new phase as many of our reform recommendations morphed from theory into practice. Released in March, the two organizations' *Final Report* contained a set of 29 Principles that pushed legal system practitioners to rethink the way the business of our civil justice system should be conducted. The *Final Report* triggered a lively and constructive debate in its advocacy of change in the areas of pleadings, discovery, experts and judicial management.

Eight months later, IAALS and the Task Force released *A Roadmap for Reform: Pilot Project Rules*. This publication and a separate report released by IAALS entitled *A Roadmap for Reform: Civil Caseflow Management Guidelines* took the earlier Principles and transformed them into operational rules for jurisdictions

interested in streamlining court practices and procedures.

The debate did not go unnoticed by the media and the blogosphere. Coverage of the reports was re-published in well over 160 media outlets and referenced in scores of blogs. The publications were also cited in numerous academic papers.



Meeting of IAALS and the ACTL Task Force

MAJOR FEDERAL COURT STUDY IMPACTS REFORM RECOMMENDATIONS



The Institute's examination of nearly 8,000 civil case dockets from eight United States District Courts provided legal system practitioners and rule-makers with an extensive statistical snapshot of

civil case management practices in courts around the nation. The research was the most in-depth analysis of federal civil dockets in three decades. One of the most important conclusions found in the Institute's report on the study, entitled *Civil Case Processing in the Federal District Courts: A 21st Century Analysis*, was that 90% of requests to extend deadlines were granted in every court, even in so-called "rocket docket" jurisdictions. The data also provided convincing support for the contention that setting an early, firm trial date is associated with shorter case times overall.

This rich repository of data also informed many of the recommendations in the Institute-ACTL Task Force *Final Report*, as well as the *Roadmap for Reform: Civil Caseflow Management Guidelines*. A number of the recommendations in the *Civil Caseflow Management Guidelines* are under consideration for a possible pilot program in some Atlanta courts in 2010.



Report: Courts Need to Reform the Civil Lawsuit System



Trial Lawyers Group & Legal Think Tank Call For Sweeping Overhaul of Civil Rules



Groups Push Changes to Civil Procedure Rules



Electronic Discovery Should Be Proportionate to Controversy

CIVIL JUSTICE REFORM DARING TO PILOT REFORM

In 2009, civil justice reform momentum kicked into high gear as state courts led the charge to put theory into practice through the development of pilot projects. Judicial leaders and members of the bar in Georgia, New Hampshire, Colorado and Massachusetts formed high-level committees to determine how to tailor best practices developed by organizations including IAALS and the ACTL Task Force, to the needs of their jurisdictions. The 7th Circuit Electronic Discovery Pilot Program in Illinois Federal Courts is a pilot designed to incentivize early information exchange related to electronic discovery and evidence preservation. It was launched in October.

SUMMIT DRAWS LEGAL SYSTEM LEADERS

In March, IAALS hosted a 2009 Civil Rules Summit: From Anecdotes to Action, a unique gathering of attorneys, judges, rule-makers, academics, corporate counsel and social scientists. The forum was held to stimulate a dialogue about reform of the Rules of Civil Procedure and to discuss the development of new research, pilot projects and measurement tools. Many of the 32 experts made presentations on state, federal and international rules reform. A highlight of the Summit was a keynote speech by Judge Lee Rosenthal on the need for empirical data to inform rules decision-making.

GEORGIA Under the leadership of Chief Judge Doris Downs, the Fulton County Superior Court intends to undertake a pilot project in order to streamline the civil case management process. It is expected to launch in spring 2010.

“We began to tailor a civil case management system that suited the needs of our courts two years ago. At a time of increasing budget cuts, we knew that we had to rethink the way we handled the business of the courts and this meant developing best practices and putting them into action. Our ultimate goal is to have participation by all of our civil courts because the people are entitled to a system that doesn’t cost so much. In order to accomplish this, we must institute a uniform procedure.

