

PATHS TO JUSTICE: THE BOLD STEPS WE NEED TO REFORM CIVIL JUSTICE

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- Alicia Bannon, Managing Director, Democracy Program, Brennan Center for Justice
- Courtney Bryan, Executive Director, Center for Court Innovation
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- Hon. Jeremy Fogel, Executive Director, Berkeley Judicial Institute
- Eduardo Gonzalez, Program Officer for Civil Justice, American Academy of Arts and Sciences
- Dr. Martin Gramatikov, Director Measuring Justice, HiiL
- Hon. Wallace B. Jefferson, Partner, Alexander Bubose & Jefferson, Former Chief Justice, Supreme Court of Texas (Ret.)
- Hon. Clemens Landau, Presiding Judge, Salt Lake City Justice Court
- Camille Nelson, Dean and Professor of Law, University of Hawai'i at Mānoa | William S. Richardson School of Law
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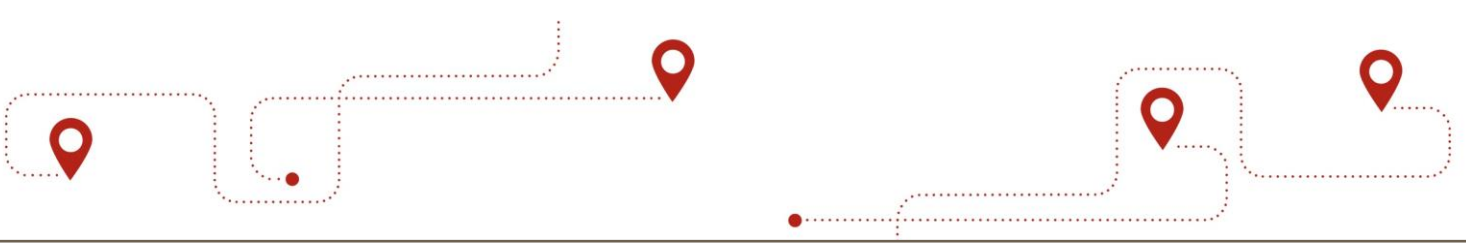
Introduction

Civil justice reform has had a long tradition in the United States. In the last 15 years, there has been a significant focus on the cost, delays, complexity, and barriers to access in the American civil justice system, at both the state and federal levels—and a significant effort to address these concerns. While we have made great progress through rule changes, case management, technology innovation, and efforts to change the overall culture of the system, change has been slow. By its nature, the legal system and those working within it are steeped in tradition, risk averse, and slow to change, even when there is a strong commitment to improve the justice system.

The pandemic changed this overnight. It forced rapid, inspirational change and a disruption to norms. During the pandemic, courts were forced to set aside many antiquated procedures, developed for a bygone era, and rethink how justice can be delivered when the courthouse doors are closed. It caused all justice system actors to rethink the how, what, when, where, and why of our justice system in order to ensure that justice continued to be delivered during an emergency—and beyond. Courts have considered and embraced new and creative solutions as a result of these pressures, and we have seen that rapid change and reform is indeed possible in our system.

In September 2021, IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, and HiiL, The Hague Institute for Innovation of Law, launched the results of our landmark, nationwide study on access to justice in the United States.¹ The results of the *US Justice Needs* survey provide a clear picture regarding the landscape of legal problems, and also provide additional insights into the justice crisis and the need for a profound change in the access to justice paradigm—from how the United States thinks about the scope of the crisis to how it is addressed. The report also highlights that the justice problems Americans experience in their daily lives are shaped in meaningful ways by their income, gender, race and ethnicity, age, and living environment. We have to recognize—and reckon with—the fact that justice is not equally distributed. There are many ways in which our system is set up that create injustices and inequities based on race and ethnicity, socioeconomics, gender, and disability.

¹ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. AND HiiL, JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA (2021), <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf>



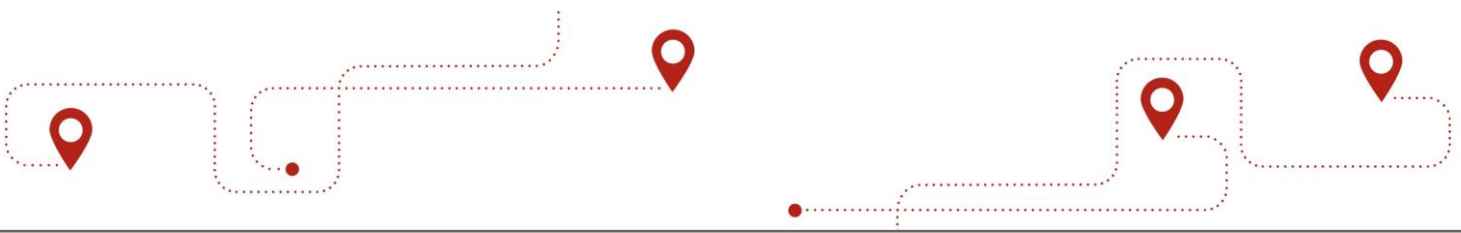
Paired with the very real justice needs going unmet in our country, lack of public trust in our justice system should add fuel to the fire of reform. Through our qualitative research on public trust,² IAALS found that a majority of people we spoke with have concerns about the fairness of the current civil process—and they frequently pointed to perceptions of systemic racial or gender biases as contributing factors to those concerns. Recent polls on public trust and confidence underscore this reality. The National Center for State Court’s 2022 survey of public opinion found that public trust and confidence in the courts continues to slide, and that more people today view the courts as not delivering equal access to justice for all than those who believe the court is meeting this goal.³ This data highlights that the public’s trust and confidence in our justice system is lacking—and that racial justice issues play a critical role in current levels of trust in the system.

To highlight both the challenges in the moment and also the significant opportunity for system change, IAALS launched a virtual summit series—Paths to Justice—in the fall of 2021. The series was comprised of multiple invite-only virtual convenings with changemakers as well as a series of public webinars focusing on the paths of the pandemic, the paths to access, and the paths to racial justice that our system must walk in our new normal. We connected with other stakeholders tackling these issues, fostered dialogue among those stakeholders and across systems, and moved the conversation—and innovation—forward. The goal was to bring together a group of diverse perspectives and partners to capture the lessons learned, identify continuing challenges, and inspire additional research. IAALS published a series of papers on each topic, sharing out key discussion points and lessons learned on how justice system insiders and changemakers can walk these paths to justice.

The last few years have emphasized that there is much work to be done to build on the innovations underway, and to continue to push reform further. It is clear that now, more than ever, we need to continue to foster transformative change on a broad scale. The discussions from this series of convenings continue to be salient today—and are critical to revisit in this moment.

² LOGAN CORNETT AND NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., PUBLIC PERSPECTIVES ON TRUST & CONFIDENCE IN THE COURTS (2020), https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf.

³ *State of the State Courts: National Survey Analysis*, NATIONAL CENTER FOR STATE COURTS (2021), <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-leadership/state-of-the-state-courts/the-state-of-state-courts-a-2022-ncsc-public-opinion-survey>.



The Paths to Justice white papers herein provide overarching themes and clear direction on how we can achieve change following the pandemic, change to access, and change for greater racial justice. The takeaways from these conversations resonate as strongly today as they did in 2021 and provide a roadmap for systemic innovation. There is no better time to embrace the challenges that continue to exist in our system and take action to transform our justice system so that it can realize its promise of justice for all.

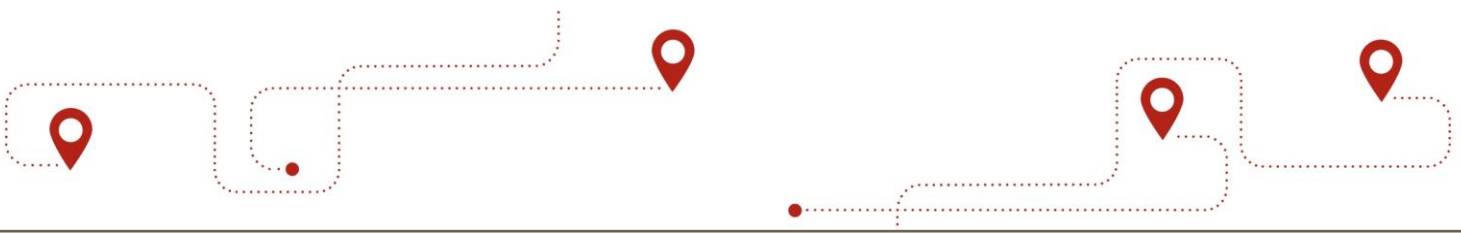
Civil justice reform has had a long tradition in the United States. In the last fifteen years, there has been a significant focus on the cost, delays, complexity, and barriers to access in the American civil justice system, at both the state and federal levels—and a significant effort to address these concerns. We’ve made progress through rule changes, case management, technology innovation, and efforts to change the overall culture, but change has been slow. Committees and task forces often take years to develop recommendations before launching multi-year pilot projects. *Enter the pandemic.* We’ve seen rapid, inspirational change and disruption to norms that have the potential to lead to significant and long-term changes to how our civil justice system functions—and to the ultimate delivery of civil justice in this country.

This is an excellent time to ask a key question: what are the emergent reforms that courts, attorneys, litigants, and others in the justice system have made that have helped our civil justice system become more efficient and less costly while ensuring an accessible, fair, equitable, and accountable justice system? What has worked well during this “nationwide pilot project,” and what has this pandemic-induced experiment highlighted that needs further improvement? How can we leverage innovation at this moment without losing the important values that ensure a trusted and trustworthy system of justice for all?

In August 2021, IAALS held a convening to brainstorm these important questions, focusing specifically on standard and complex litigation in both state and federal courts. The goal was to bring together a group of diverse perspectives and partners to capture the lessons we have learned from the past year, identify continuing challenges, and inspire additional research. We hope the following summary helps to bring focus and clarity to the dialogue and ongoing innovation.

Lessons Learned

Flexibility already exists and is largely built into the rules. When national and state executive orders first declared public health emergencies, courts acted swiftly, using the flexibility and discretion deliberately designed into the rules of civil procedure. Courts also used—and continue to update—administrative, court, or standing orders that apply to all matters of particular case types, often driven by public health data and the need for the continued administration of justice. Courts have also used discretion and shown flexibility in case-specific orders that may go against a standard practice but are permissible under the civil rules. When Congress passed the CARES



Act in early 2020, the Act directed the Judicial Conference and the Supreme Court to consider rules that govern cases in future emergencies within the framework of the Rules Enabling Act.¹ Each of the five Advisory Committees, including the Advisory Committee on Civil Rules, conducted in-depth analyses of their respective rules. After research, discussion, and collaboration across committees, four of the five Advisory Committees drafted proposed amendments that govern rules in federal courts during emergencies.² The Advisory Committee on the Civil Rules propose only two recommendations for rule changes, and only in extraordinary circumstances.³ First, a court may order an alternative means of service of process by a method that is reasonably calculated to give a defendant notice.⁴ Second, a court may order extensions of time to strict deadlines for post-trial motions.⁵ The Committee recognized that inherent flexibility is already intentionally built into civil rules. This flexibility also exists at local and state levels. *We don't need to rewrite the system—we have found the rules include flexibility to run efficiently even in changing circumstances.*

Case management is more critical than ever. Case management is essential for managing through change. The number one recommendation of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators' (COSCA) [Call to Action in 2016](#)—that courts take responsibility for managing civil cases from the time of filing to disposition—shifts the paradigm that historically puts the pace and process of civil litigation on the attorneys and litigants. *The importance of courts taking responsibility for managing cases has been underscored in the pandemic.* Given continued changing circumstances, active case management is even more important than ever. We have seen the benefits of judges embracing an early understanding of the needs of particular cases and taking a hands-on approach to case management. While the pandemic has cut off in-person communication, judges and their teams

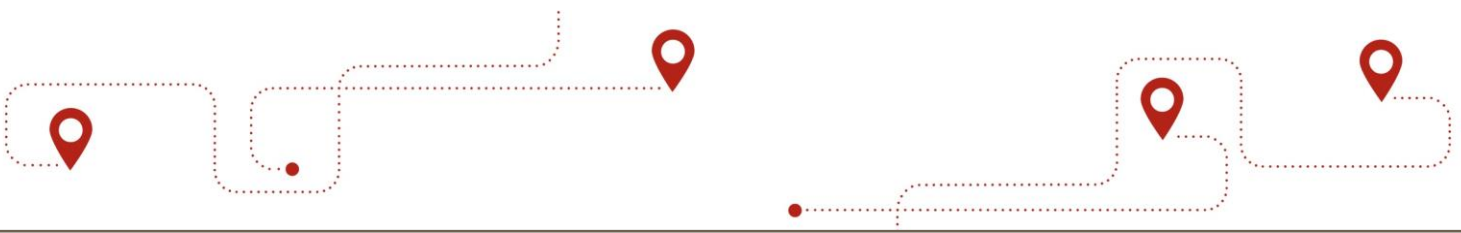
¹ CARES Act, § 15002(b)(6).

² See Committee on Rules of Practice and Procedure of the Judicial Conf. of the United States, *Preliminary Draft of Proposed Amendments to the Federal Rules* (Aug. 2021), https://www.uscourts.gov/sites/default/files/preliminary_draft_of_proposed_amendments_2021_0.pdf.

³ Proposed amendments to the Federal Rules of Civil Procedure are drafted into a single new Emergency Civil Rule 87. See Advisory Committee on Civil Rules Agenda Book 133 (Apr. 23, 2021), https://www.uscourts.gov/sites/default/files/2021-04-23_civil_agenda_book_4-16-21_with_supplemental_materials_0.pdf.

⁴ Proposed Emergency Rule 87(c)(1) allows for alternative methods of service of process during a declared emergency by a method reasonably calculated to give notice under Rule 4 subdivisions 4(e) (individuals), (h)(1) (corporations), (i) (federal government), and (j)(2) (state or local governments).

⁵ Proposed Rule 87(c)(2) creates Emergency Rule 6(b)(2), allowing courts to extend specific post-judgment motions in district courts.

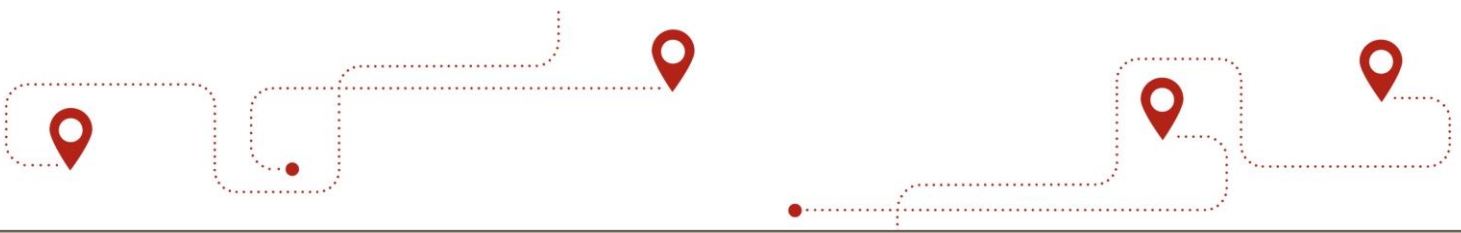


have responded by connecting with parties virtually, and status conferences have become even more important to communicate expectations and discuss issues promptly. IAALS has long advocated for the importance of case management and conferences with the court in particular, with the goal of raising and resolving issues early—whether for discovery or dispositive motions. The pandemic has reinforced the importance of communication, whether it be to convey the latest guidelines and procedures or to discuss and resolve key issues in the case.

Effective communication also lessens confusion on everything from high-level court closures to detailed call-in instructions for virtual court proceedings. IAALS’ [Redefining Case Management](#) includes litigants in the civil case management process with the goal of meeting the needs of the user/consumer. The pandemic demonstrates that judges should still drive case management, but in ways that also meet litigants’ needs. Courts are finding creative ways to engage litigants so that cases continue to move forward.

Firm trial dates continue to drive behavior and, where possible, courts must hold litigants, attorneys, and clients to firm trial dates. When firm trial dates are not possible, courts can still actively manage cases in other ways, such as setting other key deadlines. That said, such deadlines must be paired with humanity. All who serve in the justice system—judges, attorneys, staff—are human beings. We must all be mindful of the elements that have created delay over the past year, including COVID-19 and natural disasters. *While justice delayed is justice denied, court deadlines must also take into account circumstances beyond the parties’ control, particularly at this time.* Courts need to recognize these added challenges, and attorneys and litigants need to speak up where a deadline, schedule, or trial is not feasible.

Much of the pre-trial process works well and can be done more efficiently, remotely. The justice system has expanded its toolkit in the last year. WebEx, Microsoft Teams, and Zoom have been added to the arsenal of tools for the court, the attorneys, and litigants. Remote appearances reduce costs and increase efficiency. In 2021, CCJ and COSCA adopted [Resolution 2](#) in support of remote and virtual hearings. On the federal side, the Administrative Office of the U.S. Courts issued guidance enabling lower federal courts to implement virtual access to most proceedings. Remote technology has been a vital tool that has allowed courts to remain open while keeping court staff and the public safe. Remote proceedings have increased appearance rates at court hearings. Additionally, the public’s ability to observe court proceedings may increase public trust and confidence in the courts and allow a better understanding of the court system.



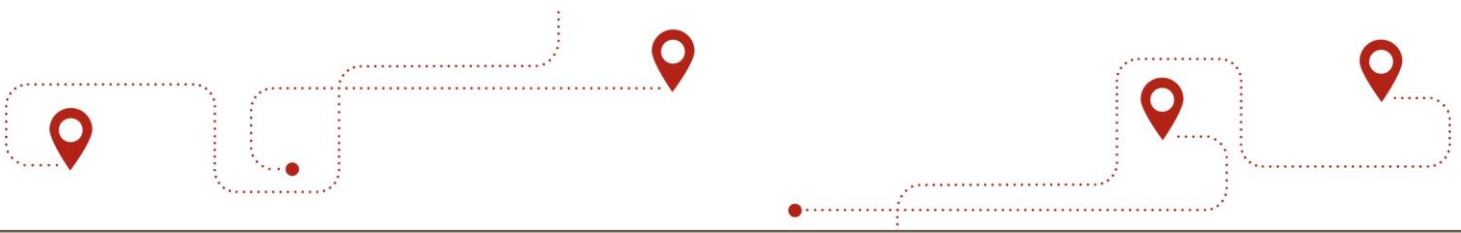
Pre-trial procedures such as status conferences, Rule 16 conferences, pre-trial conferences, and motions hearings may be optimal for remote appearance unless a party objects or when credibility may be an issue. Courts have even developed software and the ability for parties to set motions hearings online. Attorneys should also take these same lessons to their practice to integrate technology into their client interactions, saving costs and making for a better client experience.

While we have seen the benefit of remote hearings, we also have to recognize the challenges of virtual proceedings and acknowledge they may not be appropriate for all circumstances. Challenges arise when litigants do not have reliable internet access. Remote hearings may not be optimal in sensitive matters; privacy is a genuine concern in some instances. Resolution 2 contains important guiding principles for courts to consider when using remote technology going forward. The guiding principles include: ensuring all users can participate in proceedings when litigants have difficulty using technology or do not have access to reliable highspeed internet; being mindful of privacy issues when allowing remote appearances; determining the case types and hearings appropriate for virtual hearings; ensuring meaningful participation for all parties regardless of language barriers, disabilities, socioeconomic status, or whether litigants are self-represented; adjusting schedules to allow litigants time to orient themselves with new technology; and encouraging innovation, evaluation, the establishment of best practices and shared resources, and proper resources to bridge the digital divide.

