Law Stretched Thin: Access to Justice in Rural America

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LAW STRETCHED THIN:
ACCESS TO JUSTICE IN RURAL AMERICA

LISA R. PRUITT & BRADLEY E. SHOWMAN†

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About two percent of small law practices in the United States are in small towns and rural areas, a figure greatly disproportionate to the nearly twenty percent of the population living in those places. This mismatch leaves many rural legal needs unmet. In 2013, responding to the well-documented lawyer shortage in the upper Great Plains, South Dakota became the first state to offer subsidies to lawyers who practice in rural areas through a program called Project Rural Practice.

This article takes the opportunity invited by Project Rural Practice—and this symposium issue about it—to discuss a range of access to justice issues in rural places. Those providing rural legal services face challenges, of course, the most obvious being the struggle for economic viability, along with others generally associated with small firms and solo practice. Rural lawyers also face socio-spatial barriers to professional development and networking opportunities, and the lack of anonymity associated with rural places creates both ethical and economic conflicts of interest. Beyond the challenges facing rural lawyers, we recognize that individuals residing in rural America encounter obstacles to seeking legal services. These obstacles include affordability, confidentiality, and even inability to actually get to courthouses and other legal institutions and actors. Compounding matters, rural denizens are associated with an ethic of law avoidance. Persistently high poverty rates in rural America aggravate the challenge because poor people are less likely to have their legal needs met, wherever they live.

We situate our discussion of rural legal practice within the larger body of access to justice scholarship. While we recognize Project Rural Practice as a strong step in support of rural legal practice, and therefore in support of rural communities, we argue that it should be supplemented by programs aimed at helping those least likely to get the legal assistance they need, especially low-income and other vulnerable populations. We also advocate additional supports for lawyers willing to provide such assistance. Among other issues, we discuss the roles that paralegals, technology, and the broader social-service non-profit community can play in responding to rural legal needs. We pay particular attention to pro bono publico in the rural context. Lastly, our article includes a modest comparative component, surveying available information about rural lawyering and access to justice in other nations, most notably Canada and Australia.
We conclude that achieving robust access to justice requires the attention and effort of an entire community. Enabling access to justice should include partnerships with a wide array of service providers who can meet non-legal needs while also helping those confronting problems to identify when legal assistance could be of use. Given the dearth of rural lawyers, the surfeit of urban lawyers, and the preference of many attorneys to deliver pro bono services away from their usual practice settings, we also see collaboration among lawyers across and along the rural-urban continuum as critical pieces of the rural access to justice puzzle. We believe not only that these myriad collaborations can help rural residents get the legal assistance they need to solve their most pressing problems, but that the collaborations also hold promise for ameliorating the structural deficits that afflict entire rural communities.

I. INTRODUCTION

[Geography is destiny: the services available to people from eligible populations who face civil justice problems are determined not by what their problems are or the kinds of services they may need, but rather by where they happen to live.]^{1}


Struggles for “access to justice” are pervasive across the United States, but rural Americans face particular challenges to accessing lawyers and courts, and generally to getting legal needs met. Ethan Bronner, writing for the New York Times in April 2013, observed that “[r]ural Americans are increasingly without lawyers even as law school graduates are increasingly without jobs.”^{2} Bronner reported that sixty-five percent of South Dakota’s lawyers live in urban areas.^{3} Indeed, as of the spring of 2014, twenty-five South Dakota counties had three or fewer attorneys, and six had no attorney at all.^{4} Other states face a similar prob-


problem: in Georgia, seventy percent of attorneys practice in the Atlanta area; in Texas, eighty-three percent practice in and around the largest cities; and in Arizona, an astonishing ninety-four percent practice in just Maricopa and Pima counties, the state’s population behemoths.\(^5\) Nationally, just two percent of small law practices are in rural America,\(^6\) representing a serious mismatch for the roughly twenty percent of the populace who live there.\(^7\)

Responding to this problem, the South Dakota legislature took an unprecedented step in 2013 and enacted the Attorney Recruitment Assistance Pilot Program,\(^8\) commonly known as Project Rural Practice.\(^9\) The law offers subsidies to

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9. Id. See also Patrick G. Goetzinger, Project Rural Practice: Saving an Endangered Species by Recruiting the Sweet Sixteen, 37 B. LEADER 33 (2013), available at
Project Rural Practice is a strong step toward helping South Dakota’s rural residents get access to a lawyer, and it is one model for affording some 59 million rural Americans the same opportunity. But the lawyer shortage in rural Ameri-
ca has many causes and many consequences, and what works in South Dakota may not work elsewhere. We are unable to address all of the causes or implications of the rural lawyer shortage in this overview article, but we take this opportunity to acknowledge some of the web of issues associated with the dearth of lawyers serving rural America. In particular, we discuss at length below the consequences of the lawyer shortage for the most vulnerable populations: the elderly, disabled, veterans, children, and the poor.

Among the reasons that newly-minted lawyers might be reluctant to practice in rural America is skyrocketing law school tuition, an increasing constraint on the employment options of recent law graduates. Further, law schools are increasingly under fire for failing to produce practice-ready graduates, and they presumably could do more to inculcate an ethic of service in their students.

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16. Between 2004 and 2012, public law school tuition nearly doubled to an average of $23,214 per year, leaving the average public law school graduate carrying $84,600 in debt at graduation. A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LAW SCHOOL TUITION 1985-2012, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Apr. 11, 2014). Some public law schools boast tuition nearing $50,000. What Are the Priciest Public Law Schools?, U.S. NEWS AND WORLD REPORT (last updated 2014), available at http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/public-cost-rankings. While it is unclear if the South Dakota stipend is meant to offset the cost of law school per se, student debt and low pay are among the common reasons many recent law graduates do not pursue rural legal practice. For a review of the urban-rural patterns in legal employment and law school debt burden, see Rebecca L. Sandefur, Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers’ Persistence in the Profession, 36 Sw. U. L. Rev. 539 (2007). See also Gilbertson, Reflections, supra note 10, at Part II (listing some reasons why young lawyers may not wish to practice in rural America); ILLINOIS STATE BAR ASS’N, FINAL REPORT, FINDINGS & RECOMMENDATIONS ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES 2, 7, 15 (2013) (noting that high levels of law school debt have discouraged legal careers in rural Illinois, even as the number of rural lawyers declines). But see Kirsten H. Hill, Making the Case for Public Interest Graduates to Go Rural, NAT’L ASS. LEGAL PLACEMENT BULLETIN, July 2013, at 9-10. Hill focuses on nonprofit sector employment opportunities, stating that rural practice offers quicker career advancement and lower cost of living, and that work in rural communities demonstrates “unwavering commitment to public interest law.” Id. at 10.


These factors pose particular problems in rural areas, where the dominant practice types are solo practitioners and small firms that may struggle to provide adequate training, mentoring, and oversight of young lawyers. Lacking both the financial wherewithal and the practical legal skills to hang out the proverbial shingle, highly leveraged law graduates may seek large-firm experience and salaries as their only apparent choice, which necessarily places them in metropolitan areas.

Beyond these obvious reasons for the shortage of rural lawyers, hard data and empirical studies are needed to inform evidence-based solutions to this problem.

While our focus is the consequences of the rural lawyer shortage for vulnerable populations, the shortage affects entire rural communities, as by hindering economic development. That is, the missing lawyers could serve not only the research regarding attorney personalities and whether it is possible to teach legal ethics to attorneys, who tend to be more competitive and focus on zealous advocacy; concluding that attorneys, like everyone else, learn through modeling and from their peers).

While no empirical studies have documented this phenomenon in the United States, it has been the subject of scholarly attention in other countries. In particular, Australian academics have considered the consequences of the shortage of lawyers in that country, and we draw on their work to substantiate our claims regarding the United States. See, e.g., Simon Rice, Access to a Lawyer in Rural Australia: Thoughts on the Evidence We Need, 16 DEAKIN L. REV. 13, 25 (2011) (noting that remoteness from support and supervision is one of the many challenges facing rural lawyers in rural Australia); Michael Cain & Suzie Forell, Recruitment and Retention of Community Sector Lawyers: Regional Differences Within New South Wales, 16 DEAKIN L. REV. 265, 283 (2011) (noting that in the most remote regions in New South Wales, Australia, attorneys report frustration with lack of professional development, office capacity, and low pay). Cf. Nina Tarr, Two Women Attorneys and Country Practice, 2 COLUM. J. GENDER & L. 25 (1992) (examining the lives of two female attorneys in rural Kansas and observing that these rural women lawyers had more in common with male rural practitioners than with female lawyers in metropolitan areas).

A good start is Hannah Alsgaard’s contribution to this Symposium Issue, which studies the efforts of states like South Dakota and entities like Indian Health Services to recruit a range of medical professionals to rural areas. Hannah Alsgaard, Rural Incentive Programs for Legal and Medical Professionals: A Comparative Analysis, 59 S.D. L. REV. 585 (2014). Another important initiative, this one more specifically about the demand side of the access to justice problem in rural South Dakota, was initiated in the spring of 2014. Access to Justice, Inc., distributed a survey of service providers regarding the most remote regions in New South Wales, Australia, attorneys report frustration with lack of professional development, office capacity, and low pay). Cf. Nina Tarr, Two Women Attorneys and Country Practice, 2 COLUM. J. GENDER & L. 25 (1992) (examining the lives of two female attorneys in rural Kansas and observing that these rural women lawyers had more in common with male rural practitioners than with female lawyers in metropolitan areas).

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22. See Martin et al., supra note 20, at 64-65 (noting that lawyers are supporters and facilitators of not only social justice imperatives, but also of smooth economic functioning). See also KEN SMITH, THE ECONOMIC IMPACT OF CIVIL LEGAL SERVICES IN NEW HAMPSHIRE: ACHIEVING JUSTICE AND BOOSTING THE ECONOMY 4-5 (2013) (finding that legal aid, legal referral services, and pro bono services in New Hampshire collectively brought in $68.8 million in federal funds and saved the state an additional $15.6 million in 2012 alone, with impacts felt most immediately in low-income and high-risk communities).
needs of individual clients, but also those of local entities, both public and private, while providing the sort of human and social capital that helps communities innovate and flourish. As a related matter, the absence of local lawyers may mean that public officials and public entities unwittingly run afoul of the law, failing to comply with norms of transparency and good governance. Such failures of checks and balances within and among public institutions may infringe civil liberties, and the resulting mistakes can be costly for local government entities to remedy. Lastly, the rural lawyer shortage means that local dollars are diverted from the local community as rural residents and entities hire lawyers from metropolitan areas to meet their legal needs. Project Rural Practice implicitly recognizes this range of issues by valuing all that lawyers can bring to their communities.

While Project Rural Practice’s approach to increasing rural access to justice is unique within the United States, other states have also responded to the unmet legal needs of their rural communities. For instance, a strategy recently adopted by the Washington Supreme Court allows non-lawyers, called “Limited License Legal Technicians,” to perform nine well-defined types of tasks. These tasks include completing legal forms, performing client intake, reviewing and explaining pleadings, identifying needed court documents, performing legal research, drafting letters under attorney supervision, and informing clients of procedures

23. See Martin et al., supra note 20, at 64-65. See also, e.g., Donald D. Landon, Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice, 10 AM. B. FOUND. RES. J. 81, 94, 102 (1985); Pavan K. Mamidi, Negotiating Out of Holdouts in Land Aggregation in India: Small Town Lawyers, Contingent Contracts, Social Norms, and Auctions 3-5 (HLS Program on the Legal Profession, Working Paper No. 2013-1) (discussing the role small-town lawyers in India play as mediators between rural farmers and large corporations in structuring complex infrastructure and land holdings transactions, often persuading skeptical farmers to sell for more money than the farmer could make in a lifetime); LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (2009) (noting that legal issues often address essential human needs, such as health care, housing, family law issues, and relief from economic exploitation).


25. See Phil Garland, Remarks at the University of South Dakota Law Review Rural Practice Symposium (Mar. 20, 2014).

and timelines.\(^27\) This approach might be analogized to the increasing use of paraprofessionals such as nurse practitioners and physician assistants under the Affordable Care Act,\(^28\) and it can be very effective in rural areas.\(^29\)

Other states have also turned attention to rural justice issues in the past few years. In 2010, the California Commission on Access to Justice issued a comprehensive report called *Improving Civil Justice in Rural California.* Among the Report’s seven recommendations were pursuing geographic equality; increasing funding to legal aid organizations serving rural populations; encouraging California lawyers—including the urban ones—to fulfill part of their pro bono responsibility in rural parts of the state; and developing innovative uses of technology to bridge the urban-rural divide.\(^30\) In 2006, the New Mexico Supreme Court established pro bono committees in each state judicial district,\(^31\) an action prompted in

\(^{27}\) Holland, *supra* note 26, at 95. In 2006, the Practice of Law Board of the Washington State Bar Association initially identified nine types of activities in which the technicians could engage. *Id.* After much resistance by the Washington Bar, those nine areas were again proposed in 2008. *Id.* at 99. Finally, the Washington Supreme Court in 2012 adopted those nine activity types with few modifications. *Id.* at 111-12.

\(^{28}\) *See generally* David I. Auerbach et al., *Nurse-Managed Health Centers and Patient-Centered Medical Homes Could Mitigate Expected Primary Care Physician Shortage,* 32 *HEALTH AFFAIRS* 1933 (2013), available at http://content.healthaffairs.org/content/32/11/1933.full.pdf (explaining that the predicted shortage of primary care providers under the Affordable Care Act can be remedied by an increased use of nurse practitioners and physician assistants); Ian Lovett, *California Expands Availability of Abortions,* N.Y. TIMES, Oct. 9, 2013, http://www.nytimes.com/2013/10/10/us/california-expands-availability-of-abortions.html?_r=0 (allowing “nurse practitioners, midwives and physician assistants to perform a common type of the procedure, an aspiration abortion, during the first trimester”).

\(^{29}\) Other nations have responded to rural access to justice challenges in similar ways. In South Africa, among other developing countries, paralegals are widely used to enhance access to the justice system. Apartheid in South Africa caused many South Africans to doubt the justice system, but in terms of gender and race, paralegals are more representative of the South African population. That said, paralegals are more often used in the criminal context, providing an array of functions, such as (1) advocacy during arrest/police investigation, (2) advocacy for alternatives to pre-trial incarceration, (3) case investigation, (4) client and family counseling, and (5) preparation for plea, pre-trial hearing, trial, and sentencing. *See* Thomas F. Geraghty et al., *Access to Justice: Challenges, Models, and the Participation of Non-Lawyers in Justice Delivery,* in *ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY* 53, 66 (2007); Penal Reform International et al., *The Paralegal Advisory Service: A Role for Paralegals in the Criminal Justice System,* in *ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY* 145, 146 (2007); Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa,* 30 *FORDHAM INT’L L.J.* 374, 383-84 (2006) (briefly discussing how community-based paralegals provide the majority of legal services to the rural poor in South Africa); OPEN SOCIETY FOUNDATIONS, *COMMUNITY BASED PARALEGALS, A PRACTITIONER’S GUIDE* 13 (2010), available at http://www.opensocietyfoundations.org/sites/default/files/paralegal-guide-20101208.pdf (briefly describing South Africa’s paralegal scheme as grounded in grassroots needs and activities, but also organized around community-level legal needs to advocate for reform of government policies, legislation, and public institutions).

\(^{30}\) *CAL. COMM’N ON ACCESS TO JUSTICE, IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA* 14-15 (2010), available at http://calbar.ca.gov/LinkClick.aspx?fileticket=nWB9dBjulm%403D&tabid=216. The remaining recommendations include developing minimum access guidelines, establishing a statewide “friends of rural legal aid” committee, and convening a task force to coordinate rural legal service delivery. *Id.*

part by the recognition that sixteen counties had twenty-five or fewer attorneys, and some had none.\textsuperscript{32} The New Mexico plan holds promise for tailoring pro bono promotion to rural contexts, where the resources available to meet the needs may vary dramatically from those in urban settings. Colorado, New Mexico, and Utah all have rural sections within their state bar organizations.\textsuperscript{33}

These states’ attention to geography and local context reminds us not only of rural-urban difference, but also of differences among rural locales. A familiar adage in rural sociology holds, “if you’ve seen one rural place, you’ve seen one rural place.”\textsuperscript{34} We thus acknowledge that a one-size-fits-all solution—even a “rural-sized” solution that accounts for factors like inability to achieve economies of scale\textsuperscript{35}—is unlikely to be the optimal access to justice solution across all rural

\begin{thebibliography}{99}
\bibitem{1} (quoting Christine Chandler, \textit{The New Mexico Ten Step Plan for Improving Access to Justice}, SYS. PLANNING Comm. of the N.M. Comm’n on Access to Justice 9 (2006), http://www.nmbar.org/Attorneys/ATJ/2006TheNewMexico10StepPlanforImprovingAccesstoJustice.pdf). In recognition of county-to-county differences, both Colorado and New Mexico require that the district plans be localized to meet an area’s particular needs. See \textit{id}. Colorado’s approach to implementing local pro bono committees, though less structured than New Mexico’s approach, has achieved significant progress. \textit{Id}. Judicial districts statewide have formed local access to justice committees to address the legal needs of the low-income people in their district. In 2008, there were eleven active committees, some of which encompassed several judicial districts, and three committees that were in the formation stage. \textit{Colo. Access to Justice Comm’n, the Justice Crisis in Colorado, A Report on the Civil Legal Needs of the Indigent in Colorado 17 n.11 (2008), available at http://www.cobar.org/repository/Access%20to%20Justice/08ATJReport.pdf.}

\textsuperscript{32} Chandler, supra note 31, at 5. “Attorneys” here refers to all attorneys, whether doing civil or criminal work.


\textsuperscript{34} Lisa R. Pruitt, \textit{Place Matters: Domestic Violence and Rural Difference}, 23 Wis. J.L. Gender & Soc’y 347, 388 (2008) [hereinafter Pruitt, \textit{Place Matters}] (attributing aphorism to rural sociologist Daryl Hobbs) (citing Louis E. Swanson & David L. Brown, \textit{Conclusion: Challenges Become Opportunities: Trends and Policies Shaping the Future, in Challenges for Rural America in the Twenty-First Century} 397, 397 (David L. Brown & Louis E. Swanson eds., 2003)). See also \textit{Lawrence C. Hamilton et al., Carney Inst. Place Matters: Challenges and Opportunities in Four Rural Americas} 3 (2008), available at http://www.carseyinstitute.unh.edu/publications/Report_PlaceMatters.pdf (arguing that rural areas are diverse economically, politically, and environmentally, placing rural areas in to one of four broad categories: “amenity-rich, declining resource-dependent, and chronically poor regions, as well as a fourth transitional type characterized by both amenity-driven growth and resource-based decline.”). The Chief Justice of Australia has offered a similar observation regarding the challenges of rural access to justice in that country. Chief Justice Robert French, \textit{Law and Justice Outside the CBD}, 16 Deakin L. Rev. 1, 9 (2011) (noting the variability among “rural, regional and remote centres based not only on population, but also location, including proximity to major centres”).

