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One Crisis or Two Problems? Disentangling Rural Access to Justice and the Rural Attorney Shortage

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ONE CRISIS OR TWO PROBLEMS? DISENTANGLING RURAL ACCESS TO JUSTICE AND THE RURAL ATTORNEY SHORTAGE

Daria Fisher Page* & Brian R. Farrell**

Abstract: We have all seen the headlines: *No Lawyer for Miles* or *Legal Deserts Threaten Justice for All in Rural America*. There is a substantial body of literature, across disciplines and for diverse audiences, that looks at access to justice in rural communities and geographies. However, in both the popular and scholarly imaginations, the access to justice crisis has been largely conflated with the shortage of local attorneys in rural areas: When bar associations, lawyers, and legal academics define the problem as not enough lawyers, more lawyers become the obvious solution. Consequently, programs aimed at building pipelines from law schools to rural locations and incentivizing rural practice have proliferated in central states, including South Dakota, North Dakota, Montana, Illinois, Nebraska, and Arkansas. And while there may be good reasons to want more lawyers in rural communities, we argue that more lawyers may not, in fact, be the most effective or impactful intervention in the rural access to justice crisis.

This Article begins with the hypothesis that an attorney shortage and the justice gap are two distinct issues that have been uniquely conflated in the rural context and that when we begin to disentangle these problems, we better understand the complexity of each. As a starting point, we cannot measure what we cannot define. Advocates, scholars, and the legal profession lack shared definitions of both “access to justice” and “rural,” making measurement of rural access to justice, let alone comparisons across jurisdictions, nearly impossible. When we look at rural access to justice independently and without a bias or preference for lawyer-focused solutions, it seems less likely that more attorneys can effectively address the crisis for a multitude of reasons including rural community dynamics, information gaps, unclear demand, mismatched skills or expertise, cost, and potential conflicts. What we propose, instead, is a conceptualization of access to justice that is not centered around the lawyer, and we argue for a measurement of access to justice that does not rely on lawyers per capita or county (or anything) as its primary unit of measure. This Article, in turn, establishes the foundation for future work developing broader measures of access to justice infrastructure and proposing legal vulnerability as a concept that could help anticipate the needs of a community.

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INTRODUCTION

The exploration of rural access to justice that we undertake in this Article grew from our own conversations about access to justice in Iowa. These conversations were informed by our identities as a small-town, homegrown Iowan (Brian) and an East Coast transplant (Daria); our roles as a former county seat lawyer and member of the state Access to Justice

Commission¹ (Brian) and as director of a community lawyering clinic² (Daria); and our shared commitments to social justice and public service. We teach at the University of Iowa College of Law. The university is Iowa’s flagship public university and an R1 institution. The College of Law is the oldest law school west of the Mississippi River and one of the state’s two law schools. And Iowa is a predominantly rural state, both in the popular imagination (tall corn, *Field of Dreams*, Grant Wood, the Iowa State Fair) and by most “objective”³ metrics.

Each of Iowa’s ninety-nine counties has a courthouse, but more than seventy-five percent of the state’s attorneys are located in the eleven counties with populous, urban centers.⁴ As in many other Midwestern states, rural attorneys are retiring and younger attorneys are not buying

1. The American Bar Association (A.B.A.) describes access to justice commissions as “collaborative entities that bring together courts, the bar, civil legal aid providers, and other stakeholders in an effort to remove barriers to civil justice for low-income and disadvantaged people.” *Access to Justice Commissions*, A.B.A., https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/ [https://perma.cc/8QVM-ATGL]. The Iowa Supreme Court established its commission in 2016. In the Matter of Appointments to the Iowa Access to Justice Commission, (Iowa Sept. 22, 2016), https://www.iowacourts.gov/static/media/cms/Order_Appointing_Members_with_terms_F06ECFB75BA65.pdf [https://perma.cc/475P-AD9Z].

2. Community lawyering—also known as rebellious lawyering or democratic lawyering—aims to reverse “political, economic, and social subordination. Subordination manifests and perpetuates itself through practices that presume that some people matter and some don’t, that some people merit consulting and some don’t, that some people should shape the contours and rules of our society and some need not The goal is to build the power of ‘ordinary’—non-affluent, non-expert, non-privileged—people and communities to shape their circumstances and living conditions.” Ascanio Piomelli, *Sensibilities for Social Justice Lawyers*, 10 HASTINGS RACE & POVERTY L.J. 177, 183 (2013) (emphasis omitted).

3. Much of Iowa is still “rural.” In 2022, Iowa had just over 3.2 million residents and more than one-third lived in rural areas. *Annual Population Estimates and Rankings with Numeric and Percent Change: Vintage 2022*, IOWA DATA CTR., <https://www.iowadatabase.org/index.php/data-by-source/population-estimates/annual-population-estimates-vintage-2021> (last visited Sept. 10, 2023) (select “state” from menu for “geographic level”). The state is comprised of ninety-nine counties, the smallest of which, Adams County, has only 3,611 residents. *Id.* Iowa’s total area is 35.7 million acres, and 30.5 million acres—or approximately eighty-five percent of the land—is farmland. *See Iowa Data and Statistics*, FARMLAND INFO. CTR., <https://farmlandinfo.org/statistics/iowa-statistics/> [https://perma.cc/NKC7-3NJJ]; *2022 State Agriculture Overview: Iowa*, U.S. DEP’T AGRIC., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IOWA [https://perma.cc/SE6H-WJPS] (last updated Sept. 17, 2023). More than 200,000 individuals were employed on Iowa farms in 2017. William Edwards, *New Census of Agriculture Reveals Much About Iowa Farms*, AG DECISION MAKER 2 (Sept. 2019), <https://www.extension.iastate.edu/agdm/newsletters/nl2019/sep19.pdf> [https://perma.cc/6DTT-Z3Q7].

4. *See* IOWA CODE § 602.6105 (2015); Grant Rodgers, *Rural Areas Face Declining Lawyer Numbers*, DES MOINES REG. (Nov. 2, 2014, 9:45 AM), <https://www.desmoinesregister.com/story/news/investigations/2014/11/02/rural-areas-face-declining-lawyer-numbers/18362425/> [https://perma.cc/737S-F2W5].

their practices or replacing them, creating “legal deserts.”⁵ A popular conclusion is that as “fewer and fewer attorneys locate in rural communities, th[e] access to justice issue is becoming more evident.”⁶ Faced with this conclusion, state legislatures and bar associations have initiated programs to address the attorney shortage, from the groundbreaking Project Rural Practice and Recruitment Assistance Pilot Program in South Dakota to the Illinois Rural Practice Fellowship.⁷ Public law schools—like South Dakota’s Knudson School of Law—frequently play a critical role in these programs,⁸ often predicated on the understanding that rural attorney recruitment will enhance access to justice.⁹

5. See Laura Brown, *Rural Minnesota’s Legal Deserts*, MINN. LAW. (Oct. 27, 2021), <https://minnlawyer.com/2021/10/27/rural-minnesotas-legal-deserts/> [<https://perma.cc/JYQ4-EQGZ>]; Jack Dura, *North Dakota Takes Cue from South Dakota to Recruit Lawyers*, U.S. NEWS (Feb. 21, 2022, 1:01 AM), <https://www.usnews.com/news/best-states/north-dakota/articles/2022-02-21/north-dakota-takes-cue-from-south-dakota-to-recruit-lawyers> (last visited Sept. 10, 2023); Danielle Kaeding, *Rural Wisconsin Lacking Lawyers, Especially Up North*, WIS. PUB. RADIO (Aug. 23, 2016, 5:40 PM), <https://www.wpr.org/rural-wisconsin-lacking-lawyers-especially-north> [<https://perma.cc/XK7E-M9JD>]; Collin Schopp, *Here’s How the Illinois State Bar Association Works to Bring Lawyers to Illinois’ ‘Legal Deserts,’* WCBU (Sept. 29, 2022, 3:44 PM), <https://www.wcbu.org/local-news/2022-09-29/heres-how-the-illinois-state-bar-association-works-to-bring-lawyers-to-illinois-legal-deserts> [<https://perma.cc/E2QR-X95W>].

6. Amy Mayer, *Rural Lawyer Shortage Spurs Affordable Option: A La Carte Services*, IOWA PUB. RADIO (May 18, 2018, 5:00 AM CDT), <https://www.iowapublicradio.org/agriculture/2018-05-18/rural-lawyer-shortage-spurs-affordable-option-a-la-carte-services#stream/0> [<https://perma.cc/UD5T-N6L5>] (quoting Jennifer Zwagerman, Director of Career Development and Associate Director of the Agricultural Law Center at Drake University Law School); see also *Legal Deserts Threaten Justice for All in Rural America*, A.B.A. (Aug. 3, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/08/legal-deserts-threaten-justice/> (last visited Sept. 10, 2023).

7. See Dura, *supra* note 5; Schopp, *supra* note 5; see also Megan Hill, *State Level Responses to the Rural Attorney Shortage*, INDIANAPOLIS BAR ASS’N (Aug. 10, 2022), <https://www.indybar.org/?pg=GovernmentPracticeNews&blAction=showEntry&blogEntry=79790> [<https://perma.cc/PC9F-HKK6>]; *Rural Practice Incubator Project*, UNIV. ARK. LITTLE ROCK WILLIAM H. BOWEN SCH. L., <https://ualr.edu/law/clinical-programs/rural-practice-incubator-project/> [<https://perma.cc/FRH2-QAMW>]; *Rural Incubator Project for Lawyers*, MONT. LEGAL SERVS. ASS’N, <https://www.mtlsa.org/rural-incubator-project-for-lawyers/> [<https://perma.cc/7FPJ-F3N3>]; *Rural Law Opportunities Program*, UNIV. NEB. COLL. L., <https://law.unl.edu/RLOP/> [<https://perma.cc/FY9V-WKKD>].

8. Melissa L. Kidder, *The Future of Rural Lawyering: How Law Schools Should Embrace a General Practice Legal Clinic Model to Address the Current and Future Legal Needs of Rural and Smaller Communities*, 70 DRAKE L. REV. 83, 97–102 (2022); *A Champion for Rural Law*, UNIV. OF S.D. (Mar. 7, 2022), <https://www.usd.edu/academics/colleges-and-schools/knudson-school-of-law/south-dakotan-lawyer/a-champion-for-rural-law> [<https://perma.cc/533U-D5ZZ>].

9. See, e.g., Kathryn R.L. Rand, Joseph A. Wetch, Hon. Gail Hagerty & Tony J. Weiler, *Rural Justice in North Dakota*, 42 MITCHELL HAMLINE L. REV. 1027, 1028–30 (2016) (articulating the access to justice motivations for the North Dakota program); Patrick G. Goetzinger & Robert L. Morris, *Project Rural Practice: Its People & Its Purpose*, 59 S.D. L. REV. 444, 446 (2014) (explaining the roots of the South Dakota program as a response to a crisis of access to justice).

We began wrestling with this question: If Iowa has a rural access to justice crisis caused by a declining number of resident rural attorneys, what should the University of Iowa College of Law be doing to ameliorate the situation?¹⁰ But we shared a suspicion, occasionally voiced by academics, lawyers, and those outside the legal profession, that more lawyers might not necessarily equate to more justice—or even access to it.¹¹ Moreover, it seemed clear to us that the concept of “access to justice” had a different meaning depending on the other people in the conversation. If various stakeholders are not operating from a common understanding of “access to justice,” how could we reliably measure it? If we cannot measure access to justice, or can only do so using assumptions (e.g., X attorneys per capita = access to justice), how can we begin to fully understand if there is a problem, let alone begin to formulate effective solutions?

We recognized that measuring numbers of attorneys was an understandable and straightforward baseline for those working to understand and enhance access to justice. We also recognized that rural access to justice conversations, unlike those in urban areas, were uniquely shaped by the narrative of declining attorney numbers.¹² Yet, we remained troubled by the lack of understanding around the goal: How many attorneys per *anything*—capita, county, square mile—were needed to achieve “access to justice” or some positive impact? And we were equally troubled by the possibility that the relationship between attorney numbers and access to justice was based more on assumption than evidence, in part because the measures for access to justice are limited.