Remote proceedings outside the courtroom may also require extra consideration from attorneys, litigants, and the courts. For example, attorneys may have reasons not to hold a deposition virtually. Depending on the type of case, the party being deposed, the relationship between opposing counsel, and other circumstances, attorneys may seek to depose a witness or party in person. Considerations include witness credibility, nonverbal cues that could be missed if remote, or concerns of coaching.

While remote processes may be less costly, a change in mindset toward an all-remote approach may be too quick to disregard an appreciation for how much human nature is exposed when in another's physical presence.

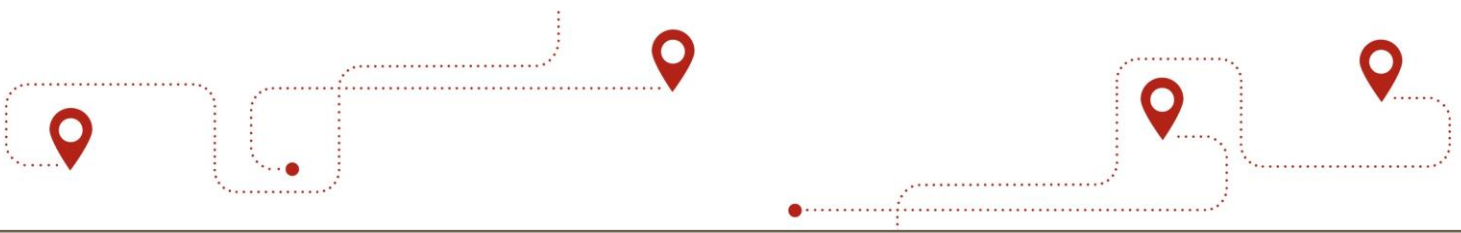
Trials are a separate matter, and one size doesn't fit all. Trials require separate analysis, particularly jury trials. *While there seems to be a recognition that much of the pretrial process can benefit from virtual proceedings, trials are unique and warrant a separate analysis of*



lessons learned. We have learned that some parts of trials can be done remotely—such as jury prequalification—so it may be best to think about the different components of trial rather than trial as a whole. We have also learned that while virtual jury trials are possible, they aren’t always ideal. For trials, considerations have to be balanced related to credibility, type of case, backlog, and the parties’ preferences. Trial attorneys are trained to understand how to read the room and how to deliver information in person, and many attorneys and judges will still prefer in-person trials. This is a place where additional research and focus is needed, and where there are still important lessons to learn.

Cooperation, civility, and professionalism remain paramount. Cooperation among the parties was an important theme in the 2015 amendments to the Federal Rules of Civil Procedure, and the revisions to Rule 1 and the Committee Notes highlighted the importance of cooperation in reducing unnecessary costs. Courts, judges, and attorneys have demonstrated a remarkable ability to adapt to a remote and technology-driven version of our justice system in response to the COVID-19 pandemic. Advancements in technology within the legal system are not new, but this shift has had a dramatic impact on how attorneys practice, bringing with it fewer opportunities to have the face-to-face interactions that are often critical to cooperation among the parties. In this changing landscape, cooperation has become more important than ever. Dialogue between counsel and engagement with fellow bar members help to maintain accountability, civility, and collegiality in the legal system. While in-person opportunities have decreased, attorneys should look for opportunities to engage by phone or zoom, with opposing counsel and with other attorneys. In addition, when appearing virtually—be it with the court or a fellow attorney—attorneys must maintain professionalism and fidelity to their role as officers of the court. *As we all adapt to great changes in our justice system sped up by the pandemic, it is critical for attorneys to work together for the benefit of their clients and the overall administration of justice.*

Virtual proceedings have made courts more participatory. Remote appearances have removed many barriers for litigants and attorneys. [Arizona Supreme Court’s Post Pandemic Recommendations for the COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup](#) (“Plan B Workgroup”) concludes that allowing parties to appear through virtual platforms has significantly increased appearance rates. Litigants have the ability to appear without having to take off time from work or drive to a particular location. Some of the initial jury information can also be performed virtually, which saves time. We have also seen more diverse jury pools with virtual trials. Courts have noticed a higher “watch rate” for virtual events,

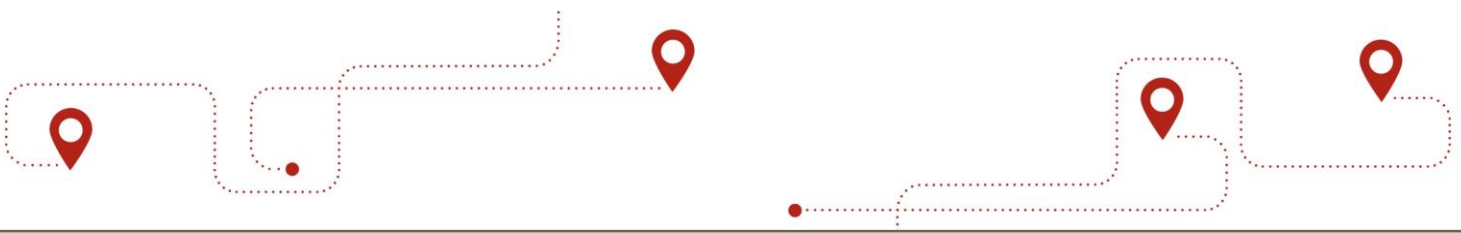


like oral arguments. Courts are now seeing lower failure to appear rates as well. The pandemic has created a unique opportunity for more participation for new attorneys in remote virtual proceedings because many of the cost barriers have been removed. This has allowed young attorneys to be in the virtual room, and to have more opportunities for early engagement and experience. However, all present must be fully engaged at the same time when virtual; otherwise, this creates additional delay.

The courtroom still matters. There are times when being together in person is critical, whether to “read the room,” for collaboration, or “meeting of the minds.” Certain types of proceedings require in-person court attendance. There are varied opinions on this, and this is an area where further consensus can be developed, although one size doesn’t fit all even within certain types of proceedings. Judges and attorneys have missed the traditional courtroom customs, the level of formality, and the feelings of responsibility they have when present in a physical courthouse. The counterbalance is that many litigants find the environment intimidating, time-consuming, or have conflicts that create barriers to in-person attendance at the courthouse. The requirement to attend in person drives down appearance rates—there is something to learn from this. However, the loss of spontaneous interactions that attorneys usually had to meet in the hall—which leads to resolving underlying issues that complicate cases or prolong them—don’t naturally exist in a remote environment. *We should remain alert to circumstances where there is a real need for spontaneous exchange and figure out ways to have those conversations.*

The quality of technology also matters, as does security. When we rely on technology to this high of a degree, the technology needs to work. Network outages, dropped Zoom conferences, and connectivity issues have, and will, continue to happen. Some courts have developed best practices for technology. *Until courts are given the proper infrastructure, equipment, manpower, and training, all parties and courts should have a backup plan.* This could be as simple as picking up the phone for a phone conference. Security is also critical, and it becomes even more critical as more is done online.

Not all courts, attorneys, or litigants have the same resources and abilities. Court resources can vary even within a state or local jurisdiction. However, courts that adopted technology prior to the pandemic are in a much better place to adjust to the pandemic. The same is true for attorneys. Innovation helps lessen the impacts of future challenges that we cannot predict—but that at this point we should anticipate.



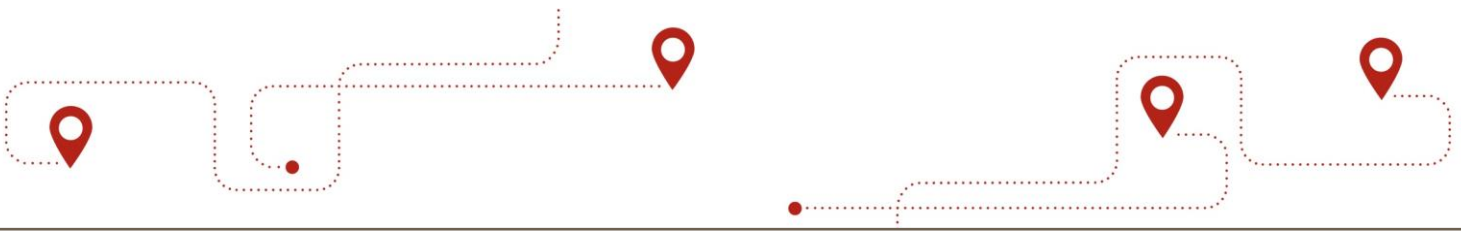
Upcoming Challenges

We must continue to focus on change management and devote time and energy to it. We are still in the midst of the pandemic and will continue to experience challenges that we have not yet fully tackled. *Now is not the time to assume we have reached the other side, but to recognize we are still in the midst of innovation, growth, and learning. We have a unique opportunity to study each challenge and to become more resilient in the face of continued change.*

The hybrid world is the hardest. Some changes in behavior are required in an all-virtual world. Managing different views will be more challenging as judges and attorneys navigate more choices, and differences of opinions between the parties regarding in-person versus remote appearances. Hybrid proceedings may be the most difficult issue to tackle. As health restrictions are lifted, and courthouses open again, there will be matters where parties appear both remotely and in person. Unforeseen circumstances may require that individuals appear remotely (positive COVID-19 test), while others appear in person. The lessons learned from 100% virtual hearings do not all translate to the hybrid world—we need to recognize the new challenges presented and innovate for these proceedings just as we have done so for the past year. *Often, the key to the unpredictable is communication.* Ideally, all counsel, courts, and litigants will be in continuous communication so that, even when disruption happens, all parties and the courts can quickly adapt.

Our future: backlogs, shadow cases, and the unknown. The impacts of the pandemic will continue for many years to come, as the justice system deals with the backlog of trials and the increase in certain cases as a result of the impacts of the pandemic on people’s lives and businesses. Given that filings have been lower in the pandemic, it is also possible that there are “shadow” cases that have yet to be filed, and that may result in a post-pandemic surge of cases in the court system. These impacts will be felt by the courts, attorneys, and the litigants who are seeking justice in our system. Where we can anticipate and make adjustments in advance, such as implementing reforms in debt collection cases, we should do so now. *We have more data than ever before on filings data in our courts, and we should utilize this data to track changes in the system and be responsive to changing circumstances to decrease the impact of cost and delays on everyone in the system.*

Courts need resources to address these challenges. Not all courts have the same resources and capabilities. Court resources vary even within state or local jurisdictions. In 2021, CCJ and



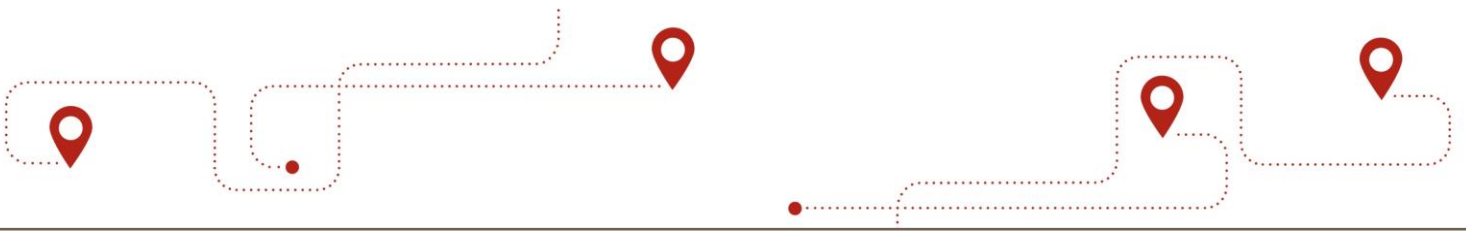
COSCA adopted [Resolution 6](#), recognizing that state courts are essential in emergencies. State court leadership should be involved in emergency management decisions, and judicial personnel must be recognized as valuable and treated as first responders. Federal and state emergency relief funds should be earmarked for courts to protect personnel and safeguard judicial facilities. In addition to technology, we also need to invest in training—including training on changing technology and changes to procedures. *We also have to recognize that people are our greatest resource in the courts, as is their health—both physical and mental.*

Attorneys may be taking into consideration filing cases in courts that have adapted and learned new technology. They may opt to file matters where courts and judges have adapted and use technology well and in the right circumstances. *These market forces are one more reason for policy makers to ensure that our courts have the resources they need to adapt and innovate.*

Need for Continued Dialogue, Research, and Learning

Around the country, task forces, committees, individual judges and attorneys, and numerous other stakeholders are engaged in this process of determining lessons learned and recommendations for what changes should be continued. We urge this dialogue to continue, as our justice system has not fully processed the lessons learned or the innovations needed.

A key piece of this analysis must be further research. At IAALS, we believe in the importance of evidence based-reform that support what works for improving the justice system. The challenge—particularly in a pandemic—is that research takes time. Courts had to respond to the crisis quickly, putting in place changes without long-term study or research. We have seen the value of innovation in this moment, and we should continue to encourage an agile approach to change management. We should bolster these efforts with data wherever that is possible. And we need to identify the places where it is essential to slow down and conduct research, particularly where key system values are at stake such as due process. Research into jury trials and virtual versus in-person presence (including concerns of attention span, credibility determinations, and witness interference and misconduct) are key areas for focus. Research will also be helpful to understand the trends resulting from the pandemic, including potential shifts to bench trials, alternate dispute resolution, and changes in caseloads.



We now find ourselves in 2021 in a new world, where our justice system has adapted in a time of crisis. We need to continue to think outside the box and innovate in this moment. We also need to make sure we take time to pause and reflect so that lessons learned can be embedded into our system going forward.

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This issue paper is from IAALS' Paths to Justice Summit Series, comprised of multiple invite-only virtual convenings and public webinars—and corresponding issue papers—focused on the unique challenges facing our justice system in this time. Themes include the paths of the pandemic, the paths to access, and the paths to racial justice that our system must walk. Our goal is to connect with other stakeholders tackling these issues, foster conversations among stakeholders and across systems, and move the conversation—and innovation—forward.

Thank you to the attendees of IAALS' August 2021 convening on this topic who generously gave of their time and expertise to brainstorm around these important questions.

For more on the Paths to Justice Summit Series, including additional white papers as they are published, please visit <https://iaals.du.edu/paths-justice-summit-series>

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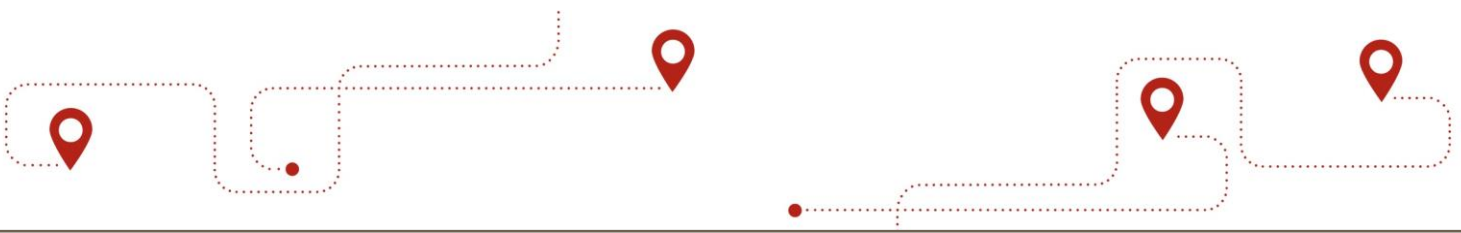
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The COVID-19 pandemic has forced courts across the country to shift their business practices to ensure the continued administration of justice. Courts have considered and embraced new and creative solutions in this moment, and these changes may have the most impact going forward for high-volume cases—including lower-value contract cases, landlord/tenant, and consumer debt collection cases—where innovation to ensure access to justice has been most needed.

The National Center for State Court’s [*Landscape of Civil Litigation in State Courts*](#) study in 2015 highlighted that the makeup of civil litigation in our state courts had changed dramatically over the last several decades, and that today state court dockets are dominated by lower-value contract and small claims cases, with attorney representation on both sides in only 24% of cases. These “high-volume” cases share a number of common characteristics. Plaintiffs tend to be represented, with more knowledge of the rules and procedures, as well as greater access to resources. Defendants, on the other hand, are likely to be self-represented, of low or modest income, and face numerous barriers to access to justice. These cases are where most people in our communities experience the justice system, and where civil justice reform efforts have urged more flexibility, creativity, and new solutions to address the gap in access to justice in our system.

During the pandemic, courts have been forced to set aside many antiquated procedures, developed for a bygone era, and rethink how justice can be delivered when the courthouse doors are closed. This is an excellent time to ask a key question: what are the emergent reforms that courts, attorneys, litigants, and others in the justice system have implemented that have helped to ensure access to justice for high-volume cases? What has worked well during this “nationwide pilot project,” and what has this pandemic-induced experiment highlighted that needs further improvement? How can we leverage innovation at this moment—in the areas of communication, procedural fairness, and substantive justice—to expand access to all people?

In September 2021, IAALS, the Institute for the Advancement of the American Legal System, held a convening to brainstorm these important questions, focusing specifically on high-volume cases. The goal was to bring together a group of diverse perspectives and partners to capture the lessons we have learned from the past year, identify continuing challenges, and inspire additional research. While caseloads were down in 2020, many expect a surge in cases in the coming year based on unemployment and financial hardships due to the pandemic. Now is the time to assess what has worked well throughout the pandemic, as well as upcoming challenges, specifically in



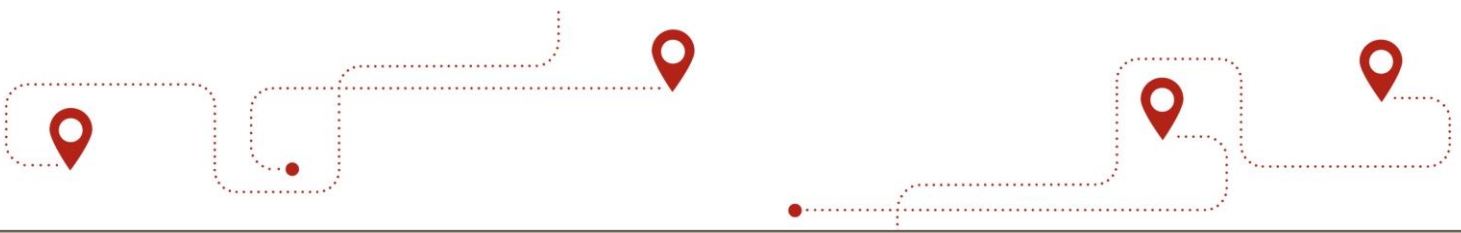
high-volume caseloads, where innovation may be the most impactful and transformative. We hope the following summary helps to bring focus and clarity to the dialogue and ongoing innovation.

Lessons Learned

We need to shift the paradigm to think about courts as a service, not just a location. Courts have been forced to think differently about where and how justice is delivered, and that has created an opportunity to consider meeting litigants’ needs in different ways. Traditional in-person hearings create a number of barriers in high-volume cases, including the costs of child care, transportation, and time off work. *To ensure that we capitalize on this lesson going forward—and not just return to pre-pandemic court procedures out of tradition—courts, judges, and attorneys need to fully embrace this shift in mindset.* If this shift isn’t embraced, courts will just revert to prior practices post-pandemic.

