

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.

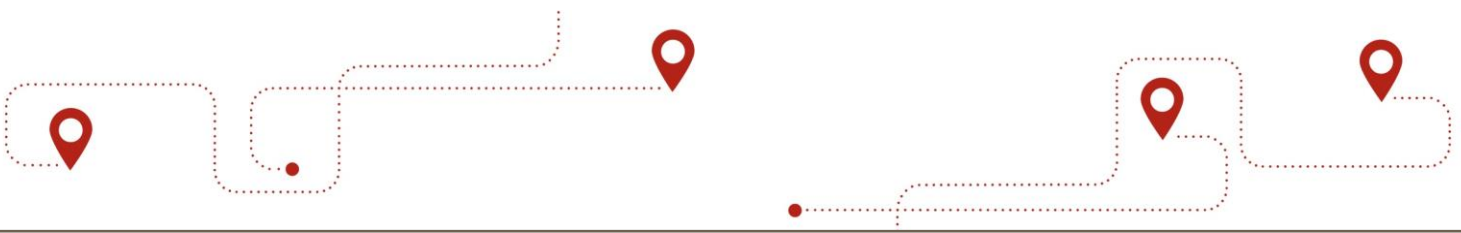
A recent report published by IAALS, the Institute for the Advancement of the American Legal System, and HiiL, The Hague Institute for Innovation of Law, [*Justice Needs and Satisfaction in the United States of America*](#), reveals that racial and ethnic identities play a role in the rate, seriousness, 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

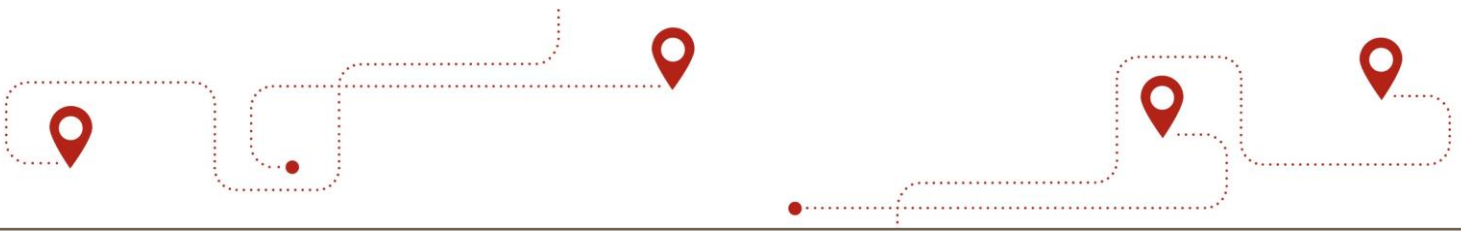
We must recognize and appreciate the historical context in which our system was formed.

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.



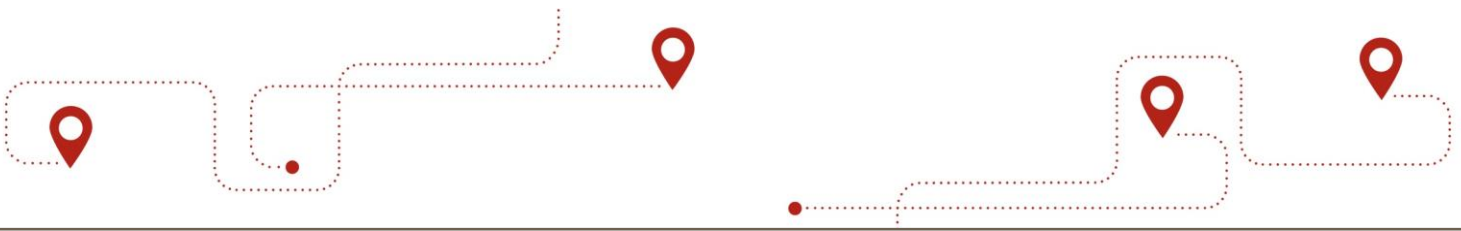
court users. Furthermore, in many courts, the issue of whether the judicial system has an obligation to make the system usable for unrepresented people is still under debate. Until justice system processes are responsive to the needs of individual users, marginalized communities will be disproportionately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