\textsuperscript{35} This is a challenge with regard to delivery of all sorts of services to rural locales. See Pruitt & Colgan, \textit{Justice Deserts}, supra note 5, at 227-28; Lisa R. Pruitt, \textit{Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place}, 71 Mont. L. Rev. 1, 6-8, 13-14 (2010). The challenge of achieving economies of scale is recognized in cases that consider the fairness and appropriate-ness of state education funding schemes. \textit{See, e.g.,} Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1247 (Wyo. 1995) (noting increased cost of education in rural school districts). This challenge is also acknowledged with regard to funding social services programs in rural areas. \textit{See} Carol K. Feyen, \textit{Isolated Acts: Domestic Violence in a Rural Community, in The Hidden America: Social Problems in Rural America for the Twenty-First Century} 101, 108 (Robert M. Moore III ed., 2001) (noting
communities. Different rural communities have different assets as well as different challenges that will influence their access to justice needs. Tensions associated with racial, ethnic, and language differences may complicate access to justice in more diverse rural communities, while gender complicates the justice landscape everywhere. Physical geography will loom larger in some places than in that human and social service needs tend to go unmet in rural counties because of the “small and dispersed” population; Ann Tickamyer et al., Where All the Counties Are Above Average, in RURAL DIMENSIONS OF WELFARE REFORM 231, 236 (Bruce A. Weber et al. eds., 2002) (describing the disadvantages of rurality in creating jobs, including the difficulty of delivering capital-intensive services like education, transportation, and childcare); Elizabeth Seale & Gregory M. Fulkerson, Critical Concepts for Studying Communities and Their Built Environments, in STUDIES IN URBAN NORMATIVITY: RURAL COMMUNITY IN URBAN SOCIETY 31, 33 (Gregory M. Fulkerson & Alexander R. Thomas eds., 2013).
others, and the capacity of transportation and communications infrastructure to ameliorate those challenges will vary from place to place.\textsuperscript{38}

The spatial proximity of rural and urban places in relation to each other is another factor. It will likely be easier to meet rural access to justice challenges in exurbia or the metropolitan periphery than in a more remote rural locale. Further, because a larger proportion of the population of some states is rural, those states may have retained what might be thought of as a “rural culture.” The leadership of such states—including South Dakota—may be more motivated to address rural justice deficits. We posit that Project Rural Practice may succeed in alleviating the rural lawyer shortage in South Dakota because the attorney participants will likely be University of South Dakota law graduates.\textsuperscript{39} Many will be familiar with small-town life, and some will hail from the counties targeted or from those nearby.\textsuperscript{40} Further, these lawyers’ levels of student debt will be on par with the amount of the subsidy. In states that are more metrocentric and where young lawyers tend to be saddled with higher levels of student debt because there is no affordable option for legal education, greater fiscal incentives will likely be necessary to entice lawyers to practice in rural areas.


As discussed \textit{infra} at notes 277-281 and accompanying text, pro bono service can play an important role in bringing justice to rural communities. It is worth noting, however, that racial minority, female, and young attorneys are all more likely to engage in pro bono service than are their white and older counterparts. When asked if they would take on more pro bono work if they could, the following answered affirmatively: sixty-two percent of non-white attorneys versus forty-three percent of white attorneys, fifty-five percent of women versus thirty-eight percent of men, and fifty-five percent of attorneys aged thirty-five to forty-four versus thirty-nine percent attorneys aged forty-five and older. \textit{See} A.B.A. \textit{STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, SUPPORTING JUSTICE III A-14 to A-16 (2013), available at} http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf.

38. \textit{See generally} UC Davis Graduate Student Practicum in Rural Community Advocacy, Access to Healthcare in Plumas County: A Report on Barriers and Opportunities (2013) (discussing one rural California county’s challenges in accessing healthcare, in large part due to physical, spatial, and transportation hurdles) (on file with authors). For these living in a rural place in California’s Great Central Valley, with easier access to major transportation arteries, the challenges to accessing services are unlikely to be as great. \textit{See infra} note 190 and accompanying text (discussing availability of internet access from state to state).


40. Several institutions have also begun to recognize that attachment to place, to one’s home region, may influence an attorney’s decision regarding where to practice. This has led some law schools to bring legal education directly to rural areas—or at least closer to them. As Alaska has no ABA-accredited law school, Alaskans—both rural and urban—are forced to travel far from their state in order to obtain a legal education. Few return to work in the state’s most remote regions. Michelle Theriault Boots, \textit{New Seattle University “Satellite Campus” Will Let Alaskans Finish Law School in Anchorage}, ANCHORAGE DAILY NEWS (June 11, 2014), http://www.adn.com/2014/06/11/3512766/new-seattle-university-satellite.html. Seattle University School of Law has announced plans to remedy this situation by opening a satellite campus in Anchorage, where students can complete their third year of studies. \textit{Id.}
In considering this array of issues, legal educators and other stakeholders in the United States might learn from their Canadian counterparts. In recent years, new Canadian law schools have opened outside major metropolitan areas—in the British Columbia interior and in Northern Ontario—with the specific goal of attracting local students to rural legal practice.\textsuperscript{41} Of course, many U.S. law schools—including the University of South Dakota—are located in nonmetropolitan areas, but this does not mean that their students will opt to practice in rural areas when metropolitan areas are not far away. More akin to these Canadian efforts is a program announced by Seattle University to permit students to complete their third year of studies at a satellite campus in Anchorage, Alaska.\textsuperscript{42} If the program gains ABA approval, the option would be available beginning in 2015. One goal of the program is to make legal careers more desirable and accessible to Alaskans, who will be able to complete some of their studies closer to home. Another goal is to expose more students to Alaska generally in the hope that some will choose careers in the state, including in its more remote reaches.\textsuperscript{43}

While all of these efforts are laudable and important, most governments, bar associations, and law schools recognize that simply increasing the number of legal professionals working in a given place will not ensure access to justice there. All state courts and commissions that have taken up rural access to justice recognize at least implicitly that rural socio-spatiality alters the lawscape. Lawyers are


\textsuperscript{42} Boots, \textit{supra} note 40 (noting that the initiative has earned the strong backing of Alaska Supreme Court Chief Justice Dana Fabe, who expects an Alaska-based law school to increase the geographic diversity of legal practice in the state).

\textsuperscript{43} \textit{Id.} As in the Alaskan Arctic, access to justice in the Canadian Arctic is a daunting challenge. The territory of Nunavut has no formal law school, its lawyers are almost exclusively non-indigenous, and many of these practitioners remain in the North only temporarily. Serena Ableson, \textit{Bringing Legal Education to the Canadian Arctic: The Development of the Akitsiraq Law School and the Challenges for Providing Library Services to a Nontraditional Law School}, 34 Int’l J. Legal Info. 1, 7 (2006); Beverly Spencer, \textit{The Wolf & the Sheep}, \textit{National Magazine}, http://www.nationalmagazine.ca/Articles/July-August-2013/The-wolf-the-sheep.aspx (last visited June 11, 2014). In order to train attorneys more deeply rooted in and reflective of the community, the government of Nunavut partnered in 2001 with the University of Victoria Faculty of Law to train a single cohort of fifteen local law students. Ableson, \textit{supra}, at 9-13. The traditional legal curriculum was modified to suit the social, cultural, linguistic, and geographic context of the Arctic. Ableson, \textit{supra}, at 14-16. While fewer than half of the original graduates are still practicing in Nunavut, the experience points to a possible model for offering culturally sensitive legal training to local people in the most severely underserved rural areas. Robert Todd, \textit{supra} note 7. This approach seems well-suited to serving remote American Indian and Alaska Native populations in the United States, a topic we return to in Part III.C(3).
fewer and farther away from each other, while clients often must overcome substantial socio-spatial and economic barriers to engage the legal system. In order for a client to overcome these obstacles, he or she would first have to self-identify a legal need—a hurdle in itself.44 For immigrant families facing language barriers, parents of a disabled child whose needs are not being met by a school district, middle-income families living paycheck to paycheck, or anyone struggling with poverty and its myriad consequences, the fact that a lawyer could help them is frequently the last thing on their minds. Further, some studies suggest that rural residents are less willing than urbanites to engage the legal system.36 They may thus be less likely to contemplate a legal solution to the problems they face.47

This is all a very clinical way of saying that there are needs for which people seek a legal solution, but also needs for which they may be unaware of such a remedy. Recognizing this reality, we deploy a broader conception of access to justice, one that goes beyond simple access to lawyers and courtrooms. We believe that a more robust concept of justice should include the process of identifying an individual’s or community’s legal needs—even when the would-be client does not envisage a legal solution. We cannot always expect clients who need legal services to knock on a lawyer’s door, yet rural residents and their communities are often in need of law-based intervention. On the other hand, lawyers cannot shoulder the entire access to justice burden. Rather, access to justice should be an aspiration for an entire rural community—including the public sector, non-profits, religious institutions, and for-profit enterprises. In our view, a lawyer’s role is just one pillar among many needed to build and sustain a strong community.


45. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 9 (noting the absence of an established right to an interpreter in civil matters).

46. See generally Lisa R. Pruitt, The Rural Lawscape: Space Tames Law Space, in THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY (Ibars Braverman et al. eds., 2014) (citing ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1994); David M. Engel, The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community, 18 L. & SOC’Y REV. 551 (1984)) (documenting rural residents’ reluctance to engage the legal system, especially to resolve civil disputes and thus suggesting rurality’s association with informal order). Indeed, rural residents are also less likely than urban residents to report crimes, even when the perpetrator is a stranger. Ralph A. Weisheit & Joseph Donnermeyer, Change and Continuity in Crime in Rural America, in CRIMINAL JUSTICE 2000: THE NATURE OF CRIME: CONTINUITY AND CHANGE 309, 329-30 (July 2000), available at https://nijr.gov/criminal_justice2000/vol_1/02g.pdf. This lack of willingness to engage the traditional legal system does not necessarily mean that disputes go unresolved, as churches or families may effectively facilitate informal dispute resolution in the absence of a lawyer. DONALD D. LANDON, COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE 131 (1990); ELLICKSON, supra.

47. See generally Pruitt, Space Tames Law, supra note 46 (theorizing the inherent tension between rural socio-spatiality and law as an ordering, monitoring force).
This article thus begins to sketch the parameters of a broader, more complex access to justice framework in what might be thought of as a generic rural context. We envision a productive feedback loop between lawyers and legal resources on the one hand, and non-profits and other community institutions on the other. Such inter-dependence would better serve both clients and lawyers. Under the system we envision, clients will be more likely to seek and get legal assistance, while lawyers will be better able to engage community resources that respond to their clients’ range of needs.

We lay the foundation for our vision of rural access to justice by describing in Part II the “rural lawscape,” meaning the rural socio-spatial-cultural-economic milieu as it relates to law and access to justice. In that Part, we also review the limited—and unfortunately dated—literature on lawyers in rural America. In Part III, we flesh out the more robust conception of access to justice that we advocate. In Part IV, we discuss the promise of pro bono services to meet the legal needs of rural communities, with special attention to the so-called “low bono” legal services often provided by solo practitioners. Lastly, in Part V, we discuss implementation of a community resource and referral program that would facilitate identifying legal needs and connecting would-be clients with legal resources. We conclude with thoughts on steps that law schools, bar associations, legislatures, courts, and other stakeholders can take to enhance access to justice for rural populations.

II. THE RURAL LAWSCAPE: SPACE, ECONOMY, SOCIETY

We cannot resurrect the past. Rather, we need to realistically look at meeting current and future needs. There is no maintaining the status quo.48

Chief Justice David Gilbertson, South Dakota Supreme Court, 2013

While rural communities are often stereotyped as static, homogeneous, and traditional, abundant evidence suggests dramatic change in rural America—demographic, economic, and cultural—over the last century. This fact is reflected in Chief Justice Gilbertson’s remark, which suggests that some of the change has been negative. Indeed, Justice Gilbertson began his comment by noting an


“overall decline of all facets of rural life in the state.” 50 This is surely a reference to the dramatic population loss that South Dakota and other parts of the Great Plains have experienced in recent decades. 51 But population loss is not the only recent trend of note in rural America. In this Part we discuss spatial, economic, cultural, and demographic aspects of an evolving rural lawscape.

Diversity among (and increasingly within) the nation’s rural areas makes generalizing across the rural populace problematic, but similarities are identifiable from studies of rural areas spanning wide swaths of the nation. Rural residents’ attachment to place is a recurring finding, 52 but we cannot say definitively whether this attachment is to the land or to networks of kith and kin. 53 The nature of rural spatiality, the high diversity of acquaintanceship it begets, and associated lack of anonymity are other common themes that can have profound consequences for rural livelihoods and the justice systems that serve them.

Rural spatiality is not only a material phenomenon; it is a product of social phenomena, even as it also produces those phenomena. Rural society and rural spatiality are mutually constitutive; space shapes society and, perhaps less intuitively, society places constraints on space. But population loss is not the only recent trend of note in rural America. In this Part we discuss spatial, economic, cultural, and demographic aspects of an evolving rural lawscape.

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50. Gilbertson, State of the Judiciary, supra note 48, at 25. Similar changes challenge access to justice in rural Australia. See French, supra note 34, at 5 (noting concerns including “intergenerational change, changing patterns of land ownership, shortages of services and skills, and access to physical and electronic infrastructure”).

51. See generally patrick j. carr & maria j. kefalas, hollowing out the middle: the rural brain drain and what it means for america (2010) (investigating why so many young people choose to leave their rural homes, with ethnographic field work done in Iowa). See also Lisa r. Pruitt, Population Loss, Legal Ruralism Blog (last visited apr. 29, 2014), http://legalruralism.blogspot.com/search?label=population%20loss. The influx of ethnic and racial minorities in the Midwest, plains, and South has also changed rural cultures. See Pruitt, Latinas/os, Locality and Law, supra note 36, at Part III.C. At the live Rural Practice Symposium, March 20-21, 2014, at the University of South Dakota, Professor Daniel T. Lichter of Cornell University gave an overview of recent demographic changes in South Dakota. Among other facts, he noted that South Dakota’s metropolitan counties accounted for ninety-seven percent of population growth between 2000 and 2010. Id. The fifty-eight nonmetro counties account for only 1.848 additional people during the same period. Id.

52. See ann r. tickamyer & debra henderson, rural women: new roles for the new century? in challenges for rural america in the twenty-first century 109, 112-14 (David L. Brown et al. eds., 2003) (discussing three different rural regions and emphasizing the residents’ “deep-seated local affiliations and loyalties,” lack of willingness to leave their rural homes in spite of greater opportunity in urban areas, ties to family and community, “commitment to the land,” and attachment to rural “land and lifestyle”); Cynthia B. Struthers & Janet L. Bokemeier, Myths and Realities of Raising Children and Creating Family Life in a Rural County, 21 J. Fam. Issues 17, 35 (2000) (noting that respondents lived in rural area “because they had always lived there” and had family there), and at 42 (noting that a recurring theme among respondents is “‘place matters’: that is, place defines family life, patterns of inequality, and social opportunities). See also Terry Marsden et al., Introduction: Questions of Rurality, in Rural Restructuring: Global Processes and Their Responses 1, 1 (Terry Marsden et al. eds., 1990) (noting rurality’s longstanding association with “internal solidarity, kinship ties, generational continuity, and traditional face-to-face society”).

53. See, e.g., Feyen, supra note 35, at 118 (describing one woman’s choice not to leave abusive husband because of a desire to maintain roots to the farm). Scholars have documented rural women’s decisions not to move to locales with better opportunities because of their attachment to land and to the lifestyle it represents. See, e.g., Tickamyer & Henderson, supra note 52, at 113-14. But see Patrick J. Carr and Maria J. Kefalas, The Rural Brain Drain, Chron. of Higher Educ., Sept. 21, 2009, http://chronicle.com/article/The-Rural-Brain-Drain/48425/ (describing how talented young people in rural areas are leaving in greater numbers, causing great economic hardship to rural communities); Carr & Kefalas, supra note 51 and accompanying text.
tively, society shapes space. For example, the population sparseness associated with rurality—an ecological or spatial phenomenon—results in a high density of acquaintanceship, a socio-spatial phenomenon that carries social consequenc-
es. Sociologists link the stasis and attachment to tradition associated with rural livelihoods to this “predomina-
ce of personal, face-to-face social relationships among similar people.” This stasis is, in turn, linked to “greater levels of consen-
sus on important values and morals.” Meanwhile, urban settings are
thought to “foster . . . the generation and acceptance of new ideas” because their populations are larger and more diverse, causing norms there to evolve more quickly. While this aspect of the rural-urban dichotomy has long been conventional wisdom, such high levels of social compliance and relative unity of thought are surely under challenge by demographic and economic changes afoot in many parts of rural America. Further, advances in transportation and communication have somewhat ameliorated the geographic isolation of rural areas, diminishing differences between rural and urban.


57. Fern K. Willits et al., supra note 55, at 73.


60. Rural communities that have been or are being gentrified illustrate our point. These communities’ cultures surely change with the influx of wealthy, urban-oriented residents, at least on a seasonal basis. See generally Sonya Salamon, From Hometown to Nontown: Rural Community Effects of Suburbanization, 68 RURAL SOC. 1 (2003) (noting that the stability and rigidity often praised in rural America are being challenged by people who add diversity moving into rural settings); SONYA SALAMON, NEWCOMERS TO OLD TOWNS (2003) (discussing changes in rural communities brought about by new populations moving in, such as upscale urbanites and people of diverse ethnic backgrounds). Cf. Mormont, supra note 59, at 21, 28-41 (suggesting that some characteristics associated with rural areas were never actually unique to such places); Dewey, supra note 54, at 60-63 (also noting temporal component of urban and rural as referents). See also Lisa R. Pruitt, Rural Gentrification, LEGAL RURALISM BLOG (last visited May 1, 2014), http://legalruralism.blogspot.com/search/label/rural%20gentrification.

The influx of ethnic and racial minorities also changes rural cultures. See Pruitt, Latina/os, Locality and Law, supra note 36, at Part III.C. This is an issue addressed by Professor Daniel T. Lichter at the live Rural Practice Symposium, supra note 51. In particular, he analyzed the racial/ethnic composition of Huron, Plankinton, Alpena, and Marshall counties, where the populations of racial/ethnic minorities have risen sharply in recent years. In Marshall County, the Latino/as are working primarily on dairy farms.

61. Albrecht & Albrecht, supra note 56, at 433 (speculating that increasing similarities between rural and urban are attributable to the decline of the family farm and a decreasing rural population). See also John A. Rife, The Rural Plight: Narrowing the Digital Divide in Rural Localities, 1 APPALACHIAN
The economic landscape of the rural United States has historically been marked by substandard infrastructure and human capital deficits. Rural economies tend to lack diversity and rural places have long been associated with cheap labor and bad jobs. It is thus unsurprising that rural areas have generally been harder hit by economic downturns and global competition. Rural restructuring has meant a loss of good blue-collar jobs and agriculture-based livelihoods as the new staples of rural economies, manufacturing and service jobs, have supplanted or replaced extractive industries. This has brought lower

J.L. 33 (2002) (discussing the idea of “Universal Service” to telecommunications in the United States, and the challenges presented in providing access in Appalachia).

62. See also infra note 85-86 (discussing public transport deficits).

63. See Hous. Assistance Council, Taking Stock: Rural People, Poverty, and Housing in the 21st Century 19-20 (2012) [hereinafter Taking Stock], available at http://www.ruralhome.org/storage/documents/ts2010/ts_full_report.pdf (noting that one in five urban residents over the age of twenty-five has a college degree, but only one in eight rural adults do); Robert M. Gibbs, Rural Labor Markets in an Era of Welfare Reform, in Rural Dimensions of Welfare Reform 51, 57-62 (Bruce A. Weber et al. eds., 2002) (Table 2.1) (showing that about thirteen percent of nonmetro residents over the age of twenty-five do not have high school diplomas, compared to approximately eleven percent of that age group in metro areas). See also U.S.D.A., Employment & Education – Rural Education (last updated July 17, 2012), http://www.ers.usda.gov/topics/rural-economy-population/employment-education/rural-education.aspx#.Ux__OflUuc. Thirty percent of the metropolitan population over age 25 had at least a bachelor’s degree, while less than eighteen percent of their nonmetropolitan counterparts had reached the same educational level. Id. Less than fifteen percent of the metropolitan population had not received a high school diploma, but more than seventeen percent of the nonmetro population had not received a high school diploma. Id.