10. Scholars have noted the role of law schools in addressing rural needs, urging that “the burden of integrating rural people and rural issues into legal education should be borne in proportion to an institution’s clout and resources.” Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 146 (2018) [hereinafter Pruitt et al., *Legal Deserts*].

11. See, e.g., Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 50 (2019) [hereinafter Sandefur, *Access to What?*] (“[D]iagnosis of the problem proceeds from a preference for a single specific solution: more legal services.”); Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 450 (2016) [hereinafter Sandefur, *What We Know and Need to Know*] (noting “[e]ven when lawyers are free we see an interesting lack of recourse to them”); Emily A. Spieler, *The Paradox of Access to Civil Justice: The “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365, 365 (2013) (describing the “market failure between the growing supply of lawyers and the unmet need for legal services in these [small] communities”); Zachariah DeMeola & Michael Houlberg, *To Close the Justice Gap, We Must Look Beyond Lawyers*, UNIV. DENV. INST. ADVANCEMENT AM. LEGAL SYS. (Nov. 4, 2021), <https://iaals.du.edu/blog/close-justice-gap-we-must-look-beyond-lawyers> [https://perma.cc/BTX9-MB6E] (arguing that “[r]eliance on more lawyers—and more pro bono services—to address our country’s justice crisis is a practical impossibility under the circumstances”).

12. Goetzinger & Morris, *supra* note 9, at 446 (“With the decline in the number of lawyers on Main Street . . . rural resident’s access to lawyers, and by extension, access to justice, also declined.”).

We wanted to contribute to the important and well-intended discourse within legal education, state bar associations, and access to justice efforts by articulating this thesis: While it is reasonable to believe there is *some* relationship between the presence of attorneys and access to justice, perhaps these two factors do not perfectly correspond. In the rural context, this discourse would benefit by recognizing that what we often see as one crisis is, in fact, two related but distinct problems: (1) There is a decline in rural attorneys, a real phenomenon with real implications for communities and the profession, which may have *some degree* of impact on access to justice;¹³ and (2) In rural communities, there is a legitimate access to justice concern for which the decline in attorneys might be a cause, and an increase in attorneys might be *one of several* potential interventions.¹⁴ Discussions about rural access frequently rely on the presence of one particular actor, the attorney, as the default metric.¹⁵ Thus, data related to one of these problems (rural attorney shortage) was typically being relied upon as the primary or exclusive measure for the other (rural access to justice). By using attorney numbers to measure access to justice, it followed that attorneys were also the default intervention to increase access to justice.

This exploration of rural access to justice—which admittedly does not lead to any concrete solutions—asks important questions to help us think more systematically about every facet of rural access to justice and to think critically about the need for, and role of, attorneys in rural communities. Parts I, II, and III interrogate the definitions of “crisis,” “rural,” and “access to justice” respectively. In each part, we review existing scholarship and consider the challenges and implications related to each definition. In Part IV, we examine access to justice measurements, highlighting the limits of existing measures and the problems of conflating

13. See *infra* Part I.

14. AM. BAR ASS’N HOUSE DELEGATES, RESOLUTION 10B (2012) (emphasis added) (on file with authors) (capturing the related-but-distinct nature of these issues by urging action to “address the decline in the number of lawyers practicing in rural areas *and* to address access to justice issues for residents in rural America”).

15. See, e.g., Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, AM. BAR ASS’N, HUM. RTS. MAG. (July 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america/ [<https://perma.cc/JJ2N-ERC9>] (framing rural access to justice crisis around lack of attorneys); William Morris, *Does Iowa Have Enough Lawyers? American Bar Association President Says It Could Use More*, DES MOINES REG. (Apr. 5, 2023, 1:32 PM CT), <https://www.desmoinesregister.com/story/news/crime-and-courts/2023/04/05/american-bar-association-president-deborah-enix-ross-interview-tort-reform-indigent-defense-iowa/70075847007/> [<https://perma.cc/8DBD-3FQL>] (using lawyers per capita in state compared to national average as evidence of need); Rand et al., *supra* note 9, at 1027–28 (presenting lawyers per capita as evidence of crisis).

attorney to justice with access to attorneys, particularly in the rural context. Part V urges a reframing of the rural access to justice conversation around broader definition and measurement of access to justice and the possibility that the resident rural attorney is but one among multiple potential access to justice interventions.

I. DEFINING A CRISIS

Over nearly the last two decades, an alarm has been raised about the shortage of attorneys in rural America.¹⁶ The choice of passive voice is purposeful, as we should more closely examine *who* is raising the alarm, *how*, and *why*. Nationally, statistics show that twenty percent of the United States population lives in rural areas, yet only two percent of attorneys practice in rural America.¹⁷ Given the raw numbers, it is no surprise that national media, like *The New York Times*, have proclaimed, “[r]ural Americans are increasingly without lawyers.”¹⁸

This recent decline in rural attorneys has coincided with heightened awareness of the “justice gap,” defined by Legal Services Corporation as “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.”¹⁹ These two concepts have, understandably, become linked, with media describing a growing “access to justice issue” as “fewer and fewer attorneys locate in rural communities.”²⁰ One legal academic stated unequivocally that “[w]e have an access to justice crisis in rural America. A disproportionate percentage of people living in poverty live in rural communities in the United States. At the same time, there are very few attorneys providing legal services in rural communities, and their numbers are dwindling.”²¹ Another concluded that “the simple presence of rural private practice lawyers goes a long way to provide [rural residents] access to justice.”²² And state court judges have expressed similar sentiments, with Chief Justice David E. Gilbertson of the South Dakota Supreme Court analogizing that “[a]

16. Kidder, *supra* note 8, at 84–85, 88.

17. Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers Pay*, N.Y. TIMES (Apr. 8, 2013), <https://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html> (last visited Aug. 6, 2023).

18. *Id.*

19. LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7 (2022), <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtj1gi0emp3myz1> [<https://perma.cc/HS3R-JCT8>].

20. Mayer, *supra* note 6 (quoting Jennifer Zwagerman, Director of Career Development and Associate Director of the Agricultural Law Center at Drake University Law School).

21. Runge, *supra* note 15.

22. Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 ME. L. REV. 209, 215 (2019).

hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future.”²³

On its face, there seems to be little doubt about the nature and scope of the rural access to justice crisis and its cause: Rural communities cannot access justice largely because they lack local attorneys.²⁴ In fact, from the collective imagination to policymaking decisions, these ideas have become interchangeable: “Access to justice” as shorthand for lack of local attorneys and “attorney shortage” in rural areas as a synonym for the access to justice crisis. This conflation appears to be a unique aspect of *rural* access to justice discourse, where access to justice has been so directly and singularly tied to the presence and numbers of resident attorneys in a community.²⁵ It is a common conclusion that the decline in attorneys is the cause of the rural justice gap, and reversing this tide is the best—or only—solution.²⁶

However, the conflation of these issues presents problems, in part because the “crisis” has been primarily diagnosed by members of the legal profession who, because of their training and perspectives, naturally place themselves at the center of the identification and resolution of legal problems.²⁷ It is lawyers, judges, bar representatives, and law professors labeling the shortage of rural attorneys as a “crisis” with dire access to justice implications; those raising the alarm typically view the problem from their position within the legal profession and are generally invested in maintaining and growing the legal profession.²⁸ In particular, the

23. Bronner, *supra* note 17.

24. Kidder, *supra* note 8, at 92 (“[A] shortage of lawyers presents a clear access to justice issue for those in rural communities.”).

25. *Id.*

26. *Id.*; Kristi Eaton, *Rural Areas Struggle with Lack of Lawyers*, MINN. PUB. RADIO (Dec. 12, 2011, 1:06 PM), <https://www.mprnews.org/story/2011/12/12/rural-lawyers> [<https://perma.cc/L5P2-A9Q3>]; Grant Gerlock, *Lawyers Needed to Work in Rural Areas*, IOWA PUB. RADIO (Dec. 16, 2016, 8:40 AM CST), <https://www.iowapublicradio.org/agriculture/2016-12-16/lawyers-needed-to-work-in-rural-areas> [<https://perma.cc/8ENR-RFYZ>].

27. Eaton, *supra* note 26 (“‘The numbers speak volumes about who we have -or don’t have -in the rural communities,’ said Patrick Goetzinger, president of the South Dakota State Bar Association. ‘We’re going to have some problems in delivering justice in these rural communities if we don’t do anything proactively.’”); see also Gerlock, *supra* note 26 (“‘You don’t have access to justice because you don’t have access to lawyers.’” (quoting Lyle Koenig, co-chair of the Rural Practice Initiative at the Nebraska Bar Association)).

28. North Carolina State Bd. Dental Exam’rs v. FTC, 574 U.S. 494, 496 (2015) (“When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest.” (citation omitted)). In *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), the Court, in finding that the Virginia State Bar’s activities were not exempt from the Sherman Act, explained that the State Bar, controlled by lawyers participating in the market, had “joined in what is essentially a private anticompetitive activity” for “the benefit of its members.” 421 U.S. at 791–92.

narrative and responses have been shaped by the economic and succession planning concerns of current rural attorneys.²⁹ It is not primarily rural teachers, doctors, social workers, or residents themselves who have proclaimed a “crisis” related to a lack of attorneys. In fact, if there are significant unmet legal needs, communities themselves are not calling for more lawyers.³⁰

This is not to say that the equation of a shortage of attorneys with an access to justice crisis is completely unfounded or nefarious. As the United States Supreme Court has noted, “established ethical standards may blend with private anticompetitive motives in a way difficult for even market participants to discern. Dual allegiances are not always apparent to an actor.”³¹ That practicing lawyers and others who have made the investment in obtaining a Juris Doctor would advocate for more lawyers is not surprising and may very well prove to be a potential solution. However, the lawyer’s monopoly³²—which is reinforced by calling for more lawyers, and only lawyers, as the solution to the access to justice crisis—is itself a root cause of the access to justice crisis. Other scholars have decried the “tremendous negative effect” that the lawyer’s monopoly has had on access to justice in the United States.³³ These “dual allegiances”³⁴ have led to eighty-five percent of Americans being priced

29. The Illinois State Bar Association’s Committee on the Rural Practice Initiative was presented with “complaints from members in rural areas, including those who wanted to sell their practices and retire but could not find lawyers interested in moving to their communities and buying the practices.” Dan Kittay, *Success on the Horizon? New Efforts to Increase Rural Access to Justice*, A.B.A. BAR LEADER (May 1, 2022), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2021_22/may-june/success-on-the-horizon-new-efforts-to-increase-rural-access-to-justice/ [<https://perma.cc/DQC6-CUFD>]. Some bar association rural recruitment efforts are driven primarily by succession planning concerns among older solo practitioners. See Pruitt et al., *Legal Deserts*, *supra* note 10, at 71 (describing Georgia’s Succession Planning Pilot Program, which launched in 2014).

30. See, e.g., Rodgers, *supra* note 4 (quoting Philip Garland, Chair of the Iowa State Bar Association’s Rural Practice Committee, as saying, “[i]n all honesty, I’m not hearing any citizens complaining about the lack of lawyers in their communities”).

31. *Bd. of Dental Exam’rs*, 574 U.S. at 505.

32. See Benjamin H. Barton, *The Lawyer’s Monopoly—What Goes and What Stays*, 82 FORDHAM L. REV. 3067, 3080 (2014) (“State supreme courts control lawyer regulation in all fifty states. Many state supreme courts have claimed an exclusive ‘inherent authority’ to regulate lawyers, barring legislative encroachment. . . . State supreme court inherent authority over lawyer regulation has been predictably advantageous to lawyers. Courts have used their inherent authority to create unified bars in multiple states . . . , to prosecute the unauthorized practice of law, to adopt the American Bar Association’s (ABA) Rules of Professional Conduct, and to require bar passage and attendance at an ABA-accredited law school.” (footnotes omitted)).

33. Jessica K. Steinberg, Anna E. Carpenter, Colleen F. Shanahan & Alyx Mark, *Judges and the Deregulation of the Lawyer’s Monopoly*, 89 FORDHAM L. REV. 1315, 1319 (2021).

34. *Bd. Dental Exam’rs*, 574 U.S. at 495.

out of civil legal services,³⁵ a glut of lawyers serving a handful of large multinational corporations,³⁶ and a deep “mismatch between people’s legal needs and their ability to access services.”³⁷ Perhaps some skepticism is warranted if those who played a key role in creating a problem then propose that they are also the sole solution to the problem.