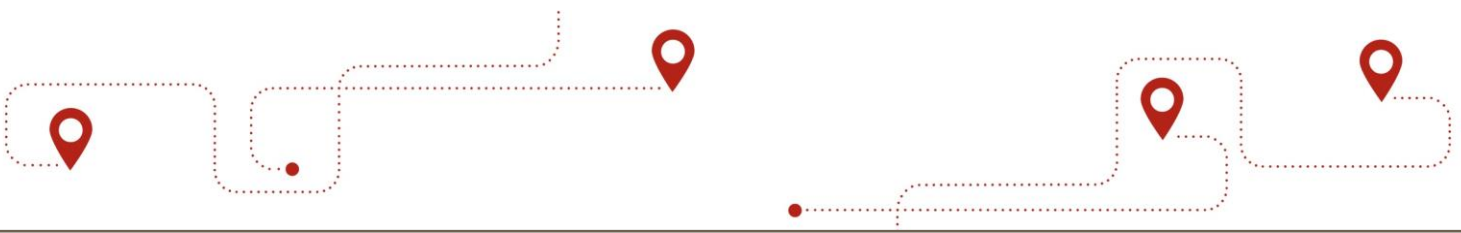
There is a lack of diversity in the profession (the bench, the bar, and the academy).

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

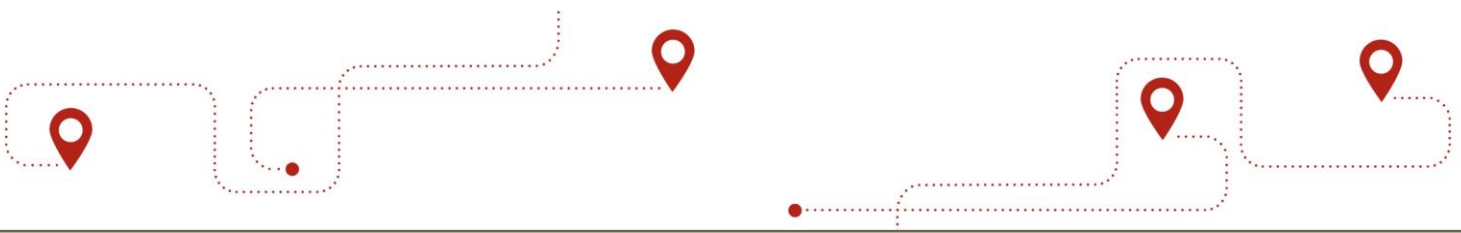
No singular solution exists to eliminating barriers to inequity in our legal system. We need a multifaceted approach that brings together diverse perspectives, members of diverse communities, and interdisciplinary partnerships to create change at multiple points throughout the system.

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.

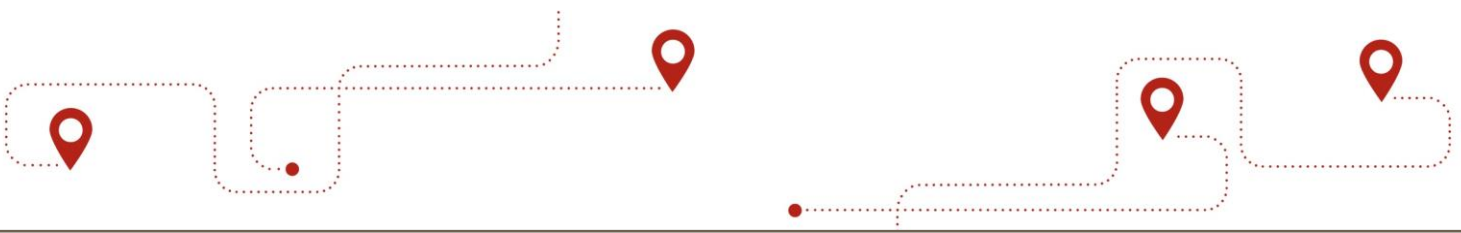
We need multiple pathways to the legal profession that engage young people at an early age. Developing a more diverse and inclusive profession must start well before law school. Children from privileged backgrounds often have an image of college at a very young age—and a clear expectation from their 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).



