

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.

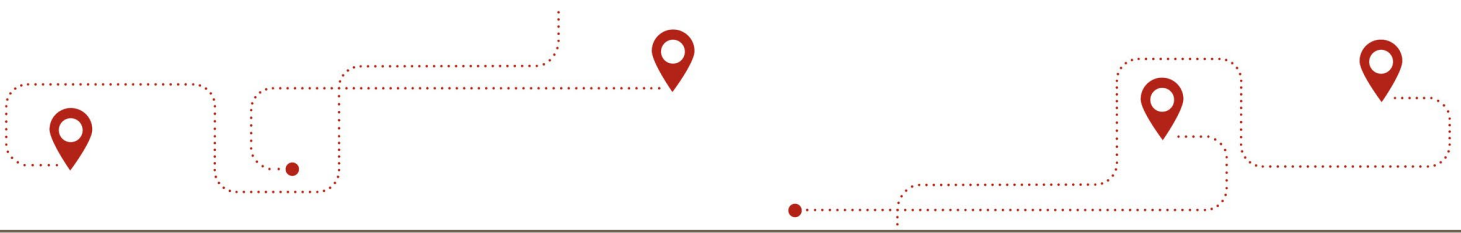
In September 2021, IAALS released the results of our *US Justice Needs* study, in collaboration with our partner HiiL, The Hague Institute for Innovation of Law. One of the most salient findings of that research is that, while justice issues are experienced across the demographic spectrum, the impacts 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%).

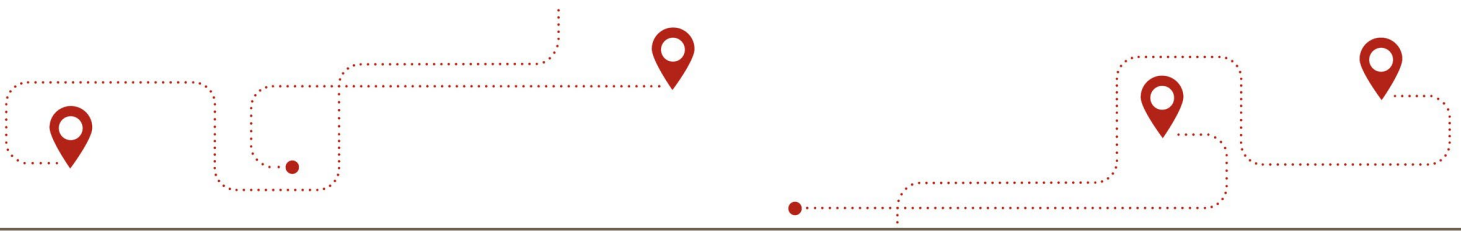
The Civil Justice Factor of the World Justice Project’s 2021 Rule of Law Index takes into account accessibility; affordability; freedom from discrimination, corruption, and inappropriate influence of public officials; unreasonable delay; effective enforcement of decisions; and accessibility, impartiality, 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.

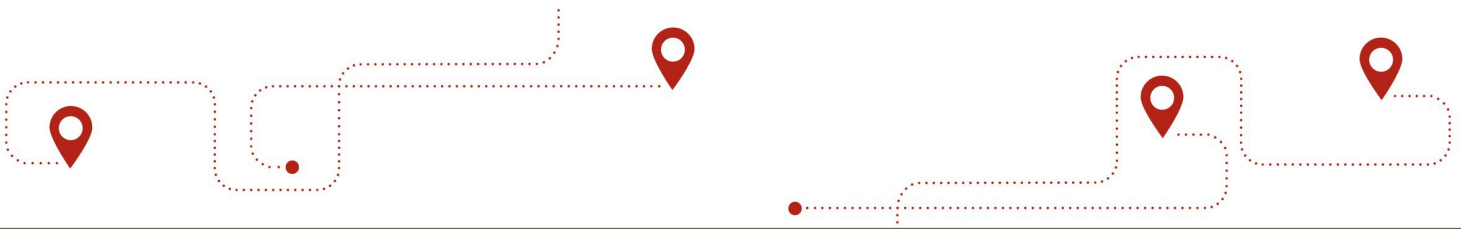
The data clearly converges in telling us that the public’s trust and confidence in our justice system is lacking—and that racial justice issues are central to this reality. It is critical that we ask ourselves the following questions: *What is the nexus between racial justice and public trust and confidence 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



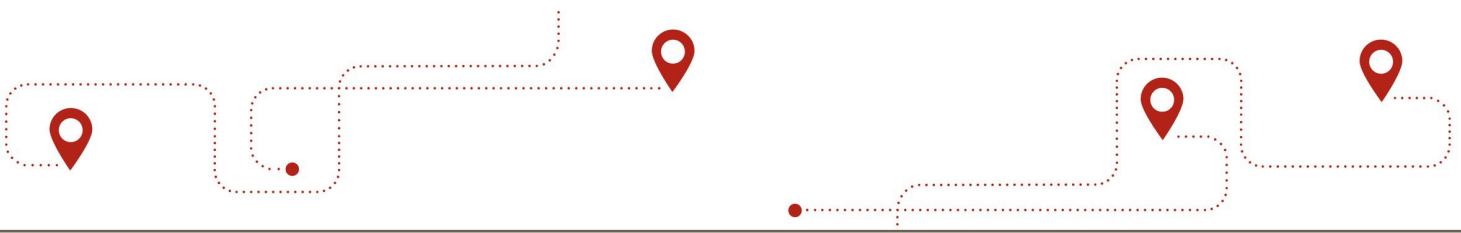
about racism in the criminal justice system reaching a boiling point in recent years—punctuated by the murders of George Floyd and Breonna Taylor among many, many others—it is unsurprising that public perceptions of the civil justice system are lacking. *To improve levels of public trust and confidence 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).