Legal professionals do hold critical information relevant to understanding and addressing the access to justice problem. Local lawyers know the number of clients they have to turn away and the nature of their legal issues; courts know how many litigants proceed pro se or default; bar associations know if the number of attorneys in an area is increasing or decreasing; law schools know where their graduates seek employment. But there is a risk when this information, from these sources, is exclusively used to frame the problem or inform the response, in part because the information is woefully incomplete, and in part because the sources are both self-interested and self-regulated.

As a matter of general policymaking, when

a new problem definition gains significant support, it shapes the ensuing action. It legitimates some solutions rather than others, invites participation by some political actors and devalues the involvement of others, focuses attention on some indicators of success and consigns others to the scrapheap of the irrelevant.³⁸

The definition of a problem determines the realm of solutions. Legal professionals, in their myopic approach, may conclude that an access to justice crisis in rural communities must be wholly the result of decreasing numbers of attorneys in these communities. The predetermined solution is then more attorneys, which *may* benefit residents with unmet legal needs, but will *certainly* benefit law schools, bar associations, and lawyers generally.

II. DEFINING RURAL

An initial and somewhat basic hurdle to understanding the rural access to justice problem is determining what we mean by rural. An area could be defined as rural because of its economic activity or based on its population density. A community could be defined as rural because of shared culture and relationships. There is no uniformly applied definition

35. Steinberg et al., *supra* note 33, at 1315.

36. *Id.* at 1319.

37. *Id.* at 1321.

38. Janet A. Weiss, *The Powers of Problem Definition: The Case of Government Paperwork*, 22 POL’Y SCIS. 97, 98 (1989).

of “rural” in the United States.³⁹ Perhaps the most compelling evidence of the challenges associated with identifying rurality is that rural is frequently defined “as the foil to urban,”⁴⁰ meaning that which does not meet the definition of urban must be rural. And even once rurality is defined, it is equally complicated to determine where it starts and stops. Is it defined by legal borders such as the county line? Institutional limits like school district boundaries? Or more ephemeral boundaries defined by shared meanings and beliefs, as with the members of a congregation?

A. *Who is Rural?*

Rural communities may be defined not by geography or density, but by shared history, experiences, rituals, and vernacular: “An object, a practice, a custom, an experience, a person, etc., might be imagined as ‘rural’ even if located in a spatial context considered to be urban.”⁴¹ Community, as a social field, is defined not “[by] the space (or place) itself, but on the social interaction that gives this space meaning.”⁴² Alternatively, sociologists view community as a social system, defined by the “relatively lasting arrangements among concrete institutional entities such as education, the church, local government, the economy, and the polity.”⁴³ Defining *who* is rural is no less complex than *where* is rural. Can an individual be rural by choice or only by heritage?⁴⁴ Some scholars believe these groups can

39. “Researchers and policy officials employ many definitions to distinguish rural from urban areas, which often leads to unnecessary confusion However, the existence of multiple rural definitions reflects the reality that rural and urban are multidimensional concepts.” *What Is Rural?*, USDA ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/what-is-rural/> [https://perma.cc/99PW-DM5T] (last updated Oct. 23, 2019).

40. Lisa R. Pruitt, *The Rural Lawscape: Space Tames Law Tames Space*, in *THE EXPANDING SPACES OF LAW: A TIMELY LEGAL GEOGRAPHY* 190, 191 (Irus Braverman, Nicholas Blomley, David Delaney & Alexandre Kedar eds., 2014) [hereinafter Pruitt, *The Rural Lawscape*].

41. MICHAEL WOODS & JESSE HELEY, *CONCEPTUALISATION OF RURAL-URBAN RELATIONS AND SYNERGIES*, ROBUST 6 (2017), <https://rural-urban.eu/sites/default/files/D1-1%20Conceptualisation%20of%20Rural-Urban%20Relations%20and%20Synergies.pdf> [https://perma.cc/9CL7-9ZGY].

42. DAVID L. BROWN & KAI A. SCHAFFT, *RURAL PEOPLE AND COMMUNITIES IN THE 21ST CENTURY: RESILIENCE & TRANSFORMATION* 70 (2d ed. 2019).

43. *Id.* at 75.

44. In the Northeast, the terms “woodchuck” may be used to refer to someone who was born in rural New York or Vermont, while a “flatlander” is a transplant, generally someone who relocates from the city to more rural areas. See Nina Keck, *Where Do the Terms ‘Woodchuck’ and ‘Flatlander’ Come From?*, VT. PUB. (Dec. 17, 2020, 6:41 PM EST), <https://www.vermontpublic.org/programs/2020-12-17/where-do-the-terms-woodchuck-and-flatlander-come-from> [https://perma.cc/E277-BUHZ]. It is a derogatory term to label an outsider, who does not have the requisite skill and work ethic to survive or succeed in their new home. Cf. *id.* (showing a cartoon in which woodchucks “[k]eep on plowing with hot coffee served in the field”

have shared goals: “Those who are rural by choice versus rural by heritage sometimes conflict, but they can come together through their commitment to place.”⁴⁵ It is less clear whether and what is necessary for an individual and/or their family to transcend one category to the next. In other words, if rurality is a result of heritage, how many generations, what sort of investment, and what personal changes must occur to become truly rural?

B. *Where is Rural?*

The Census Bureau, the Office of Budget Management (OMB), Department of Agriculture, Department of Health and Human Services, Department of Veterans Affairs, and other state and federal agencies all use differing definitions of urban and rural for developing policies and for allocating resources.⁴⁶ Additionally, there may be several definitions at

while flatlanders “[c]elebrate the successful changing of the air filter in their Volvo with some moderately priced prosecco”). It is an open question as to whether the passage of time and acquisition of skills and local knowledge can convert a person into a “local,” or in the case of Vermont, a “woodchuck.” *Cf. id.* In Iowa, you can buy bumper stickers to label yourself a “native” (meaning you were born here), a “transplant” (meaning you chose to be here), or a “captive” (meaning you are being held here against your will). *See, e.g.,* Eric Johnson, *Visual Design*, ERIC JOHNSON, <https://www.ericdjohnson.net/work-ive-done/visual-design/> [https://perma.cc/YH8U-E7ZN] (discussing Iowa’s famous “Iowa Native” sticker and describing the author’s “transplant” sticker he made for his wife, who is “from Illinois but considers herself an Iowan now”); RAYGUNshirts, FACEBOOK (Nov. 15, 2013), <https://www.facebook.com/raygunshirts/photos/a.10150165331455441/10153521934415441/?type=3> (last visited Sept. 17, 2023) (noting that the “native” stickers are “for someone who is from Iowa” and that the “captive” stickers are those who are “unable to escape”). Notably, these conversations and terms, essentially about who was somewhere first and who is the interloper, completely leave out Native Americans, the only people who can accurately be described as “native,” and ignore the fact that all other Americans are interlopers.

45. CORNELIA BUTLER FLORA, JAN L. FLORA & STEPHEN P. GASTEYER, *RURAL COMMUNITIES: LEGACY AND CHANGE* 3 (5th ed. 2016).

46. *See, e.g.,* Michael Ratcliffe, Charlynn Burd, Kelly Holder & Alison Fields, *Defining Rural at the U.S. Census Bureau*, U.S. CENSUS BUREAU (Dec. 2016), https://www2.census.gov/geo/pdfs/reference/ua/Defining_Rural.pdf [https://perma.cc/BHQ7-4A8P] [hereinafter *Defining Rural at the U.S. Census Bureau*] (describing the Census Bureau definition of “rural”); *The Federal Definition of ‘Rural’ – Times 15*, WASH. POST (June 8, 2013, 7:35 PM EDT), https://www.washingtonpost.com/politics/the-federal-definition-of-rural--times-15/2013/06/08/a39e46a8-cd4a-11e2-ac03-178510c9cc0a_story.html?utm_term=.4bc95b118998 (last visited July 15, 2023) (summarizing fifteen different federal definitions); Carolyn McAndrews, Kirsten Beyer, Clare E. Guse & Peter Layde, *Are Rural Places Less Safe for Motorists? Definitions of Urban and Rural to Understand Road Safety Disparities*, 23 *INJ. PREVENTION* 412, 412 (2017) (emphasizing “there is no agreed-on definition of rurality”); *What is Rural?*, USDA NAT’L AGRIC. LIBR., <https://www.nal.usda.gov/ric/what-is-rural> [https://perma.cc/99PW-DM5T] (noting different federal definitions are used for different purposes).

play within a single agency, and the methodology used by the agency to classify urban and rural areas may change over time.⁴⁷

The geographic unit to which the definition is applied adds another complication. In some cases, such as OMB, these definitions are applied to a county as a binary determination.⁴⁸ It is important to bear in mind that the size and nature of these geographic and administrative units can vary widely. For example, Clark County, Nevada, covers approximately 7,892 square miles and had a population of 2.3 million people as of 2022.⁴⁹ OMB designates Clark County as a “metro” county.⁵⁰ By comparison, Clinton County, Iowa, covers approximately 695 square miles and had a population of 46,460 as of 2020.⁵¹ OMB designates Clinton County as a “nonmetro” county.⁵² Over ninety-eight percent of the population of Clark County lives in the 453 square miles in and around Las Vegas, while approximately seventy percent of the population of Clinton County lives in the twenty square miles comprising its county seat, Clinton.⁵³ The population density in the remaining 7,439 square miles of “metro” Clark County is less than four people per square mile, five times fewer than the twenty people per square mile in the remaining 675 square miles of “nonmetro” Clinton County.⁵⁴

47. See Surabhi Balachander, *Why Study the Rural West?*, BILL LANE CTR. AM. W., STAN. SCH. OF HUMANS. & SCIS., <https://west.stanford.edu/research/rural-west-initiative/why-study-rural-west> [<https://perma.cc/4XUU-RKRY>].

48. See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB BULL. NO. 23-01, REVISED DELINEATIONS OF METROPOLITAN STATISTICAL AREAS, MICROPOLITAN STATISTICAL AREAS, AND COMBINED STATISTICAL AREAS, AND GUIDANCE ON USES OF THE DELINEATIONS OF THESE AREAS, app. at 3 (2023) [hereinafter OMB BULL. NO. 23-01], <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf> [<https://perma.cc/492U-WHAJ>] (stating the geographic components of statistical areas are counties and equivalent entities); *Defining Rural Population*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.hhs.gov/guidance/document/defining-rural-population> [<https://perma.cc/DSN8-94ZM>].

49. *Urban and Rural: County-Level 2020 Census Urban and Rural Information for the U.S., Puerto Rico, and Island Areas Sorted by State and County FIPS Codes*, U.S. CENSUS BUREAU [hereinafter *County-Level 2020 Census*], <https://www.census.gov/programs-surveys/geography/guidance/geographic-areas/urban-rural.html> [<https://perma.cc/L8ML-TLNK>].

50. OMB BULL. NO. 23-01, *supra* note 48, app. at 59. For a discussion of the OMB classification criteria, see generally *id.* at 2–3 (stating the geographic components of statistical areas are counties and equivalent entities).

51. *County-Level 2020 Census*, *supra* note 49.

52. *Iowa: Rural Definitions Based on Office of Management and Budget (OMB) Metro Counties*, USDA, https://www.ers.usda.gov/webdocs/DataFiles/53180/25570_IA.pdf?v=8668.5 [<https://perma.cc/2F5X-WGQK>].

53. *County-Level 2020 Census*, *supra* note 49.

