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**INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM AND  
AMERICAN COLLEGE OF TRIAL LAWYERS RELEASE MAJOR SURVEY  
THAT FINDS SERIOUS CRACKS IN U.S. CIVIL JUSTICE SYSTEM**

On September 9, 2008, the Institute for the Advancement of the American Legal System (IAALS) and the American College of Trial Lawyers (ACTL) Task Force on Discovery released an Interim Report of the key findings of a major survey of some of America's leading lawyers entitled, the *2008 Litigation Survey of Fellows of the American College of Trial Lawyers*.

The two organizations agreed to undertake a survey of the more than 3,800 members, or "Fellows" of the ACTL as the first step in quantifying what both organizations have come to fear—that the U.S. civil justice system has become increasingly disabled by disproportionate cost and delay and that this dysfunction is impacting justice in America. According to ACTL Task Force Chairman Paul C. Saunders, "the costs and burdens of discovery are driving litigation away from the court system and forcing settlements based on the costs, as opposed to the merits." IAALS Executive Director and former Colorado Supreme Court Justice Rebecca Love Kourlis concurred noting, "millions of Americans seek the services of our courts every year—whether on an individual basis or on behalf of a business—and far too many walk away from that experience feeling that the system has let them down."

Evidence of escalating interest in this problem by members of the legal community may be seen in the impressive 42% survey response rate by Fellows from coast-to-coast. Of those responding to the survey, 24% represent plaintiffs only, 31% represent defendants only and the balance represent both plaintiffs and defendants. The survey addressed most aspects of the American civil justice system—from the impact of electronic discovery to the leadership role of judges; this coupled with the depth of experience of most respondents—38 years on average—provided an unusually rich source of comprehensive data.

**Overview of Survey Key Findings**

- The U.S. discovery system is broken;
- Electronic discovery was repeatedly described as a "morass" and 87% of respondents believe that form of discovery is too expensive;
- The broad legal system—while not broken—is in need of substantial repair; deserving cases are not brought because they fail a rational cost-benefit test (85% believe litigation in general and discovery in particular are too expensive);
- Litigation costs drive some cases to settle that should not settle on the merits (83% of respondents);

- The discovery and perhaps other portions of the Federal Rules of Civil Procedure are not conducive to meeting the legal system goals of “just, speedy, and inexpensive” resolution of disputes (65% of respondents); and
- Judges should assume a stronger leadership role from case start-to-finish (89% of respondents).

*(The Interim Report has been posted on both the IAALS and ACTL websites. Please contact Dallas Jamison at IAALS for additional copies).*

### Next Steps

When the system is so costly that it denies access to many, and impairs the process for those who do litigate, the losers are not the lawyers or the judges. The losers are a public that is entitled to a just, speedy and inexpensive resolution of disputes. The system has become burdened by economics. Our organizations are committed to a civil justice system that is affordable, fair and transparent. To that end, we expect to develop a set of guiding principles followed by an implementation plan. Following is an overview of activities to be undertaken in the next 6 months:

- analysis of effective alternative civil procedure schemes in the United States and abroad; and
- development of a set of proposed principles that might govern any major revision of the discovery or other provisions of the Federal Rules of Civil Procedure.

About our organizations:

The Institute for the Advancement of the American Legal System (IAALS) at the University of Denver is a national, non-partisan organization, dedicated to improving the process and culture of the civil justice system. IAALS provides principled leadership, conducts comprehensive and objective research and develops innovative and practical solutions in the pursuit of a more transparent, fair and cost-effective system of justice in the United States. For more information, visit [www.du.edu/legalinstitute](http://www.du.edu/legalinstitute).

The American College of Trial Lawyers is an honorary association comprised of experienced trial lawyers in the United States and Canada who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. The College is dedicated to furthering the administration of justice and improving the ethics and standards of the trial profession. The College’s Fellowship represents all branches of trial practice, enabling the organization to speak with a balanced voice on important issues affecting the legal profession and the administration of justice. For more information, visit [www.actl.com](http://www.actl.com).