“Procedures that will increase efficiency and reduce cost are critical to our survival. The rule of law is at stake. If people can’t get into court because the system is clogged, we’re really losing the whole premise upon which our democracy is based. We can’t afford to lose this.”

NEW HAMPSHIRE Supreme Court Chief Justice John T. Broderick Jr. asked that a committee be formed to evaluate how access to justice in civil matters could be made more efficient and less costly without sacrificing due process. As a result, a pilot project will be launched in fall 2010 to implement both new and modified rules with a focus on proportional discovery and fact-pleading.

“In a bad economy, the need for the courts goes up, just as our budgets are being cut. This situation should serve as the impetus for people to redesign the system. The court system is losing its vitality. If we don’t get smarter and faster and more streamlined in the 21st century, the courts are going to be less and less relevant.

“One of the unique promises of our democracy is that justice is not for sale but is accessible to all who seek it. If ultimately, this is just a paper promise, it will have a long term impact on people’s trust in the state courts and in government overall. I worry every day that we are not keeping our promise.”

COLORADO Attorney Natalie Brown co-chairs a committee tasked with developing a pilot project that will reduce the time and money spent on discovery, in an effort to make the courts more accessible for people who have smaller medical malpractice cases. Plans are underway to develop pilot project protocols by mid 2010.

“This needed to happen 20 years ago. The cost associated with discovery has spiraled over the last decade to the point where meritorious cases aren’t being filed because the cost of pursuing the case will exceed recovery. Essentially, we’re closing the courthouse doors to a whole group of people who should otherwise have their day in court.

“The jury trial is the cornerstone of our democracy and its future has been threatened. I would like to see a system that embraces the jury trial, facilitates access and provides an opportunity for a full measure of justice.”



“I know that changes get made—I’ve been involved in making a lot of them. The frustrating thing is the extent to which people say that your change is radical and destructive, when it really isn’t at all. This event gives us a chance to look at what some of the more progressive changes might be.”

Richard Marcus, Professor – Hastings College of Law



“People in this country feel that they can’t get a fair trial without spending an inordinate amount of money. It seems to me that there are alternatives to that, some of which we have been able to explore at the conference.”

Judge Henry Kantor, Multnomah County Circuit Court, Oregon



“Discovery seems to take more of our time, our energy and our dollars and it has become an end in itself.”

Francis Wikstrom
Member – ACTL Task Force
on Discovery and Civil Justice

JUDICIAL SELECTION

JUSTICE O’CONNOR JOINS FORCES WITH IAALS

In December, retired United States Supreme Court Justice Sandra Day O’Connor agreed to join forces with IAALS to support states interested in abolishing direct election of judges. This is a continuation of her work initiated with the Sandra Day O’Connor Project on the State of the Judiciary at Georgetown Law. The Institute formed a high profile Advisory Committee that brings credibility and expertise to this important issue.

In one of the many media stories announcing the formation of the O’Connor Judicial Selection Initiative, the Justice put the debate over judicial selection into context noting, “This initiative is a matter of great importance to our country. The amount of money poured into judicial campaigns has skyrocketed, intensifying the need to re-examine how we choose judges in America.”

Since its inception, IAALS has been outspoken in its concern about the impact of mega-dollar campaigns and attack ads on public trust and confidence in the courts. Headed by



Theresa Spahn, an IAALS Director, the initiative will provide policy reform expertise to states wishing to adopt a public commission, appointment, evaluation and retention election model or improve existing systems.

The initiative was launched at a time when selection reform is on the march. In 2010, Nevada may become the first state in over 16 years to abolish direct election of judges in favor of a commission-based system.

The New York Times

Effort Begun to End Voting For Judges

CNNPolitics.com

Former Justice O’Connor Leads Push to End Judicial Elections

AP Associated Press

Justices Making New Push to Abolish Elected Judges



Justice Sandra Day O’Connor (ret.), Theresa Spahn

PUBLIC EDUCATION KEY IN SELECTION REFORM

IAALS continued to play a leading role in encouraging a robust, national debate over how judges are chosen in America. During the course of the year, Executive Director Rebecca Love Kourlis made numerous speeches to organizations around the nation, encouraging audiences to become knowledgeable about the corrosive impact of campaign contributions on public trust and confidence in the judiciary.