64. See infra note 279 and accompanying text.

65. See Morristown: In the Air and Sun (Anne Lewis documentary 2007); Pruitt, Latina/os, Locality and Law supra note 36, at Part I.


67. Manufacturing, retail, and public services are the fastest-growing sectors of rural economies. These sectors are largely characterized by low-wage and non-unionized jobs. In 2010, manufacturing accounted for 13.8 percent of all jobs in rural and small-town areas, but eleven percent nationwide. Hous. Assistance Council, Rural Research Note, No. 7, Rural Economies and Industry 3-4 (July 2012), available at http://www.ruralhome.org/storage/research_notes/rn-economies-and-industry.pdf. See also Peter T. Kilborn, In Kansas, a Growing Phone Company Helps Keep a Small Prairie Town Alive, N.Y. TIMES, Dec. 2, 2003, http://www.nytimes.com/2003/12/02/us/vanishing-point-kansas-growing-phone-company-helps-keep-small-prairie-town-alive.html (describing a small town that offered tax incentives to attract business as being in “a race to the bottom" that brought low wages and environmental destruction). The causes of this shift include the exhaustion of natural resources (e.g.,
wages and diminution of other terms and conditions of employment, as well as greater economic stratification between the rich and poor.68 Meanwhile, rural women have increasingly entered the paid labor force.69

In light of the rural economic restructuring of recent decades, it is not surprising that rural poverty has risen in recent years, even as poverty in metropolitan areas has begun to decline as our nation slowly shrugs off the effects of the Great Recession.70 In 2012, the non-metro poverty rate was 17.7%, more than three percentage points higher than the metropolitan rate of 14.5%. Unemployment rates increased about five percent across the United States during the recession, and job recovery in rural areas has lagged.71

Many rural communities are undergoing demographic transformation, too.72 Although most rural areas experienced slow population losses during much of the twentieth century,73 some regained population during the 1970s and again in the 1990s.74 Reverse migration has brought some urbanites to the coun-

68. See Tristin Green, Civil Rights Lemonade: Title VII, Gender, and Working Options for Working Families, 10 STAN. J. C. R. & C. L. (forthcoming 2014); Bosco, supra note 37, at 574 (citing GLENN V. FUGUIT ET AL., RURAL AND SMALL TOWN AMERICA 4 (1989)) (arguing that fewer employment prospects and educational opportunities force rural residents to settle for lower quality employment).

69. See Smith & Tickamyer, supra note 66, at 3 (noting a decline in well-paying, traditionally male jobs with benefits); Tickamyer & Henderson, supra note 52, at 112-114. In fact, rural mothers of children under the age of six have long been employed at higher rates than their urban counterparts. As of 2004, among all women, those in rural areas (sixty percent) were still employed at slightly lower rates than urban women (sixty-two percent). See Kristin Smith, Employment Rates Higher among Rural Mothers than Urban Mothers, CARESEY INST. 1 (2007), available at http://www.carseyinstitute.unh.edu/publications/FS_ruralmothers_07.pdf.


71. RURAL AMERICA AT A GLANCE 2013, supra note 70, at 1.

72. See, e.g., Pruitt, Latinos, Locality and Law supra note 36; Sonya Salamon, From Hometown to Nontown, supra note 60, at 2-3 (noting that those moving into rural settings do so for various reasons, including retirement and a desire for a slower-paced life, even at the cost of long commutes); Rick Lyman, In Exurbs, Life Framed by Hours Spent in the Car, N.Y. TIMES, Dec. 18, 2005, http://www.nytimes.com/2005/12/18/national/18FRISCO.html?pagewanted=all&_r=0.

73. Some of these population losses were associated with changes in agricultural production and other economic shifts. See Don E. Albrecht, The Industrial Transformation of Farm Communities: Implications for Family Structure and Socioeconomic Conditions, 63 RURAL SOC. 51, 51-53 (1998).

try, though the most recent trend is an unprecedented non-metro population decline of 0.09%, or roughly 44,000 people, between April 2010 and July 2012. Immigration accounts for what little growth rural areas have seen, sometimes offsetting natural decline. Indeed, immigration is also diminishing the racial and ethnic homogeneity long associated with rural communities.

A. MATERIAL SPATIALITY

We knew that closing the courts would deny people in outlying jurisdictions the availability of going to a local courthouse to take care of their business. I know others have disagreed with our choice, but financially we could not do anything else but close those courts. We have to live within our budget.

Presiding Judge Gary Hoff, 
Fresno County Superior Court, 2013

Rural places are often defined by their “relatively sparse populations and relative isolation from urban areas,” sometimes referred to as the “ecological component” of rurality. Rural America encompasses seventy-five percent of the United States landmass but is home to less than twenty percent of its population. Physical space itself is often a literal roadblock to gaining access to all

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75. Id. at 20-21. In the 1970s, 3.1 million metro residents migrated to nonmetro areas, and the nonmetro population grew by 5.2 million (10.3 percent) during the 1990s. Id. at 19-21. People under age sixty-five, not only retirees, accounted for most of the population gain in rural areas. Id. at 26.

76. See RURAL AMERICA AT A GLANCE 2013, supra note 70, at 5-6 (referring to a decline between April 2010 and July 2012); Christopher Doering, As More Move to the City, Does Rural America Still Matter?, USA TODAY, Jan. 13, 2013, http://www.usatoday.com/story/news/nation/2013/01/12/rural-decline-congress/1827407/. Agriculture Secretary Tom Vilsack noted that fifty percent of rural counties have seen a population decline, and more than eighty percent of lawmakers are not representing rural areas. Id.

77. Johnson, supra note 74, at 22-23 (noting that migration accounted for sixty-seven percent of the nonmetro population increase between the 1990 and 2000 censuses). This was also reflected in Professor Daniel Lichter’s comments at the live Rural Practice Symposium, supra note 51 (comparing demographic changes in Huron, Plankinton, Marshall and Alpena counties in South Dakota).

78. Minorities constituted 83 percent of nonmetropolitan population gain between 2000 and 2010. Hispanics constituted 54 percent of this gain, and migrated primarily into the South and Midwest. Although rural America is less diverse than the national average, the discrepancy is narrowing. Kenneth M. Johnson, Demographic Trends in Nonmetropolitan America: Implications for Land Use Development and Conservation, 15 VT. J. ENVTL. L. 31, 45-47 (2013); RURAL AMERICA AT A GLANCE 2013, supra note 70, at 5-6 (reporting that rural areas experienced a net population loss between 2010 and 2012, due in part to reduced migration into rural areas).


81. Johnson, supra note 74, at 1.

82. As of the 2010 Census, urban areas constitute 80.7 percent of the U.S. population, compared to 19.3 percent for rural areas. A sizeable majority of Americans—71.2 percent of the total—live in urban areas with more than 50,000 residents. 2010 Census Urban and Rural Classification and Urban Area
sorts of services, although one rarely recognized in our increasingly metrocentric nation. The challenge is aggravated by the dearth of public transportation in rural America. It is thus a hallmark of rural living that residents must travel greater distances, at greater cost, to access all sorts of services and institutions.


83. Sonya Salamon has argued that rural Americans have become more geographically isolated in recent years, as rural areas have lost population and services. Consequently, some rural residents must now travel even greater distances to reach services and visit their neighbors. Sonya Salamon, Prairie Patrimony 40 (1992). See also Pruitt, Space Tames Law, supra note 46; Pruitt, Gender, Geography & Rural Justice, supra note 37; Pruitt, Place Matters, supra note 34, at 388-403; Michele St. Amand, Limited Relief: Cause Lawyerng on Behalf of Unaccompanied Chinese Youth (forthcoming Dec. 2014) (Ph.D. dissertation, University of Washington) (on file with author) (noting that, among nonmetro attorneys representing immigrants, the most frequent complaint was distance to and from immigration court, in part because the exhaustion from travel compromised clarity, but also because of the added cost, often including the need for a hotel).

84. See, e.g., Margaret Talbot, Home Movies: Alexander Payne, High Plains Auteur, NEW YORKER, Oct 28, 2013, 50-59. Talbot’s piece profiles Alexander Payne, director of the recent film “Nebraska,” along with “The Descendants” and “About Schmidt.” Payne describes a seeming metrocentric bias in Hollywood: “This is the only—semi-sarcastic answer I sometimes give to the question ‘Why Nebraska?’ ‘You don’t ask Woody Allen or Spike Lee why they want to shoot in New York, or Paul Thomas Anderson or Quentin Tarantino why they want to shoot in L.A., or Claude Lelouch why he wants to shoot in Paris.’ I happen to be from here and, like many writers and filmmakers, at least earlier in your career, you want to explore the mystery of the place you’re from—those early buttons, how it haunts you.

Id. at 54. See also infra note 86 for a discussion of the related concept, “urbanormativity.”


86. Seale and Fulkerson link this phenomenon to an urbanormative perspective:

Having access to employers, schools, hospitals, retail establishments, as well as other amenities and necessities of life, is highly predicated on location in physical space and planning with regard to the built environment. Metropolitan areas by definition contain a higher density of people as well as goods and services that serve them, including (to varying degrees) viable transportation alternatives that enhance access. In contrast, rural communities are confronted with a range of challenges related to living with large tracts of physical space, including an inability to provide sufficient and affordable public transportation, continuing mandates to consolidate or close schools, or to consolidate medical services, dealing with a limited number of options when it comes to finding work, and operating with a smaller tax base to support local amenities such as parks or other leisure outlets, not to mention maintaining basic infrastructural needs. Taking all this into consideration, one can observe that an urbanormative lens would presuppose easy access to most of life’s basic needs and wants. For rural communities, a premium must be paid in order to gain access to these taken-for-granted facets of life.

Seale & Fulkerson, supra note 35, at 33. Another way of thinking about urbanormativity is as “urban bias.” See Luke Boso, supra note 37.

Sonya Salamon has argued that rural Americans have become more geographically isolated in recent years, as rural areas have lost population and services. Consequently, some rural residents must now travel even greater distances to reach services and visit their neighbors. SALAMON, PRAIRIE PATRIMONY, supra note 83, at 40. See also Pruitt, Space Tames Law, supra note 46; Pruitt, Gender, Geog-
Such institutions include courts, and such services include those provided by lawyers, as well as others that are often ancillary to legal issues, e.g., drug treatment facilities, domestic violence shelters, and health and human services. Challenges are compounded in this era of budget cuts and courthouse closures, increasing the travel times associated with rural lawyering and the rural justice system more broadly.

The material spatiality that defines rural living also masks social problems, many with legal implications. Migrant farm workers and other rural residents endure substandard housing and abusive working conditions. The elderly,
disabled, and veterans—all disproportionately represented in rural America—need a wide array of supports. The access to justice challenge for American Indians, who face myriad social ailments and disproportionately high poverty rates, is aggravated by the byzantine tapestry of state, federal, and tribal laws that form the backdrop to their lives. And rural places are increasingly the dumping ground for externalities associated with extractive industries and with all sorts of environmental hazards cast off by metropolitan areas. All of these implicate legal issues.

93. See Chana Joffe-Walt, Unfit for Work: The Startling Rise of Disability in America, N.P.R., March 26, 2013, available at http://apps.npr.org/unfit-for-work/ (reporting that disability rates are higher in nonmetropolitan places than in metropolitan ones); E. Helen Berry, The Seniors are Coming! Oh Wait, They’re Here, RURAL VOICES, Fall 2013, at 8-10, available at http://www.ruralhome.org/storage/documents/rural-voices/rv-fall-2013.pdf (noting in 2010, 16.5 percent of the rural population was over age 65, compared to 12.3 percent of the metropolitan population); Bill Bishop & Roberto Gallardo, The Geography of Disability, DAILY YONDER, Nov. 30, 2011, http://www.dailyyonder.com/geography-disability/2011/11/29/3619 (noting that 7.2 percent of rural adults receive disability payments, while the national average is 4.6 percent); M. L. Reig, The Unspoken Poor: Single Elderly Women Surviving in Rural America, 9 ELDER L.J. 257, 266-67 (2001) (noting that twenty percent of rural elderly women live in poverty, compared to fourteen percent of their metropolitan counterparts, and discussing some of their challenges).

94. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 9. Further, Sandefur and Smythe’s Mapping Justice project lists the elderly, disabled, and veterans as particularly vulnerable populations, suggesting that their need for legal services is greater than for the general population. SANDEFUR & SMYTH, supra note 1, at 84.


B. THE SOCIAL IMPLICATIONS OF RURAL SPATIALITY: BY YOURSELF, BUT KNOWN TO ALL

The city entrepreneur adapts to the urban setting by a heavy reliance on brokers for business. The rural entrepreneur relies on reputation. The urban entrepreneur struggles with anonymity, but enjoys immunity. . . . An unhappy client is of little concern, since the dissatisfied are unlikely to be able to steer very many others away from the attorney. The rural entrepreneur . . . enjoys familiarity and visibility, but struggles with the accompanying accountability.

Donald D. Landon,


Lack of anonymity and an accompanying diminution of privacy are socio-spatial consequences of the “high density of acquaintanceship” that tends to mark rural places.99 The fact that legal actors (e.g., law enforcement, prosecutors, and judicial officials) are also neighbors, acquaintances, and even friends or family100 may help explain rural residents’ reluctance to engage the state. This ethos of independence and self-reliance associated with rural places101 is reflected in residents’ reluctance to seek government assistance.102 It is manifest, too, in the lesser likelihood that they will report crime, a reluctance perhaps predictable with regard to sex-related crimes or to intimate partner and other family violence,103 but which persists even when a stranger perpetrates the crime.104

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97. Landon, Country Lawyers, supra note 46, at 149.
98. Freudenberg, supra note 54.
99. See also Pruitt, Rural Rhetoric, supra note 49, at 171-72, 228-32 (highlighting positive and negative aspects of the closeness of community among rural residents and discussing the presence of popular perceptions of rural communities in judicial opinions, like rural communities being close-knit and lacking anonymity); Pruitt, Place Matters, supra note 34, at 363 (discussing how the interpersonal familiarity of rural areas contributes to low reporting rates of domestic violence).
100. See Pruitt, Place Matters, supra note 34, at 363; Lisa R. Pruitt, Toward a Feminist Theory of the Rural, 2007 Utah L. Rev. 421, 478-81 (discussing the implications of rural lack of anonymity in the context of judicial bypass for minors seeking abortion).
101. This independence is expressed in a 1979 decision of the West Virginia Supreme Court that offered a comprehensive and artful, if circular, definition of “rural community,” Stephens v. Raleigh Cnty. Bd. Educ., 257 S.E.2d 175, 180 (W. Va. 1979). The Stephens court wrote that a:

“[R]ural community” may be distinguished by its dominant character as a social and economic unit founded in rural, land-based interests. It is inhabited, in the main, by country people, who live a country life, and who engage in country pursuits. Its residents are removed from the immediacy of urban and suburban environs, and are not immediately tied to any city or urban area; they work, socialize and politic as an independent, integral community.

Id. (emphasis added).
This high density of acquaintanceship also influences lawyers’ interactions with prospective and existing clients because it increases the likelihood that a small-town lawyer will have some kind of personal relationship with one of the parties. These relationships can make it more difficult for a lawyer to be a zealous advocate because doing so may jeopardize some of those relationships. As discussed further in the next section, lack of anonymity also increases conflicts of interest, as well as the risk of bias within a jury.

C. ECONOMIC AND ETHICAL CONFLICTS OF INTEREST

Small-firm practice in the country isn’t really all that different than small-firm practice in the city. The clients have many of the same problems and you handle a wide variety of matters. The difference is intimacy. In the country you know everybody and everybody knows you. That’s where things start to get different.


The lack of anonymity associated with rural places has significant implications for small-town lawyers, who face heightened scrutiny from both client and community. Even apart from formal, ethical conflicts of interest, rural and small-town lawyers may feel beholden to local economic elites who provide most of their business. In some senses, allegiance to a community’s “haves” may cause lawyers to fail the “have nots,” and thereby also to fail the wider

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105. These personal relationships can create hostility between rural lawyers and their clients. Donald Landon observed: “Some clients expect their attorney to demonstrate exclusive loyalty to them. Failing to understand the separation of professional and private roles, a client may harbor deep suspicions about the friendliness of his or her attorney toward the attorney representing the other side.” Landon, Country Lawyers, supra note 46, at 127.

106. See Landon, Country Lawyers, supra note 46, at 127 (“To employ lawsuits in an environment of multiplex relationships is to put too much in jeopardy unless one is willing to risk collapsing a broad network of interests.”); see also infra notes 111-1116 (discussing the impact of rural lack of anonymity on rural lawyering).

107. Pruitt, Rural Rhetoric, supra note 49, at 231. See also Jernigan v. State, 475 S.W.2d 184, 185-86 (Tenn. Crim. App. 1971) (holding it is not necessarily grounds for mistrial that “[m]any cases are tried in rural areas wherein all of the jurors know all of the lawyers, litigants and witnesses”); Toyota Motor Corp. v. McLaurin, 642 So. 2d 351, 360 (Miss. 1994) (McRae, J., dissenting) (“What is unique or unusual about a case where, in a sparsely-populated county, a great number of citizens know or are in some way connected to a prominent attorney practicing in that county? Needless to say, in our rural state the situation where most citizens of a county have had someone in their family represented by either party’s counsel occurs more often than not.”); see also infra notes 117-120 (discussing judicial adjudications of possible conflicts of interest in rural places).

community. Indeed, community scrutiny may be one reason why lawyers generally tend to prefer pro bono work removed “substantively and often geographically” from their community, a concern that is magnified in the rural context.

The challenges facing rural lawyers who would take on controversial structural issues or even individual clients challenging local institutions (e.g., the school district, the county public health or social services department, a local utility) are complicated by the lived realities of small-town life. The smaller the community, the greater the public awareness of local matters. While such undertakings tend to be high profile wherever they occur—especially if they involve litigation—a small community may scrutinize to a greater degree the decisions and behavior of a local attorney. Rural lawyers who are outsiders, without roots in the community where they practice, may face even greater scrutiny from “old-timers.” This is an added challenge likely to face some attorneys who take advantage of Project Rural Practice.

When a lawyer’s behavior runs counter to the vested interests of influential and powerful individuals and institutions in the community, such local elites may exact revenge by withholding their business.

109. Richard L. Abel, Just Law?, in THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE 296, 309-310 (Scott L. Cummings ed., 2011) (discussing how “[c]ommunities of legal practice can support the rule of law” but that “[j]ustice advocates are far more likely to be outsiders: racial and ethnoreligious minorities, working class, and women”).

110. Id. at 307. Abel writes, “Lawyers prefer to do pro bono far removed from their paying work, substantively and often geographically, partly to avoid conflicts of interest (actual and positional) and partly for the sake of novelty.” Id. By way of example, Abel observes that Northern lawyers eagerly sought to respond to Southern racism in the 1960s but were less interested in de facto racism in their own communities. In a similar vein, lawyers representing detainees in Guantanamo Bay are primarily motivated by moral outrage, but many are also intrigued by “the novelty of the issues, the difference from their regular practice (both the law and the clients), and the bizarre remote prison site.” Id. He further observes “an awkward resemblance to religious enthusiasm for missionary activity.” Id.