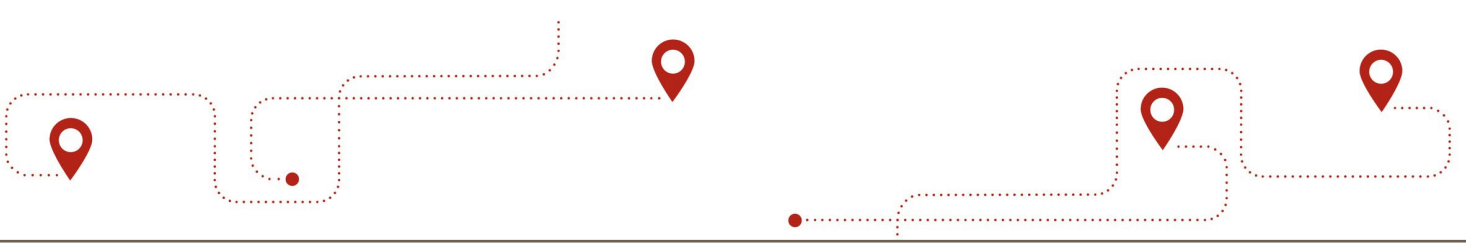


Some are unconvinced that change is needed. Despite the unequivocal evidence that structural racism exists and impacts how the public views our justice system—and despite the growing movement for positive change—there is still a lack of consensus around the need for equity-driven reforms in our justice 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



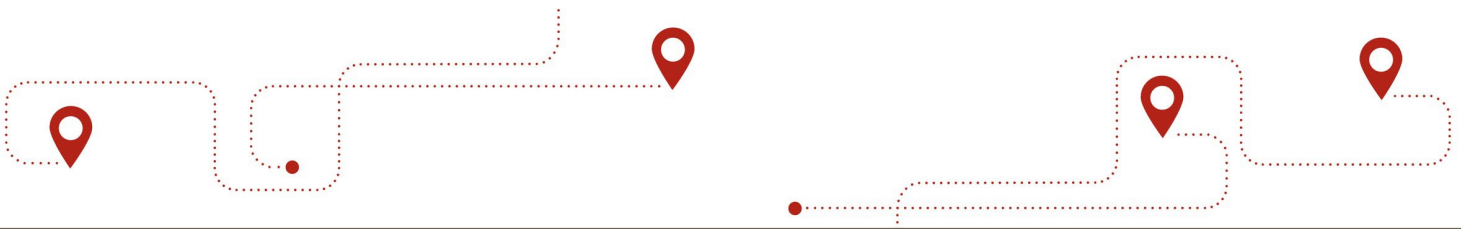
professionals outside the legal system.¹⁰ Thus, those who work in professions that have touch points with the legal system—such as social workers, health care providers, and mental health practitioners—can lend invaluable insights into how to tackle racial justice issues.

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.*

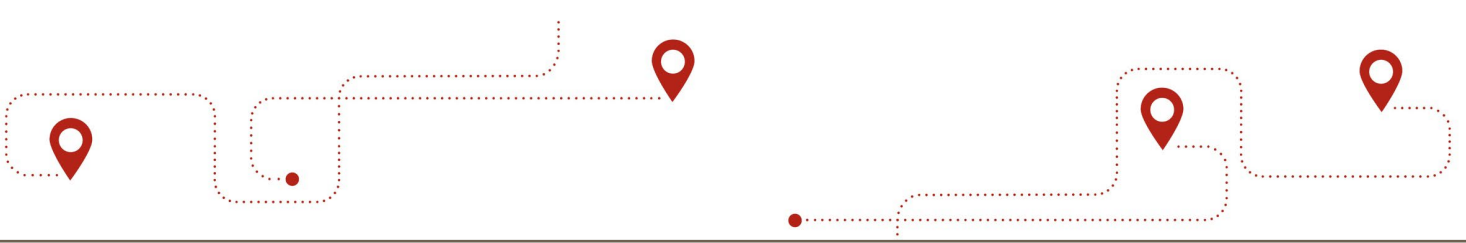


There must be mechanisms in place to keep courts and the profession accountable for making and maintaining the changes needed to dismantle structural racism. Addressing the racial justice issues in the legal system is neither simple nor straightforward—and accountability will be critical to the success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

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



shows these implicit bias trainings to be largely ineffective, and there is more work that is 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

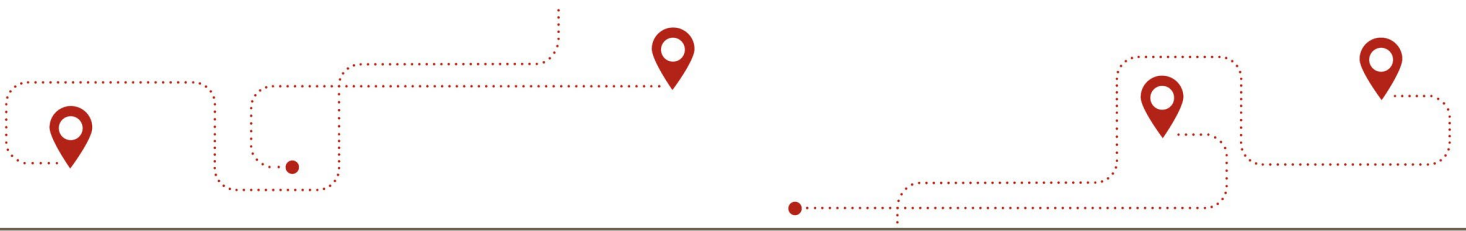
The nature of the structural racism and racial justice challenges that the legal system faces—and their implications for public trust in confidence—is multifaceted. We must recognize that making meaningful, lasting change will not be instantaneous. But we must stay the course. We have to create strategies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