Because the media plays such an important role in pushing this debate onto the radar screens of lawmakers and the voting public—both pivotal players in the selection reform process—the Institute made outreach to reporters to familiarize them with the issue. Institute expertise was also sought out by reporters covering the high profile United States Supreme Court decision in *Caperton v Massey*, in which the high court established new recusal standards for judges who receive campaign contributions.



Rebecca Love Kourlis

The Economist

Not For Sale

WALL STREET JOURNAL

Justices Set New Standard for Recusals

The New York Times

Uncertainty in Law Circles Over New Rules for Judges

AP Associated Press

Judges Must Avoid Appearance of Bias

CELEBRATING COMMITMENT TO OUR COURTS 2009 TRANSPARENT COURTHOUSE® AWARD

This year marked the third annual celebration of individuals who have demonstrated a commitment to improving our civil justice system through careers marked by innovation, leadership and courage. New Hampshire Chief Justice John T. Broderick Jr. received unanimous approval from the IAALS Executive Committee, Board and staff, joining previous recipients—Utah Chief Justice Christine Durham and former United States Supreme

Court Justice Sandra Day O'Connor—in receiving the award.

Although the Transparent Courthouse® dinner and award ceremony is a relatively new event, it has attracted an increasing number of luminaries from the legal, academic and business community nationwide. Held at the University of Denver, this year's festivities drew a capacity crowd, including Chancellor Robert Coombe; members of the University's Board of Trustees;

Joan Lukey, President of the American College of Trial Lawyers; and Joan Biskupic, *USA Today* Supreme Court Correspondent as the evening's guest speaker.

In her introductory remarks, IAALS Executive Director Rebecca Love Kourlis referenced numerous examples of the Chief Justice's life-long commitment to strengthening public access to the nation's courts. Chief Justice Broderick played a pivotal role in the formation

of a commission—composed primarily of lay citizens—tasked with conducting a 360-degree analysis of the New Hampshire court system; its recommendations underpin the judiciary's strategic plan. His interest in the correlation between civil rules and access to the courts also prompted the Chief Justice to draw from reform recommendations developed by IAALS and the ACTL Task Force; they inform the work of a pilot project to be launched in 2010.



Chancellor Robert Coombe, Chief Justice John T. Broderick Jr., Rebecca Love Kourlis (L-R)



Walter Sutton, Thomas Cope, Gary Jackson (L-R)



Osborne Ayscue, Philip Stevenson, Joan Lukey (L-R)



Justice Michael Bender, John Moye (L-R)



Chief Justice John T. Broderick Jr., Joan Biskupic (L-R)

The 2009 Honoree — In His Own Words

“More and more people are coming into our courthouses without lawyers, and more and more of those people are middle class and small businesses. Civil jury trials are declining across the U.S. because the system, which is elegant in its function, is not affordable. We can all pretend that it's working well, and sometime it will right itself, or we can be painfully honest and say it is breaking.”

Chief Justice John T. Broderick Jr.

“We need to enhance what's on the ground, vision the possible, be open to new and different ideas and take ownership. We need to reach across state boundaries, learn and share with one another, and recognize that many people we will never know or meet are counting on us. We have no time to waste, and we couldn't have a more important mission. Impatience is our best friend, honesty our best weapon, and success our obligation. Make some waves!”

Chief Justice John T. Broderick Jr.

JUDICIAL PERFORMANCE EVALUATION



IAALS CONTINUES LEADERSHIP ROLE IN JPE

In the four years since the Institute released its very first publication—*Shared Expectations: Judicial Accountability in Context*—it has continued to demonstrate a strong commitment to serving as a resource for states interested in establishing or strengthening judicial performance evaluation (JPE) programs. At a time when major institutions, including the judiciary, have come under attack for a perceived lack of accountability, JPE continues to be viewed as an effective means of boosting public trust and confidence in our courts.