111. See LANDON, COUNTRY LAWYERS, supra note 46, at 136.

112. See id. at 138-45. Rural lawyers are expected to resolve disputes, while minimizing conflict, and simultaneously maintaining collegial ties. Even simple business disputes can polarize a community, putting the attorney’s reputation at risk: “Accountability to the community is raised to a very salient level because reputation is the individual entrepreneur’s chief business-getting tool . . . . While individual interests are important, they are not to be pursued at the expense of the community or its valued amiability.” Id. at 145. This desire to adhere to local norms in an effort to maintain amiability can also affect the types of suits an attorney will file. Personal injury or civil rights cases are often viewed as anti-communitarian. See id. at 137-40.

113. Id. at 137.

114. Id.
years!"  

As these anecdotes illustrate, “[a]dversarial justice can sometimes be disastrous for the delicate bonds that hold smaller systems together.”

Other types of conflicts of interest arise, too, as discussed in a separate contribution to this symposium issue. Where lawyers are in short supply, courts may effectively suspend the usual conflict-of-interest expectations. For example, in a 1986 case an Iowa court overlooked a potential conflict of interest where a public defender was employed as a part-time prosecutor in a neighboring town, citing “the geographical composition of our state and the small number of rural counsel.” A court in Texas in 1985 found it permissible for a judge to issue a search warrant for a defendant even though the same judge previously had served as a prosecutor of that defendant in another matter. The court reasoned that requiring a magistrate with no prior knowledge of a defendant would “leave a number of rural Texas counties judgeless in some criminal cases.”

On the other hand, a Mississippi court in 1995 found it impermissible for a single court-appointed public defender to represent two defendants, Smith and Latham, in separate criminal actions, where Latham testified against Smith in Smith’s criminal prosecution.

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115. Id.

116. Id. at 138. This phenomenon is consistent with Cynthia Duncan’s observations in her longitudinal study of three nonmetropolitan counties, two of them persistent-poverty counties. In the two persistent-poverty counties, one in Appalachia (“Blackwell”) and one in the Mississippi Delta (“Dahlia”), community elites were not concerned about the well-being of the poor because the elites viewed the poor as unworthy and not an integral part of the wider community. The same was not true, however, in the nonmetropolitan New England county (“Gray Mountain”). Cynthia M. Duncan, World’s Apart: Why Poverty Persists in Rural America 204 (1999) (observing that in the persistent-poverty counties, “many public programs were effectively commandeered by local politicians and made part of the patronage system because there is little accountability” but that residents of Gray Mountain “put resources into public schools and public parks and public hockey rinks. A place where inequality is not great and civic norms are inclusive . . . is more likely to make local decisions to invest in a public sector that is open to everyone regardless of social class . . . . Since those who control the resources in [Blackwell and Dahlia] are well connected to powerful politicians at the state level, they are likely to prevail when changes in the social arrangements are proposed at the local or state level.”). Duncan also wrote: “Families in the upper class often see their interests best served by a minimal public sector and as much local control as possible, while those in the lower class want the social arrangements that govern the allocation of resources to include more public goods. When middle-class families make up the majority, as they do in Gray Mountain, they see investment in the public sector being in their families’ best interests, and poor families benefit because they too participate in the institutions the middle class builds for its own families.” Id. at 203-204. “When the economy is healthy and participation in political life is widespread, as in Gray Mountain, ‘local control’ can release initiative, leadership, and energy in the community. But in the feudal kingdoms of Blackwell [persistent-poverty county in Appalachia] and Dahlia [persistent-poverty county in the Mississippi Delta], these principles sustain the two-class society that perpetuates poverty.” Id. at 207. Duncan further commented on how isolation reinforced separation and a sense of elitism: “The social isolation that keeps the haves out of contact with the have-nots means that all long-term poor are stigmatized and lumped together as an undeserving group. Those with good jobs often use the pronoun ‘they,’ and speak with disdain about the dependent poor.” Id. at 9.


120. See Smith v. State, 666 So. 2d 810 (Miss. 1995).
D. INFORMAL ORDER

[W]here communities are quite isolated and people are intimately intertwined by marriage and family ties, disputes do tend to be handled within the family or sometimes by other institutions such as the church.121


Rural areas have long been associated with a relative absence of formal law, although the germinal sources supporting this proposition are now at least two decades old, and it is impossible to know the extent to which this feature of rural livelihoods persists. This association of rural places with informal order is reflected most famously in Robert Ellickson’s 1994 book, *Order without Law: How Neighbors Settle Disputes*. Ellickson observed how ranchers in Shasta County, California, resolved disputes among themselves, without recourse to formal legal proceedings.122 David Engel’s 1984 study of attitudes toward engaging the justice system to resolve civil disputes similarly suggested that rural residents are more reluctant to do so than are their urban counterparts.123 In his 1990 book about rural lawyers, Landon suggested that this reluctance was diminishing, or at least that “folks in the country [were] somewhat more inclined to seek legal redress than they were in the past.”124 The idea that rural residents are less amenable to the state’s ordering and regulating powers—and even that the state sees a lesser role for itself in rural places—is reflected in case law, too.125

These studies suggest that rural socio-spatiality may give rise to local practices and systems that undermine the market for an attorney’s services. Indeed, when a community has been without a lawyer for years, people there may “develop[ ] alternative techniques for handling matters that might normally come to an attorney’s office.”126 In such places, Landon observed, an attorney will struggle to establish a practice.

121. Landon, Country Lawyers, supra note 46, at 131.
122. Ellickson, supra note 40, at 40-64, 82-103.
123. Engel, supra note 46, at 577, 580-81 (explaining that for residents in a rural community in Illinois, “Duties generated by socially imposed obligations to guard against injuring other people were seen as intrusions upon existing relationships, as pretexts for forced exchanges, as inappropriate attempts to redistribute wealth, and as limitations upon individual freedom.”).
125. See Pruitt, Rural Rhetoric, supra note 49, at 203-204. See also Pruitt, Space Tames Law, supra note 46. For a fascinating discussion of rural and urban approaches to legal claims-making in the modern Chinese context, see generally Mary E. Gallagher & Yuhua Wang, *Users and Non-Users: Legal Experience and Its Effects on Legal Consciousness, in Chinese Justice: Civil Dispute Resolution in Contemporary China* 204 (Margaret Y. K. Woo & Mary E. Gallagher, eds., 2011).
E. THE RURAL DATA SHORTAGE AND NATIONAL NEGLECT OF RURAL AMERICA

The real and sad truth is that we are heading toward a state that will not provide justice for all no matter the location. We are heading for a state which contains islands of justice in a sea of empty rural courthouses.127

Chief Justice David Gilbertson, South Dakota Supreme Court, 2009

It is difficult to determine the exact number of rural attorneys in any given state because most state bar organizations or other regulatory bodies do not keep or make publicly available such data. Further, because of privacy concerns, the U.S. Census Bureau does not disclose precise county-level data about employment categories for counties with so few persons employed in any given field, e.g., as attorneys.128 This data gap is reflected in Ethan Bronner’s New York Times story, which indicated simply that two percent of small firm practitioners work in rural America.129 The lack of detailed data makes it difficult to determine precisely how great the shortage is and where the needs are most acute.130 Indeed, the dearth of current and nuanced data is typical of the national policy-making approach to rural America. It suggests that relevant national institutions are not sufficiently aware or concerned to keep statistics that would meaningfully inform evidence-based law and policy-making.


128. See U.S. CENSUS BUREAU – Attorney Data, supra note 5. When downloading attorney data, the Census Bureau notes that for areas with few attorneys, exact information is “[w]ithheld to avoid disclosing data for individual companies” but that the “data are included in higher level totals.” Id.

129. Bronner, supra note 2 (indicating no source for the data). But see ABA Discussion: Opportunities for Law Practice in Rural Communities, American Bar Association (Apr. 29, 2014), http://www.americanbar.org/groups/young_lawyers/events_cle/opportunities-for-law-practice-in-rural-communities.html (demonstrating the ABA recognizing the rural lawyer shortage and taking steps to raise awareness about it), and AMERICAN BAR ASSOCIATION, STATE BAR OF SOUTH DAKOTA, REPORT TO THE HOUSE OF DELEGATES, RESOLUTION 1 (2012) (articulating a resolution to urge federal, state, territorial, tribal and local governments to support efforts to address the decline in the number of lawyers practicing in rural areas and state and territorial bar associations to develop programs to increase the number of lawyers practicing in rural areas).

130. Some unconfirmed statistics found in the blogosphere include the following: Roy S. Ginsburg, Be a Small-Town Lawyer, ATTORNEY AT WORK BLOG (Feb. 5, 2014), http://www.legalnet Ryu.com/be-a-small-town-lawyer/ (noting 12 Nebraska counties have no lawyer at all); Bruce Cameron, Another Approach, RURAL LAWYER BLOG (Dec. 31, 2013), http://rural lawyer.com/tag/rural-lawyer-shortage/ (noting that in North Dakota, 21 counties have fewer than 4 attorneys each, 4 other counties have no lawyer, and 8 counties only have only 1 lawyer each). Others were noted at the live Rural Practice Symposium. Linda Klein, the 2010-2012 Chair of the ABA House of Delegates, reported that in 1994, when she was running for secretary of the State Bar of Georgia, five Georgia counties had no lawyer. She also reported that, currently, only twenty-eight percent of Georgia’s impoverished residents live in Georgia, where the state’s lawyers are concentrated. Klein also reported that twenty-one of North Dakota’s fifty-three counties have fewer than four lawyers. Linda A. Klein, Remarks at the University of South Dakota Law Review Rural Practice Symposium (Mar. 20, 2014).
In a similar vein, when lawmakers respond to social problems or other needs, they rarely consider the particular challenges facing rural residents and their communities.\textsuperscript{131} Even state legislators who represent rural places are more likely to advocate for urban issues than for rural ones.\textsuperscript{132} U.S. Secretary of Agriculture Tom Vilsack has opined that rural influence is waning nationally,\textsuperscript{133} as evidenced by Congress’s failure to pass a Farm Bill in timely fashion.\textsuperscript{134} Meanwhile, local governments in rural places are typically more limited in both fiscal and human resources.\textsuperscript{135}

F. THE RURAL JUSTICE NEED

As a judge whose court serves a large rural area, I am keenly aware of the lack of legal help available for low-income rural families facing critical life issues. We must find a solution to this justice gap.\textsuperscript{136}

Justice Ron Robbie, California Court of Appeal, Third Appellate District, 2010

\textsuperscript{131} LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA, supra note 23, at 1. See also Pruitt, The Forgotten Fifth, supra note 90; Pruitt, Place Matters, supra note 34; RURAL SOCIAL WORK, supra note 87 (documenting rural service deficits).

\textsuperscript{132} See W.K. KELLOGG FOUNDATION, PERCEPTIONS OF RURAL AMERICA: NATIONAL STATE LEGISLATOR SURVEY 2 (2002), available at http://www.frameworksinstitute.org/workshops/rural/Pub3782.pdf. In a survey regarding how legislators spend their time, legislators representing rural districts were, surprisingly, more likely to assert that urban issues take legislative priority. Legislators representing urban districts were more likely to assert that rural, urban, and suburban issues should receive equal priority. See also DAVID L. BROWN & KAI A. SCHAFFT, RURAL PEOPLE AND COMMUNITIES IN THE 21ST CENTURY: RESILIENCE AND TRANSFORMATION 5 (2011) (noting that rural areas are commonly thought of as “geographically and socially isolated from centers of power and influence which are thought to emanate from urban complexes.”). This phenomenon may be less pronounced in states like South Dakota where a substantial part of the population still live in nonmetropolitan counties and where many who dwell in cities still have connections to rural places via family members and even land ownership. See supra notes 39-40 and accompanying text.

\textsuperscript{133} Doering, supra note 76.


\textsuperscript{136} CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 4.
The most recent statistics available indicate that one-third of rural residents need legal assistance to secure basic human needs.\textsuperscript{137} Although that data is two decades old, we can readily surmise that the problem persists, and may be greater than ever because the number of lawyers in rural places has declined in the intervening years. We know that nationally the legal needs of four-fifths of low-income families remain unmet,\textsuperscript{138} and we also know that income level correlates with the decision to engage the civil legal system.\textsuperscript{140} Because rural populations are disproportionately poor and because lawyers (legal aid attorneys or otherwise) are scarce in rural areas, we can surmise that rural residents—especially those who are low-income—are less likely than their urban counterparts to have their legal needs met.\textsuperscript{141} Such spatially uneven access to justice is a critical aspect of the rural lawscape to which our proposal aims to respond.

\textbf{G. SUMMARY}

Rural socio-spatiality poses substantial hurdles to accessing law enforcement, the regulatory state, lawyers, and courtrooms. Yet beyond these literal access issues, socio-cultural and economic challenges also impede achievement of an authentic and pervasive justice in America’s rural communities. Access to courts and lawyers is a necessary component—perhaps the foundational building block of access to justice—but a more robust conception of justice would include identifying and addressing structural injustices that impact entire communities. That is the topic we take up in the next Part.

\textbf{III. ACCESS TO JUSTICE: A PROBLEM ONLY A COMMUNITY CAN SOLVE}

[The] reframing of access to justice would encompass not only problems that have ripened into clear legal controversies but also those that might do so with the benefit of legal assistance. It would extend to a right to assistance in overcoming collective action problems and in asserting group claims where doing so is either necessary or efficient.\textsuperscript{142}

Gary Blasi, \\ \textit{Framing Access to Justice: Beyond Perceived Justice for Individuals}, 2009

\textsuperscript{137} \textit{Id.} at 5 (citing Larry R. Spain, \textit{The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities}, 28 WM. MITCHELL L. REV. 367, 372 (2001)).

\textsuperscript{138} \textit{LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP, supra} note 23, at 19 (defining “low-income” as 125 percent or less of the federal poverty line).

\textsuperscript{139} \textit{Id.} at 1 (reporting that on average nationally, just one legal aid attorney is available for every 6,415 low-income people). An even more extreme example of the need, focusing on the state level, is Montana, where one legal aid lawyer exists for every 11,000 Montanans living in poverty. Klaus Sitte, \textit{A Mile Wide and an Inch Deep No More: Achieving Access to Justice in Rural Montana}, 70 MONT. L. REV. 273, 280 (2009).


\textsuperscript{141} \textit{See supra} notes 66-71, 86-87 and accompanying text.

A. A “Thicker” Conception of Access to Justice

Access to justice is often thought of as an individual’s ability to secure a lawyer and resolve in court issues already framed in legal terms. This straightforward or “thin” sense of access to justice overlooks some important hurdles to both seeking and providing legal services. For one, it ignores complex legal issues that have community-wide impacts. Second, it relies on individuals to identify legal needs, whether their own or the community’s, even though, as noted above, low-income folks may conceive of their problems through non-legal frameworks. Finally, this “thin” lawyers-and-courtrooms approach to access to justice often does not recognize the underlying cause of an individual or community’s legal problems. We advocate a “thicker” conception of access to justice that responds to each of these challenges.

To illustrate what we mean by a thick access to justice, we analogize access to justice to another community service: providing a hungry family with food. Providing food to the hungry fulfills an immediate and life-saving need, yet hunger often accompanies a host of problems, such as lack of education, poor health, and joblessness. The most effective community service would address both the immediate need and the underlying issues because treating a symptom (e.g., hunger) of a larger problem (e.g., joblessness) is a limited panacea, albeit a critical service in its own right. We propose examining access to justice in the same way, as access to a lawyer pays insufficient attention to the critical needs of the larger poor community.

143. See Gary Blasi, How Much Access? How Much Justice?, 73 FORDHAM L. REV. 865, 865 (2004). See also JULIET BRODIE ET AL., POVERTY LAW: POLICY AND PRACTICE 587 (2014) (defining access to justice as “a concept used to analyze and evaluate whether people, especially but not exclusively the poor, can effectively use the courts and other fora to resolve disputes or protect rights”); Blasi, Framing Access to Justice, supra note 142, at 914 (a criticism of the traditional definition of access to justice); WORLD JUSTICE PROJECT, supra note 140, at 9-10. The World Justice Project (the “Project”) ranks countries based on adherence to the rule of law, one principle being access to justice. Id. The rankings distinguish between “thinner and thicker” conceptions of access to justice and principally address the “thinner” conception. The Project states:

The principles address access to justice, but chiefly in terms of access to legal representation and access to the courts, rather than in the “thicker” sense in which access to justice is sometimes seen as synonymous with broad legal empowerment of the poor and disfranchised. Delivery of justice in this more limited sense is a critical cornerstone for the implementation of policies and rights that empower the poor.

Id. Advancing the “thicker” sense of access to justice is buttressed by the “thinner” conception. Id. at 10. In this article, we aim to advance the “thicker” sense of access to justice as critical to advancing meaningful social justice, but, like the World Justice Project, we do not see the “thinner” and “thicker” conceptions as being at odds with each other. Rather, these different visions can be supportive of each other. See, e.g., Resolution 10D, supra note 1 (encouraging states to adopt access to justice commissions and commit to taking down barriers for accessing courts and lawyers); CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 5 (discussing access to justice in terms of availability of formal legal aid programs, such as access to a Legal Services Corporation funded attorney). We do not assert that this definition of access to justice is incorrect; access to counsel is a necessary condition to achieving meaningful access to justice. See Larry R. Spain, supra note 137, at 367. Nevertheless, we advocate for a broader conception of access to justice that recognizes the benefits of helping individuals identify and address legal issues outside a courtroom.

144. Gary F. Smith, Poverty Warriors: A Historical Perspective on the Mission of Legal Services, 45 CLEARINGHOUSE REV. J. POVERTY L. POL’Y 34, 36 (2011) (observing that equating access to justice as access to a lawyer pays insufficient attention to “the critical needs of the larger poor community.”).
responding to the lack of access to lawyers and courts in relation to underlying problems that also need attention.

Goals associated with a thicker access to justice can be advanced by borrowing methods from community organizers and community lawyering. For example, some branches of United Way use a creative form of community needs assessment called “Community Conversations.” The problem United Way’s method seeks to address is this: too often, well-intentioned non-profits come into a community professing to have the answers to a community’s problems. Sometimes, those individuals find that the community is not receptive to their solution, that their proposed solutions are redundant, or that a similar method has previously been tried and abandoned. United Way-reverses that process by having “kitchen table”-style conversations with residents so these stakeholders can express what is happening in their communities and what they need, thus influencing the organization’s direction and priorities. Community Conversations reflect the same values that underlie legal participatory action research (“PAR”): putting the concerns and perspectives of community stakeholders at the center of the work. Applied to access to justice, these informal “kitchen table” discussions help community organizers and advocates—be they lawyers or not—to identify and address both legal and non-legal issues. When these problems are solved, the community is strengthened.

Professor Gary Blasi offers a definition of access to justice that is similar to the model we promote. Blasi explains that access to justice is commonly thought of as having four components: “(1) access of (2) an individual (3) to a lawyer, or some form of assistance purported to be at least a partial substitute,  

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145. See Rose Cuison Villazor, Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities, 8 N.Y.U. J. LEGIS. & PUB. POL’Y 35, 37-38 (2004). Professor Villazor defines “community lawyering” as an approach to problem solving that looks beyond litigation as the principal tool for advancing social justice. See id. Community lawyering encourages a lawyer to play a more active role in his or her community, rather than waiting to be asked to provide a service. See id. Community lawyering would involve forms of advocacy such as organizing, media events, community education, and public demonstrations in addition to litigation. See also Gary F. Smith, Poverty Warriors, supra note 144, at 34 (describing the mission of the Legal Services Corporation as a broader anti-poverty program).