54. *Id.*

A wealth of writing preceding this Article has grappled with how to define rural, but little consensus has emerged.⁵⁵ In a 2015 study of the shortage of attorneys in rural Arkansas, the county was used as the unit of analysis,⁵⁶ and rural was defined as a county with fewer than 15,000 residents.⁵⁷ That same year, a study of rural access to justice in Montana used the Index of Relative Rurality (IRR), developed by Brigitte Waldorf in 2007.⁵⁸ The IRR uses counties as the unit of analysis, but asks, “What is a county’s degree of rurality?” rather than “Is a county rural or urban?”⁵⁹ The IRR uses four characteristics—population size, population density, percentage of urban residents, and distance to the nearest metropolitan area—to locate a county on a scale of zero (least rural) to one (most rural).⁶⁰ In the 2010 IRR dataset, the most urban place was Manhattan (New York County, New York) with a 0.04, and the most rural location was the Northwest Arctic Borough in Alaska with a 0.89.⁶¹ For comparison, Clark County, Nevada, discussed above, scored a 0.39, identifying it as significantly more urban than Clinton County, Iowa with a 0.49.⁶²

A 2016 article on the Rural Justice Program in North Dakota quoted Judge Gail Hagerty who “pitched” the Program as noting that,

55. See, e.g., *Defining Rural at the U.S. Census Bureau*, *supra* note 46 (explaining the history and meaning of rural in the Census Bureau); *The Federal Definition of ‘Rural’ – Times 15*, *supra* note 46 (summarizing the myriad definitions of “rural”); McAndrews et al., *supra* note 46 (comparing definitions and purposes); *What is Rural?*, *supra* note 46 (emphasizing there is no shared meaning of “rural”); Balachander, *supra* note 47 (highlighting the varied purposes of different definitions); L. Gary Hart, Eric H. Larson & Denise M. Lishner, *Rural Definitions for Health Policy and Research*, 95 AM. J. PUB. HEALTH 1149, 1150 (2005) (discussing rural taxonomies).

56. Lisa R. Pruitt, J. Cliff McKinney, II & Bart Calhoun, *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 UALR L. REV. 573, 582–84 (2015) [hereinafter *Justice in the Hinterlands*].

57. *Id.* at 586–88.

58. Hillary A. Wandler, *Spreading Justice to Rural Montana: Rurality’s Impacts on Supply and Demand for Legal Services in Montana*, 76 MONT. L. REV. 225, 232–33 (2015).

59. Brigitte S. Waldorf, *A Continuous Multi-Dimensional Measure of Rurality: Moving Beyond Threshold Measures 2* (2006) (unpublished conference paper) (on file with the Agricultural and Applied Economics Association), <https://ageconsearch.umn.edu/record/21383> (last visited Sept. 17, 2023).

60. *Id.* The IRR was revised and updated in 2015. BRIGITTE WALDORF & AYOUNG KIM, *DEFINING AND MEASURING RURALITY IN THE US: FROM TYPOLOGIES TO CONTINUOUS INDICES* 10–11 (2015), https://sites.nationalacademies.org/cs/groups/dbassesite/documents/webpage/dbasse_168031.pdf [<https://perma.cc/WTW6-82NE>].

61. Brigitte Waldorf & Ayoun Kim, *The Index of Relative Rurality (IRR): US County Data for 2000 and 2010*, PURDUE UNIV. RSCH. REPOSITORY (Apr. 18, 2018), <https://purr.purdue.edu/publications/2960/about?v=1> (last visited Sept. 17, 2023) (select “Download Bundle”).

62. *Id.*

“communities of 15,000 or fewer residents” are rural.⁶³ An ambitious, comparative study of rural access to justice in California, Georgia, Maine, Minnesota, Wisconsin, and South Dakota published in 2018 acknowledges the shortcomings of its analysis because of the “multiple definitions of ‘rural’ [that] are employed across the various and specific states and data” surveyed.⁶⁴

A 2018 study of attorneys in rural California used Medical Service Study Areas (MSSA), as defined by the California Office of Statewide Health Planning and Development (OSHPD).⁶⁵ An MSSA is the geographic unit used by OSHPD for needs assessments, policy planning, and resource allocation, with a focus on primary care services.⁶⁶ Each MSSA is composed of one or more complete census tracts, but does not cross county lines.⁶⁷ MSSAs typically align with “communities” in that they are defined by shared geography, culture, and socioeconomic status. In addition, all population centers within an MSSA must be within thirty minutes travel time to the largest population center.⁶⁸ When these criteria are met, population (and population density) are used to determine whether an MSSA is designated urban, rural, or frontier. Rural MSSAs have a population density of less than 250 persons per square mile and no population center can be larger than 50,000 persons.⁶⁹

A 2019 study of the challenges of rural practice in New York targeted all attorneys with “listed rural-county addresses in the attorney registration list kept by the New York State Office of Court Administration.”⁷⁰ However, the study does not explain how rural counties were defined, and the Office of Court Administration does not have proprietary definitions of urban and rural counties.⁷¹

63. Rand et al., *supra* note 9, at 1030.

64. Pruitt et al., *Legal Deserts*, *supra* note 10, at 24, 27.

65. Lisa R. Pruitt & Rebecca H. Williams, *Rural Justice*, 41 L.A. LAW. 26, 26, 29 (2018).

66. See LEE D. KEMPER, ON THE FRONTIER: MEDI-CAL BRINGS MANAGED CARE TO CALIFORNIA’S RURAL COUNTIES, CAL. HEALTHCARE FOUND. 7–9 (2015), <https://www.chcf.org/wp-content/uploads/2017/12/PDF-FrontierMediCalMgdCareRural.pdf> [<https://perma.cc/FT6M-LXT8>].

67. Hovik Khosrovian, *Medical Service Study Areas (MSSA) Guidelines Project*, OFF. STATEWIDE HEALTH PLAN. & DEV. 4 (June 2020), <https://hcai.ca.gov/wp-content/uploads/2020/12/Attachment-W-Agenda-Item-16-Medical-Services-Study-Area-MSSA-Guidelines-Project-ADA-Accessible.pdf> [<https://perma.cc/NPQ9-M5EV>].

68. *Id.*

69. *Id.* A rural MSSA occupies the middle ground between an urban MSSA and a frontier MSSA, which is extremely rural and has a population density of less than eleven persons per square mile.

70. TAIER PERLMAN, RURAL LAW PRACTICE IN NEW YORK STATE, ALBANY L. SCH. GOV’T LAW CTR., 1 (2019), <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative/Documents/rural-law-practice-in-new-york-state.pdf> [<https://perma.cc/WD2D-9Z7Q>].

71. *Id.*

Similarly, Canadian scholars and practitioners have been unable to reach consensus on how to identify rural communities. Studies of access to justice in Alberta⁷² and Ontario,⁷³ completed in 2011 and 2015 respectively, make important distinctions between rural communities and remote communities. The 2015 study's authors advocate for a "multifaceted approach" to defining rurality that includes: (1) distance and density; (2) demography; and (3) social and cultural characteristics.⁷⁴ Yet a 2014 study of the geography of access to justice in Canada identified lawyers as practicing in rural communities based on their postal code,⁷⁵ relying on Canada Post's designation of urban or rural.⁷⁶

There is consensus among scholars across fields that rurality is not a monolith: "[I]f you've seen one rural place, you've seen one rural place."⁷⁷ At the same time, though, scholars are constantly struggling to identify shared characteristics of rural communities. Some common threads have emerged. Rural communities, because they generally have smaller populations and less population density, are commonly defined by a high density of acquaintanceship.⁷⁸ Historically, these communities also tend to be more homogenous and less diverse.⁷⁹ These factors, in turn,

72. MARY STRATTON, CAN. F. ON CIV. JUST., ALBERTA LEGAL SERVICES MAPPING PROJECT: AN OVERVIEW OF FINDINGS FROM THE ELEVEN JUDICIAL DISTRICTS (2011), <http://www.cfcj-fcjc.org/sites/default/files/docs/2011/mapping-final-en.pdf> [<https://perma.cc/83P6-U9RE>].

73. NICOLE AYLWIN & LISA MOORE, CAN. F. ON CIV. JUST., RURAL & REMOTE ACCESS TO JUSTICE: A LITERATURE REVIEW (2015), <https://cfcj-fcjc.org/wp-content/uploads/Rural-Remote-Lit-Review-N-Aylwin-and-L-Moore.pdf> [<https://perma.cc/E22Q-SRH6>].

74. *Id.* at 6–15. The approach to defining rurality proposed in the Canadian studies is theoretically rich but nearly impossible to use. The network of questions to be addressed in this assessment of rurality include: How far are rural communities from larger urban centers? How many people per square kilometer reside in a community? How does the demographic profile of a community (average age, income levels, education levels, language profiles, etc.) shape the population and their needs? (average age, income levels, education levels, language profiles, etc.). How does the social organization of a community influence the specification of a population? How do the value systems and beliefs influence the specification of a population?

75. Jamie Baxter & Albert Yoon, *No Lawyer for a Hundred Miles? Mapping the New Geography of Access of Justice in Canada*, 52 OSGOODE HALL L.J. 9, 47 (2014).

76. See generally CAN. POST, *Addressing Guidelines*, 41–43 (last updated June 14, 2021) <https://www.canadapost-postescanada.ca/cpc/doc/en/support/addressing-guidelines.pdf> [<https://perma.cc/7SCX-NHC8>]. A Canadian postal code consists of six alphabetic (A) and numerical (N) characters, formatted as "ANA NAN." *Id.* at 40. Canada Post codes all rural areas by making the first N a zero. *Id.* at 43. Urban areas will have any number from one to nine in that same place. *Id.*

77. Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 475 (2014).

78. Cf. William R. Freudenberg, *The Density of Acquaintanceship: An Overlooked Variable in Community Research?*, 92 AM. J. SOCIO. 27, 27–28 (1986) (noting that residents of rural areas tend to know a greater proportion of their neighbors than do persons in urban areas).

79. DW Rowlands & Hannah Love, *Mapping Rural America's Diversity and Demographic Change*, BROOKINGS (Sept. 28, 2021), <https://www.brookings.edu/articles/mapping-rural-americas-diversity-and-demographic-change/> [<https://perma.cc/AZS9-YWJZ>].

lead to communities in which residents have a strong attachment to place, shared values, and a commitment to tradition.⁸⁰ Rural areas also tend to lack economic diversity and, consequently, have become associated with “cheap labor and bad jobs.”⁸¹ Rural areas are associated with substandard infrastructure and a lack of human capital due to “brain drain.”⁸² Whether these characterizations are accurate, and what the nature of the relationship between these factors is, are ongoing subjects of scholarly debate across several fields from sociology to political science. It is nearly indisputable, though, that the “*hallmark of rural living [is] that residents must travel greater distances, at greater cost, to access all sorts of services and institutions.*”⁸³ It is this commonality that underlies the need to map rural access to the legal system.

III. DEFINING ACCESS TO JUSTICE

“Access to justice” is a phrase used frequently by scholars, journalists, and politicians, but without precision and often without a shared meaning. It is perhaps foreseeable, then, that many lawyers, policymakers, and legal educators reflexively equate “access to justice” with the presence of a lawyer, particularly in rural communities where attorney numbers are already low. The lack of a common definition allows various actors to adopt an understanding of the concept that is—not surprisingly—shaped by their perspectives or interests. A narrow understanding might also result in failure to consider the availability or efficacy of some potential interventions. This Part explores the challenges in defining access to justice and evaluates definitions proposed by scholars.

A. _____ to Justice and Access to _____

Rebecca Sandefur, one of the leading scholars studying access to justice through an empirical approach, aptly frames the definitional question as, “Access to what?”⁸⁴ The other question, though, is, “What is access?” We understand “access,” generally, as “permission, liberty, or ability to enter . . . a place or to approach or communicate with a person.”⁸⁵ Another definition, beyond just entering or approaching,

80. See Pruitt & Showman, *supra* note 77, at 481–82.

81. *Id.* at 483.

82. See generally PATRICK J. CARR & MARIA J. KEFALAS, HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA (2009).

83. Pruitt & Showman, *supra* note 77, at 486 (emphasis added).

84. Sandefur, *Access to What?*, *supra* note 11, at 49–50.

85. *Access*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/access> [<https://perma.cc/6M84-MDDB>] (last updated Sept. 14, 2023).

focuses on agency: “[T]he freedom or ability to obtain or make use of something.”⁸⁶ In the former definition, access is given, bequeathed by those with power; in the latter, access is intrinsic and requires the exercise of choice.

