

Legal Deserts Restricted Access to Justice

A Talk with Professor Lisa Pruitt

- Rural lawyer shortage is an issue of access to justice
 - Rural America has been experiencing a decline in lawyers serving its populations, resulting in severe shortages.
 - Some estimates show over 50 counties with no lawyers at all. Many of these counties with no lawyers are clustered together, requiring clients to travel across several counties to find a lawyer who can serve them.
 - As rural populations have been declining, so too has developed human capital, e.g. dentists, doctors, lawyers, etc.
 - Data indicates the ratio of lawyers to residents in some counties can be as high as 1 to 700 in some rural California counties and 1 to 1500 in rural Arkansas counties. These data count all licensed lawyers in the county, not factoring in whether those particular lawyers are taking clients or whether they are government attorneys, prosecutors, judges, etc. Sierra County, CA, for example, has five attorneys but only one in private practice to represent clients.¹
 - Access to justice issue
 - Severe economic consequences for already strained local and state governments, particularly acute in indigent defense. Local governments have to pay out-of-county lawyers “windscreen time” for them to drive long distances to the courthouse where the case is being adjudicated.
 - Lawyers serve a watchdog function in their communities. A lack of local lawyers can lead to oversights in local government governance.
 - A shortage of lawyers can lead local communities to develop alternative ways of resolving disputes or other issues that may not always work in the best interest of justice.
 - Many rural areas are low-income or modest-means communities with a dire need for affordable legal services. Rural populations face a host of legal issues, including consumer and finance, employment, health, and housing, that need to be serviced by a lawyer competent in those areas. A shortage of lawyers means that those needs are not met.
 - A dire need for criminal matters

¹ See Pruitt, Lisa R., Rural Access to Justice in the Golden State (January 3, 2018). Available at SSRN: <https://ssrn.com/abstract=3096179> or <http://dx.doi.org/10.2139/ssrn.3096179>

- VERA Institute study on rural jail population found that since 2013, rural jail populations have climbed 26%, a rate higher than in urban areas.²
 - One factor for the increased rate is an increase in pre-trial detainees. Because many defendants are not able to retain a lawyer for pre-trial proceedings, they await their trial in jail.
 - The high rural jail population also contributes to the rural fiscal crisis.
- COVID-19 pandemic effects
 - May exacerbate the lawyer shortage by accelerating retirement
 - Many older lawyers may look to retire earlier than planned because of the pandemic for health reasons or economic effects of the pandemic.
 - As with businesses in other sectors, rural lawyers' practices were severely affected by the pandemic lockdowns and court closures.
 - Digital divide
 - Rural/urban: access to broadband in many rural areas was already an issue even prior to the pandemic. As the country increasingly turns to remote/online methods of continuing business during the pandemic, rural areas are left behind.
 - Generational divide: some older lawyers may struggle to adopt new technologies and platforms necessary to transition to remote work during the pandemic. May also factor in speeding up their retirement.
- Factors contributing to lawyer shortages
 - Shrinking population overall in rural areas
 - "Graying" of the bar: many of the lawyers serving rural populations are older lawyers who may be close to retiring, and there is a lack of younger lawyers who can take over their practices.
 - Less younger attorneys practicing in rural areas
 - In a survey conducted by Pruitt about lawyers' and law students' attitudes toward rural practice, young lawyers and law students cited various reasons for why rural practice was less appealing³:
 - Less cultural amenities in rural areas
 - Perception that rural communities are biased or are "old-boy networks"

² Kang-Brown, Jacob; Hinds, Oliver; Schattner-Elmaleh, Eital ; Wallace-Lee, James. "People in Jail in 2019". *Vera Institute of Justice* (12/01/2019). <https://www.vera.org/publications/people-in-jail-in-2019>.