Holistic upstream solutions have huge potential to solve justice needs in our communities. When we look at the justice system more broadly, holistically, and with a broad array of partners, we can achieve real upstream solutions. We have seen remarkably creative partnerships result—with significant positive impacts on people’s lives—in the pandemic. Depending on the case type, courts may offer diversion programs at the start of a case, or provide wraparound services over the course of the case. *By considering a holistic approach, recognizing interconnections of mental and physical health, social, and economic factors, a better outcome for people can be achieved.* For example, the National League of Cities ([NLC](#)), together with the Stanford Legal Design Lab ([LDL](#)), have created [The Eviction Prevention Learning Lab \(EPLL\)](#) program, following the inaugural [Eviction Prevention Cohort](#) in 2020. The EPLL is a nationwide peer-to-peer network for cities and their partners committed to improving human-centered approaches to the eviction crisis. The program encourages cities to increase community outreach and engagement to both landlord and tenants; develop diversion strategies before evictions or after a household has been displaced; use mediation programs; offer financial, legal, and social services; and promote relationship-building with local courts and court officials.

This action requires stakeholder involvement from all perspectives. In Michigan, the Michigan State Housing Development Authority (MSHDA) has federal funds available to help tenants facing pandemic-related hardships avoid evictions through the COVID Emergency Rental Assistance (CERA) program. The Michigan Supreme Court has played a key role in anticipating

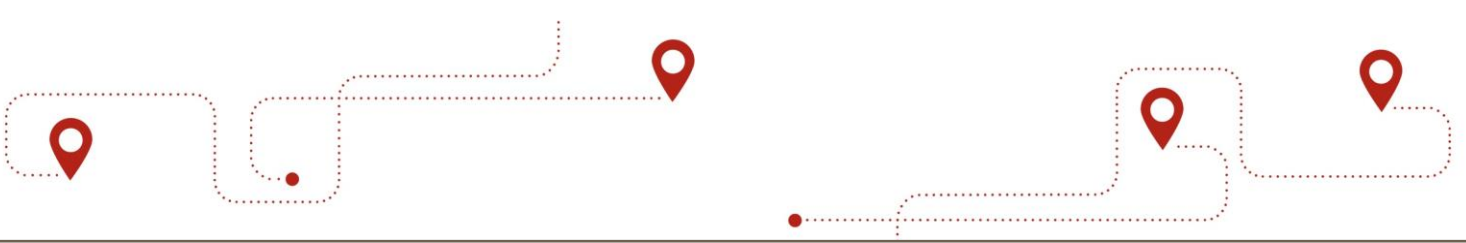


the end of the federal moratorium and working toward short-term and long-term solutions, and the courts statewide are assisting in connecting renters with these resources and giving renters time in the court process to access these resources.

Technology has allowed more people to access the courts in high-volume cases. Technology has allowed people to interact with the court system in new ways. Early data suggest that hearing attendance has increased and default rates have decreased. These increased participation rates suggest that requirements to appear in court serve as a barrier to justice for many people. The ability to appear in a virtual hearing setting reduces costs associated with participating at a physical courthouse, such as childcare and transportation costs. This applies to both litigants and court staff. Some people may be more comfortable appearing by video, especially in certain case types such as restraining orders. Judges, court staff, and attorneys share concerns about lack of formality and seriousness in proceedings, and this remains a factor to consider as we continue to innovate virtual and hybrid hearings going forward.

Not all virtual access is equal. While we see an increased rate of participation in virtual hearings, this does not mean that virtual hearings do not have their own access challenges that need to be solved. Inequities result from people using different technologies, such as a litigant calling in from a phone line at a hearing where the judge and other party appear by video. We have learned many lessons to address these challenges, such as the judge clearly identifying themselves verbally as a judicial officer and calling on parties frequently who are not able to visually raise their hand or otherwise indicate that they have a question. Courts have faced new challenges related to providing interpreters during virtual hearings, and private access to counsel in a Zoom setting, but they have learned ways to navigate these challenges as well. For people who don't have a professional, quiet place to join a virtual hearing, they may find themselves at a disadvantage. Here, too, courts and communities have been innovative, creating spaces at libraries and community centers to help bridge this gap. *As additional research is done from the perspective of the court users, we will learn more ways to improve the virtual experience to ensure fairness and access for all.*

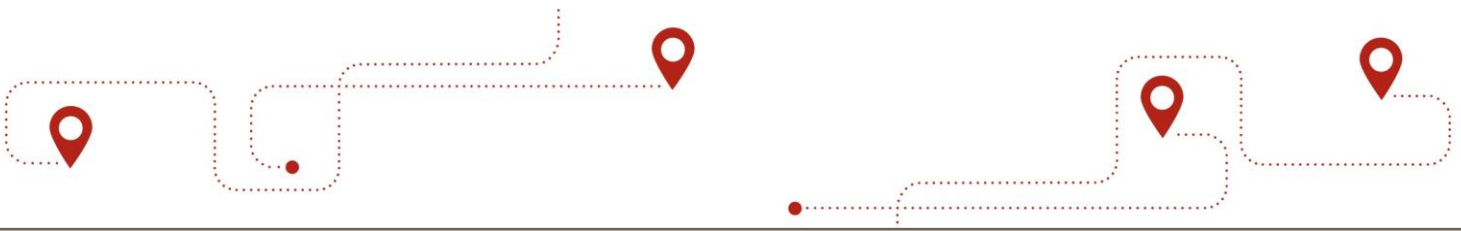
Technology has exposed a digital divide in high-volume cases especially. The pandemic created new opportunities to appear without going to a courthouse, and these remote services come with great benefits to the court and the litigants alike. While remote court services should be lauded and continued as a way to increase access, particularly in high-volume cases, the pivot to remote technology has highlighted the challenge of the digital divide. Court consumers may



lack internet, a stable internet connection, and even the technology—such as a smartphone or laptop—to appear in a virtual setting. In addition to these access challenges, not all court users have the digital literacy to navigate a videoconferencing platform. Bandwidth problems are particularly challenging in rural areas, but we have seen that unstable internet connections can be a challenge anywhere. To best meet the consumer needs, courts should think creatively about how to address this digital divide. In addition to providing spaces with technology, as noted above, some courts have also loaned or driven digital devices out to litigants or witnesses to ensure access to the courts. *Given the increased access to justice in high volume cases afforded by remote court services, it is critical that these services continue post-pandemic.* What is needed is a continued focus on solutions to address the inequities that may exist in virtual hearings and because of the digital divide.

Communication is crucial for a court service approach. Many litigants in high-volume cases lack sufficient information to allow them to navigate their cases effectively. This creates challenges for the litigants and for the court staff. Where court services are provided remotely, courts cannot fall back on visual cues in the courtroom, signage and flyers, and in-person help desks. It is critical that courts communicate adequate information in advance to litigants regarding when and how they should appear, as well as what to expect so that they can easily navigate the proceedings. This is particularly important for self-represented litigants who are rarely familiar with court processes and procedures. Many courts utilized mass calendaring in high-volume cases prior to the pandemic, forcing attorneys and litigants to show up and wait long periods of time for what ultimately was likely to be a brief court appearance. While this may be the most convenient approach for the court in terms of resource expenditure, it does not prioritize the needs of our court users. Courts have experimented with different models for virtual hearings, and while there may still be room for improvement, this service-oriented approach has contributed to increased participation rates and improved access to justice. *We need to continue this commitment to communication with court users where they are—in plain language, in multiple languages, and in a way that increases engagement of litigants.*

Streamlined and relaxed procedures are more important than ever. The process itself remains a barrier to access in high-volume cases, and streamlined processes have been a key goal of civil justice reform efforts prior to the pandemic. In the midst of changes as a result of the pandemic, we have seen courts take a more relaxed approach to proceedings, removing unnecessary procedural barriers that have historically served as obstacles to access. Courts have removed antiquated barriers, such as notaries and in-person payments. While some of these



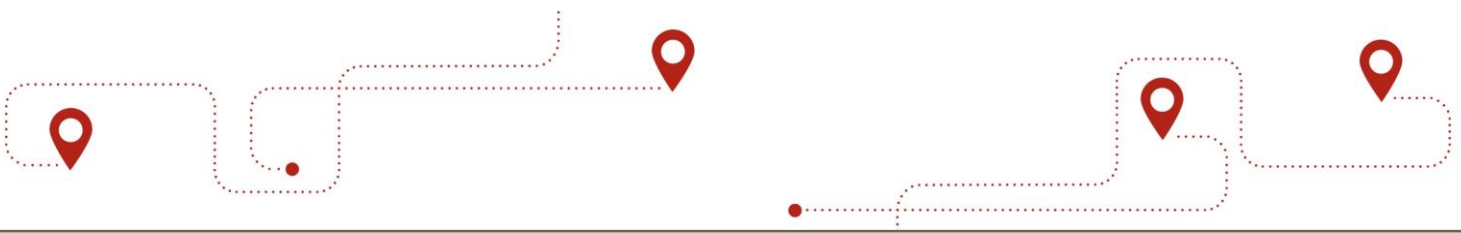
changes may seem small, we have seen the positive benefits to the users without any negative impacts on the administration of justice. High-volume cases benefit from clearly defined streamlined procedures and resources that are right-sized to the needs of the case. *The last year has underscored the point that a one-size-fits-all approach fails to recognize and respond to the unique needs of individual cases, and that is particularly true for high-volume cases.* Courts should build on this momentum and put streamlined user-friendly procedures into place permanently so as to ensure access to justice in these cases.

Court funding, staffing, and technology are crucial to address high-volume matters. The pandemic has underscored the importance of resources, technology, staffing, and funding for courts, as this has made all the difference in courts' responsiveness and ability to maintain the administration of justice through these difficult times. We need continued funding paired with innovation to ensure improved access to justice and to make real impact on people's lives. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators' (COSCA) [*Call to Action*](#) in 2016 emphasized that we must strategically deploy court personnel and resources and use technology wisely in order to ensure a justice system that meets the needs of the 21st century. Those needs have been driven home in the pandemic. *While high-volume cases may not need the same judicial attention as other more complex matters, these cases need staff support to meaningfully review all of the points in a case and ensure proper documentation, technology to simplify the court-litigant interface, and real-time assistance to navigate the process.*

Upcoming Challenges

In our prior issue paper on [reducing the costs and delay of civil litigation](#), we emphasized that we are still in the midst of the pandemic and will continue to experience challenges that we have not yet fully tackled. This sentiment is even more important for high-volume cases, where there may not be as strong of an attorney constituency pushing to make changes permanent. *Our justice system has learned a lot about how to innovate in the last year to address some of the key challenges of access to justice, and now is not the time to move backwards. We have a unique opportunity to study each challenge and to become more resilient in the face of continued change.*

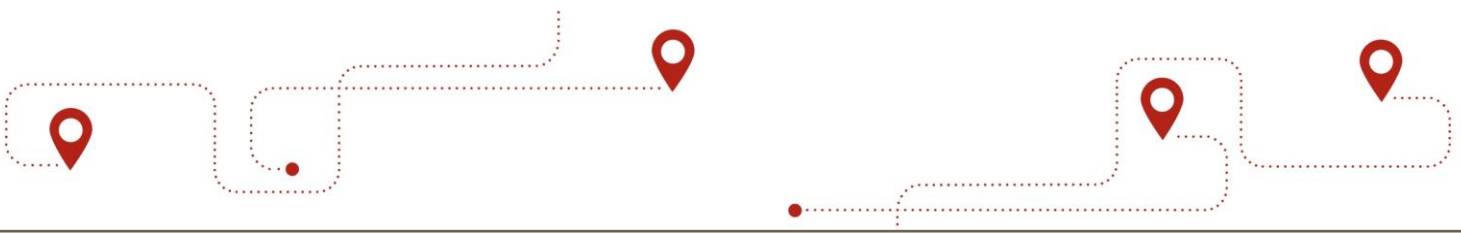
Courts should seek uniformity in procedures across jurisdictions. Innovation has happened on a national scale, but it has manifested in very different ways in each state, local jurisdiction,



and virtual courtroom. *The lack of uniformity is particularly concerning for fairness and equity in high-volume cases, where self-represented litigants may be navigating vastly different circumstances without any knowledge or expertise regarding what to expect or how to navigate different circumstances.* Those who find themselves as defendants in high-volume matters like consumer debt collection cases are overwhelmingly unrepresented, intimidated by court procedures, and uninformed about their rights or how to assert them in court. Creating uniformity across courts, as well as aligning court rules, procedures, staffing, technology, and information for litigants, can provide significant relief for individuals and the court system. IAALS has emphasized the importance of consistency within and across cases in our work on [Redefining Case Management](#), noting that consistency and predictability are essential to implementing technology solutions that are user-centric, efficient, equitable, and effective. Now is the time to take the lessons learned from all the different innovations and implement them nationwide.

We must maintain improvements to substantive justice and procedural fairness. While much of the innovation has come from the shift to virtual proceedings required by the unique circumstances of the pandemic, we have seen important improvements in substantive justice as well. Courts have been more deliberate in ensuring that substantive legal standards are met, and judges have taken more time to ensure that self-represented parties are substantively engaged in their cases. These improvements are equally important to procedural improvements, and while these improvements may prove more challenging in the face of rising dockets over the next year, they are just as crucial. Alongside improvements to proper outcomes, procedural fairness is equally essential to ensure that parties know they have a voice that is heard by the justice system. Courts have moved closer to bridge the gap of procedural fairness through the innovations that we have seen, helping to remove the disparity that exists as a result of differences in legal representation of the parties, lack of knowledge of court practices on the part of self-represented litigants, and mass dockets.

We need more discussion and empirical research regarding remote appearances and a framework for determining in-person versus remote appearances. A key question that has been raised around the country is *who decides who gets to appear remotely and who appears in person?* While judicial discretion plays a role, as does the type of case and type of hearing, it is also essential that the litigants and users of our system have a voice as well. As noted earlier, we have seen positive impacts to participation and access to justice as a result of remote court proceedings. We have seen the implementation of reforms that have long been urged to improve the administration of justice, but rarely implemented. While there may be legitimate questions as



to some of the challenges raised above, it is important to develop and move forward with a framework for making informed decisions regarding remote versus in-person proceedings. We need to consider what metrics and data we are not capturing that we should be used to inform this framework.

Over the next year, courts should pay close attention to changes in high-volume dockets.

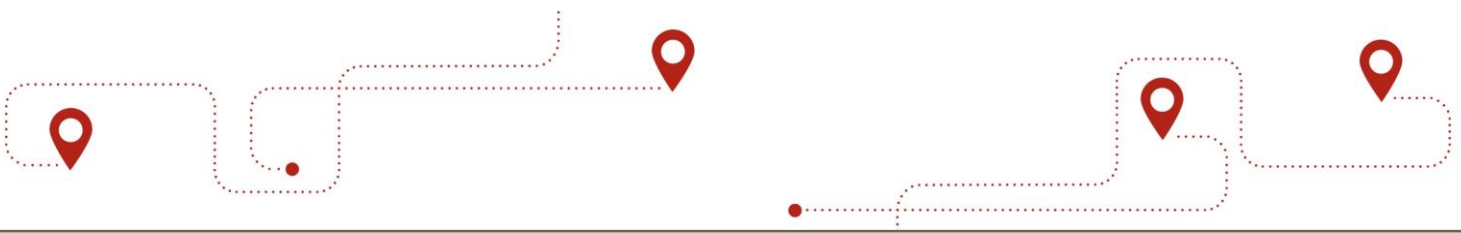
Courts have prioritized criminal matters and other emergent cases in the pandemic. Courts must figure out what types of cases are backlogged and what cases are expected to grow over the next year, and then determine the resources needed to address them. Given the challenges of unemployment, housing, and money problems over the past year, high-volume dockets are likely to grow. *These are cases that are likely to need additional court resources—and a continued focus on innovation and improved processes—in the near future.*

Our court staff has proven to be our greatest resource in this crisis, and this is particularly true in high-volume cases. In the pandemic, court personnel have gone above and beyond what has historically been asked of them to ensure access to justice in this time of crisis. They have been on the front lines ensuring access in the face of constantly changing expectations. They have suffered losses themselves. In the face of these pressures, court staff remain particularly important interfaces with litigants in high-volume cases, and we need to recognize their hard work and provide them the support they need to continue to play this vital role in these cases.

Need for Continued Dialogue, Research, and Learning

Around the country, task forces, committees, individual judges and attorneys, and numerous other stakeholders are engaged in this process of determining lessons learned and recommendations for what changes should be continued. *These efforts need to consider the unique challenges facing high-volume cases and focus on turning temporary innovations into permanent reforms so as to ensure that the gains we have seen in access to justice are maintained.*

A key piece of this analysis must be further research. We emphasized this in our issue paper on reducing cost and delay, and it is equally important to emphasize for high-volume cases. All of the different aspects of high-volume cases are ripe for research. IAALS and other leaders in civil justice reform have urged many of these reforms—such as remote hearings—for years, and we have now seen these innovations happen on the ground. There remain key questions about what

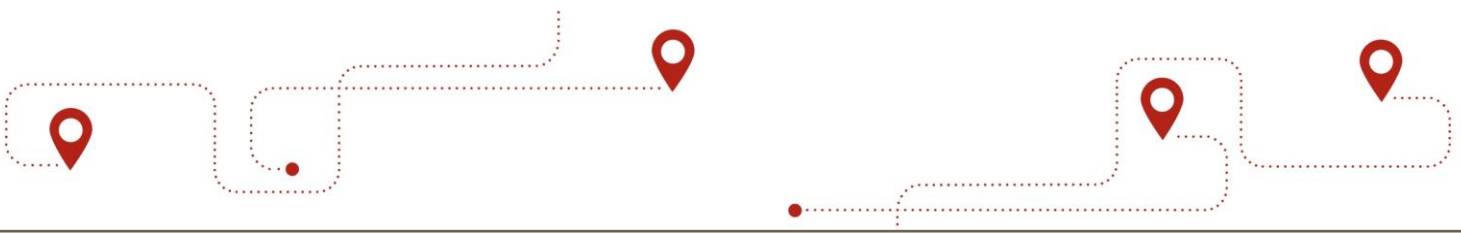


has worked well, and what needs to be kept with improvements from the past. The research to date has suggested that there is increased participation in high-volume cases, and a decrease in default judgments—a key challenge and goal of reform efforts in the past for high-volume cases. *Additional research will help us focus in on the extent to which we have improved access to justice in high-volume cases, and what changes in particular have been effective, so that we can continue to improve and prevent backsliding.*

There is greater interest now than ever before in evaluating what has happened from the perspective of the court users—and we need to capitalize on this. Despite the above positive benefits of technology, we still do not have a full understanding of the user experience and the new challenges posed by virtual experiences. We also need to recognize the limits of this research, as not all court users will feel comfortable providing honest feedback to the court, and we need to recognize and address this challenge in the research. Court staff and attorneys who work on these cases have a good eye and ear to what court users need, and they are an equally important group for feedback.

IAALS and HiiL, The Hague Institute for Innovation of Law, recently published [the results of a nationwide study](#) on access to justice in the United States. The study highlights that certain socio-demographic groups and racial/ethnic groups are particularly disadvantaged in terms of access to justice. *The existence of this inequity in our justice system makes it all the more important that we move forward with the innovations of this past year to ensure that the needs of all are met in an equal, equitable, and fair way.* Consumer debt cases—as one example—come coupled with long-term ramifications on economic stability, housing, credit, and employment. And, low- and moderate-income Americans are disproportionately impacted by consumer debt cases—as are Black and Hispanic communities. By improving the debt collection process, we can help those who are most frequently affected get notice and be heard, respected, and able to get justice—not just in theory but in practice. Improvements in high-volume cases may have the most immediate impact on advancing racial equity and support for underserved communities in our justice system.