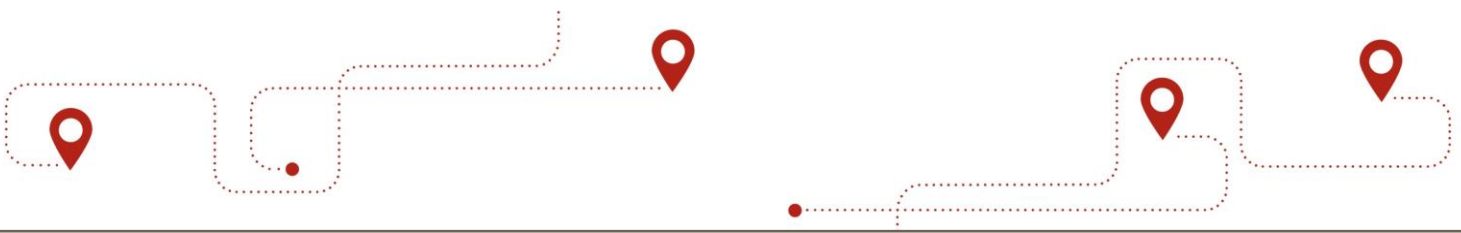
other resources available (in languages spoken by the community) is an easy step to dismantle barriers to access. On the other end of the spectrum, courts have implemented streamlined processes in civil and family cases, some of which are specifically designed around the needs of unrepresented parties.

- **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.

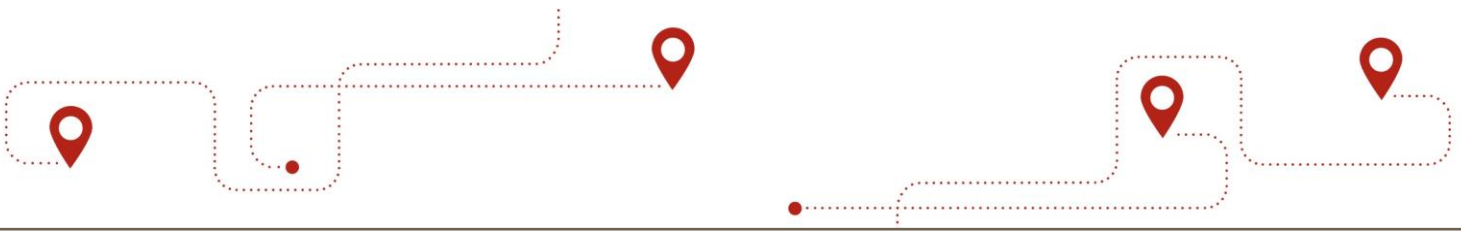
Technology (to an extent) provides substantial opportunities to solve equity and access issues. The COVID-19 pandemic has had a major impact on the way the justice system functions, and research is emerging on the efficacy of measures put into place during this time. People can participate in virtual 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).



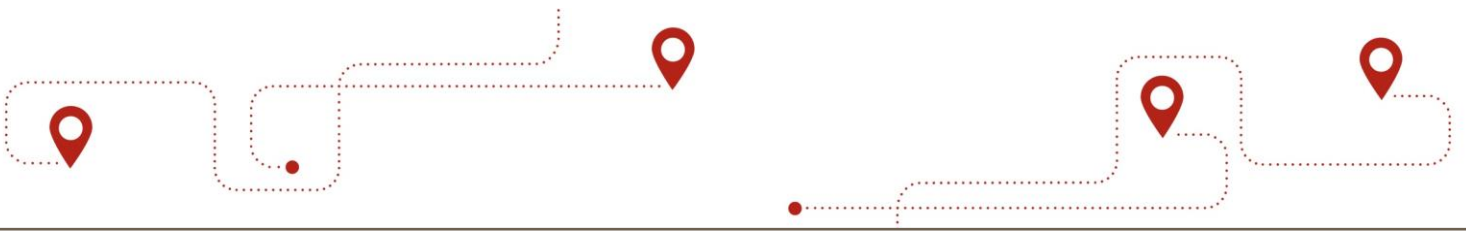
We need to collect and disseminate documented successes. There is so much innovation happening in courts around the country. The successes and failures that emerge from these efforts (even those that are small/smaller in scale) should be documented, disseminated, and deployed to accelerate success in 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.

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 now. 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' December 2021 convening on this topic who generously gave their time and expertise to brainstorm around these essential 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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