³ See Pruitt, Lisa R. and McKinney, J. and Fehrenbacher, Juliana and Johnson, Amy, Access to Justice in Rural Arkansas (April 28, 2015). UC Davis Legal Studies Research Paper No. 426, Available at SSRN: <https://ssrn.com/abstract=2600274> or <http://dx.doi.org/10.2139/ssrn.2600274>

- Concerns about finding a suitable life partner or suitable jobs for life partners
 - Fiscal concerns
 - Concerns about financial viability or stability of rural practice
 - Concerns about ability to pay law school debts
 - Role of law schools
 - Law schools not producing practice-ready law students who feel they can confidently go into rural practice where there may be less support, supervision, or mentorship
 - Law students steered toward high-paying jobs or practice areas in law school
- Rural practice as a form of public interest practice
 - Some scholars believe rural private practice should be considered a type of public interest work.
 - University of South Dakota Law School professor Hannah Haksgaard conceptualizes rural practice as public interest because very few lawyers provide services in rural areas and are often the only lawyers able to provide those services in the area; rural attorneys frequently provide a range of services in government, pro bono, and private practice; and rural lawyers earn far less than lawyers in traditional public interest fields, i.e. government and public interest organizations.⁴
- Conflicts of interest issues in rural practice
 - ABA Model Rule 1.7 Conflict of Interest⁵
 - *(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:*
 - *(1) the representation of one client will be directly adverse to another client; or*
 - *(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*
 - ABA Model Rule 1.9 Duties to Former Clients⁶
 - *(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially*

⁴ See Haksgaard, Hannah, Rural Practice as Public Interest Work (May 11, 2019). 71 Maine Law Review 209 (2019), [Available at SSRN: https://ssrn.com/abstract=3386710](https://ssrn.com/abstract=3386710).

⁵ ABA Model Rules of Professional Conduct Rule 1.7, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/.

⁶ ABA Model Rules of Professional Conduct Rule 1.9, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients/.

related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

- Very few lawyers serving the area means that lawyers will inevitably face conflicts issues. May be particularly problematic in criminal cases.
 - In a Mississippi case, for example, the court found an irreparable conflict of interest where the assigned counsel had represented both co-participants in plea negotiations and one of whom became a key eyewitness for the prosecutors in the defendant's trial. In its opinion, the court noted the challenge placed on public defenders in rural areas but that the trial court erred in appointing the attorney which resulted in the conflict. *Smith v. State*, 666 So. 2d 810 (Miss. 1995).
 - Because of the lawyer shortage in rural areas, conflicts rules may not be as stringently observed simply because there are no other lawyers. For example, the only attorney available to represent an indigent client as an assigned public defender may actually be a part-time prosecutor in a neighboring town.
 - Beyond traditional conflicts issues, in rural areas, there is a lack of anonymity or a "high density acquaintanceship" which may pose a range of challenges from jury selection to venue.
- Due process issues related to non-attorney judges and "justice courts"
 - In some rural jurisdictions and states, non-attorneys are empowered to sit on justice courts and decide matters of first impression for cost efficiency or to service rural areas.
 - More than half the states in the U.S. allow non-lawyers to sit on justice courts. Some of those states prohibit non-lawyers from adjudicating matters where the defendant's liberty is at stake in a criminal proceeding. Others allow non-lawyers to preside over misdemeanors or other similar infractions. According to a survey conducted by the Sixth Amendment Center, in 8 states — Arizona, Colorado, Montana, Nevada, New York, South Carolina, Texas, and Wyoming — non-lawyers may try jailable offenses, and there is no right to trial de novo.⁷
 - The Supreme Court ruled that due process is not violated when a defendant charged with a misdemeanor is tried before a nonlawyer judge when a later de novo trial is available. See *North v. Russell*, 427 U.S. 328 (1976). The Court has not ruled on the constitutionality of justice courts where there is no right to appeal to a court presided by a lawyer-judge.
 - In New York, for example, town and village justice courts handle small claims, traffic tickets, misdemeanors, and others. In 2006, the NYTimes published a

⁷ Carroll, David, Should non-lawyer judges be sending people to jail? SCOTUS asked to review (December 12, 2016), <https://sixthamendment.org/should-non-lawyer-judges-be-sending-people-to-jail-scotus-asked-to-review/>.

series of articles examining the state's justice courts.⁸ After the profiles, New York overhauled its system to provide training and additional resources to the courts, but laypeople may still sit on justice courts.