The high-volume dockets in state courts and bankruptcy cases in our federal courts are the places where the vast majority of people in the United States experience the court system. After many years of urging reform in these cases, we have witnessed incredible innovation and adaptability in our justice system during a time of crisis. In this new world, we must capitalize on the unique



opportunity to evaluate and learn from these changes to improve access to justice in high-volume cases.

IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system.

This issue paper is from IAALS' Paths to Justice Summit Series, comprised of multiple invite-only virtual convenings and public webinars—and corresponding issue papers—focused on the unique challenges facing our justice system in this time. Themes include the paths of the pandemic, the paths to access, and the paths to racial justice that our system must walk. Our goal is to connect with other stakeholders tackling these issues, foster conversations among stakeholders and across systems, and move the conversation—and innovation—forward.

Thank you to the attendees of IAALS' September 2021 convening on this topic who generously gave of their time and expertise to brainstorm around these important questions.

For more on the Paths to Justice Summit Series, including additional white papers as they are published, please visit <https://iaals.du.edu/paths-justice-summit-series>.

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On September 1, 2021, IAALS, the Institute for the Advancement of the American Legal System, and HiiL, The Hague Institute for Innovation of Law, published the results of a nationwide study on access to justice in the United States in a report titled [*Justice Needs and Satisfaction in the United States of America*](#). The *US Justice Needs* study identified multiple goals, including providing nationwide data on access to justice and the justice needs that people in the United States face every day, as well as a greater understanding of how people resolve those needs—all to inform reform efforts. The pandemic has deepened the justice crisis globally and in the United States, making the goals of this study even more important. As noted in the final chapter of the report:

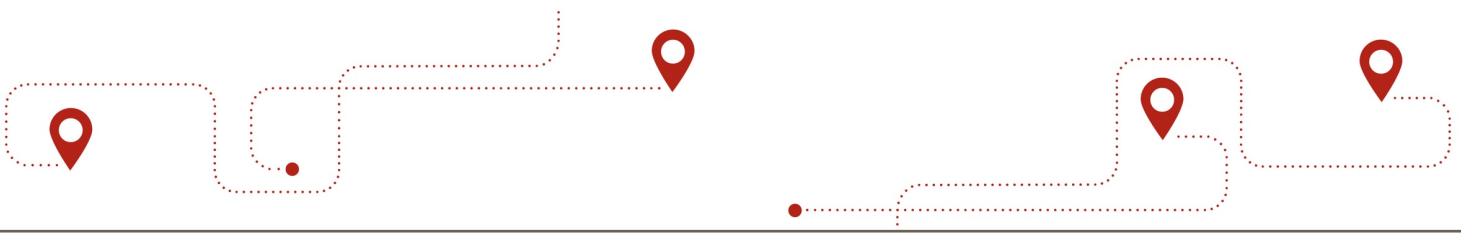
This study informs a deeper understanding of the justice crisis in the United States and provides the foundation for a path forward based on data. We call upon providers of justice services and policymakers to take up this data to inform innovation in the approach to closing this justice gap in the United States.

The next key questions are: How can we best utilize this data to inform action and innovation? What are the key areas of focus moving forward? And how do we broaden interest, engagement, and support in this effort to improve access to justice in the United States?

In October 2021, IAALS held a convening to brainstorm these important questions as part of IAALS' Paths to Justice Summit Series. The goal was to bring together a group of diverse perspectives and partners to engage in a dialogue, identify opportunities for action and broadening engagement, and inspire continued research and collaboration. Just as it was our goal to provide the data necessary for national system reform, we hope the following summary helps to bring focus and clarity to the dialogue and ongoing efforts to improve access to justice in the United States.

From Action to Access

A key opportunity for impact lies in focusing reform efforts rather than treating access to justice as a one-size-fits-all problem. The IAALS and HiiL study confirms that, while access to justice is a problem that impacts people from all walks of life, with serious social, legal, economic, and political consequences, the effects of the justice crisis are not equally distributed.

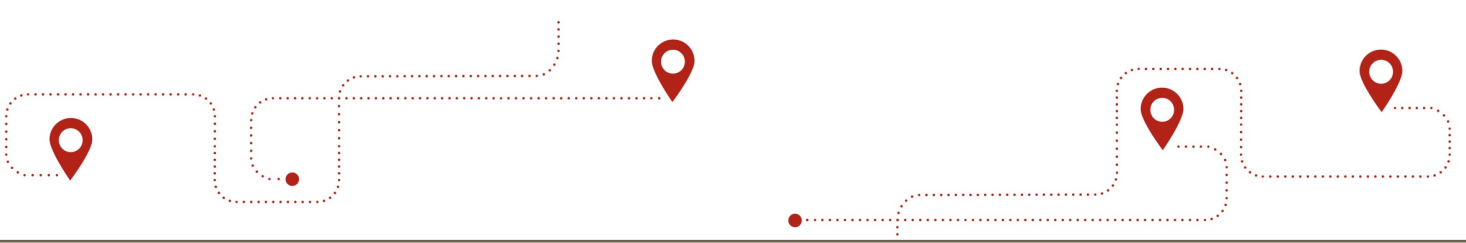


- There are some legal problems in people’s lives that are more burdensome than others. In terms of seriousness and impact time and money spent, rate of resolution, and problem types that are most often assessed as the most serious problem Americans have faced as a result of the COVID-19 pandemic, these include domestic violence and abuse, family problems, work and employment problems, housing, and money-related problems. *We must focus in on these core justice problems, which are prevalent and severe, as this is where the opportunity exists for the greatest impact.* The problems that are the most intractable—the ones that are most complex, with multiple factors—need integrated solutions.
- The *US Justice Needs* study highlights a national access to justice crisis. At the same time, the American legal infrastructure—the laws, rules, and practices that contribute to how people experience the justice system as fair or unfair, effective or ineffective—vary depending on where people live. This needs to be taken into account when crafting solutions.
- The study also includes powerful findings regarding inequity in our system. *We must view the system through this lens of inequity to find solutions.* The nature, seriousness, and resolution rates of the problems Americans experience are shaped in meaningful ways by their income, gender, race and ethnicity, age, and living environment. We need to recognize and focus in on these inequities so as to ensure they are addressed.

Another way to approach system reform is to focus in on different justice system actors.

There are many different paths into the justice system, with a web of different actors. We need to map out this ecosystem and create an integrated and cohesive approach to justice delivery. We also need to engage each of these different actors, as the one-size-fits-all approach also does not work in terms of how we engage with others across the justice ecosystem.

- We recognize that courts have defined roles in the justice system. Yet courts have demonstrated that it is possible to use their instrumental role in our justice system to address access to justice needs in less traditional ways. Judges are often thought of as adjudicators; however, judges and the courts also play an important administrative function. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators’ (COSCA) [*Call to Action*](#) in 2016 recognized the critical role that courts play in achieving civil justice for all, including a list of recommendations to ensure improved access for litigants. *Courts have been forced to be innovative in the pandemic in terms of partnerships and approaches to meet justice needs, and we need to continue*



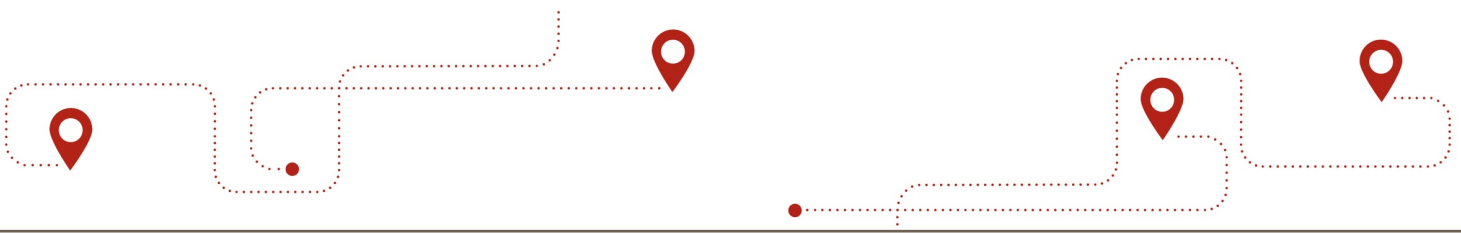
to build on this momentum. One suggestion that was shared during the convening was the development of community councils for courts.

- Judges are an equally important system actor. As Michigan Chief Justice Bridget Mary McCormack recently noted, “many judges directly interact with members of the public trying to navigate the legal system on a daily basis. This experience provides judges with an informed perspective on what policies are working well and what policies are working *less* well. As direct witnesses to the daily experiences of people navigating legal problems, judges have critical information about what reforms are needed, as well as ideas on how such reforms can be implemented.”¹ Judges bring this experience, as well as critical leadership. “As first-hand observers of the flaws in our legal system, judges are uniquely positioned to help fix them.”²
- For similar reasons, lawyers are essential system actors to engage as well. Just like judges, attorneys play a critical role as observers of justice needs and barriers in the system, as well as leaders and advocates for reform. Even within the bar, however, there will be very different experiences and understanding of the extent of the justice crisis. While some—particularly legal aid lawyers—will have first hand knowledge of the unmet legal needs in communities, other attorneys who practice primarily complex litigation may not have a full understanding of the extent of the justice crisis.
- We also need to think outside the box of traditional approaches and traditional justice system actors. The *US Justice Needs* study confirms the extent of the justice crisis in the United States, and the extent to which this is a broad societal problem that touches all aspects of peoples’ daily lives. *We need to think broadly regarding the extent of the crisis, the impact, and the actors throughout society who interact with people as they struggle with this crisis.* We need to fully engage all of these different actors to address this challenge.

We must be proactive in our focus and identify what interventions can be put in place to avoid justice problems before they occur. When we consider the full extent of the justice crisis, we see that approximately 120 million legal problems are not resolved fairly each year from the perspective of the users of our system. The cumulative adverse effects are immense. Negative impacts on peoples’ lives include the practical and financial, as well as emotional and

¹ Bridget Mary McCormack, *Staying Off the Sidelines: Judges as Agents for Justice System Reform*, 131 YALE L.J. 179 (Oct. 24, 2021).

² *Id.* at 189.



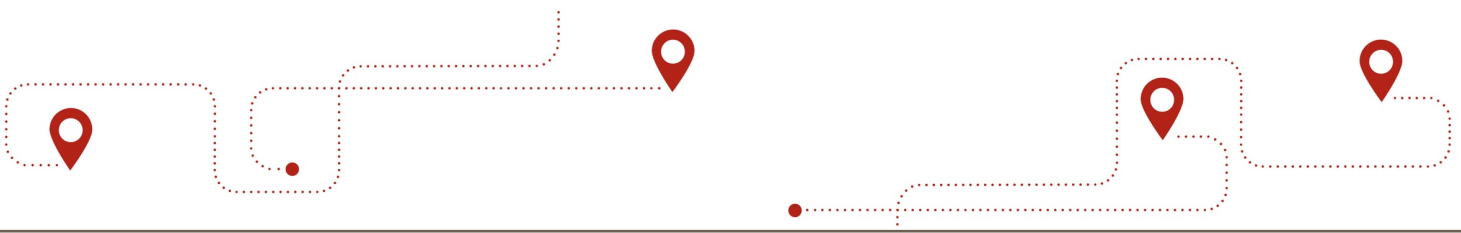
psychological. *While we need to focus on how to achieve fair resolutions in the problems that occur, the sheer magnitude of this problem also underscores the need for a focus on upstream solutions to prevent these justice problems in the first place.* Where we can focus in on specific interventions that can be put in place to avoid problems altogether, we can eliminate these negative impacts—on people’s lives and the system—all together.

Partnership can play a critical role in developing solutions. Given the broad extent of the crisis and its impact on society, this crisis has not—and will not—be addressed through the usual actions and policies. We know that along with “traditional” providers, we are already seeing numerous “new” providers of justice including financial institutions, health care professionals, insurance companies, and public authorities. There are many actors across society who intersect with this crisis. *One critical opportunity for intervention is to think about how people can work together, as coordination across these different actors can lead to impact.* “Medical-legal partnerships integrate the unique expertise of lawyers into health care settings to help clinicians, case managers, and social workers address structural problems at the root of so many health inequities.”³ We need to think about how we can likewise integrate the expertise of those outside the legal system to address the structural problems at the root of legal inequities.

Action requires funding, and for increased impact we need to engage funders around these issues. The clear evidence of an access to justice crisis in the United States highlights the importance of the above opportunities for action, but it also highlights the urgent need for increased funding. *While it is understandable that funders have been invested in criminal justice reform, the widespread negative impacts on people with unmet civil justice needs demands funding to address the civil justice crisis in the United States as well.* There are a few key opportunities for engaging funders on these issues:

- Civil and criminal problems in people’s daily lives are intertwined, as are our civil and criminal systems. Emphasizing this important interconnection, and opportunity for a system-wide approach, may attract funders historically focused on criminal justice reform.
- We must also focus on activities that funders are already keen to fund. With proper guidance, funders will see the long-term value of funding civil justice reform, starting

³ National Center for Medical Legal Partnership, Milken Institute School of Public Health, The George Washington University, <https://medical-legalpartnership.org/>.



with current areas of interest in, for example, homes and community stability, income and asset growth, family well-being, and employment.

Expanding Engagement and Support

How do we broaden interest, engagement, and support in this effort to improve access to justice in the United States?

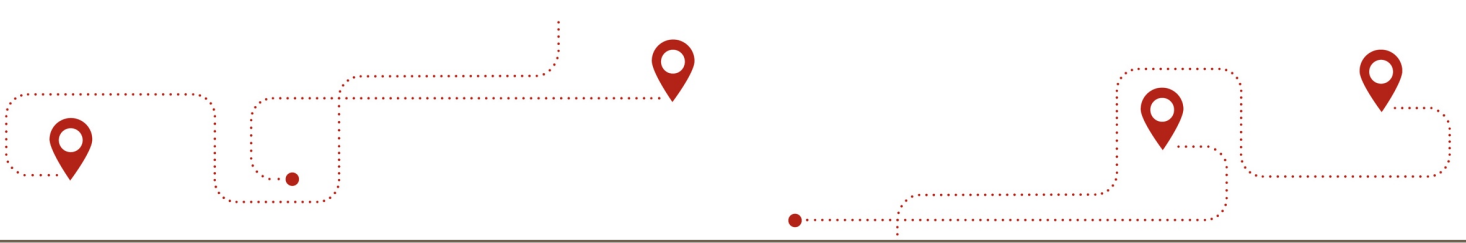
We should think broadly about different stakeholders that should be engaged in this effort.

This was emphasized above in terms of how to have impact, but it is worth noting here as well in terms of broadening engagement. *Because the problem is not just a legal system problem, it will take a broad coalition of stakeholders in and outside the justice system to fully solve the problem.* This includes the executive and legislative branches, employers, the medical and business communities, and academics.

We need to look to other complex movements to see what has been successful in getting engagement and broad support. For example, what has worked in the criminal justice reform and in the environmental movement? How has criminal justice reform made progress? We need to look to other examples of complex society-wide challenges where progress has been made, and look at what has been successful in terms of messaging and broadening engagement and support.

Vision and messaging go hand in hand. We need to shift from a message of “this is what is wrong” to a message of “this is the change that we are working toward.” Engaging others in system reform requires more than highlighting the problems. It requires positive messaging around a reform agenda, including a vision for what the system could look like when the problem is solved.

- We need to highlight our goals for reform, which include deepening the public’s understanding of their rights and legal needs; greater ability for people to assert those rights and resolve those needs in a neutral, fair, and equitable way; and greater accountability across all system actors in their role in ensuring and enforcing such outcomes.
- Funders may need guidance to see that the modern civil justice reform movement is increasingly coordinating activism, pointing toward definite and clear policy goals, and



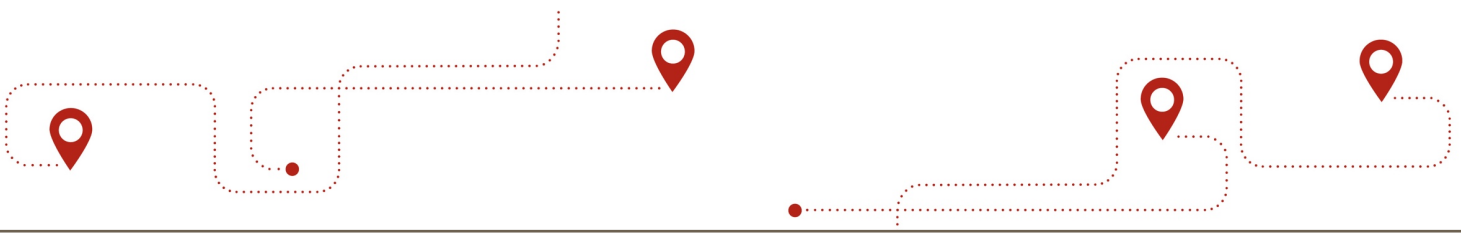
creating opportunities for philanthropic interventions that can improve home and community stability, income and asset growth, family well-being, and employment.

Storytelling and narratives are critical. We need to answer the societal question of “what is in it for me?” We can do this by focusing in on the impacts on people’s lives. This was a key goal of the *US Justice Needs* study. We need to take that one step further and look to how storytelling and narratives can support engagement. *Looking to the experiences of people, we can find compelling stories of how access to justice has changed lives.* People respond to compassionate accounts of how lives have been improved, communities stabilized, and societal costs and other harms reduced.

Just as we need multiple focused approaches to solutions, there is no one-size-fits-all approach to outreach and engagement. We reach different audiences by addressing needs that are important to them. Those needs will be unique, and we have to be clear to each different group how access to justice responds to their specific concerns.

- Even for lawyers and judges, there is not a one-size-fits-all approach. Many lawyers do not realize that there are millions of people who do not have access to lawyers or to other resources for resolving legal disputes. Others are deeply entrenched in these challenges.
- For funders, it is important to show how “investment” in civil justice makes a difference.
- Strategies for outreach and engagement also need to look different based on whether they are local or national efforts.

Education is essential and should broadly engage both those within the justice system and those outside the system. The key to wider engagement is a better understanding of the crisis, needed solutions, and the vision of a system that achieves access to justice for all. This education must include leaders amongst the bench and bar, such as the Conference of Chief Justices and bar associations, those on the ground who are tirelessly working toward access to justice including trial courts and Access to Justice Commissions, and new audiences both within the justice system and outside it, such as the medical community, businesses, and educators. Lawyers are a key necessary audience for education because many don’t understand the scale of the crisis. Law school education suggests a traditional adversarial system with lawyers on both sides of a case that goes through a lengthy process ending in trial. *Justice needs, and the journeys people take to resolve those needs, often vary greatly from these more traditional views of the justice system, however.* Providing a full view of the how justice is delivered, including the



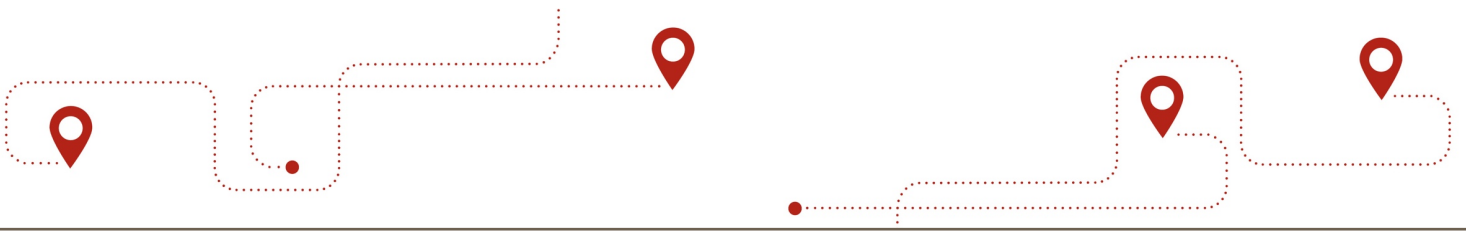
journeys people take to resolve their legal problems, is essential to designing better and more responsive justice systems.