146. See generally Hardwood Inst. & United Way, United Way Campaign for the Common Good: Community Conversation Workbook, available at http://unway.3cdn.net/8e505013f84d41cf50_ksm6btx0.pdf [hereinafter Community Conversations]. One of the authors of this article worked at United Way of Greater Toledo from 2009-2011. Some of what follows is anecdotal based on his experience there.


148. Emily M.S. Houh & Kristin Kalsem, It’s Critical: Legal Participatory Action Research, 19 MICHT J. RACE & L., at 7 (forthcoming 2014). Professor Pruitt facilitated a course using what Houh and Kalsem call “Legal PAR” in the spring of 2013. The course was called “Practicum in Rural Community Advocacy,” and students in the course worked with Legal Services of Northern California (“LSNC”) to facilitate early implementation of California’s Medicaid (MediCal) expansion under the Affordable Care Act in nonmetropolitan Plumas County, California. The class produced a report called ACCESS TO HEALTH CARE IN PLUMAS COUNTY: A REPORT ON BARRIERS AND OPPORTUNITIES (Sept. 2013) (on file with authors). That report informs our thinking about rural justice challenges.
(4) to help deal with a problem or dispute already framed in legal terms.\textsuperscript{149} Blasi calls us to think more broadly about access to justice by helping individuals identify legal needs, especially when those individuals might not otherwise contemplate a legal solution to their problems.\textsuperscript{150}

Professor Deborah Rhode has also challenged the narrow understanding of access to justice, noting that while access to a lawyer is often trumpeted, “[n]ot all barriers [to justice] are in the judicial system” because some barriers reflect economic disadvantage more broadly.\textsuperscript{151} The thicker concept of access to justice described by both Blasi and Rhode is community focused and forward looking, inviting us to think about justice even before an individual seeks out a lawyer. This is similar to how a community lawyering model pushes advocates to address issues apart from or prior to litigation,\textsuperscript{152} and how United Way encourages advocates to reach out and ask a community about their priorities, about what they need.\textsuperscript{153}

By way of example, Blasi describes an experience he had working with an individual who lived in an apartment complex with several habitability issues, including a cockroach infestation and no heat.\textsuperscript{154} Under a traditional, individual-based conception of access to justice, the goal would be to meet the legal needs of the individual client who comes forward for legal assistance. Yet a collective problem clearly exists. Cockroaches are rarely, if ever, confined to one unit in an apartment complex, and the heating in this particular complex is centralized.\textsuperscript{155} To address the collective problem, Blasi met with and organized tenants and lawyers to help frame the issue as the collective, apartment-wide problem it was. Such a problem could further be endemic to an entire neighborhood, perhaps indicating issues with housing code enforcement or community redevelopment funds.\textsuperscript{156} To circle back to our initial analogy comparing access to justice to solving a family’s hunger problems, Blasi not only provided his client with food, he also helped the client—and indeed the entire community—to find work.

\textsuperscript{149} Blasi, Framing Access to Justice, supra note 143, at 914.
\textsuperscript{150} Id.
\textsuperscript{151} Deborah L. Rhode, Whatever Happened to Access to Justice?, 42 LOY. L.A. L. REV. 869, 873 (2009) (citing MASS. ACCESS TO JUSTICE COMM’N, BARRIERS TO ACCESS TO JUSTICE IN MASSACHUSETTS: A REPORT, WITH RECOMMENDATIONS, TO THE SUPREME JUDICIAL COURT 3 (2007)). Rhode provides the example of an early study of eviction defense in the South Bronx, which concluded that having a lawyer does not always improve outcomes for tenants. Judges frustrated with full dockets, and landlords unhappy with tenants who do not pay, united to eliminate certain defenses, further undermining a tenant’s bargaining position. Providing a lawyer thus had an effect opposite that intended—a more negative client outcome than otherwise might have been. Id. To be clear, neither we nor Rhode advocate against access to lawyers. Rather, we suggest that access to lawyers alone is often insufficient to achieve justice, and it may at times have unintended consequences.
\textsuperscript{152} Villazor, supra note 145, at 37. See also Community Conversations, supra note 146.
\textsuperscript{153} See Community Conversations, supra note 146.
\textsuperscript{154} Blasi, Framing Access to Justice, supra note 143, at 920-23.
\textsuperscript{155} Id. at 924.
\textsuperscript{156} Id.
Rural analogues to the urban structural problem that Blasi described are pervasive, though perhaps even less visible than habitability issues in an apartment complex. Indeed, they are often less apparent precisely because they are in rural places, removed from our metrocentric line of vision. To continue with the housing theme, rural tenants may be unwilling to press landlords on habitability issues out of fear that the lack of anonymity characteristic of rural communities will cause the tenants to be blacklisted by all landlords in the area.\textsuperscript{157} This may result in a race to the bottom among area landlords.

Rurality is associated with other potential abuses of vulnerable individuals. Rural workers often do not benefit from federal wage and leave protections either because they are not formally employed or are employed by an organization with too few employees to be subject to federal regulation.\textsuperscript{158} Because extractive industries such as forestry, mining, fishing, and farming are associated with rural economies, workers face associated hazards with irregular enforcement of safety protections.\textsuperscript{159} Yet these workers have little bargaining power with employers. Consumer protection issues such as payday lending affect metropolitan and nonmetropolitan communities alike, but even fewer banking and credit options are available in rural places for the high proportion of low-income workers.\textsuperscript{160} Veterans, the disabled, and the elderly—all higher proportions of rural populations than urban ones—are susceptible to a range of abuses, but they will have fewer watchdog and social services agencies to protect and serve them in rural communities.\textsuperscript{161}

\textsuperscript{157} This is an issue that lawyers with Legal Services of Northern California have reported to us regarding their rural clients’ reluctance to pursue remedies for habitability issues. See also DUNCAN, supra note 116, at 9. To emphasize the importance of reputation, Duncan provides the following quote from one of the residents of a persistent poverty rural county: “Everybody around here knows everybody, and they know what family you come from. Now my family, they’ve always been a bad family. There are places where we can’t even rent a house, because of our last name.” \textit{Id.} at 9.

\textsuperscript{158} See CORNELIA BUTLER FLORA & JAN L. FLORA, RURAL COMMUNITIES: LEGACY AND CHANGE 102 (3d ed. 2007). Employers with fewer than twenty-five employees are not required to adhere to the Family and Medical Leave Act. 42 U.S.C. § 2000e(b) (West 2014). Agricultural employers with fewer than 500 person days of labor during any quarter of the preceding year are not required to follow the federal minimum wage. 29 U.S.C. § 213 (a)(6) (West 2014).


\textsuperscript{160} See Megan S. Knize, Payday Lending in Louisiana, Mississippi, and Arkansas: Toward Effective Protections for Borrowers, 69 LA. L. REV. 317, 331-35 (2009) (discussing the prevalence of payday lenders in communities of all sizes, as well as the difficulties low-income people face in finding banking alternatives).

\textsuperscript{161} Rural Americans comprise nineteen percent of all U.S. Veterans, even though they only comprise sixteen percent of the general population. U.S. DEP’T AGRIC., RURAL VETERANS AT A GLANCE, ECON. BRIEF NO. 25, 1 (Nov. 2013), available for download at http://www.ers.usda.gov/publications/economic-brief/ebs25.aspx#U2Wm761dWT4. See also supra note 92-93 (discussing the vulnerability of rural elder and disabled populations). A dramatic example is found in the story of dozens of intellectual-
larly unlikely to benefit from robust health and human services or associated advocacy in rural areas. Toxic and natural hazards create risks for entire communities.

Meanwhile, nonmetropolitan county governments and small municipalities generally struggle to provide all sorts of services and functions because of the inability to achieve economies of scale, and because they typically depend on local sales or property taxes, which are less robust than in urban locales. These struggles are reflected in the comments of a South Dakota witness testifying in the ABA’s investigation into state expenditures on indigent defense. The witness observed that, in funding indigent defense, the state was forced to choose between “whether the roads are going to be graveled or the defendants are going to be defended.” At the same time, public officials running these fiscally

ly disabled men who were neglected by their employer, over several decades, in rural Atalissa, Iowa. See Barry, supra note 92.

162. See Pruitt, Spatial Inequality, supra note 35. See also Lisa R. Pruitt, Children, LEGAL RURALISM BLOG http://legalruralism.blogspot.com/search?label/children (collecting stories about rural children, many highlighting vulnerabilities of this population).

163. See supra note 96 and accompanying text. See, e.g., Dan Frosch, supra note 96 (describing the rupture of a Tesoro Logistics pipeline in the small town of Tioga, North Dakota – the spill was one of the largest inland pipeline accidents in the U.S., spilling more than 865,000 gallons of oil across the town); Saul Elbein, Jane Kleeb v. The Keystone Pipeline, N.Y. TIMES MAGAZINE, May 16, 2014, http://www.nytimes.com/2014/05/18/magazine/jane-kleeb-vs-the-keystone-pipeline.html?ref=todayspaper&_r=0 (describing the grassroots protest against the Keystone XL pipeline, which would traverse the land of 515 private owners in Nebraska, mostly in rural parts of the state; detailing the consequences of recent oil spills in small communities in Mayflower, Arkansas, and Marshall, Michigan). See also Martin Kaste, Landslide Dangers Abound in Whatcom County, Wash., N.P.R., Mar. 27, 2014, http://www.npr.org/2014/03/27/295144682/landslide-dangers-abound-in-whatcom-county-wash (reporting that the community of Acme, Washington, had to advocate for itself to get installed on a creek a sensor that would automatically call the fire department if the water level dropped quickly, a sign of a landslide upstream and quoting the fire chief who said the sensor would not be there if “the locals hadn’t asked questions about the hidden risks in their community,” and that communities cannot “always depend upon the government to come and say that this is the way everything should be”).

164. Pruitt & Colgan, Justice Deserts, supra note 5, at 242-46. A county’s general fund is used to pay for a variety of services, including public safety, probation, public health, environmental services, parks and recreation, planning and development, county attorneys, and indigent criminal defense. Id. at 244. Sources of funding include property taxes, local sales tax, and a share of the state sales tax. Id. at 243. Sales tax distribution in Arizona, for example, is pegged to a county’s population, retail sales, and property tax valuation, which disadvantages more sparsely populated counties. Id. See also Pruitt, Spatial Inequality, supra note 35 (discussing the funding of county government in Montana, largely through local property tax); Warner, supra note 135.

In South Dakota, the state assesses a four percent sales tax and allows municipalities to assess up to an additional two percent. The state collects the additional municipal sales tax, but distributes it back to that municipality. SOUTH DAKOTA DEPARTMENT OF REVENUE, 2012 ANNUAL REPORT 16-17 (2012), available at http://dor.sd.gov/Publications/Annual_Reports/PDFs/2012%20Annual%20Report%20final%20print%20friendly.pdf.. The State collects 36 distinct taxes, totaling more than $1.6 billion in FY2013. 25.5 percent of this revenue was distributed to local governments, which included each municipality’s share of their sales tax. SOUTH DAKOTA DEPARTMENT OF REVENUE, 2013 ANNUAL REPORT 22-24 (2013), available at http://dor.sd.gov/Publications/Annual_Reports/PDFs/2013%20Annual%20Report%20final%202012%2014.pdf. County governments are responsible for administering and collecting property taxes, totaling more than $1.071 billion in 2013. Id. at 34-35.

strapped local governments have fewer human and social capital resources to navigate the process, and these public entities are typically subject to fewer of the checks and balances we associate with good government. Further, when compared with urban centers, nonmetro regions are home to fewer local institutions—e.g., churches, clubs, associations, and service organizations—to engage rural citizenry in public life.

Such structural realities suggest a need to look beyond a rural client’s immediate concerns and examine the forces that contribute to the client’s predicament. Identifying and addressing these higher-scale needs are integral components of access to justice in which lawyers play a critical role. We now turn to a closer look at some of the mechanisms by which rural lawyers and other resources may respond to the legal needs of their communities: Legal Services Corporation funding, pro se assistance programs, enhanced use of technology, and local informal dispute resolution. Along the way, we acknowledge some of the ways in which rural socio-spatiality complicates the effort.

166. See Pruitt, Spatial Inequality, supra note 35, at 31-37, 47-78 (documenting how reliance on property tax to fund county government creates great disparities among health and human services that different county governments are able to provide); Pruitt & Colgan, Justice Deserts, supra note 5, at 275-78 (highlighting how reliance primarily on local sales tax to finance county government creates fiscal disparities among Arizona counties). Indeed, even under Project Rural Practice, nonmetropolitan counties seeking a lawyer will have to pay part of the subsidies for the lawyer from county funds).

167. See, e.g., Pruitt, Law and Order in the Ozarks (Part CX), supra note 24 (reporting that the Newton County, Arkansas, Treasurer had put state money earmarked for public defender services into the county’s general fund, raising the question of how the county had been paying for indigent defense services); Pruitt, Small-Town Government Run Amok (Part III), supra note 24; Pruitt, Small-Town “Justice” Run Amok? Part II, supra note 24 (describing an incident in Louisiana where a white police officer shot and killed an elderly African-American man on his front porch, even though multiple witnesses said he was unarmed). See also Pruitt, Law and Order in the Ozarks (Part LXIII), supra note 24 (reporting the indictment of a county judge who made several fraudulent deals and embezzled at least $70,000 from county funds).

B. LEGAL SERVICES CORPORATION: LIMITED FUNDING FOR A GREAT NEED

The legal needs of low-income populations are most often met by organizations that receive federal Legal Services Corporation (“LSC”) funding.\(^{169}\) This leaves many needs unmet, however, as LSC appropriations, adjusted in 2012 dollars, are at an all-time low and have dropped more than twenty percent just since 2010.\(^{170}\) Further, LSC-funded organizations are not permitted to engage in political activities or to handle criminal cases, habeas corpus actions, or represent prisoners. Nor, for example, can they represent parties in class actions or abortion-related litigation.\(^{171}\)

To be eligible for LSC services, an individual or family’s gross income must be below 125 percent of the federal poverty line,\(^{172}\) a very restrictive threshold that nevertheless leaves one in five Americans eligible.\(^{173}\) To qualify, an individual living in the contiguous forty-eight states or the District of Columbia must earn less than $14,363; for a family of four the income cap is $29,438.\(^{174}\) For context, this income threshold is well below a “living wage” as illustrated by MIT’s Living Wage Calculator. The calculator determines a “living wage” based on local costs for food, housing, and childcare, and that wage is often much higher than the federal poverty line.\(^{175}\) A living wage in California, for example, is $23,295 for an individual and $46,063 for a family of two adults

\(^{169}\) LEGAL SERVICES CORP., 2012 FACT SHEET 8 (2013), available at http://www.lsc.gov/sites/lsc.gov/files/LSC/lscgov4/AnnualReports/2012_Fact%20Book_FINALforWEB.pdf. Other sources of civil legal service funding include state, local, private, and other federal grants, filing fees, and the Interest on Lawyer Trust Accounts (“IOLTA”). Id. For a discussion of the LSC and other funding history of legal aid in a state with a significant rural population, see Sitte, supra note 139, at 278-79.

\(^{170}\) LEGAL SERVICES CORP., FACT SHEET, supra note 169, at 3. LSC appropriations reached a high point of $853,862,000 (adjusted to 2012 dollars) in 1979, nearly two and a half times what it is today. Id.

\(^{171}\) Restrictions include 45 C.F.R. §§ 1610.2, 1612.3 (lobbying), 1612.4, 1612.7, 1613.3 (representing in criminal proceedings), 1626.3 (serving illegal aliens), 1637.3 (representing prisoners), 1639.3 (engaging in welfare reform advocacy), 1638.3 (in-person unsolicited advice) (West 2014). Further, these programs cannot even use non-federal funds for any of these types of work. 45 C.F.R. § 1610.3 (West 2014); Rhode, Whatever Happened, supra note 151, at 879 (2009) (citing, 45 C.F.R. §§ 1610.3, 1612.3, 1612.9, 1617.3, 1626.3, 1637.3, 1639.3). LSC-funded organizations can, however, use non-LSC funds to assist an alien or an alien’s child who has been subject to battery or extreme cruelty by a spouse or family member residing in the alien’s household. 45 C.F.R. 1626.4 (West 2014). See generally Legal Services Corp., About Statutory Restrictions on LSC-Funded Programs, http://www.lsc.gov/media/factsheets/about-statutory-restrictions-lsc-funded-programs (last visited May 3, 2014).

\(^{172}\) Rhode, Whatever Happened, supra note 151, at 879 (2009) (citing Legal Services Corp. Regulations, 45 C.F.R. § 1611.3(c)(1)(2008)).

\(^{173}\) See LEGAL SERVICES CORP., FACT SHEET, supra note 169, at 7. Even with restrictive income eligibility guidelines, nearly one in five Americans would be eligible for LSC-funded legal services. This is due in part to the economic downturn; in 2007, 50.8 million Americans were eligible for legal services, or roughly one in six Americans. Id.

\(^{174}\) See Rhode, supra note 169, at 3. 50.8 million Americans were eligible for LSC-funded legal services. This is due in part to the economic downturn; in 2007, 50.8 million Americans were eligible for legal services, or roughly one in six Americans. Id.

and two children.\textsuperscript{176} In South Dakota, an individual would need to gross $15,476 to earn a living wage, only slightly more than 125 percent of the federal poverty line, while a family of two adults and two children would need to earn $34,837.\textsuperscript{177} None of these individuals earning a “living wage,” whether in California or South Dakota, would qualify to be served by an LSC-funded program, yet all would struggle to afford legal services on the private market.

LSC’s funding limits highlight a harsh reality: severely limited resources will not meet the breadth and depth of the legal need. How, then, should resources be focused?\textsuperscript{178} To provide some limiting principle in light of inadequate funding, the California Commission on Access to Justice recommends the goal of guaranteeing legal representation for low-income folks in situations where a person with the financial means to do so would employ counsel.\textsuperscript{179} Even limiting our expectations in this way, lawyers in the rural United States—facing constraints of time, money, and conflicts of interest—will be hard pressed to achieve comprehensive access to justice. Indeed, rural lawyers, like their urban counterparts, cannot and should not be expected to shoulder the entire burden alone. As we expand on in Part V, rural lawyers will benefit greatly from community partners who can help serve the full range of client needs, which often also reflect community-wide needs. In the next Section, we consider some additional types of resources that may ameliorate the rural access to justice need.

C. THINKING OUTSIDE THE (LEGAL) BOX: USING EXISTING AND INNOVATIVE RESOURCES TO MEET RURAL LEGAL NEEDS

1. Using Technology and Transportation to Bridge Distance

Technology can bridge spatial divides quickly and efficiently,\textsuperscript{180} and it is thus increasingly used to enhance rural access to justice. Fax, Internet, and case-management software have become, with some exceptions, fairly commonplace.\textsuperscript{181} Electronic forms and filing can ease access to the judicial system for

\textsuperscript{176} Id. [select “California,” and choose “Show results for California as a whole”]. Wide disparities exist from place to place, even within a given state. For example, Siskiyou County, California, a living wage for two adults and two children is $37,988, whereas in San Francisco County, the living wage for such a family is $52,914. Id.

\textsuperscript{177} Id.

\textsuperscript{178} See Blasi, How Much Access?, supra note 143, at 869-79.

\textsuperscript{179} Rhode, Whatever Happened, supra note 151, at 876 (discussing the California Commission). See WORLD JUSTICE PROJECT, supra note 140, at 27. Comparing Finland to the United States, for example, the World Justice Project highlights that forty-four percent of high income people and fifty-five percent of low income people in Finland do not pursue legal assistance because they thought they could not afford a lawyer’s fees. Id. In the United States, the disparity is much greater, with forty-eight percent of high-income people versus eighty-one percent of low-income people not pursuing legal assistance because of the cost. Id. This is part of the reason why the United States ranks much lower than Finland in access to justice. Id. at 27, 89, 150.