Scholarship that examines access to healthcare differentiates between potential and realized access, and spatial and social access.⁸⁷ Potential access focuses on the probability of entry into the system (health or legal, in this case), but does not ensure that the needed services will be used.⁸⁸ Realized access is accomplished when services are actually used. Spatial access focuses on proximity: It identifies geographic and temporal variables as either an obstacle or an advantage to system entry.⁸⁹ Social (or aspatial) access encompasses factors beyond time and distance, including social, cultural, economic, and demographic factors, as well as “personal idiosyncrasies and individual perceptions.”⁹⁰

The most basic and traditional definition of access to justice focuses on “lawyers and courtrooms.”⁹¹ Under this early definition, conceived nearly 200 years ago, access to justice is synonymous with “[a] right of access to judicial protection” and centers “an individual’s *formal* right to litigate or defend a claim.”⁹² Empirical evaluations of access to justice operating under this definition consider “an individual’s ability to secure a lawyer and resolve in court issues already framed in legal terms.”⁹³ In the 1960s, the definition of access to justice narrowed to focus on the ability of individuals living in poverty to obtain legal representation and became the foundation of the legal aid movement.⁹⁴ Scholars in the last twenty years have continued to refine the definition of access to justice to make it more meaningful and relevant; these new definitions of access to justice, though, are simultaneously more nuanced but less subject to measurement.⁹⁵

86. *Id.*

87. A. Patel, N.J. Balmer & P. Pleasence, *Geography of Advice Seeking*, 39 GEOFORUM 2084, 2085–86 (2008).

88. *Id.* at 2085.

89. *Id.*

90. *Id.* at 2085 (citation omitted).

91. Pruitt & Showman, *supra* note 77, at 479.

92. Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181, 183 (1978) (emphasis in original) [hereinafter Cappelletti & Garth, *Newest Wave*]. See generally 1 ACCESS TO JUSTICE: A WORLD SURVEY (Mauro Cappelletti & Bryant Garth eds., 1978).

93. Pruitt & Showman, *supra* note 77, at 497.

94. Cappelletti & Garth, *Newest Wave*, *supra* note 92, at 196–99.

95. See generally Sameer Ashar & Annie Lai, *Access to Power*, 148 DÆDALUS 82 (2019); Sandefur, *Access to What?*, *supra* note 11; Pruitt & Showman, *supra* note 77.

Earlier definitions of access to justice presumed that the individual seeking justice had already identified their problem as a legal issue to be addressed by a court. In the early twenty-first century, legal scholars like Gary Blasi articulated a definition of access to justice that emphasized “helping individuals identify legal needs” when they might not understand a problem as a legal problem.⁹⁶ This definition expands access to justice in several directions: Does an individual have the education necessary to parse legal and non-legal problems? Can individuals avail themselves of a system to triage the problem? Blasi also went beyond the individual, bringing the collective problems of communities under the access to justice rubric.⁹⁷ This further expands access to justice to include the community’s ability to access legal or similar assistance, and decision makers’ (including courts’) ability to bring about systemic change through “class actions, lobbying, or organizing.”⁹⁸

Lisa Pruitt’s extensive scholarship on rural access to justice has advocated for a “thicker” understanding of access to justice as compared to the historically “thin” definition.⁹⁹ Pruitt presents access to justice as a path to strengthen communities by responding both to immediate needs and symptoms as well as the larger, underlying issues, while centering community needs and desires.¹⁰⁰ Pruitt’s definition aptly addresses the complex relationship between underlying causes (e.g., systemic racism), immediate needs (e.g., affordable housing), and symptoms (e.g., a recent eviction), as well as the relationships between individuals, communities, lawyers, and advocates.¹⁰¹ At the same time, this “thicker” definition is amorphous and lacks concrete factors to consider when evaluating access to justice and formulating solutions.

Sameer Ashar and Annie Lai posit an equally bold and all-encompassing definition of access to justice that focuses on power. They eschew traditional models of access to justice, at least on the surface, because of the legal system’s complicity in creating, maintaining, and obscuring oppression.¹⁰² Undeniably, the “legal system distributes rights and privileges based on a particular configuration of interests, favoring those who have power and burdening those who do not.”¹⁰³ Yet,

96. Pruitt & Showman, *supra* note 77, at 498–99 (citing Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 914 (2009)).

97. *Id.* at 499.

98. Blasi, *supra* note 96, at 915.

99. See Pruitt & Showman, *supra* note 77, at 497.

100. See *id.* at 498.

101. *Id.* at 497–98.

102. Ashar & Lai, *supra* note 95.

103. *Id.* at 83.

traditional models of access to justice presume that once an individual has access to courts and legal services, justice will follow. Ashar and Lai's "access to power"—their variation of access-to-what—focuses on capacity-building and reconfiguring power in communities. Their vision is much closer to Pruitt's "thicker" access to justice, which centers and strengthens communities. Still, Ashar and Lai rely solely and explicitly on legal representation (or collaboration with attorneys and law students) as the primary tool for increasing access to justice.¹⁰⁴

In response to a self-posed question, "Access to what?," Sandefur proposes that access to justice encompasses both a broader set of problems than those immediately recognizable as legal problems and a broader spectrum of resolutions.¹⁰⁵ This definition of access to justice requires that (1) "the relevant substantive and procedural norms govern resolution;" (2) "that resolution is lawful;" and (3) "justice" can be achieved without lawyers or a formal "dispute-resolving forum."¹⁰⁶ Sandefur's understanding of access to justice, in its most utopian form, does not need any of the traditional hallmarks of dispute resolution in a common law system: lawyers, judges, courts.¹⁰⁷ Justice does need norms, both substantive and procedural, but the source of those norms is not specified. The only part of Sandefur's approach that invokes something more familiar, more traditionally legal, is reliance on a "lawful resolution" as the ideal outcome.¹⁰⁸

An equally challenging, though very appealing, definition of access to justice is described in Michele Statz's work on the rural Northland in Wisconsin and Minnesota.¹⁰⁹ Statz posits that "access" occurs when (pro se) litigants "[get] the chance to say it,"¹¹⁰ when they can "tell their story"¹¹¹ and "what they want to do,"¹¹² and adjudicators and decision-makers really "listen[.]"¹¹³ This "participatory access to justice"¹¹⁴ may be

104. *Id.* at 84–85.

105. Sandefur, *Access to What?*, *supra* note 11, at 49–50.

106. *Id.* at 50.

107. *Id.* at 51. Sandefur succinctly explains, "[w]hen the relevant substantive and procedural norms govern resolution, that resolution is lawful and we have access to justice, whether or not lawyers are involved in the resolution and whether or not the problem comes into contact with any kind of dispute-resolving forum." *Id.*

108. *Id.* at 51, 54.

109. Michele Statz, *On Shared Suffering: Judicial Intimacy in the Rural Northland*, 55 *LAW & SOC'Y REV.* 5, 6 (2021) [hereinafter Statz, *On Shared Suffering*].

110. *Id.* at 25 (emphasis omitted).

111. *Id.*

112. *Id.* (quotation marks omitted).

113. *Id.* at 24.

114. *Id.* at 32.

uniquely applicable to rural settings. It locates justice in the process, arguably in judges themselves, and not in the outcome.¹¹⁵ In many ways, “access” is about process precisely because the outcomes are foregone conclusions of “persistent injustice.”¹¹⁶

Statz describes communities and lawscapes,¹¹⁷ in which judges are not immune to the hardships suffered by litigants. Population decreases, economic downturns, loss of industry, and the neglect of urban politicians and policy makers are experienced by everyone in the community. Judges and litigants know the “pervasiveness of opioids and methamphetamines . . . , the absence of treatment centers and a dearth of rural mental health providers, the consequences of deep regional poverty, and the embittering failures of a poorly funded criminal or judicial system.”¹¹⁸ In Statz’s understanding of access to justice, it is this shared experience of living in a “left behind” rural region,¹¹⁹ coupled with the level of intimacy between litigants and decision-makers in a rural area,¹²⁰ that shifts the focus to “listening.”¹²¹

In assessing procedural justice, individuals consider the “fairness and neutrality of the decision maker; opportunity to present one’s side of the dispute (also called *voice*); trustworthiness (as opposed to mere neutrality) of the decision maker; and respectful treatment of all parties.”¹²² The judges described in Statz’s work are all of these things; they become “the eventual, if not only, source of respect, time, and ultimately, access.”¹²³

115. *Id.* at 24–25.

116. *Id.* at 9 (citing Wandler, *supra* note 58, at 236); *id.* at 32.

117. The term “lawscape” was described by Andreas Philippopoulos-Mihalopoulos as the “connection of reciprocal invisibility between law and the urban space.” Andreas Philippopoulos-Mihalopoulos, *Mapping the Lawscape: Spatial Law and the Body* 121 (Univ. of Westminster Sch. of L., Working Paper No. 12-06, 2013). It was initially employed in an urban context (“city becomes law becomes city *ad infinitum*”). Andreas Philippopoulos-Mihalopoulos, *Spatial Justice in the Lawscape*, in *URBAN INTERSTICES: THE AESTHETICS AND THE POLITICS OF THE IN-BETWEEN* 87, 93 (Andrea Mubi Brighenti ed., 2013). Scholars, such as Pruitt, have extended the concept to rural spaciality. *See, e.g.*, Pruitt, *The Rural Lawscape*, *supra* note 40, at 190 (applying the idea to rural contexts). Pruitt and Showman describe the “rural lawscape” as “the rural socio-spatial-cultural-economic milieu as it relates to law and access to justice.” Pruitt & Showman, *supra* note 77, at 480.

118. Statz, *On Shared Suffering*, *supra* note 109, at 20–21 (citation omitted).

119. *Id.* at 30.

120. *See, e.g., id.* at 19 (highlighting the personal connections between judges and litigants who grew up in the same town, went to school together, and whose families have known each other for generations).

121. *See id.* at 24.

122. Alan J. Tomkins & Kimberly Applequist, *Constructs of Justice: Beyond Civil Litigation*, in *CIVIL JURIES AND CIVIL JUSTICE: PSYCHOLOGICAL AND LEGAL PERSPECTIVES* 261 (Brian H. Bornstein, Richard L. Wiener, Robert F. Schopp & Steven L. Willborn eds., 2008) (discussing Tom Tyler’s groundbreaking work on procedural justice).

123. Statz, *On Shared Suffering*, *supra* note 109, at 13–14.

Statz' judges make the choice to see the parties who appear before them as "us" not "them."¹²⁴ This theory of access to justice, focused on the relationship between the judge and the parties, makes particular sense in rural areas where judges are fewer in number; judges themselves *are* procedure; and the outcomes cannot truly be just, often due to non-legal factors. Social psychologists and legal academics have observed that "the presence of sufficient evidence of procedural justice can overcome a lack of distributive justice in the outcome of a given proceeding[], leaving losing participants nevertheless willing to accept the outcome."¹²⁵ As with Ashar and Lai, Statz adopts a distinctly alternative vision of access to justice, but Statz too disregards an opportunity to consider access and justice as ideas which do not require the traditional legal system, nor its players.

B. What Do People Need? And, What Do People "Need"?

These different definitions of access to justice essentially ask, "What do people, and particularly individuals from low-income or marginalized communities, need?" What do they need to protect their basic necessities when they are threatened by a more powerful party—whether it is physical safety (unsafe living conditions or utility shut-off), health (food benefits, disability benefits, medical care), education (school discipline, special education), or family (divorce, custody, child support) being threatened by the government, a landlord, a company, or an influential spouse? But they also need (not want) to feel certain things: To feel seen and heard; to feel they have been treated with respect and dignity; and to feel the process was fair. If we understand justice, writ large, as "the use of methods that signal inclusion or exclusion of another person or group,"¹²⁶ these individuals and communities are simply seeking inclusion.

These individuals may need anything from a user-friendly manual to a lawyer, from a new and creative dispute resolution system to an empathetic judge who understands context. These individuals need

124. See Julie Van de Vyver, Giovanni A. Travaglino, Milica Vasiljevic & Dominic Abrams, *The Group and Cultural Context of Restorative Justice: A Social Psychological Perspective*, in *THE PSYCHOLOGY OF RESTORATIVE JUSTICE* 29, 30 (Theo Gavrielides ed., 2015). The authors note that the deployment of retributive rather than restorative justice can be viewed as a psychological and societal vehicle for maintaining systems of authority and control by [signaling] exclusive or inclusive intent towards the target. . . . [A] crucial issue for those involved in delivering and receiving justice, is therefore whether the targets of their decisions are defined as (or intended to be) one of "us" rather than one of "them".

Id.