Need for Continued Dialogue, Research, and Education

The US Justice Needs data reflects that there is much work to be done to ensure our justice system in the United States meets its promise of equal justice for all. The many pathways that people take to meet their legal needs, and the sheer numbers of justice needs that exist, serve as a reminder that we have not yet been able to deliver effective solutions at scale. In working to advance access to justice, we need a change in mindset to meet these needs. It is not necessarily a bad thing when people don't go to court for every justice problem they have. *Our ultimate goal is fair resolution of justice problems, and the prevention of justice problems in the first place.* We need to change both minds and processes to achieve this goal. We also need to move past focusing in on the problem to strategizing and mobilizing for system-wide change. The traditional approaches are working as they were created and intended to work—for a different time and different needs in society.

We should think about impact on a national scale, in terms of economic impact, impact on poverty, and impact on physical and mental health. If we have a better understanding of the societal impacts stemming from unresolved justice needs, we will have a better focus on solutions and broaden engagement.

The unmet need for justice in the United States remains a critical challenge in our society. Cross-system engagement and collaboration is essential. We need to continue to identify barriers to these challenges and address them in a focused way, with broad engagement both within and outside the justice system.



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Systemic inequity is a common discussion point in criminal justice reform. While perhaps less frequently discussed, we also have clear evidence that systemic bias exists in the civil legal system. Research spanning back decades shows that racial, ethnic, and gender bias manifests in judicial outcomes. Furthermore, as it does in the criminal justice context, inequities affect how certain demographic groups experience civil legal problems.

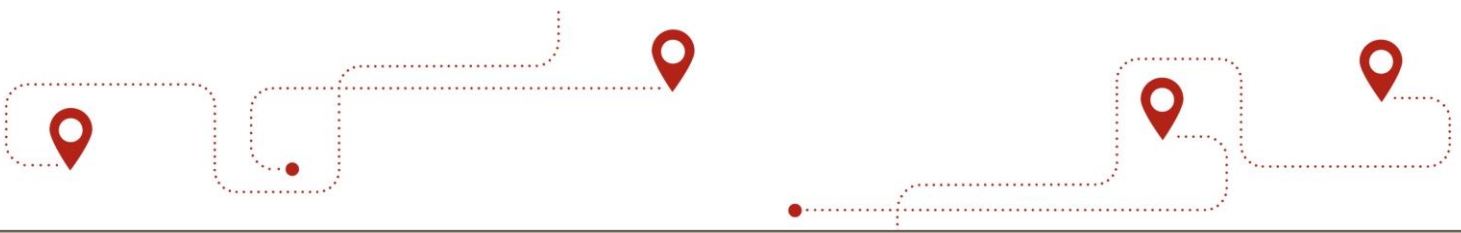
A recent report published by IAALS, the Institute for the Advancement of the American Legal System, and HiiL, The Hague Institute for Innovation of Law, [*Justice Needs and Satisfaction in the United States of America*](#), reveals that racial and ethnic identities play a role in the rate, seriousness, and resolution of legal problems. White individuals reported experiencing the lowest rates of legal issues; individuals identifying as Multiracial (non-Hispanic) reported the highest rates.¹ While a common set of the most prevalent types of problems appeared across racial and ethnic identities, Black (non-Hispanic) respondents reported a distinct set of issues relating to housing, work and employment, and money issues.

Historically marginalized groups include identities beyond race and ethnicity: members of the LGBTQ communities, persons with disabilities (including invisible disabilities), women, veterans, and others who are overlooked, underrepresented, and otherwise disadvantaged in society (broadly) and in the justice system (more specifically). Further, people have overlapping identities, and those whose identities exist at the confluence of multiple communities can experience compounding issues of inequity and lack of access to our justice system.

When we look at the justice system in this way, we see constellations of different problems, different experiences, and different outcomes. This prompts several key questions: *What barriers exist to equity in our civil justice system? How is our legal system set up to create or perpetuate injustices and inequities? What steps must we take to eliminate these barriers? What efforts, including research and collaboration, are necessary to identify and address the inequities?*

In December 2021, IAALS held a convening to brainstorm these important questions as part of IAALS' Paths to Justice Summit Series. The goal was to bring together a group of diverse

¹ Individuals identifying as Black (non-Hispanic) and separately Hispanic also reported higher rates than white individuals.



perspectives and partners to engage in a dialogue around inequity in our civil justice system and to determine ways to take meaningful action to address it.

Barriers to Equity

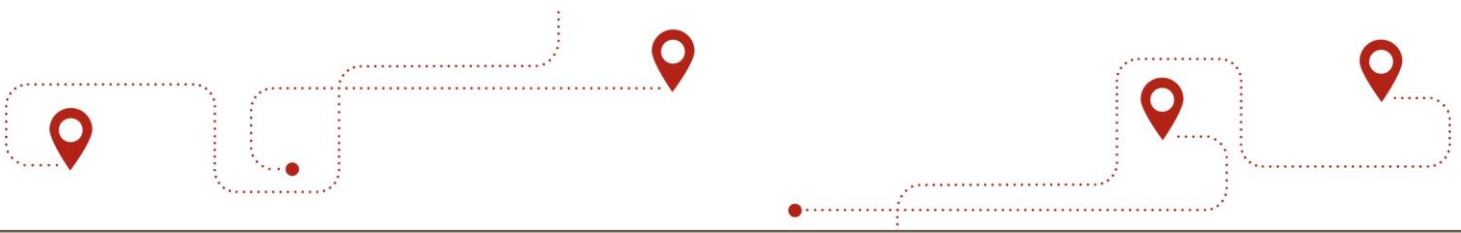
We must recognize and appreciate the historical context in which our system was formed.

It has become a ubiquitous symbol of the U.S. justice system: the cherished image of Lady Justice, donning a sword (representing power), scales (representing impartiality), and, in many modern renditions, a blindfold² (generally accepted as also representing impartiality). Her image stands in our mind alongside this aspirational promise of a fair and impartial judiciary. Yet we cannot focus on these aspirational underpinnings to the exclusion of the historical reality of the system’s roots. When our justice system was formed, Black individuals were considered property and women had very few rights. While incremental (and critical) progress has been made in the fight for civil rights and equity, our justice system (and broader society) today remains dominated by white men of economic privilege. *As a precursor to meaningful dialogue on solution building, we must acknowledge that the presence of bias and inequity in our justice system is, first and foremost, a white privilege problem.*

The justice system is complex and designed for use by judges and attorneys. *The legal system is baked with complexity and assumptions that people can equally access lawyer-gatekeepers to help enforce rights and obligations.* But our civil justice system today is full of lawyerless courts.³ By necessity or choice, many people handle their legal issues without attorney assistance. The designed complexity and adversarial structure of the system is a substantial barrier to access. Beyond the cost of a lawyer and court fees, the cost of participation is high. The system often inflicts trauma on those who go through it, which further deepens individual and community reluctance to engage. While some courts are making progress to simplify processes, very few have substantially restructured around the specific needs of these

² U.S. SUP. CT. OFFICE OF THE CURATOR, <https://www.supremecourt.gov/about/figuresofjustice.pdf> (last visited Feb. 16, 2022).

³ PAULA HANNAFORD-AGOR ET AL., NAT’L CTR. FOR STATE CTS. & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *The Landscape of Domestic Relations Cases in State Courts* ii (2018), <https://iaals.du.edu/sites/default/files/documents/publications/fji-landscape-report.pdf>; PAULA HANNAFORD-AGOR ET AL., NAT’L CTR. FOR STATE CTS., *The Landscape of Civil Litigation in State Courts* 31-33 (2015), https://www.ncsc.org/_data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf; see Anna E. Carpenter et al., *Judges in Lawyerless Courts*, 110 GEO. L.J. (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3793724.



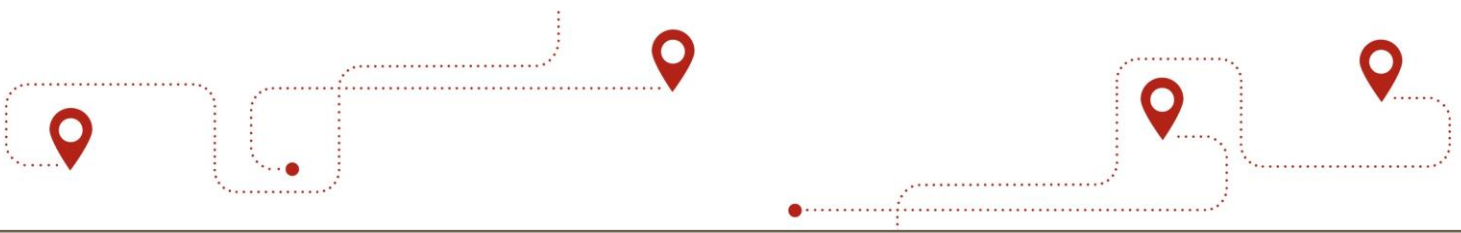
court users. Furthermore, in many courts, the issue of whether the judicial system has an obligation to make the system usable for unrepresented people is still under debate. Until justice system processes are responsive to the needs of individual users, marginalized communities will be disproportionately disadvantaged.

We lack agreement on the goal of access to justice. There is broad agreement among stakeholders that increasing access to attorneys is instrumental in achieving fair outcomes. But is attorney assistance alone the goal of access to justice efforts? Pro bono and legal aid are critical pathways to justice for countless people. Additionally, many advocate for a Civil Gideon system to provide valuable representation in civil matters that impact people’s lives and families. *Yet stakeholders also understand—given the sheer volume of the justice gap—that subsidized programs and volunteerism alone are not scalable solutions.*

Access to justice also encompasses the broad need for people to seek and obtain fair resolution of their justice problems through formal and informal means. We must rethink and redefine the goals of access to justice to include broader approaches—multifocal solutions that help the justice system meet its obligation to serve people and make the system usable. Once we have sufficiently articulated the broad goals of access to justice, we must measure the efficacy of implemented programs to develop evidence-based practices that ensure equal justice for all.

There is a misalignment in how people experience problems and how the justice system solves problems. At the heart of every legal matter that enters the justice system is a complex life problem. *It is nearly impossible for people experiencing a divorce or eviction (for example) to separate a legal matter from the broader reality and impact of the problem.* Lawyers and judges, however, are not trained to solve life problems; they are trained to function in a system that is about law, facts, and processes. The current system’s rigidity and siloed approach to problem solving is often at odds with people’s need for holistic solutions. Stakeholders must view the issue of justice system inequity through the lens of the broader social and life contexts in which it exists.

Many justice system stakeholders lack a sense of what diversity, equity, and inclusion (DEI) means and how vital these efforts are to the legal system. Lawyers and judges are often removed from the lived experiences and life problems of historically marginalized people. This



disconnect limits their ability to empathize with people engaged in the legal system⁴—and this, in turn, can affect how system players treat people. For example, a lawyer or judge may experience frustration when a person misses deadlines or hearings. They may attribute this behavior to lack of follow-through or disrespect for the process, when instead that person is dealing with serious issues pertaining to childcare, housing, employment, etc. *It is important to understand that structural inequity manifests in concrete ways; inequity is not an abstraction.* Embracing DEI also means reexamining prevailing assumptions around service and justice delivery. The pandemic has challenged the traditional model whereby clients and litigants are required to come to providers. Virtual proceedings now allow lawyers and courts to connect with people where they are. Increasingly, legal and justice service providers (including judges and courts) need to look to communities where they can help, which often means bringing services directly into those areas.

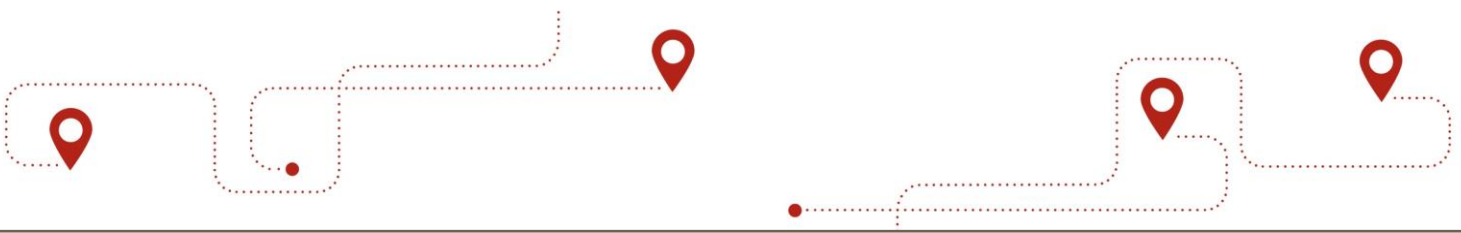
There is a lack of diversity in the profession (the bench, the bar, and the academy).

Diversification of the legal profession is critical to dismantling barriers to equity. Long-standing institutional and societal barriers have shaped our current system into the predominately white and economically privileged profession that it is today.⁵ *Gatekeeping mechanisms at various points along the pathway to the law (including standardized testing and the cost of legal education) further perpetuate existing inequalities and reinforce the homogeneity of the profession.* Our intergenerational picture of lawyers and judges as primarily white men creates a negative feedback loop wherein new generations do not see themselves as having a place in the system—and in turn do not pursue the profession, pinching the pipeline at the earliest stages.

The lack of diversity on the bench and in the bar also perpetuates the systemic lack of empathy for the circumstances and issues affecting historically marginalized groups. When the profession is non-reflective of the communities it serves, this reality is signaled outward to the public. Diversifying the profession and the bench is also critical for making intergenerational change in broader communities, as many members of historically marginalized communities attend law school to give back to their communities.

⁴ Adam Waytz, *The Limits of Empathy*, HARV. BUS. REV. (Jan. – Feb. 2016), <https://online.law.harvard.edu/>.

⁵ See Alicia Bannon, *State Supreme Court Diversity*, BRENNAN CTR. FOR JUST. (updated Apr. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity-april-2021-update>.



Eliminating Barriers

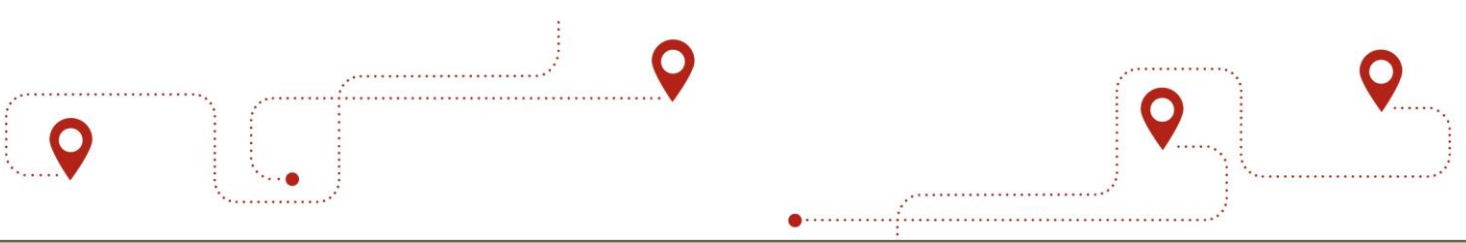
No singular solution exists to eliminating barriers to inequity in our legal system. We need a multifaceted approach that brings together diverse perspectives, members of diverse communities, and interdisciplinary partnerships to create change at multiple points throughout the system.

As a first step, education is essential for addressing and eliminating systemic barriers in our legal system.

- **Education for judges and lawyers.** While lawyers and judges today have inherited this system (and its systemic issues), the responsibility nevertheless falls to them to fix it. Acknowledging that we have a system that needs fixing, then, is the first step. For those who have had the privilege of not having experienced discrimination and systemic inequality, coming to this realization can be challenging. Efforts to educate system stakeholders on systemic inequity and to foster empathy for those who have different lived experiences must be integrated into education, particularly in law school.

Few law schools offer courses on access to justice, and even fewer still provide education on the ways in which historically marginalized communities are disadvantaged in the system. *Having a diverse law school faculty and applying interdisciplinary approaches to legal education can equip young attorneys to better serve clients and communities.* To be an effective advocate, lawyers need to understand the challenges, burdens, and barriers that their clients are experiencing. This is equally true for the judiciary, and having a diverse bench will lead to innovative approaches that better serve community needs. Continuing legal education (CLE) and judicial education must also incorporate DEI training. Colorado, for example, requires lawyers to take CLE courses that focus on bias, equity, diversity, and inclusivity.⁶ This education should include the role of implicit bias in reinforcing inequity. At times, these biases keep would-be allies from actualizing what they want to achieve. Those involved in the system must recognize that sometimes they are part of the problem.

⁶ Colorado is one of a growing number of states implementing diversity-focused attorney continuing legal education requirements. COLO. R. CIV. P. 250.2(a)(i) (effective Jan. 1, 2023) (noting that “every registered lawyer and every judge must complete at least two credit hours in the area of equity, diversity, and inclusivity. . .”).



- **Education for the executive and legislative branch.** Court funding is a perennial issue, so courts have long been strategizing how to educate legislators about the work the judiciary does and the challenges it faces. But there is no better (and no more compelling) way to appreciate inequity and access to justice issues than seeing court proceedings firsthand. *We should encourage more states to have legislative orientation in court for new representatives.* The executive branch also plays a critical role in the appointment of judges in many states and this education is equally important.

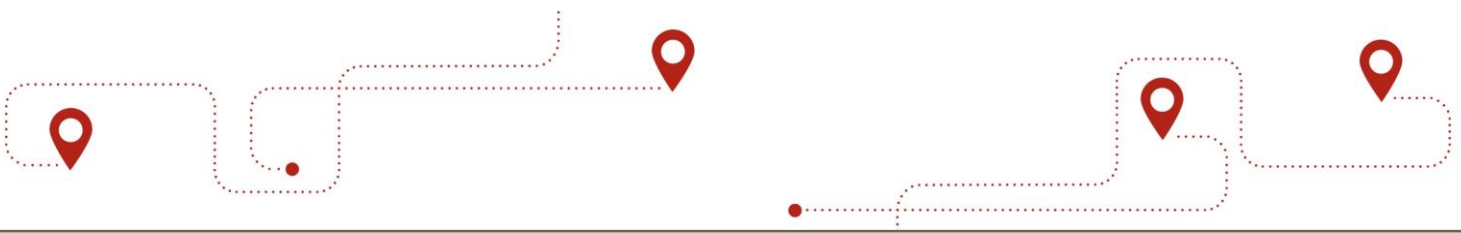
We need multiple pathways to the legal profession that engage young people at an early age. Developing a more diverse and inclusive profession must start well before law school. Children from privileged backgrounds often have an image of college at a very young age—and a clear expectation from their community that they will attend. They may also know lawyers and judges personally. Children in historically marginalized communities all too often lack this image and expectation. *Discrimination manifests at a very young age, and without models that show children that career pathways are open to them, the law can quickly become out of reach.* Children must know at a young age that there is a pathway to a legal career.

In college, pre-law programming can help young adults envision their place in the legal community. At Harvard, for example, the law school developed the Zero-L online course that is “designed to ensure all incoming students, whatever their backgrounds and previous areas of study, start with foundational legal knowledge that enables them to thrive in law school.”⁷ We also must acknowledge the role of money and economic privilege in legal education. Debt-forgiveness programs and financial resources for students from underserved communities could increase inclusivity in the profession.