\textsuperscript{180} Many rural areas have Internet access, for instance, but it is by no means pervasive. See infra notes 190-193 and accompanying text.

\textsuperscript{181} McKeon and Rice, supra note 87, at 209; Sitte, supra note 139, at 283, 288. But see Caroline Hart, Sustainable Regional Legal Practice: The Importance of Alliances and the Use of Innovative In-
individuals without a lawyer. Online dispute resolution systems provide means to resolve conflicts without the need for travel.

Skype and other video call conferencing technologies have gained some traction in providing legal services in hard-to-reach places. Montana courts, for example, use audio-visual conferencing to connect attorneys to courts, and Montana Legal Services pioneered the use of video-conferencing to hold workshops on how to file for bankruptcy. Technology also makes it easier for lawyers to find and connect with each other across distances, which facilitates mentoring and networking. This can also alleviate some of the pressure on a rural practitioner to be a generalist.

Technology also becomes more important in the face of courthouse closures. Video streaming can replace a fully staffed, local court, though service interruption and poor video quality are associated pitfalls. Technology also has limitations when it comes to controlling a remote witness or attorney.

formation Technology by Legal Practices in Regional, Rural and Remote Queensland, 16 DEAKIN L. REV. 225, 255 (2011) (describing study showing that a shocking 34.5 percent of the lawyers in regional, rural, or remote areas of Australia do not use information technology, including email, in their practices). This is especially surprising given that Australian universities—including law faculties—have long used technology to facilitate distance education.

182. Rhode, Whatever Happened, supra note 151, at 898 (citing RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES 221 (2008) (noting that online systems and services are increasing competing with lawyers in providing access to justice).

183. Id. Such systems include SquareTrade, once available for disputes between buyers and sellers on eBay; the Family Winner, an Australian product for those seeking divorce; and Money Claim Online, an English courts system for settling claims for unpaid debts such as rent arrears.


188. Emily Green, supra note 79 (reporting that Fresno County, California, closed its courthouse and facilitated traffic court with video streaming).

ther, not all individuals have access to the Internet. For example about 70 percent of Montana and South Dakota households have Internet access, compared to 83.5 percent in Alaska.

Even in tech-savvy California, a quarter of homes have no Internet access.

Technology aside, various programs bring lawyers into underserved communities to engage clients in person. Some programs are LSC-funded, while others are court based. OneJustice’s “Justice Bus Project,” for example, transports lawyers and law students to rural communities where they function as free legal clinics—albeit temporary ones—providing a wide array of services. This program is consistent with a recommendation of the California Commission on Access to Justice, which advocates partnerships that capitalize on law students’ desire for clinical and research experience.

Some legal aid services are partnering with pre-existing social service agencies to provide legal assistance while cutting overhead costs. Medical-legal partnerships have been especially successful in terms of connecting clients experiencing myriad needs with legal resources. In Fresno, California, judges, lawyers, community organizers, business professionals, and medical professionals came together in 1999 to share ideas and raise awareness about access to justice issues, and they are still doing so. The purpose of the Fresno meetings was not to design particular programming, but to raise awareness of access to

190. SANDEFUR & SMYTH, supra note 1, at 84. Cf. Sitte, supra note 139, at 283–84 (reporting that in “Montana, Colorado, Idaho, Nevada, Utah, and Wyoming, 63.7 percent of rural residents use the internet.”).

191. SANDEFUR & SMYTH, supra note 1, at 114.

192. Id. at 34.

193. Id. at 40.


195. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 48. See also Runge & Vachon, supra note 17 (advocating that law schools provide to students more clinical exposure to rural practice settings and issues); Jay A. Mitchell, Getting into the Field, 7 J. OF FOOD L. & POL’Y 69 (2011) (discussing clinical learning opportunities related to food and agriculture law).

196. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, 44.

197. Kim Krisberg, Medical-Legal Partnerships Bring Social Determinants of Health into Clearer Focus, ASS’N AM. MED. COLLEGES REP., Feb. 2013, https://www.aamc.org/newsroom/reporter/329000/medical-legal.html. Although many medical-legal partnerships are located in metropolitan areas, where hospitals tend to be located, some nevertheless serve rural populations. A partnership between Legal Aid of Arkansas and the Arkansas Children’s Hospital is an example of this because it serves children, youth and their families from across the state, including those from rural communities who come to Little Rock for specialized care. See generally Steven Schulman, Lori Chumbler & Ellen Lawton, An Innovative Model for Collaborative Pro Bono, LAW360.COM (May 6, 2014), http://www.law360.com/articles/534544/an-innovative-model-for-collaborative-pro-bono (describing the partnership, which also includes funding from Wal-Mart Corporation).

198. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 44.
justice issues among key stakeholders. The long-term impact of the initiative has not been documented.

2. The Pro Se Solution: Enabling Individuals to Help Themselves

Ethan Bronner’s New York Times story about Project Rural Practice suggested both a role for technology and the fact that lawyers are not always necessary to meet a law-related need. Bronner wrote of a drug-rehabilitation counselor in rural Martin, South Dakota, who was sometimes consulted by residents “seeking a divorce” or dealing with other legal matters “since she knew how to do research on the Internet and download forms.” The idea that lay persons or para-professionals can help to meet legal needs—and, in fact, are sometimes best suited to doing so—is summed up by a quote analogizing to the medical context: “[F]or many routine [matters], retaining counsel may be tantamount to ‘hir[ing] a surgeon to pierce an ear.’”

Pro se litigation (i.e., unrepresented parties) can be one practical, cost-effective solution to the shortage of rural lawyers, so long as the litigants are prepared. Professor Deborah Rhode outlines five strategies for simplifying the process for such litigants:

1. simplified legal requirements, documents, and procedures;
2. user-friendly technologies, including Web-based resources;
3. personal pro se assistance in courthouses and other, more accessible community locations;
4. targeted services to particularly vulnerable populations, including non-English-speaking and rural populations; and
5. advice hotlines and programs offering limited lawyer assistance.

199. Id.
200. Bronner, supra note 2. This solution also implicates technology, as discussed in the prior section.
202. Pro se litigation (i.e., unrepresented parties) can be one practical, cost-effective solution to the shortage of rural lawyers, so long as the litigants are prepared. Professor Deborah Rhode outlines five strategies for simplifying the process for such litigants: the long-term impact of the initiative has not been documented.

203. Id. See also Economides, supra note 194, at 48 (briefly discussing how prospective rural law centers could employ paralegals to provide legal services).
In an extensive 2002 study of twenty-five rural pro se assistance programs, Professor Beth M. Henschen identified many programs of the types Rhode touts. Local courts administered a majority of these programs. Henschen observed that simply allowing pro se litigants to speak in court gives them a feeling of being heard and a sense that the judicial process is fair, an often overlooked access to justice concern. Henschen also found that pro se litigants benefit from human interaction, so the most effective programs will facilitate such interaction rather than relying on simple access to computers. Pro se assistance programs are thus best located within a courthouse, where they foster relationships with court staff and judges.

While spatial obstacles can impede rural pro se assistance programs, Henschen noted that smaller communities contend with less bureaucracy as fewer people are (or need to be) involved in decision-making. To address the distance problem, some rural pro se assistance programs set up forms and basic instructions at places other than the program center (often a courthouse in a county seat) by placing them in local community centers and stores. Staff with some pro se assistance programs sometimes travel to less resourced, farther flung service areas or provide services over the phone.

Similar to our argument that an array of community resources should be engaged to increase access to justice, Henschen noted the value of partnerships, both within the legal community and among the available array of community resources. Although the most common partnerships were with bar associations, legal services, and local lawyer groups, Henschen observed that government agencies and nonprofits such as women’s advocacy groups and domestic violence organizations also joined and made referrals to some pro se assistance programs. As noted above, medical-legal partnerships can also play this facilitating and connecting role.

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205. Id. at 55.
206. Id. at 57.
207. Id. at 48, 53-54.
208. Id. at 26.
209. Id. at 31-32.
210. Id. at 32.
211. Id. at 21, 59.
212. Id. at 21. Henschen’s study was a survey of programs, and so it did not elaborate on specific partnership details. See also Deseriee Kennedy, From Collaboration to Consolidation: Developing a More Expansive Model for Responding to Family Violence, 20 CARDOZO J. OF L. & GENDER 1 (2013)
3. Local Tribunals for When Courts Are Fewer and Farther Away

Some state courts have taken notice of the distance problem facing rural Americans. In her 2013 State of the Judiciary address, the Chief Justice of the Alaska Supreme Court remarked, “[J]ustice cannot be something delivered in a far-off court by strangers, but something in which local people – those most intimately affected – can be directly and meaningfully involved.” Making courts regularly accessible to rural residents, however, takes a toll on the judiciary. Montana district court judges can spend nearly one-fourth of their time traveling, while judges in Nevada spend roughly a fifth of their time on the road. When funding for courts and ancillary justice system services (e.g., experts, court reporters) comes from county government, severe disparities can result among counties. Nonmetro counties are often least able to finance a robust justice system.

States with significant indigenous populations or substantial Indian country nestled in their territory may encompass parallel or overlapping justice systems that serve American Indians and Alaska Natives. Some state court systems operate in partnership with tribal court systems. In the most remote regions of Alaska, for instance, tribal courts handle many local disputes.

(advertising consolidation of domestic violence and child welfare agencies to provide services that would respond holistically to family violence).

213. See supra note 197 and accompanying text.


215. Fabe, supra note 189.

216. See McKeon & Rice, supra note 87, at 203-05.


219. Pruitt & Colgan, Justice Deserts, supra note 5, at 303, 308 (suggesting that some local funding problems can be alleviated by centralizing funding for courts and indigent defense, for example, at the state level). See also VETTER & CLARK, supra note 135; Idaho v. Wright, 775 P.2d 1224, 1231-33 (Idaho 1989) (Bakes, C.J., dissenting) (observing that “many rural communities do not have the financial means to set up extensive videotape facilities to aid in the preparation of criminal cases” such as this one, in which a young child’s out-of-court statement about sexual abuse was held inadmissible under the confrontation clause).


Civil Rules contemplate such tribunals by allowing parties to “agree to resolve disputes, subject to court approval, by referring them to tribal courts, tribal councils, elders’ courts, or ethnic organizations.” In the words of Chief Justice Dana Fabe, these tribal courts increase access to justice in ways the state system cannot:

[T]ribal courts are handling relatively minor problems that would likely never reach the state court system, yet have a degrading impact on a community’s sense of security and well-being. And some of the risky behaviors they seek to address, especially in young people, might never come to the attention of state law enforcement. Local justice, even when informal by national standards, can thus be effective.

D. SUMMARY

In this Part, we advocated a more robust, “thicker” concept of access to justice that includes access to lawyers while also encouraging communities and organizations within them to help identify legal needs. We examined some of the resource shortfalls rural lawyers face and considered some solutions for meeting rural justice needs. In the next Part, we take a more in-depth look at the promise of pro bono service in rural areas. There, too, we argue that a lawyer’s time can be best leveraged with wider community support.

IV. THE PROMISE OF PRO BONO: RELYING ON ATTORNEY ALTRUISM TO MEET GROWING NEEDS

Only through substantial expansion of pro bono participation do we have any real hope of significantly improving representation for the poor and moving toward achieving equal justice for all.

Chief Justice Jess Dickinson, Mississippi Supreme Court, 2013

Increasing pro bono publico service is often heralded as a means for responding to the thin access to justice problem. Access to Justice Commissions in Mississippi, California, Colorado, Massachusetts, Tennessee, and North

222. Fabe, supra note 189 (quoting the Alaska Rules).
223. Id.
225. Deborah L. Rhode, Professional Regulation and Public Service: An Unfinished Agenda, in THE PARADOX OF PROFESSIONALISM 153, supra note 109, at 156. Rhode notes that the pro bono service lawyers could reasonably supply is overshadowed by the sheer volume of the need, especially considering a lawyer’s need to earn a good living. See also Carrie Hempel and Carroll Seron, An Innovative Approach to Legal Education: The Founding of the University of California, Irvine, School of Law, in THE PARADOX OF PROFESSIONALISM 169, supra note 109, at 189-90 (describing how University of California, Irvine’s clinical legal education provides student education on the importance of professional responsibility, and requires that all clinical services are provided without expectation of fee); Larry R. Spain, supra note 137, at 377.
Carolina, for example, all recommend better engaging lawyers in pro bono service. But given how few lawyers practice in rural areas, reliance solely on pro bono service by local attorneys is unlikely to alleviate by any great measure the rural access to justice problem. Nevertheless, pro bono can be an important part of the solution, especially if the surfeit of urban lawyers dedicate some of their time to rural clients and needs. This Section looks in detail at what we know about the varieties of pro bono work, and their connection to different lawyers and settings. Part A defines “pro bono” and observes that the ABA appears to value most highly the free pro bono service that is typically performed by large law firms—and therefore by urban-based lawyers. The reduced fee pro bono work which is most associated with solo practitioners and small firms is the type more likely to be provided in rural areas, where only solos and small firms practice. Part B discusses the influence of practice size on pro bono engagement. Finally, Part C examines pro bono in relation to the rural-urban axis, an exercise which brings to light a certain urbananormativity when we rely on attorney altruism—and free pro bono in particular—to meet a community’s legal needs.

A. MODEL RULE 6.1: DIFFERENTIATING BETWEEN FREE AND REDUCED-FEE PRO BONO

ABA Model Rule 6.1 articulates two categories of pro bono service: service without expectation of fee and reduced fee service. The text states that “[i]n fulfilling this responsibility, the lawyer should: (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee . . . and (b) provide any additional services through delivery of legal services at no fee or substantially reduced fee.” The most recent ABA survey of pro bono service


227. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 12-13; Rice, Access to a Lawyer, supra note 19, at 21. Both sources state that because of the shortage of rural lawyers, relying on 50 hours of service by each is unlikely to meet the needs of even more sparsely populated rural areas.

228. See CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 55.


230. Id. (emphasis added).
performed by attorneys highlights the distinction between no fee and reduced fee:

Category 1 pro bono is defined as direct legal representation provided to persons of limited means or organizations that support the needs of persons of limited means for which no compensation was received or expected.

Category 2 pro bono is defined as any other law-related service provided for a reduced fee or no cost (without expectation of fee) to any type of client, not including activities performed to develop a paying client or anything that is part of paying job responsibilities.\textsuperscript{231}

The ABA thus gives primacy to free legal services, implying that reduced fee services are of lesser value and significance.\textsuperscript{232}

While the Model Rule underscores the importance of pro bono service, it does not mandate such service.\textsuperscript{233} Indeed, while the ABA and twenty-five states endorse this aspirational goal, only thirty-six percent of all lawyers met the fifty-hour-per-year goal in 2012.\textsuperscript{234} Investigating reasons for this failure, the ABA

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{231} \textit{Supporting Justice III}, supra note 37, at vi. The Report states that the ABA intended to clarify the two types of pro bono service, as opposed to clustering them together, as had been done in previous surveys. \textit{Id.}
  \item \textsuperscript{233} See \textit{AM. BAR ASS'N., State Reporting Policies}, http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html (last visited May 18, 2013). Colorado and Massachuetts have considered and rejected mandatory pro bono hours reporting. Further, only eight states have mandatory reporting requirements, twelve have voluntary pro bono reporting, and the remaining 31 states plus the District of Columbia do not even seek pro bono reporting. Among the states that do mandate reporting, only Florida and Mississippi enforce that requirement with threat of disciplinary action. \textit{Id.} See also \textit{A.B.A. CENTER FOR PRO BONO, EXCERPT FROM MAKING PRO BONO A PRIORITY: A BAR LEADER'S HANDBOOK I}, available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/probono_beforeyoustart.authcheckdam.pdf (recommending that an important piece of building pro bono support is addressing opposition).
  \item \textsuperscript{234} \textit{Supporting Justice III}, supra note 37, at vii. Professor Levin has questioned the accuracy of the ABA Supporting Justice survey, noting that it may overstate the amount of pro bono service that attorneys provide. Levin, \textit{Pro Bono Publico}, supra note 232, at 711 n.67. Levin was skeptical of the earlier 2008 ABA Supporting Justice survey because approximately half of the lawyers screened for participation declined to do so. \textit{Id.} Levin cautioned that attorneys who did not provide any pro bono service may have simply self-selected out of the survey, skewing results. \textit{Id.} Levin’s survey of state reporting data found that, depending on the state, thirty-three to fifty-eight percent of attorneys provide some free legal assistance. \textit{Id.} at 711. This is substantially lower than the ABA estimates. \textit{See Supporting Justice III, supra note 37, at 34. For purposes of thinking about rural lawyers’ provision of pro bono services, however, we emphasize where the ABA survey data and Levin’s state-level research tend to match: attorneys at large firms may provide more free pro bono hours, but solo practitioners and small firm attorneys tend to provide more reduced-fee service hours. \textit{Id.} at 5, 8; Levin, \textit{Pro Bono Publico, supra note 232}, at 713-14. Levin does question whether solo practitioners and small firm attorneys may be underreporting their hours, as large firms have more sophisticated infrastructures for tracking hours. \textit{Id.} At the same time, states with mandatory reporting requirements, even with a threat of discipline for failure to report, do not consistently show greater numbers of hours than those in states without mandatory reporting. This suggests that while solo and small firm underreporting may still be an issue, attorneys who must report pro bono hours are not necessarily reporting a greater number of hours than those who are not required to report. \textit{See supra note 233} (discussing various states’ mandatory reporting requirements).
\end{itemize}
\end{footnotesize}
Supporting Justice survey found that roughly three-quarters of all attorneys said they did not seek out pro bono opportunities. However, seven in ten reported taking pro bono opportunities presented to them. Factors that discourage pro bono service vary: seventy-nine percent of attorneys reported that time was either a discouraging or very discouraging factor; fifty percent reported the same regarding family obligations; and forty-five percent reported lack of expertise in the area required. Only thirteen percent reported that lack of desire or interest in pro bono discouraged them from doing the work. Details of the Survey are shown in Figure 1.

![Figure 1](LAW stretc.png)

While this data is somewhat discouraging, the Supporting Justice survey also found that eighty percent of attorneys provided at least some Category 1 service. In addition to the thirty-six percent of lawyers who reported fifty hours or more of service, forty-four percent reported one to forty-nine hours. Fewer attorneys, sixty-eight percent, performed Category 2 service, and among those, just under one-third provided reduced-fee representation, with an average fee reduction of about forty-eight percent.

235. SUPPORTING JUSTICE III, supra note 37, at vii.
236. Id. at 30.
237. Id.
238. Id. (figure compiled by the authors from data made available in the Supporting Justice III survey).
239. Id. at vii.
240. Id. at vii (reporting thirty-two percent provided reduced-fee representation).
These data suggest that most attorneys are poised to provide at least some pro bono service. But as underscored by the differentiation between the two categories of service, how “pro bono” is provided—indeed whether an attorney provides it at all—often depends on the context in which the lawyer practices. One critical aspect of context is the size and nature of an attorney’s workplace, as we discuss in the next Part.