125. Tomkins & Applequist, *supra* note 122, at 262.

126. Van de Vyver et al., *supra* note 124, at 30.

information, power, community, and deep, far-reaching systemic change. What they need most of all is *not* to have been fucked in the first place. As Michele Statz has boldly asserted, access to justice may be love.¹²⁷ It may be the ability—comprised of information, power, community, and deep agency—to create a system that makes sense to you, is accessible to you, does not discredit you when you show up as yourself, and understands your problems.

The historical evolution of the concept and the breadth of definitions now in use suggests that access to justice, understood in a robust sense, is not easily quantified. It also suggests that we are asking one phrase to do too much work, to make individual, subjective experiences and expectations into something universal and objective. What may be measured is access to the legal system—specifically access to litigation and access to legal counsel. Yet, even these two components of access to the legal system are different from each other and, taken alone or together, may have little to do with access to justice. As Hugh McDonald posed, “How much legal do people need?”¹²⁸

Both measurements, though, capture important data about the supply-side of the lawscape. A theoretical measurement of access to litigation could focus on an individual’s ability to present a problem in a court. Relevant factors could include the location and hours of the courthouse, the delay before a matter is heard, the availability of pro se resources and guidance, and the ability to retain an attorney. Access to legal counsel as a distinct, theoretical measurement could target concerns about attorney shortages, but with more detail than a mere headcount. Access to legal counsel could consider more traditional factors like attorneys per county, attorneys per capita, travel time to the nearest attorney, attorneys’ fees as compared to median incomes, and practice areas.

Both these assessments may lead to useful information for the state judiciary and court administration, as well as law schools and bar associations. They provide an evidence-based foundation for decisions

127. Michele Statz, “*It Is Here We Are Loved*”: *Rural Place Attachment in Active Judging and Access to Justice*, 00 LAW & SOC. INQUIRY 1, 16 (2022) [hereinafter Statz, *Rural Place Attachment*] (“[A]ctive judging . . . is at once a matter of providing access to justice and even more about providing a sense of trust and even love.”). Statz’s conception of justice as love seemingly draws on the work of several Black leaders and activists, including Ella Baker and the Student Nonviolent Coordinating Committee (SNCC’s manifesto fought “a social order of justice permeated by love”), Martin Luther King, Jr. (“Love without power is anemic and sentimental. Power without love is reckless and abusive.”), and, famously, Dr. Cornel West (“Never forget that justice is what love looks like in public.”). *Compare id.*, with Omid Safi, *Justice Is Love, Embodied*, ON BEING (Mar. 24, 2016), <https://onbeing.org/blog/justice-is-love-embodied/> [<https://perma.cc/U2D6-4C2A>] (discussing the linking of love and justice during the civil rights movement).

128. Hugh McDonald, *Assessing Access to Justice: How Much “Legal” Do People Need and How Can We Know?*, 11 U.C. IRVINE L. REV. 693, 693 (2021).

about the location and staffing of courts, investment of resources and technology, whether law schools should focus on certain areas of the law where there is greater demand, and whether they need to funnel recent graduates to certain locations, when possible. Yet these metrics and the questions they address are, at best, dancing around the periphery of an inquiry into what justice is, what it means to make it more accessible to more Americans, and how we might actually do that.¹²⁹

The abundance of definitions of access to justice also reminds us that access to justice—even access to litigation or legal counsel—is not absolute; it is not something you have or do not have. All of these concepts exist on a spectrum. For example, an individual may have more or less access to justice as compared to their urban counterpart or a similarly-situated person in a neighboring, rural county. Equally important, an individual may have access to justice (or access to litigation or to counsel) vis-à-vis some problems but not others. The same person might have more substantial access to justice in matters like divorce, child custody, and child support, but almost no access to justice in dealing with unsafe housing conditions and potential eviction.¹³⁰

IV. MEASURING ACCESS TO JUSTICE

Having examined the definition of access to justice in Part III, this Part considers the challenges in measuring access to justice. It begins by looking at our usual starting point—numbers of attorneys—and questions whether that metric provides even an accurate gauge of access to attorneys. It then argues that even if access to attorneys can be measured, it should not be relied on as the exclusive—or perhaps even primary—measure of access to justice.

129. See Wandler, *supra* note 58, at 230. Wandler aptly explains that “[w]hen defining ‘access to justice’ by the number of legal professionals available in a person’s immediate community, lawyers and community organizers may miss more complex community culture, concerns, and needs.” *Id.*

130. If we accept the notion that access to justice may be context-specific, we must begin to consider why an individual or community is accessing the legal system and how they got there. Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Lawyers, Power, and Strategic Expertise*, 93 DENV. L. REV. 469 (2016) [hereinafter Shanahan et al., *Lawyers, Power, and Strategic Expertise*] (discussing the critical role of burdens in unemployment insurance appeals in the District of Columbia, in particular how they impact who may benefit from legal representation). Does the party who bears the burden of proof have greater needs? Or is it the party who has been hauled into court that requires more assistance? Understanding these may be one and the same. Does our understanding of access to justice—who needs and deserves it and why—change whether an individual or a community is attempting to bring about positive change, using the law as a sword? Or if they are defending themselves against more powerful opponents, using the law as a shield? See MARGINALIZED COMMUNITIES AND ACCESS TO JUSTICE 254 (Yash Ghai & Jill Cottrell eds., 2010) (discussing the use of public interest or class action litigation as both a sword and a shield).

A. *How Many Lawyers Is Enough?*

Most studies of access to justice in rural areas look at one of two measures: (1) Attorneys per capita—an attempt to assess the potential market demand for an attorney and thereby understand the potential for unmet needs—or (2) Number of attorneys in a specified geographic unit, whether that is a square mile or a county—a measure of density of attorneys. From the studies discussed above,¹³¹ and the American Bar Association’s *Profile of the Legal Profession*,¹³² we know that the number of attorneys per 1,000 residents varies significantly from coastal states to inland states and from urban areas to rural areas:

<u>Jurisdiction</u>	<u>Attorneys per 1,000 residents</u> (2020)
New York	9.5 ¹³³
National Average	4.08 ¹³⁴
California	4.3 ¹³⁵
Average in urban California	5.7 ¹³⁶
Average in rural California	1.6 ¹³⁷
Arkansas	2.1 ¹³⁸
Average in most rural counties	0.64 (2015) ¹³⁹
Iowa	2.3 ¹⁴⁰

131. See sources cited *supra* notes 15, 56, 58, 65, 70, 78.

132. A.B.A., PROFILE OF THE LEGAL PROFESSION 3 (2020) [hereinafter PROFILE OF THE LEGAL PROFESSION], <http://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/EDD2-7HYR>].

133. See *id.* at 3.

134. *Id.* at 2.

135. *Id.* at 3.

136. See CAL. COMM’N ON ACCESS JUST., CALIFORNIA’S ATTORNEY DESERTS: ACCESS TO JUSTICE IMPLICATIONS OF THE RURAL LAWYER SHORTAGE 1 (2019), <http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Attorney-Desert-Policy-Brief.pdf> [<https://perma.cc/9NR8-8RZY>] (noting that there are 175 residents per attorney in urban areas: 1,000/175=5.7).

137. See *id.* (noting that there are 626 residents per attorney in rural areas: 1,000/626=1.6). This number is solely for rural MSSAs. Frontier MSSAs average 1.4 attorneys per 1,000 residents. See *id.* (noting that there are 738 residents per attorney in frontier areas: 1,000/738=1.4).

138. PROFILE OF THE LEGAL PROFESSION, *supra* note 132, at 3.

139. LISA R. PRUITT, J. CLIFF MCKINNEY II, JULIANA FEHRENBACHER & AMY DUNN JOHNSON, U.C. DAVIS LEGAL STUD. RSCH. PAPER SERIES NO. 426, ACCESS TO JUSTICE IN RURAL ARKANSAS 2 (2015).

140. PROFILE OF THE LEGAL PROFESSION, *supra* note 132, at 3.

Arizona	2.1 ¹⁴¹
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The American Bar Association has calculated the national average and found there are approximately four attorneys per every 1,000 residents.¹⁴² However, neither the profession nor the academy has formulated an optimal standard for when “access to justice” might be achieved based solely on the imperfect measure of “access to lawyers.” The national average—4 in 1,000—may be optimal in some circumstances, but it may also be too many or too few attorneys in other circumstances. That is to say, we are taking measurements, but we have no idea what we are trying to achieve other than making rough comparisons that communities which match or surpass the national average are doing well and those that fall below the national average “compare[] very poorly.”¹⁴³

Not surprisingly, major cities have much higher ratios of attorneys to residents—Manhattan (New York County), New York¹⁴⁴ averages 42 attorneys for every 1,000 residents and Washington, D.C.¹⁴⁵ averages roughly 83 attorneys for every 1,000 residents. Yet in New York City, the outer boroughs have ratios below the baseline national average: Brooklyn (Kings County) has 2.3 attorneys for every 1,000 residents and the Bronx (Bronx County) has only 1.5 attorneys for every 1,000 residents.¹⁴⁶ And despite D.C. being the “lawyer capital” of the country,¹⁴⁷ the District’s pro se rates are shockingly high, from ninety-seven percent of plaintiffs in small estate matters to seventy-five percent of plaintiffs in housing conditions cases who proceed without an attorney.¹⁴⁸ In three small, rural counties in Arkansas, the pro se rates for plaintiffs in small estate matters

141. *Id.*

142. See PROFILE OF THE LEGAL PROFESSION, *supra* note 132, at 2.

143. See *Justice in the Hinterlands*, *supra* note 56, at 593–94.

144. Neil Borowski, *New York Lawyer Report: How Many Lawyers Per Resident in Each County in New York State?*, PRESSCONNECTS (May 15, 2018, 12:16 PM ET), <http://www.pressconnects.com/story/news/local/2018/05/14/new-york-lawyer-report-how-many-lawyers-per-resident-each-county-new-york-state/545197002/> [https://perma.cc/5939-UYRA] (citation omitted) (noting that, per 1,000 residents, New York County (Manhattan) has 42.1 lawyers; Kings County (Brooklyn) has 2.3; Richmond County (Staten Island) has 2.0; Queens County (Queens) has 1.9; and Bronx County (Bronx) has 1.5).

145. See Brian Hughes, *D.C.: The Lawyer Capital of the World*, WASH. EXAM’R (Oct. 30, 2011, 12:00 AM), <http://www.washingtonexaminer.com/dc-the-lawyer-capital-of-the-world> [https://perma.cc/ME5B-KEKE].

146. Borowski, *supra* note 144.

147. Hughes, *supra* note 145.

148. D.C. ACCESS JUST. COMM’N, DELIVERING JUSTICE: ADDRESSING CIVIL LEGAL NEEDS IN THE DISTRICT OF COLUMBIA 4 (2019), http://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf [https://perma.cc/JF2D-ZQ29].

were approximately 44%, 71%, and 100%.¹⁴⁹ The mere fact of living in a big city—an area with high population density, more professionals, and a high attorney per capita ratio—does not mean there is increased access to justice; it does not even mean there is increased access to legal representation. By the same token, being literally surrounded by attorneys, regardless of the geography and the community, does not increase access to justice or access to legal representation.

At the macro level, efforts to assess the density of attorneys per square mile or county also generally fall short. On American Bar Association maps that show the density of lawyers, not surprisingly the density is greatest around large metropolitan areas and substantially less in other areas.¹⁵⁰ But, of course, these areas also tend to have much larger populations. For example, in California, the highest densities are around San Francisco, Sacramento, Los Angeles, and San Diego,¹⁵¹ and in Arkansas, attorneys cluster around Little Rock and Fayetteville.¹⁵² Read in tandem with the attorneys per capita data, these maps give us some general insights into the accessibility of attorneys, particularly in relation to travel time. But they generally conjure more questions than they answer: What is the geography (mountain ranges, deserts) where lawyer density is low or changes sharply? How is the land used (national or state parks, agricultural purposes) where lawyer density is low and how populous is the area? Are areas where lawyer density is low economically privileged or disadvantaged? Is the low density a result of low legal need or is there substantial unmet need in the area?

B. Problems of Conflating Access to Justice with Access to Attorneys

The measurements we currently use to assess access to justice are premised on several faulty assumptions, including the profession's closely-held belief that an attorney will inherently and immediately make the process or outcome “better” for an individual in a dispute and the related belief that more attorneys is always better. Yet, as discussed below, more attorneys may only be better if we imagine an idealized army of lawyers with the skill to deal with any type of matter, no financial needs, unlimited capacity for clients and cases, and no biases of their own.