Make it easier for people to participate in the system.

- **Remove complexity, simplify processes, and develop self-help resources.** With more than three-fourths of civil and family cases having at least one party without an attorney, courts no longer have the option to maintain a system designed solely for attorneys—at least, not if they want to dispense fair outcomes and ensure historically marginalized communities are not further disadvantaged by the legal system. *Courts can implement an array of procedural and service reforms that courts can implement, ranging from incremental improvements to substantial process change.* On one end, making forms and

⁷ Zero-L, HARV. LAW SCH., <https://online.law.harvard.edu/> (last visited Feb. 16, 2022).



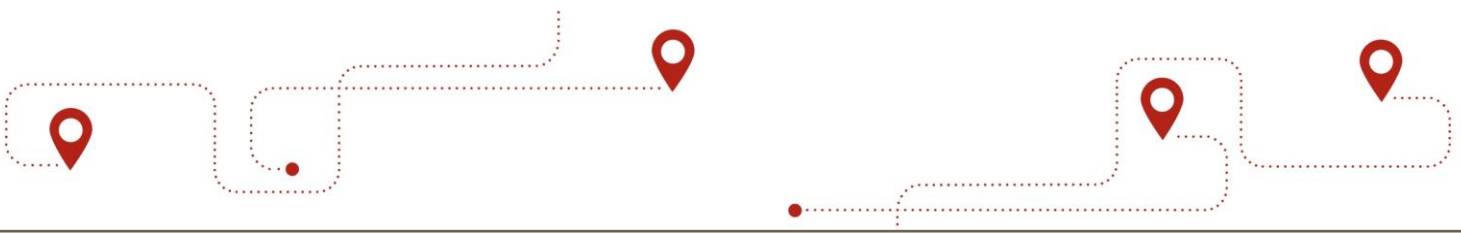
other resources available (in languages spoken by the community) is an easy step to dismantle barriers to access. On the other end of the spectrum, courts have implemented streamlined processes in civil and family cases, some of which are specifically designed around the needs of unrepresented parties.

- **Realign the framework for resolving legal problems and facilitating the resolution of life problems.** Our legal system understandably has limited authority when it comes to resolving people’s life issues. *Yet we can still create a more holistic framework in which to think about the problems that come before lawyers and judges.* Family courts are already very familiar with this reality. Many are experimenting with interdisciplinary partnerships, using court-annexed services and leveraging community service providers. In Alaska, the State Court System redefined the concept of “justice” to include a broad ecosystem of services that addresses issues related to housing, education, jobs, food, health, and safety.⁸ In eviction matters, courts are increasingly experimenting with upstream interventions, which can help people solve their life issues before they become legal matters.⁹ The Oregon Judicial Department hosts leadership coordination efforts for issues that intersect with Oregon’s behavioral health and justice systems.¹⁰ Problem-solving courts provide another model for interdisciplinary, community-based solutions.
- **Increase opportunities for people to access legal services.** Legal advice makes a difference in people’s lives and in the outcome of their legal matters. Facilitating pro bono efforts, funding legal aid organizations, and exploring Civil Gideon options in particular cases are excellent and smaller-scale solutions to increasing equity and

⁸ Stacey Marz et al., *Alaska’s justice ecosystem: Building a partnership of providers*, ALASKA CT. SYS. ACCESS TO JUST. COMM., (Dec. 22, 2017), <https://courts.alaska.gov/jfa/docs/plan.pdf>.

⁹ *Eviction diversion planning NCSC eviction diversion program*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-planning> (last visited Feb. 16, 2022).

¹⁰ Oregon Judicial Department’s Behavioral Health/Justice System Leadership Coordination Committee, “brings together the leaders of multi-stakeholder committees, councils, and workgroups working on issues at the intersection of Oregon’s behavioral health and justice systems to ensure collaboration and consistency of statewide efforts.” *Behavioral Health/Justice System Leadership Coordination*, OR. JUD. BRANCH, <https://www.courts.oregon.gov/programs/BHLeadership/Pages/default.aspx> (last visited Feb. 16, 2022). A recent presentation from Dr. Margie Balfour highlights the hub and spoke model of the Crisis Response Center (CRC), a regional clinically staffed 24/7 hub for rapid triage and crisis stabilization as a systemic approach to creating and sustaining high quality crisis services. Dr. Margie Balfour, MD, PhD, *Crisis Response Center: A Hub & Spoke Model for Behavioral Health*, OR. JUD. BRANCH, https://www.youtube.com/watch?v=TGvGrjKC_sA.



fairness. *We also need scalable solutions that include a diversified ecosystem of service providers.* Through targeted regulatory reforms, we can create partnerships with learning institutions to educate and license qualified allied professionals who can provide limited legal advice. Law students are also an underutilized resource in serving communities.

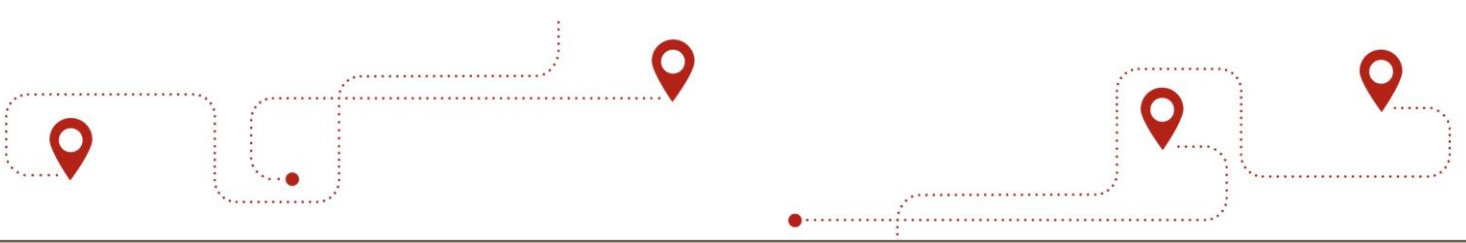
Technology (to an extent) provides substantial opportunities to solve equity and access issues. The COVID-19 pandemic has had a major impact on the way the justice system functions, and research is emerging on the efficacy of measures put into place during this time. People can participate in virtual hearings from their homes, offices, or public libraries, removing burdens of in-court participation relating to transportation, time off work, and childcare costs. At the same time, we are also coming to understand better the contours of the digital divide and how virtual engagement disadvantages certain people and communities.

Although the term “digital *divide*” suggests a wide divergence between people who can access digital technologies and those who cannot, this issue really exists on a spectrum. Our solutions, then, need not be either-or, but rather should employ a range of options for participation. Jurisdictions are experimenting with procedural middle grounds—some courts, for example, are providing the technology and making space in the courthouse for individual virtual participation. Others are partnering to create these spaces in communities throughout the state. *As we internalize the lessons we have learned to date from the pandemic, we will be better equipped to design hybrid systems with multiple on- and off-ramps, allowing court users to select options that work best for their circumstances.*

We need to look beyond the legal system, in particular to community-based solutions. Justice does not live only in courthouses. *Individuals and organizations in the community are valuable justice system partners.* An increasing number of courts are looking outside of formal judicial institutions and engaging communities in serving justice. The Alaska State Court System partners across legal, social services, medical, and information providers to assist Alaskans in solving legal issues before they enter the system (through early detection, diagnosis, and intervention).¹¹ In the United Kingdom, Citizen’s Advice centers provide people with advice on issues relating to employment, benefits, debt and money, law and courts, housing, and more.¹²

¹¹ Resource: *Alaska’s Justice Ecosystem: Building a Partnership of Providers* (SRLN 2017), SELF-REPRESENTED LITIG. NETWORK, <https://www.srln.org/Alaska> (last visited Feb. 16, 2022).

¹² CITIZENS ADVICE, <https://www.citizensadvice.org.uk/> (last visited Feb. 16, 2022).



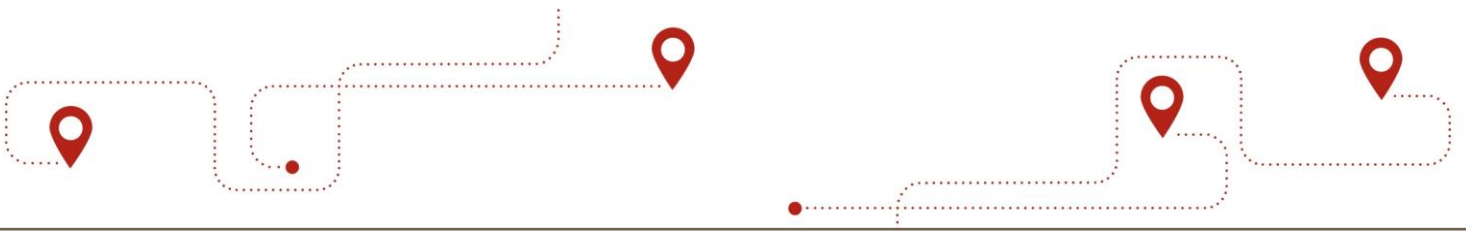
We need to collect and disseminate documented successes. There is so much innovation happening in courts around the country. The successes and failures that emerge from these efforts (even those that are small/smaller in scale) should be documented, disseminated, and deployed to accelerate success in other jurisdictions. *The access to justice community has a frequent “reinventing the wheel” problem, which hinders the development of scalable solutions.* A more organized manner of collecting and sharing information on current programs can also drum up legislative support. If legislators see a solution working somewhere, they are more likely to consider funding that solution in their jurisdiction. Broad theories simply are not as effective in mobilizing legislative action. The same is true with court systems—just a few jurisdictions experimenting can spark statewide change. We also must celebrate the changemakers, funders, and researchers making a difference in this space.

Finally, we need action instead of continued circling around the problem. It is time to move this critical work forward on two fronts: brainstorming additional solutions and creating action toward the solutions we have. *Systemic bias and discrimination are well documented in the legal system; we have enough evidence of the problem.* Many ideas are out there, and what we need is action. There will always be those in the system who support the status quo, but we have waited long enough to dismantle barriers to equity.

Need for Education, Collaboration, and Action

The legal system catches the failures of our social system and the inequities in our country. The last several years have highlighted these challenges, but also present us with an unprecedented opportunity to redesign. Discussions underway within the legal system and more broadly have been instrumental in identifying how we might begin to dismantle barriers to equity. But additional work, including education and collaboration, is needed to act on solutions that will create a truly equitable system.

Existing legal system stakeholders, including the other branches of government, require more education on the system’s structural inequalities and how DEI efforts can help. Collaborations between justice system stakeholders and community organizations can help people through upstream interventions that get closer to addressing the roots of where inequities manifest. Partnerships with communities and early educators to increase the pipeline of new, diverse generations of lawyers and judges can make longer-term changes to the makeup of the judiciary,



creating a system that is truly representative of the people it serves. Finally, and most importantly, these ideas and others must be met with widespread action. It will take work to make sure the system addresses barriers to equity and ensures access to justice for all. This is work that we all must do.

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Systemic racism is pervasive in the United States; as our policies and systems were built over centuries, advantages were built in by and for those who built them. Our societal reckoning with this reality has only just begun—and one area that is ripe for improvement is the justice system. Having a justice system that is trustworthy and trusted by the public it is intended to serve is imperative to our democracy. Thus, a critical initial step in rectifying these systemic problems is taking stock of the status quo and brainstorming ways to make progress. For the legal system, there are numerous avenues for such reflection—one of which is considering the relationship between racial justice and how the public views the justice system.

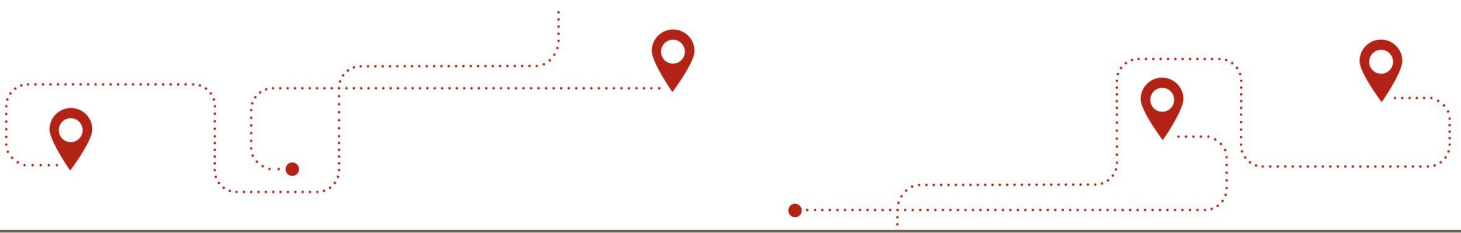
In September 2021, IAALS released the results of our *US Justice Needs* study, in collaboration with our partner HiiL, The Hague Institute for Innovation of Law. One of the most salient findings of that research is that, while justice issues are experienced across the demographic spectrum, the impacts are disproportionately borne by marginalized racial and ethnic groups.¹ These groups encounter justice issues at higher rates, report experiencing more serious legal issues, and less frequently report that their issues are completely resolved than do white individuals. IAALS has also conducted a qualitative study—*Public Perspectives on Trust and Confidence in the Courts*—on the topic of public trust. One of the key findings in that report was that a majority of participants expressed concerns about the fairness of the current civil process—and they frequently pointed to perceptions of systemic racial or gender biases as contributing factors to those concerns.²

When we consider the views of individuals in marginalized racial and ethnic groups, we see that those individuals rate the fairness of both procedures and outcomes in civil courts as less fair than do white individuals, and they rate courts lower on important procedural justice metrics like believing courts are concerned with their rights, courts treating people politely, and courts treating people with respect.³ Individuals in marginalized racial and ethnic groups also generally

¹ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. AND HiiL, JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA (2021), <https://iaals.du.edu/sites/default/files/documents/publications/justice-needs-and-satisfaction-us.pdf> [hereinafter U.S. JUSTICE NEEDS].

² LOGAN CORNETT AND NATALIE ANNE KNOWLTON, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., PUBLIC PERSPECTIVES ON TRUST & CONFIDENCE IN THE COURTS (2020), https://iaals.du.edu/sites/default/files/documents/publications/public_perspectives_on_trust_and_confidence_in_the_courts.pdf.

³ ROTTMAN, ET AL., NATIONAL CENTER FOR STATE COURTS 36, 38 (2003), <https://www.ojp.gov/pdffiles1/nij/grants/201302.pdf>.



less often believe that courts make decisions based on facts and that judges are honest in making case decisions.

Considering public perspectives on systemic racism broadly, according to the 2021 Edelman Trust Barometer, only one-third of respondents believed that the U.S. had made progress in addressing systemic racism over the previous year—more than half believe that there has been little or no progress and that things have gotten worse.⁴ Further, in that study, only 42% of the public reported trusting the government, making it the least trusted institution in the U.S.—compared with media, business, non-government organizations, and employers.⁵ Similarly, the National Center for State Courts’ *2021 State of the State Courts* report shows that confidence in state and federal courts is waning, with confidence in both institutions having declined six percentage points over the past year (70% to 64% for state courts, 66% to 60% for federal courts).⁶ Only 46% thought their state courts did well or very well at providing equal justice to all and, for the first time since tracking began in 2012, this proportion is smaller than the proportion who reported their state courts did *not very well* or *not well at all* (47%).

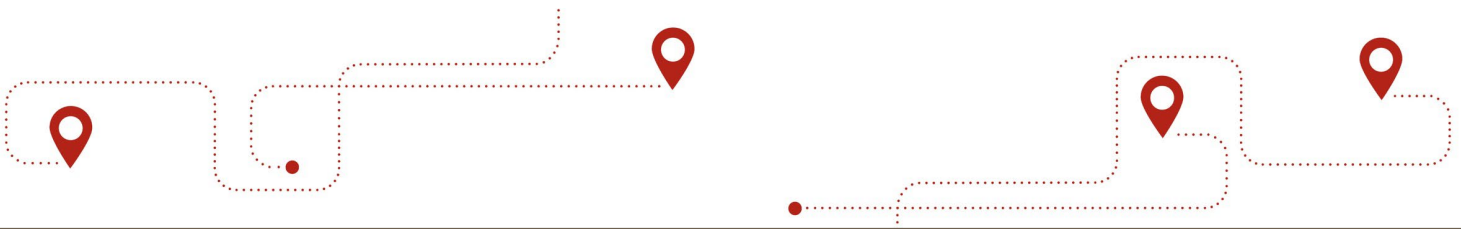
The Civil Justice Factor of the World Justice Project’s 2021 Rule of Law Index takes into account accessibility; affordability; freedom from discrimination, corruption, and inappropriate influence of public officials; unreasonable delay; effective enforcement of decisions; and accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms.⁷ Globally, the U.S. ranks 41 out of 139 countries and has been on a decline since 2017. When we focus in on countries in the same income group, the U.S. ranks 36 out of 46. When we zoom in and look specifically at the civil justice subfactor “civil justice is free of discrimination,” the U.S. ranks 122 out of 139 globally and 45 out of 46 in our income group. Put differently, the U.S. is

⁴ EDELMAN, EDELMAN TRUST BAROMETER SPECIAL REPORT: BUSINESS AND RACIAL JUSTICE IN AMERICA (2021), https://www.edelman.com/sites/g/files/aatuss191/files/2021-05/2021%20Edelman%20Trust%20Barometer%20Special%20Report_Business%20and%20Racial%20Justice%20in%20America.pdf.

⁵ EDELMAN, EDELMAN TRUST BAROMETER COUNTRY REPORT: TRUST IN THE U.S. (2021), https://www.edelman.com/sites/g/files/aatuss191/files/2021-01/2021%20Edelman%20Trust%20Barometer_U.S.%20Country%20Report_Clean.pdf.

⁶ *State of the State Courts: National Survey Analysis*, NATIONAL CENTER FOR STATE COURTS (2021), https://www.ncsc.org/_data/assets/pdf_file/0021/70581/SoSC-Analysis-2021.pdf.

⁷ WORLD JUSTICE PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX (2021), <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>.



near the bottom of the civil justice barrel, and the presence of discrimination is a substantially contributing factor.

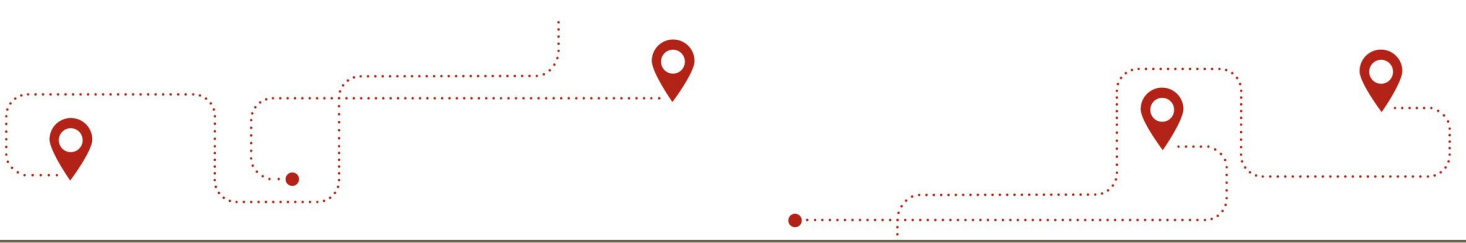
The data clearly converges in telling us that the public’s trust and confidence in our justice system is lacking—and that racial justice issues are central to this reality. It is critical that we ask ourselves the following questions: *What is the nexus between racial justice and public trust and confidence in our legal system? What is the current state of public trust and confidence in the civil legal system, and how do systemic racism and racial justice issues factor in? How does the intersection of systemic racism in the legal system and public trust and confidence provide insight into key areas for reform of our civil justice system? Does the intersection suggest ways to fix our existing system, or should we be envisioning new approaches?*

In January 2022, IAALS held a convening to brainstorm these important questions as part of our Paths to Justice Summit Series. The goal was to bring together a group of diverse perspectives and partners to engage in a dialogue around racial justice issues and public trust and confidence in our justice system, and to identify approaches to address systemic racism in the civil justice system. The sections that follow share important highlights from the conversation and ideas for turning these important insights into action.