B. PRACTICE SIZE AND SETTING INFLUENCE PRO BONO PROVISION

Detailed 2012 ABA data regarding Category 1 and reduced-fee Category 2 pro bono service are presented in Figures 2 and 3, respectively. Figure 2 below describes the hours per year given by each attorney according to firm size. 241

![Figure 2. Category 1 Service Hours per Attorney by Firm Size](image)

Attorneys in large law firms (defined as firms with 101+ attorneys) provide on average nearly seventy-eight hours of Category 1 service each year, followed by solo practitioners, at nearly sixty-three hours each year. 242 For firm sizes between solos and large firms, the pro bono contributions of lawyers decrease as firm size grows. 243

Given large law firms’ greater capacity and comprehensive human resources infrastructure, 244 it is not surprising that lawyers in these firms provide, on average, more pro bono hours than other attorneys. Indeed, engaging in pro

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241. SUPPORTING JUSTICE III, supra note 37, at 5 (chart compiled by the authors from data in the Supporting Justice III survey).
242. Id.
243. Id.
244. See Abel, Just Law?, supra note 109, at 306-07.
bono service has become embedded in large firm culture.\textsuperscript{245} The American Bar
Association gives awards;\textsuperscript{246} pro bono service is used as part of law firm staff
training, recruitment, and retention;\textsuperscript{247} firms identify pro bono projects that target
specific needs in their communities;\textsuperscript{248} and pro bono service factors into law
firm rankings.\textsuperscript{249} Some firms allow pro bono service to act as a transition for
underemployed or furloughed attorneys,\textsuperscript{250} and some have even begun to see pro
bono work as an avenue for fee generation.\textsuperscript{251} Large firms may have managers
or partners dedicated to pro bono work, and some allow associates to credit all or
part of their public service to their billable hour requirement.\textsuperscript{252} Needless to say,
these are luxuries associated with the economies of scale that large law firms en-
joy, and thus are less feasible in the context of small firms.\textsuperscript{253} These supports

\begin{itemize}
\item \textsuperscript{245} For a thorough analysis of the graduates and law firms most inclined to participate in pro bono services—as well as the inadvertent role of pro bono work in furthering the stratification of the legal profession—see Ronit Dinovitzer & Bryant G. Garth, \textit{Pro Bono as an Elite Strategy in Early Lawyer Careers, in Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession} 115 (Robert Granfield & Lynn M. Mather eds., 2009). \textit{See also} Scott L. Cummings & Rebecca L. Sandefur, \textit{Beyond the Numbers: What We Know—and Should Know—About American Pro Bono, 7 Harv. L. \\& Pol’y Rev.} 83 (2013) (discussing the institutionalization of pro bono services at private firms and the changing motivations for pro bono programs).
\item \textsuperscript{246} See AM. BAR ASS’N, \textit{Pro Bono Publico Award} (last visited May 4, 2014) http://www.americanbar.org/groups/probono_public_service/projects_awards/pro_bono_publico_award.html.
\item \textsuperscript{247} Levin, \textit{Pro Bono Publico}, \textit{supra} note 232, at 708.
\item \textsuperscript{248} See Rhode, \textit{Whatever Happened}, \textit{supra} note 151, at 903-04. Rhode describes programs that target veterans, child abuse, and nonprofit start-ups. Some of these firms surveyed local service provid-
ers to determine unmet community needs. A similar project in underway in South Dakota, where Access to Justice, Inc., a program funded by the State Bar, is soliciting feedback from service providers on the needs of low- and moderate-income individuals across the state. Alsgaard, \textit{supra} note 21. We laud such efforts and see community impact and needs assessments as integral to achieving the “thick” conception of access to justice. \textit{See supra} Part IIIA.
\item \textsuperscript{249} Scott L. Cummings, \textit{Introduction: What Good Are Lawyers?}, \textit{in The Paradox of Professionalism} 1, 9-11, \textit{supra} note 109.
\item \textsuperscript{250} \textit{Id.} at 10-11. For example, some entering associates were paid up to $80,000 to work for a year for non-profit legal services. This helped the firm both in terms of employee training and deferring costs of salary and support at junior associate billing rates. \textit{Id. See also} Rhode, \textit{Professional Regulation, \textit{supra} note 225, at 157.
\item \textsuperscript{251} Cummings, \textit{supra} note 249, at 12-13. Cummings writes that one firm “reported that it was launching a new transactional initiative designed to address ‘development issues primarily in the third world,’ which also had fee-generating potential.” \textit{Id.} Of course, these are not the sorts of pro bono opportunities that a rural, solo practitioner is likely to have access to.
\item \textsuperscript{252} Granfield, \textit{supra} note 36, at 114.
\item \textsuperscript{253} The economic downturn also had a negative impact on the pro bono commitments of lawyers and law firms with less institutional capacity. Buck Wargo, \textit{Hammered by Recession, Nevada Lawyers Cut Pro Bono Work, LAS VEGAS SUN, Oct 23, 2009}, http://www.lasvegassun.com/news/2009/oct/23/hammered-recession-lawyers-cut-pro-bono-work/. Meanwhile, large firms retained greater flexibility to contribute pro bono service. Attorneys who already provided fifty hours or more of pro bono work—those mostly in large law firms—cited the economic downturn as motivation to provide more pro bono service if they were able to do so. \textit{See Supporting Justice III, \textit{supra} note 37, at vi (noting “those who provided at least 50 hours of Category 1 pro bono reported that the economy led them to do more.”). \textit{See also} Joanne Martin & Stephen Daniels, \textit{A Brief Moment of Opportunity: The Effects of the Economic Downturn on the Delivery of Legal Services to the Poor, 33 U. ARK. LITTLE ROCK L. REV.} 435 (2011) (discussing the challenges and limitations of large firms’ pro bono programs during an economic downturn).
\end{itemize}
are therefore less likely to influence the access to justice landscape in rural places—unless, that is, we are able to engage large-firm lawyers with small-town justice.

Even beyond institutional capacity issues, large firms have another great advantage over small firms: their sheer numbers of attorneys.\textsuperscript{254} According to U.S. Census data, some states do not have even a single “large firm.” For example, South Dakota’s two largest law firms are in the fifty to ninety-nine attorney range, and both are located in Minnehaha County,\textsuperscript{255} population 179,640, \textsuperscript{256}home of Sioux Falls, the state’s most populous city. The U.S. Census reports the presence of 459 attorneys in Minnehaha County. If every attorney in Minnehaha County provided fifty hours of legal services, each resident would receive 8.12 minutes of legal service.\textsuperscript{257} Contrast that with Tripp County, population 5,498,\textsuperscript{258} where seven attorneys practice.\textsuperscript{259} If each of those seven gave fifty hours of pro bono service, each resident would receive 3.82 minutes of legal assistance,\textsuperscript{260} less than half what the people in Minnehaha County would get. While these calculations are somewhat fanciful in assuming the service provided would be spread equally regardless of need or means to pay, they support one of our points: while reliance on pro bono assistance is a limited panacea for access to justice across the country, pro bono has particular limitations in rural areas, where few lawyers work\textsuperscript{261} and where those who do are without large-firm support for the pro bono enterprise. But this bleak picture assumes that lawyers will perform pro bono in the geographical areas where they are based, and that need not be the case. This is a subject to which we return below in Part IV.C.

In spite of these institutional hurdles—or perhaps because of them—solo practitioners and smaller firms are more likely than lawyers in other practice settings to provide reduced-fee Category 2 service.\textsuperscript{262} In fact, large firm lawyers do the least Category 2 work.\textsuperscript{263} Figure 3 illustrates these data.\textsuperscript{264}

\begin{itemize}
\item \textsuperscript{254} See U.S. Census Bureau – Attorney Data, supra note 5, and accompanying instructions. These data reveal the total number of lawyers, and the total number of firms, but not how many attorneys work at each firm. Thus we do not have an accurate picture of firm size.
\item \textsuperscript{255} Id.
\item \textsuperscript{256} QuickFacts: Minnehaha County, South Dakota, U.S. Census Bureau (last updated Mar. 27, 2014), http://quickfacts.census.gov/qfd/states/46/46099.html (looking at 2013 Census data).
\item \textsuperscript{257} The calculation is as follows: (459 attorneys x 50 hours x 60 minutes) / 169,471 people = 8.12 minutes/person.
\item \textsuperscript{258} State and County QuickFacts: Tripp County, South Dakota, U.S. Census Bureau (last updated Mar. 27, 2014), http://quickfacts.census.gov/qfd/states/46/46099.html (looking at 2013 Census data).
\item \textsuperscript{259} See U.S. Census Bureau – Attorney Data, supra note 5, and accompanying instructions (using 2011 data).
\item \textsuperscript{260} The calculation is as follows: (7 attorneys x 50 hours x 60 minutes) / 5,498 people = 3.82 minutes/person.
\item \textsuperscript{261} Interestingly, this seems to run contrary to Abel’s observation that solo practitioners and small firm attorneys are more reluctant to accept mandatory pro bono requirements because they believe they “give at the office,” especially when clients fail to pay. Abel, supra note 109, at 307.
\item \textsuperscript{262} SUPPORTING JUSTICE III, supra note 37, at 8 n.16. Professor Levin notes that rural lawyers may actually provide more pro bono services, whether free or reduced fee, than their urban counterparts.
\end{itemize}
Workplace type thus seems to correlate strongly with an attorney’s engagement in pro bono service.

Furthermore, workplace encouragement tends to correlate with an increase in pro bono hours. Among attorneys who provided over fifty pro bono hours, sixty-four percent reported that their employer encouraged pro bono activities. Yet economic concerns may lead small firms to discourage pro bono service.

Indeed, especially in solo practices with limited or nonexistent support staff, a lawyer may face huge practical and financial obstacles to engaging in pro bono work. These lawyers are of particular interest in relation to rural access to justice because only solo practitioners and very small firms are viable in rural locales.

A handful of state-level surveys support Levin’s contention, although that state-level data is at odds with the ABA’s Supporting Justice survey. Levin, Pro Bono Publico, supra note 232, at 713-14.

264. Supporting Justice III, supra note 37, at 8 n.16 (chart compiled by the authors from data made available in the Supporting Justice III survey). Only the ABA did not provide a specific hours breakdown of Category 2 service, but rather asked attorneys whether they engaged in Category 2 service at all.

265. Supporting Justice III, supra note 37, at viii.

266. Levin, Pro Bono Publico, supra note 232, at 701-02.

267. Id. at 730. Levin explains, For other lawyers, pressures to pay the rent and support staff may trump the willingness to perform pro bono work, especially where paying clients are available. In solo practices, where there is no one else but the lawyer to do the work, and often limited support staff, pro bono work may not feel “possible.”

268. See Supporting Justice III, supra note 37, at 6, 28-29. Like solo and small firm lawyers, those employed by government entities may also be particularly relevant to rural access to justice be-
C. PRO BONO ACROSS THE RURAL-URBAN AXIS

The ABA’s focus on free bono representation suggests an urbanormative perspective on legal aid for underserved populations. Recall the two categories of pro bono service articulated by the ABA Survey: Category 1 for pro bono service provided at no fee and Category 2, which includes reduced fee pro bono service. Part IV.B. reported that large firms provide the most Category 1 service, while small firms and solo practitioners tend toward Category 2. The data suggest that rural lawyers, who tend to be solo and small firms lawyers, are most likely to provide Category 2 service, though we recognize that the data do not specify where attorneys are located.269 Because the lawyers and firms best situated to do the highly valued Category 1 services are necessarily located in metropolitan areas,270 the greater emphasis on Category 1 in the Model Rule and the ABA survey are implicitly urbanormative.271 Meanwhile, rural lawyers are more likely to provide reduced fee service, which the ABA appears not to value as highly. Remarkably, these solo practitioners also perform a lot of Category 1 service, though it is unclear from the data whether the same solo and small-firm lawyers are providing both categories of service.272 Apart from the expressive function of these categories and the greater apparent value associated with Category 1, one thing seems clear: urban places benefit disproportionately from free

269. See Levin, Pro Bono Publico, supra note 232, at 701. In fact, the way the data are reported makes it impossible to be sure about this because we do not know whether rural solo practitioners are providing more Category 1 and/or Category 2 service than their urban solo and small-firm counterparts. We also do not know whether the solo practitioners performing Category 1 work are also performing the lion’s share of Category 2 work, or whether some solos tend to provide Category 1 and others tend to provide Category 2. See also Rice, Access to a Lawyer, supra note 19, at 35 (noting “that smaller firms and practices do not have formal recording mechanisms as voluntary and pro bono work is an integral part of their practice”).

270. U.S. CENSUS BUREAU – Attorney Data, supra note 5, and accompanying instructions (showing fewer, if any, firms of 100+ attorneys in counties lacking a large urban city). See also supra notes 252-253 and accompanying text.

271. See Seale & Fulkerson, supra note 35, at 31-32. By urbanormativity, we mean the viewing of urban life “as a benchmark for what is considered normal about ‘place.’” Id. at 32. Thomas et al., define urbanormativity as “an assumption that the conditions of urbanism found in metropolitan areas are normative; a corollary is that a departure from an urban lifestyle is deviant.” ALEXANDER R. THOMAS, BRIAN M. LOWE, GREG M. FULKERSON & POLLY S. SMITH, CRITICAL RURAL THEORY: STRUCTURE, SPACE, CULTURE 151 (2010).

272. Further the data do not indicate whether practice location in relation to the rural-urban continuum has an impact on whether an attorney provides more Category 1 or Category 2 service.
pro bono service not only because the proportion of lawyers to population is higher in urban places, but because the lawyers who perform the greatest number of pro bono hours per capita are necessarily in urban locales.

While the Model Rule implies that Category 2 is of secondary import, reduced fee services do help meet access to justice needs. But a potential problem is associated with the delivery of reduced fee service: it is presumably delivered primarily to individuals who are already clients of the given lawyer or firm. Rural residents may be more comfortable dropping in to a local law office to ask a lawyer—also probably a neighbor and community leader—for advice. Rural lack of anonymity may prompt rural lawyers to provide reduced-fee legal services because of the lawyer’s more personal sense of duty and connection to her community. That same interpersonal familiarity may mean that the lawyer knows—or thinks she knows—what the client can afford.

This system may work well enough for existing clients, but lack of institutional capacity may prevent those attorneys from accepting new pro bono clients (whether free or reduced fee), let alone seeking them out. Those who would benefit from the assistance of a lawyer, but who do not have an existing relationship with one, are thus likely to be left out of the justice loop, if you will. Indeed, these individuals may not perceive that they have a legal problem and may not even be thinking in terms of legal assistance. At the same time, the small-town lawyer may be reluctant to take on new clients who raise controversial legal issues, especially if they run counter to the interests of existing clients. Yet it is often those very controversial legal issues—legal issues that implicate that thicker sense of access to justice and the need for structural reform—that are most neglected in rural communities.

Another complication is the increasing racial and ethnic diversity in many rural communities, as noted in Part II. Because much of this diversity is a result

273. See Levin, Pro Bono Publico, supra note 232, at 701-02. In fact, the way the data are reported makes it impossible to be sure about this because we do not know whether rural solo practitioners are providing more Category 1 and/or Category 2 service than their urban solo and small-firm counterparts. We also do not know whether the solo practitioners performing Category 1 work are also performing the lion’s share of Category 2 work, or whether some solos tend to provide Category 1 and others tend to provide Category 2. See also Rice, Access to a Lawyer, supra note 19, at 35 (“[S]maller firms and practices do not have formal recording mechanisms as voluntary and pro bono work is an integral part of their practice.”).


275. Levin, Pro Bono Publico, supra note 232, at 719. See Rice, Access to a Lawyer, supra note 19, at 35 (observing that local people “are comfortable enough to just drop into a small practice’s office for free advice; living and working in the community, practitioners understand the challenges faced by [their community] and accordingly adjust their fees”).


277. See supra notes 98-104 and accompanying text.

278. See supra notes 110-116 and accompanying text. See also Abel, Just Law?, supra note 109, at 296, 309-10 (noting that “[s]mall-town lawyers are beholden to the local economic elite who provide most of their business”); LANDON, COUNTRY LAWYERS, supra note 46, at 149 (noting that the “rural entrepreneur . . . enjoys familiarity and visibility [within his community], but struggles with the accompanying accountability” to the interests of clients). See supra Part III.B.
of migration by and natural increase among minority groups, the newcomers are unlikely to include lawyers. They are, however, likely to need legal assistance, including immigration advice. Minority attorneys are not absolutely necessary to meet the challenges of a racially and ethnically diverse community, but we note that women and minority attorneys are more likely than white men to provide pro bono service. The relative lack of minority lawyers in rural places may thus undermine the access to justice mission there.

We do not suggest that rural attorneys are not pulling their weight vis-à-vis pro bono service on a per capita basis, nor do we suggest that rural attorneys are not providing both types of pro bono service. What we do argue, however, is that rural attorneys will struggle to provide free pro bono service because of capacity limits. Further, rural communities are at an obvious disadvantage in getting either category of service because the number of attorneys practicing there is low. Finally, as noted in Part II.C., rural attorneys face heightened scrutiny from their communities and may be disinclined to take on work, let alone pro bono work, that has negative implications for or requires changes to local institutions and workplaces. All of these factors combine to seriously undermine access to justice in many rural communities.

D. THE NEED FOR RURAL-URBAN PARTNERSHIPS

This examination of how workplace size, capacity, and norms influence pro bono service can inform responses to the rural access to justice crisis. To ameliorate spatial inequalities in access to justice, we advocate channeling some large-firm pro bono service to meet rural community needs. Such urban resources should supplement the pro bono—for both free and reduced fee—that local solos and small firms deliver in rural areas.

279. SUPPORTING JUSTICE III, supra note 37, at A-15, A-16. Indeed, women who have stepped out of the workforce temporarily for family care reasons could be a great resource for enhancing access to justice everywhere, including in rural America. See generally Claudine V. Pease-Wingenter, Halting the Profession’s Female Brain Drain While Increasing the Provision of Legal Services to the Poor: A Proposal to Revamp and Expand Emeritus Attorney Programs, 37 OKLA. CITY U. L. REV. 433, 441-43 (2012) (discussing financial impediments female attorneys face in providing pro bono service while staying at home to raise children).

280. It is also likely that few rural lawyers are women because the rural profession is an aging one, from an era when few law graduates were female.

281. As best the data permits us to tell, each rural attorney could be providing nearly as much service as each urban attorney. Though large-firm urban attorneys provide more Category 1 than any other type of attorney, it is possible that some solo practitioners are providing a great deal of both Category 1 and Category 2 (reduced fee service). Some of those solo practitioners could be in rural communities.

282. Effective urban-rural partnerships may also leverage the resources of urban bar associations, law schools, and law libraries. See, e.g., CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 46 (advocating best practices for expanding and institutionalizing the relationship between bar associations and pro bono services); id. at 48 (advocating partnerships that capitalize on law students’ desire for clinical and research experience in a supervised setting); id. at 49 (encouraging sliding-scale pricing and “unbundling” of legal services to eliminate cost barriers to middle-income individuals). Models for rural-urban partnerships might be found in surprising contexts unrelated to law. See Savannah Barrett & Josh May, Introducing the Kentucky Rural-Urban Exchange, Art of the Rural, Aug. 6, 2014, http://artoftherural.org/kentucky-rural-urban-exchange/ (describing a rural-urban arts exchange aimed at...
Engaging urban lawyers in rural legal issues responds to at least three challenges arising from the dynamics at the intersection of pro bono service delivery and rural realities. First, it responds to lawyers’ general preference for providing pro bono beyond their usual geographical sphere. Second, it avoids the conflicts of interest that are more likely to arise from local, rural lawyers taking up issues, especially sensitive, structural ones that implicate webs of relationships within a given community. Third, it potentially engages more lawyers contributing a greater total number of hours in pro bono service by connecting lawyers with a wider array of compelling legal needs.