Over the years, the Institute has become known not only as the go-to source on JPE research, but also as the conduit for connecting judges, court staff and decision-makers with an interest in this

issue. Since it was launched last year, the Institute's JPE working group has expanded to 15 states. According to participants, the group's success stems from the practical, in-the-trenches know-how shared by JPE veterans and novices alike.

In 2009, this pragmatism led to extended discussions of preserving and improving JPE programs in a time of tightening state budgets. The Institute responded by conducting research on the cost of JPE programs, and methods to make them even more cost-effective—with a focus on utilizing new technology to streamline the evaluation process. Plans to pilot cost-effective software are being developed for implementation in 2010.

REPORT CITES BENEFITS OF JPE AS STATE SUPREME COURT EXPANDS PROGRAM

With guidance from the Institute, the New Hampshire Supreme Court initiated a significantly expanded JPE program featuring an electronic survey of a much broader pool of respondents. Beginning in 2008, attorneys, judges and law professors were asked to comment, via electronic survey, on the performance of individual Justices of the Supreme Court. Previously, the bench

was evaluated as a whole using written questionnaires.

A report released this year noted that substantially more respondents participated in the 2008 survey than in the previous survey conducted in 2005. In public statements, Chief Justice John T. Broderick Jr. has lauded the new program as a mechanism for boosting court accountability and transparency.

LOOKING AHEAD TO 2010

In 2010, we will be redoubling our efforts to collect empirical data, design solutions based upon that data and advocate for those solutions. Specifically, we will continue compiling empirical evidence that will shed light on the workings of the civil justice system: What rules process works to minimize gamesmanship and accelerate disposition on the merits? What about case management? What works to shorten the length of time to disposition and the associated costs without undermining fairness? We will be sharing our data broadly and will be participating in national conversations on those questions, including a pivotal conference on the Federal Rules of Civil Procedure in May of 2010.

We will also be working to develop less expensive ways to collect reliable data for judicial performance evaluations and to disseminate the data from those evaluations. And, on the judicial selection front, we will be laboring shoulder-to-shoulder with coalitions in Nevada, Minnesota and elsewhere to try to eliminate contested judicial elections in favor of systems that use citizen-based nominating commissions, gubernatorial appointment, judicial performance evaluations, and a yes/no retention election.

Next year at this time, we hope to be able to report a number of on-the-ground changes, ranging from pilot projects to implement new rules to constitutional amendments that rid the system of pay-to-play judicial selection.

IAALS STAFF

The Institute team comprises the research division, the communications division, and the O'Connor Judicial Selection Initiative. We have a total staff of 10 people, all of whom are gifted and very busy. We also benefit from the work of consultants, graduate student interns and other academic support on campus.

Together, we are committed to conducting extensive, impeccable research; partnering with other entities aligned with our mission; and developing practical, inclusive solutions that we then carry out into the field.

Leadership



Rebecca Love Kourlis
Executive Director



Pamela A. Gagel
Assistant Director

Research



Jordan M. Singer
Director



Corina Gerety
Research Analyst



Natalie Knowlton
Research Analyst

Marketing & Communications



Dallas Jamison
Director

O'Connor Judicial Selection Initiative



Theresa A. Spahn
Director



Jennifer Moe*
Legal Assistant

Operations



Abigail McLane
Budget Officer/ Office Mgr.



Stacey Davis*
Executive Assistant

*These individuals joined the staff in early 2010.

IAALS BOARD OF ADVISORS

This year, three of our Board members' terms expired: Lynn Mather, Tom Donohue, and Frank Broccolina. In their place, we welcomed three new members. Sue Dosal has been the state court administrator in the Minnesota courts for 28 years. She has won numerous awards for her leadership in that state and in the nation. Tom Gottschalk, of counsel at Kirkland and Ellis, and a member of the board of the U.S. Chamber of Commerce Institute for Legal Reform and of Justice at Stake, brings a deep understanding of our issues from a business perspective. Finally, Pamela Robillard Mackey practices criminal defense and complex civil litigation as a shareholder at Haddon, Morgan & Foreman, P.C. in Denver. Pamela has been named as a top 10 lawyer in Colorado for several years, and has the benefit of a background in criminal as well as civil work.