Where Racial Justice Meets Public Trust and Confidence

We must recognize the intersectional nature of people’s experiences with and perceptions of the justice system. People’s identities shape their levels of trust and confidence in the justice system in important ways. No one racial, ethnic, or other marginalized group experiences the justice system in the same way or has the exact same needs—and the unique nature of their experiences and perspectives is compounded when we take into account the multiple marginalized identities so many individuals embody. *This reality emphasizes that we cannot take a one-size-fits-all approach to addressing justice issues.* Instead, we must take into account the diverse and varying needs of the individuals who use the justice system.

It is critical to understand that the civil justice system is part of a much larger set of systems. The civil justice system does not exist in a vacuum—it is one component of our broader court, governmental, and societal structures. And further, the racial justice issues we encounter in the civil justice system impact, and are impacted by, the racial justice issues we see in other systems. Perhaps the most closely linked to perceptions of the civil justice system are perceptions of the criminal justice system. Anecdotally, we often see that members of the general public conflate the criminal and civil systems into one broad justice system. So, with concerns



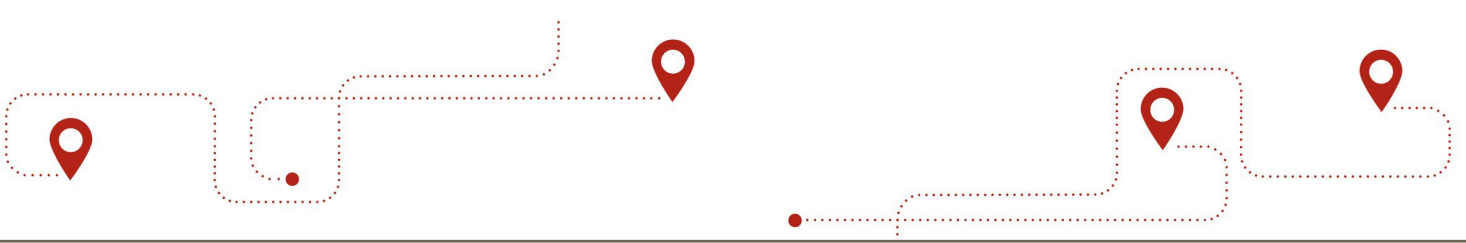
about racism in the criminal justice system reaching a boiling point in recent years—punctuated by the murders of George Floyd and Breonna Taylor among many, many others—it is unsurprising that public perceptions of the civil justice system are lacking. *To improve levels of public trust and confidence in the civil justice system, we must understand how it is one among many interrelated systems, and we must take measures to address inequities both within and outside the realm of civil justice.*

The demographic makeup of judges and court staff needs to reflect that of the broader public. Nationally, only about 20% of state court judges are people of color (about 12% men of color, about 8% women of color)—and in some states there are *no* people of color on the bench.⁸ This stands in stark contrast to the 40% of Americans who are people of color.⁹ There is clearly a disconnect. Representation matters. Having racial and ethnic diversity on the bench helps to ensure that people of color can feel heard and that their lived experiences will be understood. *But this is not just an issue for judges; it is also critical that we ensure diversity at all levels of the court, including court staff and those who interact with the public outside the courtroom.* White-dominated courthouses, the reality across most of the country, can easily become—and often are—insulated and separate from the communities and the public they are supposed to serve.

People’s perceptions of the civil justice system are shaped by interactions throughout the legal process, not just in the courtroom. An individual involved in a legal issue will have numerous interactions with court staff prior to getting to a courtroom—and some never actually make it to a courtroom or to our court system. Even just one confusing, disheartening, or otherwise negative experience can have ongoing effects on how an individual views the legal system. This reality is exacerbated when people within the legal system lack cultural competency and cultural humility, when they are ill-equipped to hear and understand how people of diverse backgrounds experience legal processes, and when there are not mechanisms in place to support interactions with non-English speakers. These challenges extend beyond courthouse interactions to things like what information is made available online, how user-friendly that information is, and whether it is accessible to people who do not speak English.

⁸ [The GavelGap in the US: A Serious Concern](https://eduhelphub.com/blog/gavelgap/), EDUHELPHUB (Nov. 25, 2021), <https://eduhelphub.com/blog/gavelgap/>.

⁹ U.S. Census Bureau QuickFacts, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045221> (last visited March 7, 2022).

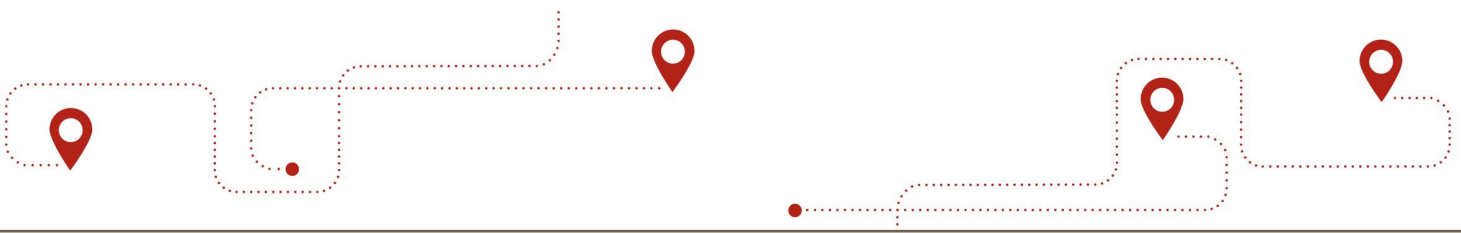


Some are unconvinced that change is needed. Despite the unequivocal evidence that structural racism exists and impacts how the public views our justice system—and despite the growing movement for positive change—there is still a lack of consensus around the need for equity-driven reforms in our justice system. Those who do not support such reforms pose a substantial barrier to overcoming structural racism. These individuals may not understand the issues surrounding racial justice, or for the sake of efficiency, may not want things to change. The contentious nature of these issues can lead to negative consequences for judges and others in the court system who speak out or act in favor of addressing structural racism in the justice system. A contributing factor to the lack of consensus is that, unlike the criminal system where copious amounts of data are collected, there is a dearth of data collected about the civil system. This is doubly true for data that would speak to disparate outcomes for people of color.

Insights for Reform

We must create meaningful opportunities for members of the public to engage in reform and policymaking. Approaches to policymaking in the civil justice system have frequently involved the same group of judges and lawyers. Given that the demographic makeup of judges and lawyers does not reflect the public at large, by their nature such efforts are limited and do not include the insights of the communities that are impacted by their decisions. *It is time to create broader engagement in the policymaking process and provide opportunities for members of the public to co-design improvements.* Specifically, we need to understand the lived experiences of those who use the justice system in order to understand how to affect positive change. We must include diverse voices in the policymaking conversation and, critically, we must actively use these perspectives to make changes that will ultimately eliminate the barriers to equity in our system and ensure access to justice for all.

Creating a team of allies, both within and external to the legal system, is a necessary step in seeding equity-driven change. Identifying individuals within the legal system who are supportive of efforts to address systemic racism in the legal system, and who are willing to actively work towards those changes, is crucial to the success of these efforts. And judges, in particular, have the potential to be powerful allies, as their day-to-day interactions and decisions play a role in shaping public trust and confidence in the justice system. Just as important as identifying allies within the legal system is finding allies in other professions. Empirical evidence, including IAALS' *US Justice Needs* study, shows that people seek help from



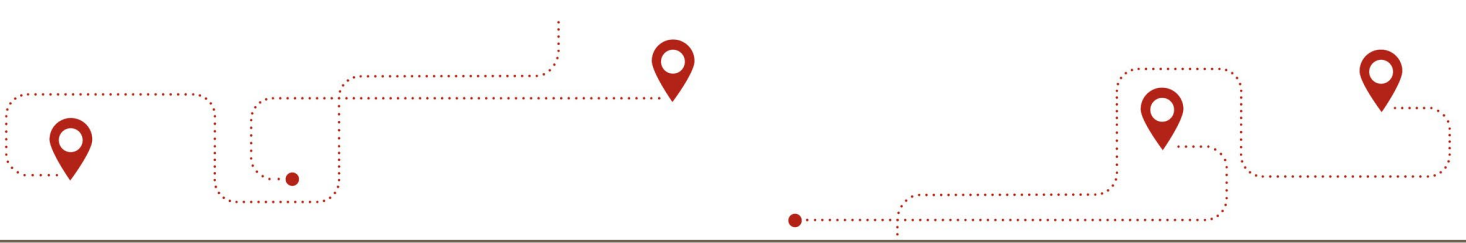
professionals outside the legal system.¹⁰ Thus, those who work in professions that have touch points with the legal system—such as social workers, health care providers, and mental health practitioners—can lend invaluable insights into how to tackle racial justice issues.

We need to shift how we view the courts. Traditionally, courts have viewed themselves as *the place* where people went to resolve their legal issues. This view does not reflect the realities of the modern legal marketplace.

- Many people with issues that could be resolved through courts prefer to resolve those issues in other ways—and they choose not to use the courts for various reasons, both cultural and personal. Data from IAALS’ *US Justice Needs* study tells us that there are literally hundreds of paths people take to resolve their legal issues.¹¹ The courts need to be responsive to this fact; they should seek to understand the range of alternatives being used and have a stance of openness to integrating those alternatives into their dispute resolution strategies. Courts also have the opportunity to change regulatory structures to allow more kinds of legal service providers into the market. *More legal service providers are likely to translate into increased access to legal services, which in turn has the potential to improve the public’s trust and confidence in the justice system.*
- Courts have traditionally been viewed as brick-and-mortar locations, rather than service providers. For this reason, courts have not historically placed a great amount of focus on making court processes more user-friendly. The pandemic has been a great catalyst for change, and courts around the country have embraced their role in the past year as a service beyond the four walls of the courthouse. Public trust and confidence is driven, in part, by individuals’ experiences with the court and with the legal system. The public deserves the same high-quality customer service from courts that has come to be the norm in the private sector, and courts need to continue to move in this direction to ensure service to all members of the public and to think about how we bring justice into the community.

¹⁰ U.S. JUSTICE NEEDS, *supra* note 1.

¹¹ *Id.*

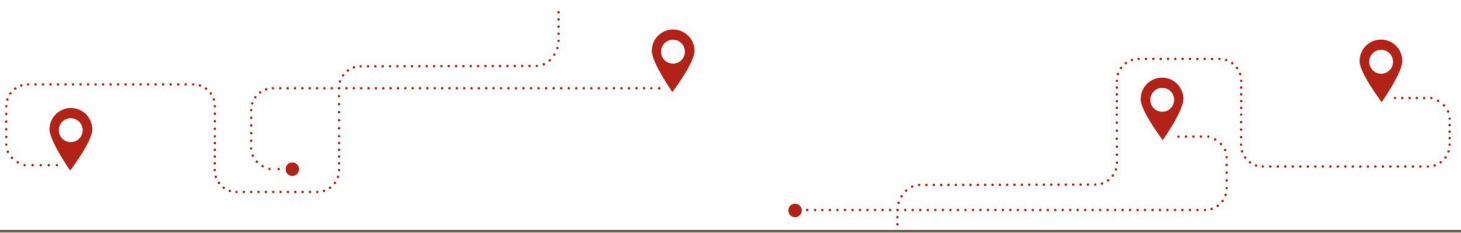


There must be mechanisms in place to keep courts and the profession accountable for making and maintaining the changes needed to dismantle structural racism. Addressing the racial justice issues in the legal system is neither simple nor straightforward—and accountability will be critical to the success of these efforts.

- A first step in creating accountability is to openly acknowledge that our justice institutions are built upon a historically racist foundation that valued white people above people of color and those from diverse cultural backgrounds. This open recognition of historical reality would signal to the public that courts and the legal profession understand the need for change, as well as empower those within and outside the legal profession to work for equity-driven change. There has been some movement on this front. In the summer of 2020, numerous supreme courts around the country issued statements acknowledging these truths.¹² We must continue to encourage and support such recognition throughout the courts and legal profession more broadly.
- Another crucial component of creating accountability is data. *Courts and other legal institutions need to collect, analyze, and understand data that speaks directly to the racial justice challenges they face.* This should include both quantitative and qualitative data—objective data provides critical insights, but so do the lived experiences of people who have interacted with the justice system. Such data would provide an evidentiary basis for making decisions about what is most in need of change and where to allocate precious resources.
- Another approach would be to involve the media. Generating public awareness of the racial justice issues within the legal system could be an effective strategy for encouraging equity-driven change.

We must ensure that individuals at all levels of the court system are educated on racial justice issues and are equipped with effective tools for equitable interactions with individuals of diverse backgrounds. There is already clear recognition of how implicit bias can manifest in courts: judges across the country routinely participate in implicit bias trainings with the goal of minimizing its impacts on their decisionmaking. Far from being sufficient to stem the tide of racial justice issues and structural racism in the justice system, the best data we have shows these implicit bias trainings to be largely ineffective, and there is more work that is

¹² Racial Justice Statements from the Courts (2020), SELF-REPRESENTED LITIGATION NETWORK, <https://www.srln.org/node/1442/race-justice-statements-courts-2020>.



needed in this vein.¹³ *We need to encourage judges and court staff at all levels—and the legal profession more broadly—to embrace a stance of cultural humility.* Distinct from cultural competence, cultural humility is characterized by three core components: a lifelong commitment to self-reflection and self-evaluation; dedication to fixing power imbalances that should not exist; and development of non-paternalistic, mutually beneficial partnerships within communities to advocate for positive change.¹⁴

Need for Continued Dialogue, Collaboration, and Action

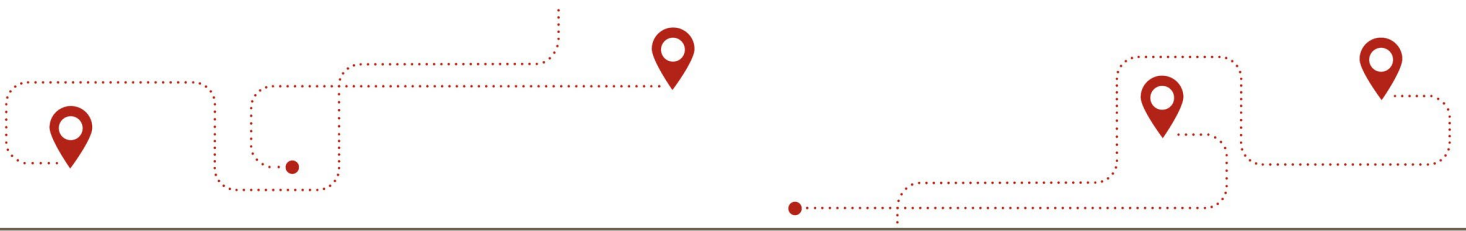
The nature of the structural racism and racial justice challenges that the legal system faces—and their implications for public trust in confidence—is multifaceted. We must recognize that making meaningful, lasting change will not be instantaneous. But we must stay the course. We have to create strategies for sustaining our efforts as we continue to make progress.

Critical to achieving an equitable justice system is continuing the conversation. We are in the nascent phase of affecting change, and we must keep creating opportunities for stakeholders to be a part of the dialogue around racial justice issues in the legal system. Conversation is important, but it alone is not enough. We must forge partnerships with others who share similar goals. This means identifying and collaborating with allies within the legal system, professionals outside the legal system, and members of the public to strategize and develop solutions. Most importantly, we must work together to turn those solutions into action.

Dismantling structural racism is no small task. We have centuries of injustice to overcome and extremely complex processes to correct—all of which is compounded by the interwoven nature of our structures and systems. But this is work we must do. Our justice system can only function when the public it is intended to serve believes it is fair and equitable for all people. We have the opportunity in this moment to right the ship—to make sure the voices at the table are inclusive of

¹³ Tiffany L. Green and Nao Hagiwara, *The Problem with Implicit Bias Training*, SCIENTIFIC AMERICAN, Aug. 28, 2020, <https://www.scientificamerican.com/article/the-problem-with-implicit-bias-training/>; Hagiwara, PhD, et al., *Call for grounding implicit bias training in clinical and translational frameworks*, THE LANCET, May 2, 2020, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30846-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30846-1/fulltext).

¹⁴ Amanda Waters and Lisa Asbill, *Reflections on cultural humility*, AM. PSYCH. ASSOC., August 2013, <https://www.apa.org/pi/families/resources/newsletter/2013/08/cultural-humility>; Cultural humility versus cultural competence: a critical distinction in defining physician training outcomes in multicultural education. *See also* M. Tervalon and J. Murray-Garcia, *Journal of Health Care for the Poor and Underserved*, NATIONAL LIBRARY OF MEDICINE 117-125 (1998).



all perspectives and to make the changes necessary to create a justice system that is truly built on equity and fairness.

IAALS, the Institute for the Advancement of the American Legal System, is a national, independent research center at the University of Denver dedicated to facilitating continuous improvement and advancing excellence in the American legal system.

This issue paper is from IAALS' Paths to Justice Summit Series, comprised of multiple invite-only virtual convenings and public webinars—and corresponding issue papers—focused on the unique challenges facing our justice system in this time. Themes include the paths of the pandemic, the paths to access, and the paths to racial justice that our system must walk. Our goal is to connect with other stakeholders tackling these issues, foster conversations among stakeholders and across systems, and move the conversation—and innovation—forward.

Thank you to the attendees of IAALS' January 2022 convening on this topic who generously gave of their time and expertise to brainstorm around these important questions.

For more on the Paths to Justice Summit Series, including additional white papers as they are published, please visit <https://iaals.du.edu/paths-justice-summit-series>.

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Overarching Themes

The last few years have illustrated that our justice system is able to innovate when forced to do so. Our justice system remains under pressure from the economy, technology, and other forces, and we remain in a moment of opportunity to redefine what normal can look like for the delivery of legal services and the delivery of justice in our country. This is true for our courts, law firms, legal aid, community partners, and all those who touch our system. As Richard Susskind reminds us, “Remember too that the current system is not an evidence-based option that we have consciously chosen. It is simply where we are. We can choose to be elsewhere.”¹

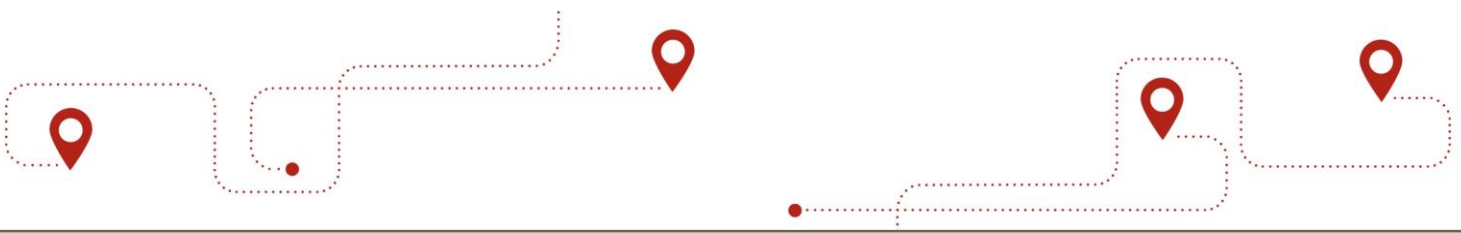
We have been forced to think differently about where and how justice is delivered, and that has created an opportunity to consider meeting litigants’ needs in different ways. To ensure that we capitalize on this lesson going forward, we must continue to be open to changing our mindset.