149. See Chanley S. Painter, Exploring the Problem of Self-Represented Litigants in Arkansas Civil Courts 12–15 (2011) (J.D./M.P.S. capstone project, University of Arkansas Clinton School of Public Policy), <https://arkansasjustice.org/wp-content/uploads/2017/04/Capstone-Report-AAJC-Final-1.pdf> [<https://perma.cc/WG88-K6EP>] (discussing the number of pro se plaintiffs in Cleburne, Pulaski, and St. Francis counties from 2010 to 2011).

150. PROFILE OF THE LEGAL PROFESSION, *supra* note 132, at 4–22.

151. *Id.* at 4.

152. *Id.* at 15.

When we try to unpack these assumptions and test hypotheses using data, we are often left with more questions as theories and findings conflict.

1. *Is the Problem “Legal”?*

There is much scholarship analyzing whether and when lay people understand their problems as legal problems or “justiciable events.”¹⁵³ From a commonsense perspective, if an individual does not see their problem as legal, they will not even try to access an attorney, court, or other legal mechanism. If an individual does not recognize their problem as justiciable, the number of attorneys and their cost, proximity, and skill set become moot questions. An American Bar Foundation study in 2014 established that two-thirds of Americans experience an average of approximately two civil justice problems a year.¹⁵⁴ These civil justice issues are frequently related to debt, employment, insurance claims, government benefits, and rental housing.¹⁵⁵ Yet many individuals did not try to engage the legal system because “they [did] not understand these situations to be legal.”¹⁵⁶ Put another way, “people do not consider law as a solution for their justice problems They think of them simply as problems: problems in relationships, problems at work, or problems with neighbors.”¹⁵⁷

Statz, however, pushes back on—or perhaps adds a new dimension to—the conclusion that low-income Americans’ inability to see an issue as justiciable is pervasive. Survey data reflects these Americans’ “documented experiences of exclusion *along with* their alternative, expansive, and insistent understandings of legal rights and entitlements.”¹⁵⁸ If a key part of the access to justice puzzle is that low-income individuals do not always self-diagnose their problems as “legal” problems, this is less about a shortage of attorneys or access to representation and more about access to information.¹⁵⁹ Efforts to make

153. See McDonald, *supra* note 128, at 696–97; Emily S. Taylor Poppe, *Institutional Design for Access to Justice*, 11 U.C. IRVINE L. REV. 781, 786 (2021); Sandefur, *What We Know and Need to Know*, *supra* note 11, at 448.

154. REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 3, 17 (2014), https://www.americanbarfoundation.org/wp-content/uploads/2023/04/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf [<https://perma.cc/3KGN-MDXT>].

155. *Id.* at 7.

156. *Id.* at 3.

157. Sandefur, *Access to What?*, *supra* note 11, at 51.

158. Statz, *Rural Place Attachment*, *supra* note 127, at 17–18.

159. See Steinberg et al., *supra* note 33, at 1321 (describing an “information deficit”).

legal information more accessible through more broadly available platforms, such as public libraries¹⁶⁰ and online resources,¹⁶¹ may prove valuable in achieving this end.

2. *Would a Lawyer, Any Lawyer, Help Achieve a Positive Outcome?*

The access to justice scholarship largely promotes or critiques new interventions to increase the number of lawyers, paraprofessionals, and self-help tools. These interventions, however, only become necessary once an individual recognizes a problem as legal and/or has a suspicion sufficiently strong enough to make them visit the courthouse. Yet, even at this point on the timeline, there is no clear agreement as to whether these interventions help or harm individuals with legal issues and in what circumstances. As Colleen Shanahan, Anna Carpenter, and Alyx Mark note in their studies of access to justice, as a society “we are still unable to answer a fundamental question: when do civil litigants *need* a lawyer to effectively participate in our justice system?”¹⁶² Their question raises other fundamental questions: What do we mean by “effective participation”? From whose perspective?

Several studies show that legal counsel increases positive outcomes for litigants,¹⁶³ but how and when are less clear. For example, initial studies established that the assistance of legal counsel increased applicants’ chances of being granted asylum in immigration court.¹⁶⁴ However, when

160. See Beth Bilson, Brea Lowenberger & Graham Sharp, *Reducing the “Justice Gap” Through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries*, 34 WINDSOR Y.B. ACCESS JUST. 99 (2017); Deborah K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources*, 62 ME. L. REV. 473 (2010).

161. For example, the People’s Law Library of Iowa was launched in 2022 as a collaboration between the State Library of Iowa and the University of Iowa Law Library on the recommendation of the Iowa Access to Justice Commission. It was modeled on the existing People’s Law Library of Maryland. Adria Carpenter, *People’s Law Library of Iowa Aims to Make the Law Accessible for All Iowans*, LITTLE VILL. (Oct. 25, 2022), <http://littlevillagemag.com/peoples-law-library-of-iowa-aims-to-make-the-law-accessible-for-all-iowans/> [<https://perma.cc/XBV5-TDKZ>].

162. Shanahan et al., *Lawyers, Power, and Strategic Expertise*, *supra* note 130, at 470–71 (emphasis added).

163. *Id.* at 482–83.

164. REFUGEE ROULETTE: DISPARITIES IN ASYLUM ADJUDICATION AND PROPOSALS FOR REFORM 92 (Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag eds., 2009) (stating that their empirical findings “confirmed the findings of prior studies showing that represented clients win their cases at a rate that is about three times higher than the rate for unrepresented clients”); Banks Miller, Linda Camp Keith & Jennifer S. Holmes, *Leveling the Odds: The Effect of Quality Legal Representation in Cases of Asymmetrical Capability*, 49 LAW & SOC’Y REV. 209, 210 (2015) (“Past research has shown that aliens who apply for asylum within the U.S. immigration courts with the assistance of legal counsel have a much greater chance of being granted asylum than do aliens who petition without the aid of attorney.”).

probed, poor or ineffective counsel is more harmful to asylum applicants than no attorney at all.¹⁶⁵ Presumably, representation by an experienced immigration attorney would be a good thing for applicants. Yet, representation by an attorney that specializes in immigration law, as compared to a less experienced attorney, does not improve the probability of a positive outcome for an applicant.¹⁶⁶

In their study of unemployment insurance appeals in the District of Columbia, Shanahan, Carpenter, and Mark found that legal representation has two clear impacts: Represented parties are more likely to appear at a hearing and are more likely to use evidentiary procedures.¹⁶⁷ For claimants, though—the “have nots” in the civil litigation context—having representation coupled with the use of evidentiary procedures actually decreases claimants’ win rates (albeit only slightly).¹⁶⁸ The authors conclude that this trend of “worse case outcomes with increased procedural participation” is explained by their theory of strategic expertise.¹⁶⁹ Strategic expertise accounts for: the complexity of burdens of proof and persuasion, including presumptions; the choices that representatives make in light of these; and the inferences that judges may make from these choices about the relative strength or weakness of a case.¹⁷⁰ When *someone* (perhaps a lawyer) shows up with a claimant, the claimant is more likely to appear and more likely to have a positive

165. See M. Margaret McKeown & Allegra McLeod, *The Counsel Conundrum: Effective Representation in Immigration Proceedings*, in REFUGEE ROULETTE, *supra* note 164, at 287–88 (describing representation in immigration court as “the classic ‘good news, bad news’ scenario: the good news is that petitioners had a lawyer; the bad news is that petitioners had a lawyer,” critiquing the *Refugee Roulette* study because it “does not account for the relative effects of the quality of counsel on case outcomes,” and finding that “[some] cases [also] underscore that some individuals may be better served without counsel than by the assistance of an incompetent attorney”); Miller et al., *supra* note 164, at 213 (2015) (characterizing McKeown and McLeod study’s conclusions simply as “ineffective counsel is worse than not having an attorney”).

166. See Miller et al., *supra* note 164, at 227 (“Contrary to our expectations . . . , increasing attorney experience does not improve the applicant’s chances of securing relief, indeed increased experience appears to reduce the likelihood of victory.”).

167. Shanahan et al., *Lawyers, Power, and Strategic Expertise*, *supra* note 130, at 473. Other studies have shown that text message reminders have a similar impact, decreasing the number of cases dismissed for failure to appear. CONF. STATE CT. ADM’RS, SERVING COURT CUSTOMERS 15 (2022), http://cosca.nesc.org/_data/assets/pdf_file/0021/80328/ServingCourtCustomers.pdf [<https://perma.cc/3CMP-9H9Q>].

168. See Shanahan et al., *Lawyers, Power, and Strategic Expertise*, *supra* note 130, at 505; see also Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC. REV. 95 (1974) (explaining that the “have nots” are the “one-shotters” who are frequently low-income and not repeat players).

169. Shanahan et al., *Lawyers, Power, and Strategic Expertise*, *supra* note 130, at 508.

170. *Id.* at 508–10.

outcome; yet, when that same *someone* acts like a lawyer, and uses more complex procedures, the rate of positive outcomes decreases.

Shanahan, Carpenter, and Mark also concluded that trained lawyers, as opposed to lay advocates, add the most value when law reform or broader change is necessary.¹⁷¹ Law reform has two components: case-focused challenges¹⁷² and system-focused challenges.¹⁷³ Both types of challenges also include an informed decision *not* to represent an individual and their set of facts.¹⁷⁴ The idea that law reform is necessary, and that lawyers are necessary for law reform, again raises questions about what people *need*, or at least what they need *now*. Lisa Pruitt and Bradley E. Showman describe a legal problem as itself having three different components—underlying cause, immediate need, and symptoms.¹⁷⁵ This taxonomy also captures the temporal element at issue, namely, what is a problem for now, what is a problem for later, and who decides? They critique: “[I]nterventions that are less than full representation may provide low- or middle-income Americans with assistance that serves a discrete need in a particular moment, but the nature of this assistance does not and cannot challenge the law.”¹⁷⁶ Low-income individuals undoubtedly need the underlying causes of their problems to be addressed—and none of us would argue otherwise—but this may be a long(er)-term goal, which requires political and societal change beyond the legal representation and the profession. Arguably, these immediate needs and symptoms reflecting physiological and safety needs are a more significant priority for these individuals.¹⁷⁷ Most telling, if institutions attempting to address the access

171. Colleen F. Shanahan, Anna E. Carpenter & Alyx Mark, *Can a Little Representation Be a Dangerous Thing?*, 67 HASTINGS L.J. 1367, 1371–72 (2016) [hereinafter Shanahan et al., *Can a Little Representation Be a Dangerous Thing?*].

172. *Id.* at 1373. Case-focused challenges involve persuading a judge “to shape the law to fit the client’s needs,” or to change their interpretation of, or behavior around, the law such that it becomes different in practice. *Id.*

173. *Id.* at 1373–74. System-focused challenges are, clearly, larger than a single client. They may involve seeking out a client to pursue more traditional impact litigation or advocacy or pushing for changes in particular practices. *Id.*

174. *See id.* at 1375.

175. *See* Pruitt & Showman, *supra* note 77, at 497.

176. Shanahan et al., *Can a Little Representation Be a Dangerous Thing?*, *supra* note 171, at 1368. This argument also completely discounts the contributions to law reform made by community organizers and activists and focuses exclusively on lawyers and quasi-lawyers as the exclusive agents of change.

177. *See* Douglas T. Kenrick, Vidas Griskevicius, Steven L. Neuberg & Mark Schaller, *Renovating the Pyramid of Needs: Contemporary Extensions Built upon Ancient Foundations*, 5 PERSPS. ON PSYCH. SCI. 292, 294 (2010). The authors propose a revised pyramid of needs, but still fundamentally rely on cognitive priority: “[S]ome motives take precedence over others, which in turn take precedence over others. If a person, is starving, for example, the desire to obtain food will trump all other goals and dominate the person’s thought processes.” *Id.*

to justice crisis knew which needs were most important to rural communities, they could and should shape interventions to reflect this prioritization.¹⁷⁸

In the context of rurality, we must also consider the need for law reform. There is no doubt that rural communities perceive themselves as harmed by “urbanormative” policies.¹⁷⁹ Shanahan, Carpenter, and Mark assert that a lack of law reform on behalf of low-income individuals is problematic because it means the law is evolving in response to the needs and experiences of those with more resources and more access.¹⁸⁰ While we suspect that the needs and experiences of urban and rural individuals are sufficiently different to necessitate law reform driven by rural communities, there is, at best, a lack of clarity about when the differences are salient and in which contexts they arise. For example, the differences between urban and rural geography, distance, and access to transportation result in vastly different abilities to access abortion, a central focus of the analysis in *Whole Woman’s Health v. Hellerstedt*.¹⁸¹ In this context, advocacy that was motivated by, and took into account, rural women’s experiences was necessary for meaningful law reform. However, other legal rights or processes *may* look nearly identical in both urban and rural context—divorces without children, for example—negating the need for uniquely rural law reform in this area of the law.