In welcoming these outstanding individuals to our Board, we continue to demonstrate a commitment to recruiting staff and Board members—not only distinguished by their expertise—but also by their diversity of ideas, backgrounds and beliefs. We humbly extend our gratitude and thanks to the staff and Board of IAALS for their significant contributions to our work.

E. Osborne Ayscue, Jr.
Counsel, McGuireWoods LLP

Justice Michael Bender
Colorado Supreme Court

Judge Kevin S. Burke
Hennepin County District Court, Minnesota

Robert D. Coombe
Chancellor, University of Denver

Sue K. Dosal*
State Court Administrator, State of Minnesota

Daniel Girard
Managing Partner, Girard Gibbs LLP

Tom Gottschalk*
Counsel, Kirkland and Ellis

Pamela Robillard Mackey*
Shareholder, Haddon, Morgan, & Foreman, P.C.

Martin Katz
Dean and Associate Professor, University of Denver Sturm College of Law

James Lyons, Partner
Rothgerber Johnson & Lyons LLP

Karen Mathis
Partner, McElroy, Deutsch, Mulvaney & Carpenter LLP

John E. Moyer
Partner, Moyer White LLP; former President of the Colorado Bar Association

William Usher Norwood, III
Partner, Pope, McGlamry, Kilpatrick, Morrison & Norwood, LLP

Daniel L. Ritchie
Chancellor Emeritus, University of Denver

Justice Patricio M. Serna
New Mexico Supreme Court

Dr. Walter Sutton
Associate General Counsel, Wal-Mart Stores, Inc.

Diane Gates Wallach
Executive Vice President, Treasurer and Director, Cody Resources LLP

Russell Wheeler
President, Governance Institute; Visiting Fellow, the Brookings Institution; former Deputy Director, Federal Judicial Center

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

*These individuals joined the Board in early 2010.

MISSION, STRUCTURE AND FUNDING

The Institute for the Advancement of the American Legal System (IAALS) is a national, non-partisan organization dedicated to improving the process and culture of the civil justice system in the United States. We provide principled leadership, conduct comprehensive and objective research and develop innovative and practical solutions—all focused on serving the individuals and organizations who rely on the system to clarify rights and resolve disputes.

Located on the campus of the University of Denver, IAALS opened its doors on January 17, 2006, as the brainchild of the University's Chancellor Emeritus Daniel Ritchie, Denver attorney and Bar leader John Moye and United States District Court Judge Richard Matsch. IAALS Executive Director Rebecca Love Kourlis is also a founding member and previously served for almost twenty years as a Colorado Supreme Court Justice and trial court judge.

IAALS is very proud to be a part of the University of Denver. We have the benefit of an impressive network of staff, faculty and students. 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 Chancellor Robert Coombe, the Chancellor Emeritus Daniel Ritchie and John Moye. For purposes of daily operations, the Executive Director is governed by University policy and reports to the Provost.

We benefit 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. All IAALS research and products are supported by pooled grants from individuals, businesses and private foundations.

Our vision for America's legal system is an ambitious one. We are working hard to achieve a transparent, fair and cost-effective civil justice system that is accountable to and trusted by those it serves. More broadly, we are working to achieve a system of selecting and evaluating judges that fosters the impartiality of judges and the confidence of citizens. It is our hope that this Annual Report has offered some evidence that together, we can make strides toward our goals. We would be honored if you would consider joining us on this journey by supporting our mission and work. Donations from individuals, foundations and businesses are essential to ensure that we maintain the highest standards of excellence in our staff and programs. For more information about how to contribute to IAALS, please visit our website at: www.du.edu/legalinstitute/howyoucanhelp.html. Thank you for your interest.



To learn more about IAALS, please contact us at:

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