The unmet need for justice in the United States remains a critical challenge in our society. Cross-system engagement and collaboration is essential. We need to continue to identify barriers to these challenges and address them in a focused way, with broad engagement both within and outside the justice system. Our ultimate goal is the fair resolution of justice problems—and the prevention of justice problems in the first place. There are clear themes across the Paths to Justice Summit Series of what is needed to make significant progress on this path to justice. We highlight those themes below and urge that they remain guideposts in this work to improve our justice system.

A People-Centered Approach

The pandemic emphasized the importance of thinking about courts as a service, not just a location. Courts have been forced to think differently about where and how justice is delivered, and that has created an opportunity to consider meeting litigants’ needs in different ways. This is a lesson that should be driven home across our justice system—this system and all of its actors exist to ensure justice for the people. We need to put people at the center of this work, and we need to listen and learn from their experiences to gain a better understanding of the problems they face, whether and how they seek to resolve them, and the justice outcomes they do or do not

¹ Richard Susskind, *The Future of Courts*, Vol. 6, Iss. 5 THE PRACTICE (July/Aug. 2020), <https://thepractice.law.harvard.edu/article/the-future-of-courts/> (“In light of the experience during the crisis, there is certainly greater acceptance now than in February 2020—amongst lawyers, judges, officials, and court users—that judicial and court work might be undertaken very differently in years to come.”).



get. And then we need to continue to innovate our system to ensure that it is delivering people just and fair outcomes to the problems in their lives.

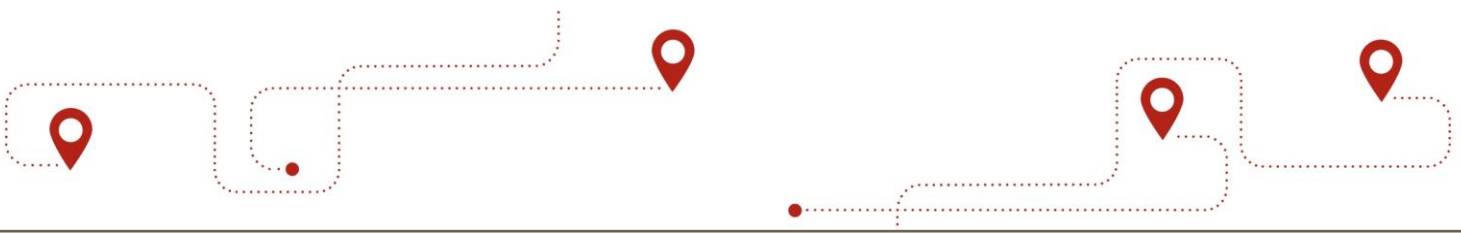
By focusing on people and their experiences, we are compelled to understand and address the current barriers that exist in our system. We must recognize the intersectional nature of people’s experiences with and perceptions of the justice system. People’s identities shape their levels of trust and confidence in the justice system in important ways. No one racial, ethnic, or other marginalized group experiences the justice system in the same way or has the exact same needs—and the unique nature of their experiences and perspectives is compounded when we take into account the multiple marginalized identities so many individuals embody. This reality emphasizes that we cannot take a one-size-fits-all approach to addressing justice issues. In addition, as a precursor to meaningful dialogue on solution building, we must acknowledge the presence of bias and inequity in our justice system. Then we must take into account the diverse and varying needs of the individuals who use the justice system.

When we take a people-centered approach, we see that there is a misalignment in how people experience problems and how the justice system solves problems. The use of virtual proceedings has provided an example of system redesign that more closely aligns our justice system with how and where people experience problems in order to solve those problems most efficiently.

Redesign the System

When national and state executive orders first declared public health emergencies, courts acted swiftly, using the flexibility and discretion deliberately designed into the rules of civil procedure. Courts also used—and continue to update—administrative, court, or standing orders to be responsive to changing circumstances. What we have learned from this moment of innovation is that it is possible to work more efficiently and effectively, including through remote proceedings. There remain key questions about what has worked well and should stay, and what needs to continue to be improved. As research is being conducted to understand the impacts of these innovations, we need to be open to continuous learning and further system redesign.

As we focus on solutions, one lesson learned is that we need to make it easier for people to participate in the system. We need to remove complexity, simplify processes, and develop more and better self-help resources. We also need to realign the framework for resolving legal problems and facilitate the resolution of life problems. Our legal system understandably has limited authority when it comes to resolving people’s life issues. Yet we can still create a more



holistic framework in which to think about the problems that come before lawyers and judges. Problem solving courts provide an important example, and there are lessons learned from these experiences that can be pulled into more traditional courts.

As we look to increase opportunities for people to access legal services, we need to look beyond the legal system, in particular to community-based solutions. These were shown to be very effective in the pandemic, and there continues to be great promise in looking beyond the traditional approach of “problem-lawyer-court” to understand and support less formal and more accessible avenues to justice.

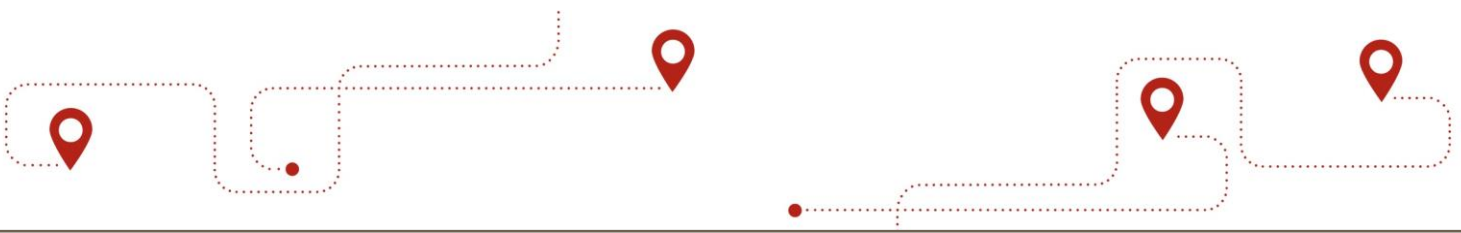
Finally, the importance of case management has been underscored over the past several years, and case management must continue to be central to reform efforts. In a world of rules, formality, and structure, case management is what helps the courts be nimble and flexible.

A Web of Scalable Solutions

As we redesign the system, we need to remember that there is no silver bullet answer or solution. A key opportunity for impact lies in focusing reform efforts rather than treating access to justice as a one-size-fits-all problem. One way to do this is to focus on specific cases, such as family or debt collection, to understand their unique challenges and opportunities for improvement. What we need is a web of solutions, preferably upstream, and always scalable.

The IAALS and HiiL study confirms that, while access to justice is a problem that impacts people from all walks of life, with serious social, legal, economic, and political consequences, the effects of the justice crisis are not equally distributed. We must focus on these core justice problems, which are prevalent and severe, as this is where the opportunity exists for the greatest impact. The problems that are the most intractable—the ones that are most complex, with multiple factors—need integrated solutions.

In addition, while we need to focus on how to achieve fair resolutions for the problems that occur, the sheer magnitude of the unmet need underscores the urgency for upstream solutions that can prevent these justice problems in the first place. Holistic upstream solutions have huge potential to solve justice needs in our communities. By considering a holistic approach that recognizes interconnections of mental and physical health, social, and economic factors, a better outcome for people can be achieved. These types of solutions require stakeholder involvement from all perspectives.



Another way to approach system reform is to focus on different justice system actors. There are many different paths into the justice system, with a web of different people working within and around the system. We need to map out this ecosystem and create an integrated and cohesive approach to justice delivery. We also need to engage each of these different actors, as we also cannot take a one-size-fits-all approach to the engagement of stakeholders.

Embrace Technology

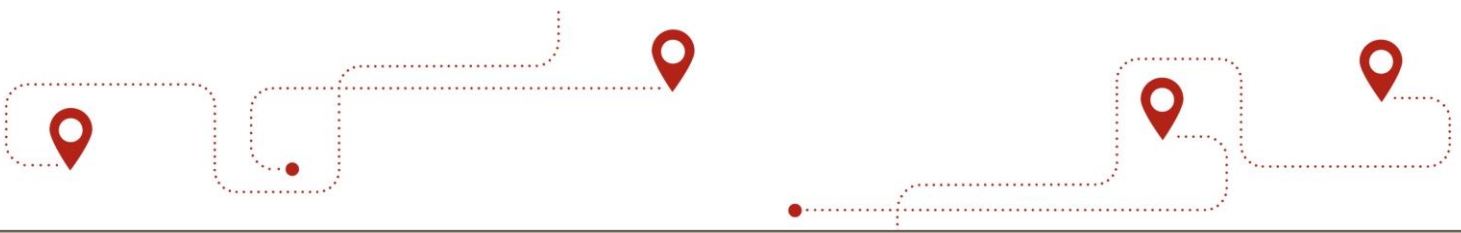
At the heart of the lessons learned in recent years is the critical importance of technology. From remote proceedings to artificial intelligence, we continue to be faced with technological challenges and opportunities today. Technology (to an extent, and if used strategically) provides substantial opportunities to solve equity and access issues. Virtual proceedings have made courts more participatory, and they have forced us all to examine the way things have always been done.

This opportunity is qualified because we have learned that not all virtual access is equal. Technology has also underscored the digital divide where not everyone can access and use technology in the same way. Yet the challenges of technology are solvable, and there is great promise in its ability to bridge the access to justice gap. We need to continue to examine people’s experiences with remote technology and incorporate lessons learned from this research.²

Commitment to Diversity, Equity, and Inclusion

There remains a lack of diversity in the profession across the bench, the bar, and the academy—and there are signs that efforts in support of diversity may be backsliding. Yet diversification of the legal profession is critical to dismantling barriers to equity and ensuring a justice system that works for all people. Longstanding institutional and societal barriers have shaped our current system into the predominately white and economically privileged profession that it is today. Gatekeeping mechanisms at various points along the pathway to the law further perpetuate existing inequalities and reinforce the homogeneity of the profession. The lack of diversity on

² See, e.g., VICTOR D. QUINTANILLA, KURT HUGENBERG, RYAN HUTCHINGS & NEDIM YEL, ACCESSING JUSTICE WITH ZOOM: EXPERIENCES AND OUTCOMES IN ONLINE CIVIL COURTS (2023), https://drive.google.com/file/d/1xfb052SVZRTIwv8-03xQyX9UzFjvcuul/view?usp=drive_link; see also GRACE SPULAK, NATIONAL CENTER FOR STATE COURTS, REMOTE PROCEEDINGS TOOLKIT, VERSION 2 (2024), https://www.ncsc.org/_data/assets/pdf_file/0027/82377/Remote-Proceeding-Toolkit-Final.pdf.



the bench and in the bar also perpetuates the systemic lack of empathy for the circumstances and issues affecting historically marginalized groups.

One critical place for focus is ensuring that the demographic makeup of judges and court staff reflects that of the broader public. Having racial and ethnic diversity on the bench makes it more likely that people of color can feel heard and that their lived experiences will be understood. But this is not just an issue for judges; it is also critical that we ensure diversity at all levels of the court, including court staff and those who interact with the public outside the courtroom. We need to have this same focus on diversity in the profession and in the academy. In order to fully realize our goals of justice for all, we need to commit to diversity, equity, and inclusion along the entire continuum of our justice system.

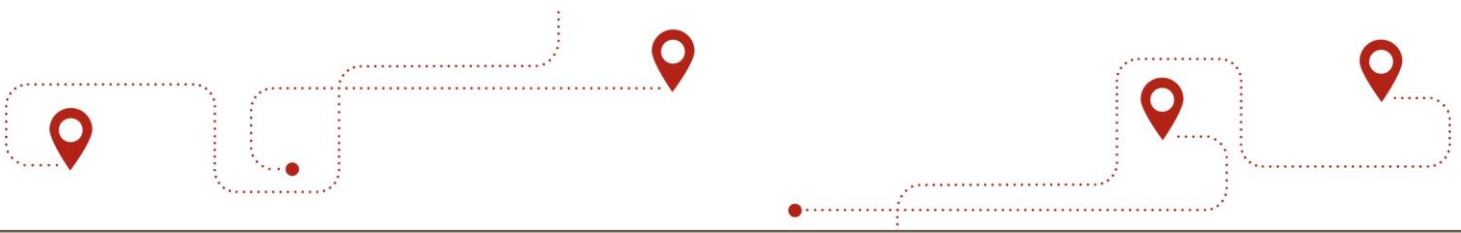
Research

A key piece of system improvement must be a commitment to further research and collecting and disseminating documented successes and areas for continued refinement. At IAALS, we believe in evidence-based reform. The challenge—particularly in a pandemic—is that research takes time. Courts had to respond to the crisis quickly, putting in place changes without long-term study or research. We have seen the value of innovation in this critical moment, and we should continue to encourage an agile approach to change management. We should bolster these efforts with data wherever that is possible.

Courts and other legal institutions need to collect, analyze, and understand data. This includes both quantitative and qualitative data—objective data provides critical insights, but so do the lived experiences of people who have interacted with the justice system. Such data would provide an evidentiary basis for making decisions about what is most in need of change and where to allocate precious resources.

Education

Over the course of our discussions, and across all the convenings, the necessity of education came up again and again. Education—on everything outlined in this section—is essential and should broadly engage both those within the justice system and those outside the system. As an example, many justice system stakeholders lack a sense of what diversity, equity, and inclusion (DEI) means for our justice system, how vital these efforts are, and the current barriers that exist



in the system. We must ensure that individuals at all levels of our system are educated and equipped with effective tools to achieve all the goals of system improvement.

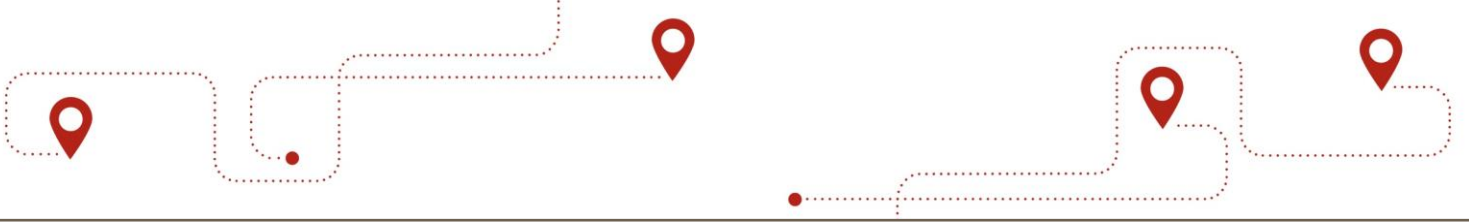
Expanded Partnerships, Engagement, and Support

No one entity can solve these monumental challenges alone. Partnership is critical to developing solutions and putting them in place. In addition, given the broad extent of the crisis and its impact on society, this crisis has not—and will not—be addressed through the usual actions, policies, or approaches.

We need to expand engagement and support to include new and different stakeholders. We need to look to other complex change movements to see what has been successful in getting engagement and broad support. We know that along with “traditional” providers, we are already seeing numerous “new” providers of justice including financial institutions, healthcare professionals, insurance companies, and public authorities. There are many actors across society who intersect with this crisis. One critical opportunity for intervention is to think about how people can work together, as coordination across these different actors can lead to impact. Just as we need multiple focused approaches to solutions, there is no one-size-fits-all approach to outreach and engagement.

As we expand and engage partners, we must create meaningful opportunities for members of the public to engage in reform and policymaking. Approaches to policymaking in the civil justice system have frequently involved the same group of judges and lawyers. Given that the demographic makeup of judges and lawyers does not reflect the public at large, by their nature such efforts are limited and do not include the insights of the communities that are impacted by their decisions. It is time to create broader engagement in the policymaking process and provide opportunities for those who have historically been excluded.

This expanded outreach and engagement includes the need for new and diverse support, including funding. Action requires funding, and for increased impact we need to engage funders around these issues. The clear evidence of an access to justice crisis in the United States highlights the importance of these broad opportunities for action, but it also highlights the urgent need for increased funding. While it is understandable that funders have been invested in criminal justice reform, the widespread, life-altering, negative impacts on people with unmet civil justice needs also demand attention and funding—and people experiencing criminal justice



issues often have overlapping civil issues as well. We need to properly invest in innovation, rather than just the minimal amount needed to maintain the status quo.

A Continued Dialogue

We now find ourselves in a new world, where our justice system has adapted quickly in a time of crisis. Yet we cannot rest on the innovations that have taken place. The work is not done. We must rethink and redefine the goals of access to justice to include broader approaches—multifocal solutions that help the justice system meet its obligation to serve people and make the system usable. Once we have sufficiently articulated the broad goals of access to justice, we must measure the efficacy of implemented programs and continue to innovate and develop evidence-based practices that ensure equal justice for all.

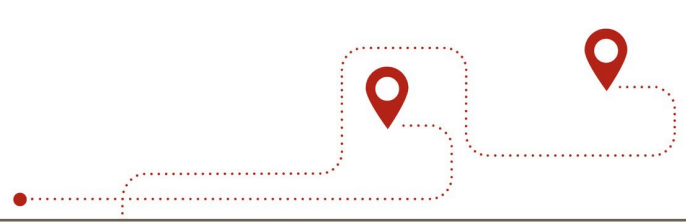
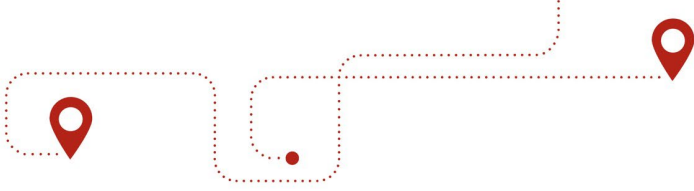
The convenings underpinning these recommendations emphasized that the nature of the challenges our justice system faces—and their implications for public trust in confidence—is multifaceted. The civil justice system does not exist in a vacuum—it is one component of our broader court, governmental, and societal structures. To improve our civil justice system, we must understand how it is one among many interrelated systems, and we must take measures for change both within and outside the realm of civil justice. We also must deal with the reality that meaningful, lasting change will not be instantaneous. But we must stay the course and develop strategies for continued progress.

As IAALS Founding Executive Director Rebecca Love Kourlis relevantly noted in 2019:

In the end, I see the problem of the public’s distrust in the legal system as a problem of access to legal services and to justice. And, if that is indeed the problem, then there is a way out of this mess. We can rebuild the system in a far more open, transparent, accessible way. To do so, we have to invite disruption into our midst. We have to open up the delivery of legal services. We have to harness technology to make court processes far more accessible and understandable to people without lawyers. We have to develop robust systems that inform people about their legal rights and remedies. We have to communicate better, more reliably—to tell a story. We have to do all of those things and more.³

Critical to achieving change is continuing the dialogue. We must identify and collaborate with others in the legal system, professionals outside the legal system, and members of the public to

³ Rebecca Love Kourlis, IAALS Blog, Public Trust and Confidence in the Legal System: The Way Forward (Sept. 13, 2019), <https://iaals.du.edu/blog/public-trust-and-confidence-legal-system-way-forward>.



strategize and develop solutions. Finally, and most importantly, these ideas and others must be met with widespread action.