- Practice areas, specialization, and competence
 - Most rural lawyers are generalists, taking on matters related to criminal law, trust and estates, and other civil matters. For matters requiring specialists, burden on rural lawyer to help the client find an appropriate specialist who are often located hours away.
 - ABA Model Rule 1.1 requires that lawyer provide competent representation:
 - *Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*⁹
 - Question of whether the “competence” standard for lawyers in rural areas should be different from their urban counterparts, taking into account the reality of lawyer shortages.

- Programs to recruit rural attorneys
 - South Dakota Rural Attorney Recruitment Program¹⁰
 - In 2013, the South Dakota Legislature approved a program to recruit attorneys to practice in rural areas. The program launched in 2014, and since then, over 25 attorneys have participated. The program is the first and only program of its kind nationwide.
 - The program provides stipends to attorneys in exchange for 5 years of continuous practice in a participating rural county. The program also provides mentors and networking opportunities. The attorneys are connected with the local clerks and courts. Some counties also provide free office space in their courthouse.
 - Succession planning and matchmaking
 - Programs that focus on mitigating the graying of the bar by assisting retiring rural attorneys to pass their practices onto younger attorneys. Alleviates some of the fiscal concerns that young lawyers have about the viability of rural practice.
 - Iowa State Bar Association's Rural Practice Committee¹¹

⁸ Glaberson, William (September 25, 2006). "In Tiny Courts of N.Y., Abuses of Law and Power". *The New York Times* <https://www.nytimes.com/2006/11/22/nyregion/22court.html>.

⁹ ABA Model Rules of Professional Conduct Rule 1.1, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/.

¹⁰ South Dakota Rural Recruitment Program, <https://ujslawhelp.sd.gov/rarprogram.aspx>

¹¹Iowa State Bar Association Rural Practice Committee Member Community, <https://engage.iowabar.org/communities/community-home?CommunityKey=befe5df3-f31c-4f82-9183-06755e52a0f3>

- In the past decade, the Committee has been expanding its work to bring together practicing rural attorneys and law students. It created a “Meet and Greet” event and a web page to connect students with lawyers who are interested in summer rural clerkships.
 - State Bar of Georgia’s Succession Planning Pilot Program¹²
 - The program links young lawyers with seasoned attorneys working on succession plans to work as law clerks or associates either for referral work or to take over the practice.
- Pipeline programs
 - Nebraska College of Law Rural Law Opportunities Program (RLOP)¹³
 - Students from rural areas in Nebraska receive scholarships to study at Nebraska state schools and earn their law degree at Nebraska Law to return rural areas to practice. If students maintain a 3.5 GPA at their undergrad institution and obtain a minimum LSAT score, they will automatically be accepted to the Nebraska Law.
 - The program is a partnership between the University of Nebraska College of Law and Chadron State College, the University of Nebraska at Kearney and Wayne State College.
- Incubators
 - Some localities and law schools have incubator programs that provide attorneys with legal and practical skills necessary to launch a practice in a rural area. Includes courses on how to market legal services to low-income and modest-means clients.
 - Arkansas Rural Practice Incubator Project¹⁴
 - 18 months program by the University of Arkansas Bowen School of Law.
 - It provides a \$6,000 stipend, a business development bootcamp, coaching in marketing, free subscriptions to case management software and legal research tools, among other things.
 - The support that incubators provide can alleviate some of the concerns that law students have about rural practice. Law students reported having concerns about not being practice-ready or fear of committing malpractice.
- Addressing the law student debt crisis
 - Loan repayment assistance