Canadian law societies are also pioneering urban-rural partnerships to address the shortage of rural lawyers and low-cost legal service providers. In response to the ongoing lack of interest in articling outside metropolitan British Columbia, for example, the provincial branch of the Canadian Bar Association created the Rural Education and Access to Lawyers (“REAL”) Initiative. The program offers funding for second-year law students to fill positions in rural communities, provides professional support to rural practitioners, and assists rural firms with marketing and hiring.

Just as rural attorneys would benefit from rural-urban partnerships, so they would benefit from community-based partnerships. As noted above, providing reduced-fee pro bono to existing clients enables rural lawyers to balance service in the public good with paying their bills. But reducing fees to existing clients leaves out important needs of those who do not seek legal services either because they do not know the law could help them or because they do not have an existing relationship with an attorney. With local lawyers’ time already stretched thin, we must be creative about identifying resources—both within and outside rural areas—that can assist rural lawyers in serving their communities. In the next Part, we discuss how partnerships between community service non-profits

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283. See Abel, Just Law?, supra note 109, at 307.
284. See, e.g., CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 46 (citing the example of Bet Tzedek Legal Services in Los Angeles, which partners with private attorneys to provide basic legal assistance in underserved suburban communities in the Mojave Desert).
286. Id.
287. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 45 (discussing how encouraging urban attorneys to perform pro bono work in rural areas is one solution to the rural access to justice problem). In a similar vein, nonprofits like United Way and Red Cross sometimes locate their main offices in urban areas, with smaller rural satellite offices. Both main and satellite offices provide direct community services. The main offices take the majority of the “behind the scenes” work, such as fundraising and compliance, freeing the satellite offices to focus on direct services. See, e.g., United Way of Greater Toledo Counties, http://www.unitedwaytoledo.org/united-way-greater-toledo-counties (last visited May 6, 2014) (serving Lucas, Wood, and Ottawa counties; Lucas County is home to Toledo, while Wood and Ottawa counties are more rural).
and legal providers can take some of the pressure off rural attorneys by leveraging non-legal resources that are already available.

V. AN INTEGRATED ACCESS TO JUSTICE: FOSTERING A CULTURE OF SERVICE AND A ROLE FOR THE COMMUNITY

[Law is practiced in a fluid realm of human interaction. While the territories of interaction to which the law applies are generally known, the precise context of law practice is revealed only as the local economic and social institutions interact to shape the agenda for the attorney. It is not remarkable that law practice in large cities follows the contours of metropolitan life in its diversity and dynamics. Nor is it remarkable the country law practice mirrors its local milieu.]

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Overall, the evidence from both the rural data and the metropolitan data suggest that the legal profession is adaptive in its relationship to its environment. The forces organizing the work of the practitioner as well as his relationship to his clients, colleagues, and community are primarily external.

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Donald D. Landon,


Where rural capacity to deliver fails because of the dearth of lawyers, the broader social service community can play a critical, facilitating role. As discussed in Part IV, an attorney’s workplace norms, values, pressures, and constraints can account for differences in volunteer behavior, serving as strong external influences on altruism or the lack thereof. In the absence of strong workplace support, we are challenged to engage rural lawyers in the access to justice mission, few and far between as those lawyers are, their time already stretched thin. Local bar associations or community organizations can play a critical role in promoting pro bono service among solo practitioners.

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We take this idea one step further, arguing that local non-profit organizations that are not law oriented or law related can serve this function, too. In particular, we believe

288. Landon, Country Lawyers, supra note 46, at 149.

Of course, teaching legal ethics can also influence attorney behavior. See generally Browne et al., supra note 18. But see Granfield, supra note 36, at 135-36. Granfield found no correlation between law schools with mandatory pro bono requirements and attitudes toward pro bono service in practice. Id. Granfield does suggest some positive correlation between the surveyed law school that had the greatest mandatory pro bono requirement and later attitudes toward public service, and speculates that depth of pro bono participation in law school may achieve greater outcomes in this regard. Id.

291. Levin, Pro Bono Publico, supra note 232, at 731-32. See also supra notes 26-33, 281-285 and accompanying text (discussing steps some bar associations have taken in relation to rural pro bono).
that a sort of “community culture” can step in to encourage a rural lawyer’s community engagement, even where workplace support for it is absent. 292

Take, for instance, the potential for information and referral services to involve lawyers in pro bono participation. The Greater Twin Cities United Way, based in Toledo, Ohio, is one of many United Ways that hosts 2-1-1 information and referral services for their community. 293 A 2-1-1 system operates similar to 9-1-1, except that an individual calls 2-1-1 for information on community services, e.g., food, clothing, shelter, rather than the emergency services associated with 9-1-1. 294

In 2011, the Greater Twin Cities United Way partnered with the nonprofit Call for Justice, whose specific mission is to increase access to justice via legal referral. 295 Call for Justice was able to work with United Way 2-1-1 to provide legal referral training to United Way staff, an updated and comprehensive list of legal agency information, and eligibility criteria. 296 In just about a year of operation, this partnership increased by 200% referrals to nine community legal resources. 297 These legal resources included self-help centers, lawyer referral services, and a low-fee family law project. 298 The partnership also spawned outreach efforts to local nonprofits, helping to connect homeless shelters with legal services organizations, engaging two Minneapolis law firms in “adopting” a program aimed at ending intergenerational poverty, and spreading awareness on the availability of legal referral and United Way 2-1-1 generally. 299 The partnership between Call for Justice and 2-1-1 became key to addressing unmet community needs.

292. Other scholars have recognized this kind of culture: “Lawyers are part of a community, and when that community encourages ethical behavior, there is no reason to believe that lawyers would be any less responsive to that encouragement than would any other responsible profession.” Browne et al., supra note 18, at 78. See Levin, Pro Bono Publico, supra note 232, at 730 (citing Andrew Boon & Avis Whyte, “Charity and Beating Begins at Home”: The Aetiology of the New Culture of Pro Bono Publico, 2 LegaL ETHICS 169, 172-73 (1999)).

293. United Way 2-1-1, GREATER TWIN CITIES UNITED WAY, http://www.211unitedway.org/ (last visited May 6, 2014). See also CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 55 (discussing local rural task forces as a potential solution to rural access to justice that would “identify gaps and target services for isolated, underserved groups, and to expand the availability of legal aid services locally”).


297. Id. at A-17. See also Richard Zorza, The Access to Justice “Sorting Hat”: Towards A System of Triage and Intake that Maximizes Access and Outcomes, 89 DENV. U. L. REV. 859, 861 (2012) (discussing how effective—and transparent—Legal Aid intake systems can lead to providing stronger legal services to those in need).

298. Id. at 11.

299. Id. at A-17, 2.
When clients seek legal services, the problems they face are often not solely legal issues. For instance, a tenant seeking eviction protection may look for a lawyer, but the eviction issue may be merely the one that appears most likely to have a legal solution among a host of other challenges, e.g., the need for emergency housing, food, or clothing. Engaging information and referral services is a two-way street: specialists know where to refer clients for legal assistance, and lawyers know where to refer clients for non-legal assistance. In this way, the more robust conception of access to justice that we desire is more likely to be achieved.

These 2-1-1 partnerships are in place nationwide, in urban areas and in many rural places, too.300 Indeed, some 2-1-1 programs utilize urban-rural partnerships to engage the capacity and economy of scale associated with an urban-sized program to serve more sparsely populated surrounding communities.301 This resource could be leveraged to increase referrals to solo practitioners—and, indeed, to all attorneys—regardless of where they practice.

In the absence of a community referral source, legal referral clinics and hotlines can fulfill a similar purpose. For instance, the Mississippi Bar and the Legal Services Corporation formed the nation’s first state-wide volunteer attorney program in 1982.302 California has had certified Lawyer Referral Services since 1996,303 and Massachusetts seeks to launch a statewide pro bono website soon.304 Existing legal referral clinics are limited, however, by the client’s self-

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301. See e.g., UNITED WAY OF GREATER TOLEDO, 2-1-1 QUARTERLY REPORT JANUARY-MARCH 2014, available at http://www.unitedwaytoledo.org/sites/unitedwaytoledo.org/files/2-1-1%201st%20Qtr%202014.pdf (outlining United Way of Greater Toledo’s 2-1-1 call intakes from all serviced counties). As an example of an urban-rural partnership, United Way of Greater Toledo operates its 2-1-1 program from Toledo, Ohio, but serves a fairly large geographic footprint that includes both urban Toledo and more rural areas of Wood, Ottawa, Erie, and Hancock counties. One challenge that arises with rural-urban partnerships is competition for resources. Urban areas with superior resources may have to be convinced that they have something to gain by diverting resources to rural areas. See generally Jason Gray, Speak Your Piece: Rural and Urban Have a Shared Fate, THE DAILY YONDER, Feb. 27, 2009, http://www.dailyyonder.com/speak-your-piece-rural-and-urban-have-shared-fate/2009/02/27/1958 (discussing the ways in which rural and urban communities can find unexpected commonalities and forge alliances). An example of a rural-urban partnership that appears to be thriving because it is seen as mutually beneficial, albeit in a completely different context, is the network by which surplus animals are transported from shelters in the rural South, where they are plentiful, to northern cities where the animals are in short supply and the demand is much greater. See J. Courtney Sullivan, Adopt a Dog with a Southern Drawl, N.Y. TIMES, May 25, 2014, http://www.nytimes.com/2014/05/26/opinion/adopt-a-dog-with-a-southern-drawl.html?src=me&ref=general&r=0. Sadly, these sorts of partnerships are increasingly rare. Indeed, in encouraging urban lawyers to engage in pro bono work in rural communities, the California Commission on Access to Justice clarified that the services delivered in urban areas should not be diminished by any uptick in rural services. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 51 (“The goal is to increase the total resources available for legal services . . . not merely to reallocate existing resources.”).

302. Dickinson, supra note 224, at 58.

303. CAL. COMM’N ON ACCESS TO JUSTICE, supra note 30, at 49.

304. MASS. ACCESS TO JUSTICE COMM’N, STATEMENT OF STRATEGIES, supra note 226, at 6. The website, massprobono.org, was slated to go live by December 2013, but as of January 2014 was still under development.
identification of a legal need. Broader 2-1-1 partnerships can fill this gap if they have staff equipped to help callers identify when a lawyer could be of use.

Further, lawyer referral programs are likely a very good way to increase the volume of pro bono services delivered. Recall that attorneys are more likely to accept pro bono cases that are referred to them. The ABA’s national survey found that thirty-six percent of lawyers said they would accept an unfamiliar client, while thirty-one percent indicated they would not. An additional thirty-three percent said they would accept a client if they knew the referral source. Among attorneys who provided pro bono service, sixty percent indicated that their most recent client was referred to them.

Data from Professor Leslie Levin’s 2009 article corroborate the point that familiarity helps promote pro bono service, especially among rural practitioners. Studies of solo and small firm lawyers “reveal that pro bono work often grows out of the lawyers’ existing practices and their personal relationships, rather than out of deliberate efforts to seek out legal work that will benefit the poor.” Solo practitioners and small firm lawyers, like lawyers at large firms, receive referrals from outside organizations, but also based on community familiarity, “from individuals who simply walk in the door and ‘tug at your heart strings.’” By the same token, a lawyer’s connection with local non-profits, such as a regional 2-1-1, would presumably incline her to accept referrals from those organizations.

In short, community partnerships can help engage a lawyer in his or her community. While 2-1-1 referrals are likely to be clients who cannot pay full price for legal services, such referrals can have the effect of connecting a lawyer to her community, even if the lawyer cannot always provide the needed pro bono service. Plus, 2-1-1 is also a two-way street: lawyers with better knowledge of the array of community resources can better serve their low-and-moderate-income clients. If an attorney has a client who is being evicted, the attorney can help her client find a place to go through 2-1-1. An attorney working on a child custody case may be able to meet her client’s legal needs, but an attorney clued in to her community’s resources might also connect her client to other services.

305. Supporting Justice III, supra note 37, at 15 (noting that an additional thirty-three percent of attorneys would agree to pro bono service of an unknown client if they knew the referral source).

306. Id. at 15.

307. Id. at 12-13. The most common referral sources were legal aid or services programs (twenty-seven percent), outside attorneys (thirteen percent), bar associations (thirteen percent), and friends or family members (eleven percent). Id. at 13. Interestingly, the attorney’s employer, non-profit organizations, lawyer referral services, guardian ad litem programs, and professional acquaintances each accounted for only 1 percent of total referrals. This could signal that information and referral services are ineffective, or, perhaps more likely given the novelty of the Call for Justice / 2-1-1 partnership, underutilized.

308. Levin, Pro Bono Publico, supra note 232, at 718. Levin’s article discusses a number of studies, including one of attorneys in Erie County, New York; divorce lawyers in New York City; divorce lawyers in New England more broadly; and lawyers in a small firm whose identity was protected but who focused on criminal defense. Id. at 715-18. Levin states that all of these studies focused principally on solo practitioners and small firms. Id. at 715.

309. Id. at 719. This familiarity may impact a solo practitioner’s decision to continue representing a client when it becomes apparent that a client cannot pay. Id. at 723.
whether through referral to a counseling service, or a program at a local community center.\textsuperscript{310} We believe community partnerships can better enable clients to find lawyers while also equipping lawyers to meet a fuller array of client needs. In this regard, the high density of acquaintanceship associated with rural places can be an asset.

VI. CONCLUDING THOUGHTS

Justice cannot be something delivered in a far-off court by strangers, but [must be] something in which local people – those most intimately affected – can be directly and meaningfully involved.\textsuperscript{311}

Chief Justice Dana Fabe, 
Alaska Supreme Court, 2013

In this overview article responding to South Dakota’s Project Rural Practice and the newfound attention it brings to the nationwide shortage of rural lawyers, we do not profess to identify—let alone suggest solutions for—all of the issues undermining rural access to justice. Our goal has been to explore a more robust, “thicker” concept of access to justice in rural context, bringing to bear what we know about rural socio-spatial difference to this significant challenge. As we have documented, rural areas in the United States face particular obstacles to achieving access to justice. These include socio-spatial obstacles associated with poor transportation infrastructure, lack of anonymity, population loss, shifting demographics, and social problems. Compounding the socio-economic and socio-spatial challenges is the fact that too few lawyers are available to enable robust rural justice systems.

We herald Project Rural Practice as a concrete and innovative step toward bringing more lawyers to the underserved rural areas of South Dakota. We hope it serves as an inspiration for other states to respond to their own rural lawyer shortages. But what may work in South Dakota—where the Chief Justice and legislature cared enough about rural communities to institute Project Rural Practice and where law school tuition is relatively low—is unlikely to work in states that are more metrocentric in population and in culture. It is also unlikely to work in states where there are, effectively, no affordable law schools. Some best practices that translate across states and regions may eventually emerge in the effort to enhance rural access to justice, but this will surely require more experimentation.

Meanwhile, we should consider what we can learn from nations like Australia, where distance learning has long been a staple of higher education—including legal education. Further, academics and policy makers there are actively studying many aspects of that nation’s rural lawyer shortage—including

\textsuperscript{310} See Statz, supra note 83 (observing that immigration lawyers in nonmetropolitan locales were better equipped and more likely to refer their clients to other services, which rarely occurred in so-called gateway cities, e.g., Los Angeles, New York, Chicago, owing largely to bureaucratic constraints).

\textsuperscript{311} Fabe, supra note 189.
the reasons for it—in order to inform evidence-based responses. Stakeholders in the United States should take rural populations as seriously and similarly engage these issues.

As a starting point, every organization that regulates the legal profession—be it a bar association, state high court, or other responsible institution—should begin to keep detailed data on where lawyers practice. Future ABA studies following in the wake of the 2012 Supporting Justice Initiative should collect more nuanced information on the locales of attorneys who provide different types of pro bono service, as well as on the locales of the beneficiaries of their service. Other data sets about and studies of legal education and the legal profession are also potentially very useful, particularly if they consider solo and small-firm practice and nonmetropolitan milieu.

Many stakeholders must play roles if the rural access to justice crisis is to be solved. Curriculum shifts in legal education may be necessary to respond to evolving needs. Commercial law, family law, and trusts/wills/estates expertise will continue to be staples of rural practice, as will the full range of elder law issues. We suggest that disability and poverty law courses would also serve rural practitioners quite well. As already noted, immigration law is a good example of a burgeoning rural need. With many states in the South and Midwest now home to substantial immigrant populations, the demand will grow for lawyers in those regions to know immigration law, and therefore for law schools to teach it. A curriculum that devotes adequate attention to skills and fosters graduates closer to the “practice-ready” aspiration is critical. Innovative programs might require students to participate in skills courses and clinics, perhaps even requiring a student’s entire third year to be devoted to experiential learning. Apprenticeships that place students in a range of rural settings, from private practice to LSC-


313. Again, we laud the 2014 initiative of Access to Justice, Inc., to gather related information in South Dakota. See Letter from Cheryl Hanna, supra note 21.

314. See, e.g., Bryant G. Garth, After the J.D.: The Beginning of a Longitudinal Study, AM. BAR FOUNDATION, http://www.americanbarfoundation.org/publications/afterthejd.html (last visited June 26, 2014) (describing the data collection as “the first and most ambitious effort to gather systematic, detailed data about the careers and experiences of a national cross-section of law graduates”). See also, e.g., Seron, supra note 20 (discussing career advantages enjoyed by graduates of urban law schools).

315. Indeed, in response to the burgeoning immigrant population in Arkansas, the University of Arkansas School of Law created an immigration clinic in 2008. Immigration Clinic, UNIV. ARK. SCH. LAW, http://law.uark.edu/clinic/immigration/ (last visited May 6, 2014). The University of North Carolina created an immigration clinic for the same reason in 2006. E-mail from Melissa Cobb, Business Officer, University of North Carolina School of Law, Clinical Programs to research assistant (May 20, 2014, 13:06 PST) (on file with author).

316. Critchlow, supra note 17, at 36-37.
funded organizations, seem an obvious way to expose more students to the challenges and rewards of rural practice.317

As for the wider rural justice mission, a variety of personnel and modes of delivery can be marshaled: using technology to make court forms and procedures easily available and video conferencing software for holding virtual court; promoting informal dispute resolution; and supporting pro se litigants. Engaging more lawyers in rural pro bono—including those working in urban places—appears a critical step because rural lawyers alone are unlikely to be able to meet the need, even if programs like Project Rural Practice bolster their ranks. Each of these approaches and tactics can help foster rural access to the justice, whether the client is an individual or, effectively, the entire community.

Whatever best practices emerge from the current interest in the rural lawyer shortage, one thing is clear: rural lawyers will need support if they are to play more meaningful roles in meeting the legal needs of their communities. Some of that critical support can come from outside the legal world but from within the local or regional community itself. Another part of that support may be from within the legal world, but from outside the local community, e.g., urban lawyers and firms.

A key take-away we hope to leave with those who rise to the challenge of rural practice is they should engage their community. Rural lawyering is not easy, in part because of the heightened scrutiny associated with lack of anonymity and close-knit community. Yet there is plenty of evidence from existing practitioners that it can be extremely rewarding. Like an engaged and pro-active nonprofit organization, a rural lawyer should have conversations with neighbors, associates, and stakeholders of all sorts to get to know what makes her community tick. And with programs like Project Rural Practice, which require a five-year commitment to a particular place, an attorney will have the opportunity to become an integral part of a nonmetropolitan milieu. Rural lawyers can leverage that integration to make more significant contributions to a thicker access to justice.

317. Id. at 30-31. See also Runge & Vachon, supra note 17.