¹² State Bar of Georgia Senior Lawyer/Younger Lawyer Mutual Enhancement Opportunities, https://www.gabar.org/wellness/mental/aging_lawyers.cfm

¹³ Nebraska College of Law Rural Law Opportunities Program, <https://law.unl.edu/RLOP/>

¹⁴ UA Little Rock William H. Bowen School of Law Rural Practice Incubator Project, <https://ualr.edu/law/clinical-programs/rural-practice-incubator-project/>

- Loan Repayment Assistance Programs (LRAPs) forgive student debt if attorney commits to a certain period of qualifying work.
 - The federal Public Service Loan Forgiveness Program (PSLF) forgives the remaining balance on loans after 120 qualifying monthly payments for those employed in government or nonprofit organizations.¹⁵
 - Some law schools also have similar LRAPs for qualifying public interest work.
 - Schools should consider whether rural practice should qualify for LRAPs as well.
- What law schools can do more to expand the pipeline for rural practice.
 - Create more opportunities to students to engage in rural practice through clinics, externships, internships, and student groups.
 - Invite alumni to speak about rural practice and feature them in alumni magazines.
 - Offer courses on issues that relate to rural practice. Some schools like UC Davis Law and Michigan Law have started to offer courses on legal issues that affect rural America.
 - Offer courses similar to the training that incubators might provide.
- Use of technology
 - Tech solution to connect clients with:
 - Referrals and specialist lawyers who may be located in urban areas
 - Pro bono lawyers in urban areas who can meet additional low/moderate income clients' needs
 - The digital divide remains a challenge and why tech is not the panacea for the lawyer shortage problem.
- Pro bono work
 - Pro bono programs to create urban-rural partnerships
 - OneJustice's Justice Bus Project in California sets up one or two day mobile legal clinics in underserved rural areas.¹⁶ OneJustice has launched a variety of similar projects to bring legal services to rural areas in California.
 - Closing the Gap is a partnership between the Legal Aid Society of Northeastern New York (LASNNY), Legal Assistance of Western New York (LawNY), Volunteer Legal Services Project (VLSP) and Pro Bono Net to provide legal services in rural areas in northeastern and western upstate New York.¹⁷
 - Role of individual lawyers in providing legal services to rural areas through pro bono work
 - ABA Model Rule 6.1 Voluntary Pro Bono Publico Service
 - Rule provides that lawyers should aspire to provide at least 50 hours of pro bono legal services a year. The rule emphasizes

¹⁵ Public Service Loan Forgiveness (PSLF), <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>

¹⁶ One Justice Rural Justice Initiative, <https://onejustice.org/probonojustice/rural-justice-initiative/>

¹⁷ Closing the Gap About Us, <https://www.closingthegapny.org/about>

- providing serves to low-income clients or nonprofit organizations that serve low-income communities.
- As a group, rural attorneys outpace their urban and suburban counterparts in providing pro bono work. Part of that may be that many of their clients are low to moderate income clients who may not be able to access legal service otherwise.
- Legal aid services
 - Legal aid services face challenges in rural areas in recruitment and retention of attorneys.
 - Hub-and-spoke model of service delivery meaning organizations are based in urban centers or not “on the ground.” Prevents attorneys from being part of those rural communities they serve. Clients face challenges accessing the attorneys who don’t reside in their communities.
 - Requires more funding funneled specifically to those legal services organizations who serve rural areas, recognizing these built-in geographical hurdles.
 - For a comprehensive survey of various states examining the rural access to justice issue, the legal resources available, and the policy responses:
 - Pruitt, Lisa R. and Kool, Amanda L. and Sudeall, Lauren and Statz, Michele and Conway, Danielle M. and Haksgaard, Hannah, Legal Deserts: A Multi-State Perspective on Rural Access to Justice (June 18, 2018). 13 Harvard Law & Policy Review 15 (2018), Georgia State University College of Law, Legal Studies Research Paper No. 2019-01, Available at SSRN: <https://ssrn.com/abstract=3198411>