We do know, however, that problems are resolved without the assistance of lawyers in formal and informal settings every day. A divorce may never be heard by a judge if it was successfully mediated, potentially

178. This sense of who and what drives change—the people most impacted—is a core tenet of rebellious collaborative or community lawyering. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004); see also Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 407 (2019); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541, 598–99 (2006); *id.* at 600 (“Rather than assuming they know best how to solve problems, these lawyers aim to facilitate collective strategizing that voices and applies what everyone knows and can contribute.”).

179. See Michele Statz, Hon. Robert Friday & Jon Bredeson, “*They Had Access, But They Didn’t Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO. J. ON POVERTY L. & POL’Y 321, 326 (2021) (“Drawing on extensive mixed-methods data, this Article offers the first sustained empirical consideration of the consequences of urbanormative state-sponsored access to justice supports in rural communities.” (footnote omitted)).

180. See Shanahan et al., *Can a Little Representation Be a Dangerous Thing?*, *supra* note 171, at 1376.

181. See Michele Statz & Lisa R. Pruitt, *To Recognize the Tyranny of Distance: A Spatial Reading of Whole Woman’s Health v. Hellerstedt*, 51 ENV’T & PLAN. A: ECON. & SPACE 1106, 1107 (2019).

by a person without formal legal training.¹⁸² Pro se parties reach out-of-court settlements.¹⁸³ In the criminal context, adults or juveniles facing charges may be diverted into a restorative justice program where the victim and offender may engage in dialogue, conferencing, or peace circles.¹⁸⁴ Restorative justice practitioners who facilitate these programs are often not lawyers.¹⁸⁵ We also know that these problem-solving approaches, which do not require lawyers and may actually be hindered by them, are successful by several metrics. Numerous empirical studies show that restorative justice programs result in lower recidivism rates for the offender, greater satisfaction with the process by the victim, and a shared feeling that the process was more fair than a traditional court hearing.¹⁸⁶ Similarly, couples divorcing who go through mediation are more likely to reach a joint custody agreement, less likely to go to court

182. See, e.g., Roselle L. Wissler, *Representation in Mediation: What We Know from Empirical Research*, 37 FORDHAM URB. L.J. 419, 458 (2010) (“Settlement was more likely when both parties were unrepresented than when both were represented. One domestic relations mediation study found that a full or partial settlement was more likely when neither party had a lawyer present during mediation than when one or both parties’ lawyers attended.”); JUD. SERVS. DIV. ADMIN. OFF. CTS., AN ANALYSIS OF PRO SE LITIGANTS IN WASHINGTON STATE 1995–2000, at 16, http://www.courts.wa.gov/subsite/wscsr/docs/Final%20Report_Pro_Se_11_01.pdf [<https://perma.cc/2CWX-2D25>] (“The result that: (1) cases involving two pro se litigants generally have the lowest occurrence rates for most courtroom events, and (2) the filing-to-resolution time of this group is consistently the shortest, most likely signals that these individuals have resolved all of their issues prior to their arrival in court. To add credence to this argument we looked at the percentage of cases in which a joinder was recorded in the docket on the same date as the filing of the petition for dissolution. The results . . . provide significant evidence that when a case has two active pro se litigants, the majority of these litigants - in dissolutions either with or without children - have resolved their differences at filing.”).

183. See Mark D. Gough & Emily S. Taylor Poppe, *(Un)Changing Rates of Pro Se Litigation in Federal Court*, 45 LAW & SO. INQUIRY 567, 580–82 (2020). Of federal court cases in which both parties are pro se, 11.1% reach settlement. *Id.* at 582.

184. BAILEY MARYFIELD, ROGER PRZYBYLSKI & MARK MYRENT, RESEARCH ON RESTORATIVE JUSTICE PRACTICES, JUST. RSCH. & STATS. ASS’N 1–2 (2020), <https://www.jrsa.org/pubs/factsheets/jrsa-research-brief-restorative-justice.pdf> [<https://perma.cc/HD73-KEES>].

185. See, e.g., *Restorative Justice Facilitator*, BOULDER CNTY., <https://bouldercounty.gov/safety/victim/restorative-justice/facilitator/#> [<https://perma.cc/8W68-55TM>] (seeking restorative justice facilitators, who may be volunteers, and who need to attend a twenty hour training); *How to Become an Arbitrator, Mediator, or Conciliator*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm#tab-4> (last visited Aug. 26, 2023) (explaining that mediators may be lawyers, but legal training is not always required).

186. See MARYFIELD ET AL., *supra* note 184, at 6–9; see also SUJATHA BALIGA, SIA HENRY & GEORGIA VALENTINE, RESTORATIVE COMMUNITY CONFERENCING: A STUDY OF COMMUNITY WORKS WEST’S RESTORATIVE JUSTICE YOUTH DIVERSION PROGRAM IN ALAMEDA COUNTY, IMPACT JUST. & CMTY. WORKS WEST 1 (2017), https://impactjustice.org/wp-content/uploads/CWW_RJreport.pdf [<https://perma.cc/6KFM-UXAB>]; Jeff Bouffard, Maisha Cooper & Kathleen Bergseth, *The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 465, 477 (2017).

to modify custody, and tend to reach agreements more quickly, and with less expense than couples who litigate.¹⁸⁷

3. *Would Other Quasi-Legal or Non-Traditional Legal Assistance Help Resolve the Problem?*

If individuals do not necessarily or may not always need lawyers, what do we know about the efficacy of other interventions? Although lay advocates may not be well-positioned to advance law reform, studies have shown that a Juris Doctor may not be necessary for engaging in some cases, as “lay advocates can perform successfully as legal professionals.”¹⁸⁸ We also know that trial court judges with domestic violence dockets rely heavily on an informal network of nonlawyer advocates—for better or for worse—who assist pro se parties behind the scenes.¹⁸⁹ A United Kingdom study comparing lawyer and nonlawyer provision of legal aid in the early 2000s concluded that “clients were more satisfied with nonlawyers than lawyers, and nonlawyers were more successful than lawyers.”¹⁹⁰

Numerous jurisdictions have recently engaged in regulatory reform aimed at allowing space for non-lawyers to provide some level of advice or advocacy on behalf of clients.¹⁹¹ Most programs are still in early stages, however, and it is not yet clear whether they will yield improved access to justice. The impact of regulatory reform on access for low-income individuals remains unclear a decade after implementation in England and

187. See, e.g., Lori Anne Shaw, *Divorce Mediation Outcome Research: A Meta-Analysis*, 72 CONFLICT RESOL. Q. 447, 464–66 (2010) (presenting findings from a meta-analysis of divorce mediation research and concluding that mediation is quantitatively superior to litigation in divorce cases and also tends to have better qualitative results).

188. Steinberg et al., *supra* note 33, at 1323–24; see also Sandefur, *What We Know and Need to Know*, *supra* note 11, at 452.

189. See Steinberg et al., *supra* note 33, at 1316.

190. Shanahan et al., *supra* note 171, at 1371 (citing Richard Moorhead, Alan Paterson & Avrom Sherr, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC'Y. REV. 765, 785 (2003)).

191. See MICHAEL HOULBERG & JANET DROBINSKE, THE LANDSCAPE OF ALLIED LEGAL PROFESSIONAL PROGRAMS IN THE UNITED STATES, INST. ADVANCEMENT AM. LEGAL SYS. 4 (2022), https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf [<https://perma.cc/TTA6-Y9WB>]; MICHAEL HOULBERG & NATALIE ANNE KNOWLTON, ALLIED LEGAL PROFESSIONALS: A NATIONAL FRAMEWORK FOR PROGRAM GROWTH, INST. ADVANCEMENT AM. LEGAL SYS. 6 (2023), https://iaals.du.edu/sites/default/files/documents/publications/alp_national_framework.pdf [<https://perma.cc/4TRR-HRBS>].

Wales,¹⁹² and more research is needed to assess nascent American innovations.¹⁹³

State courts have also developed self-represented litigant resources and navigator programs aimed at improving the experiences of those who proceed without a lawyer.¹⁹⁴ While such initiatives show promise, evidence is limited, and more research is needed to understand the scope of their impact.¹⁹⁵ It is also possible that some interventions have the effect of making it easier and more efficient for courts to handle pro se litigants without significantly improving the experience of those litigants themselves. Taking aim at the self-help and simplification interventions implemented in Minnesota, Statz concludes that “the very same self-help forms, helplines, and online advice systems” that the State believes advance equal access to justice are actually experienced by low-income rural residents as “*barriers to justice.*”¹⁹⁶

Similarly, forty-one states now allow attorneys to provide unbundled legal services, an “a la carte” option in which a client can engage a lawyer for discrete parts of a legal matter.¹⁹⁷ Though considered another potentially promising approach to enhance access to justice over the last fifteen years, the efficacy of unbundled legal services has been called into question. A 2010 study from California showed that lawyers providing unbundled legal services did not improve substantive outcomes for

192. See DAVID FREEMAN ENGSTROM, LUCY RICCA, GRAHAM AMBROSE & MADDIE WALSH, STANF. L. SCH., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 20–21 (2022), <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf> [<https://perma.cc/84T5-7848>].

193. See Rebecca L. Sandefur & Emily Denne, *Access to Justice and Legal Services Regulatory Reform*, 18 ANN. REV. L. & SOC. SCI. 27, 38 (2022).

194. See, e.g., SELF-REPRESENTED LITIG. NETWORK, BEST PRACTICES IN COURT-BASED PROGRAMS FOR THE SELF-REPRESENTED 43–52 (2008), <https://www.srln.org/system/files/attachments/SRLN%20Best%20Practices%20Guide%20%282008%29.pdf> [<https://perma.cc/ZW2V-2K35>] (providing attributes for development of forms to be used by pro se litigants); Dimarie Alicea-Lozada, *Court Navigators Help Self-Represented Litigants*, NAT’L CTR. STATE CTS. (July 19, 2023), <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/court-navigators-help-self-represented-litigants> [<https://perma.cc/S82Q-F32M>] (summarizing court navigator programs).

195. See MARY E. MCCLYMONT, JUST. LAB GEO. L. CTR., NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 39–40 (2019), http://www.ncsc.org/_data/assets/pdf_file/0024/53691/Justice-Lab-Navigator-Report-6.11.19.pdf [<https://perma.cc/ZWD6-RUK6>].

196. Statz, *supra* note 109, at 16.

197. See *Unbundling*, SELF-REPRESENTED LITIG. NETWORK, [http://www.srln.org/Unbundling#:~:text=ABA%20Model%20Rule%201.2\(c,or%20a%20substantively%20similar%20rule](http://www.srln.org/Unbundling#:~:text=ABA%20Model%20Rule%201.2(c,or%20a%20substantively%20similar%20rule) [<https://perma.cc/5XE5-HVFZ>].

indigent tenants facing eviction compared to unrepresented litigants,¹⁹⁸ while another study of eviction cases in Massachusetts found a large difference in outcomes between tenants who received unbundled assistance and those given full representation.¹⁹⁹

Going forward, empirical assessments of innovation in the legal system have the potential to be both richer and more complex because of the COVID-19 pandemic.²⁰⁰ During the pandemic, state and local courts were forced to reimagine their practice, conducting telephonic and video conference hearings and modifying evidentiary procedures.²⁰¹

4. *Is a Lawyer the “Right” Lawyer?*

It may go without saying that the physical presence of a lawyer—or several lawyers—in a locality does not mean that they (1) provide the legal services needed by community members; (2) are affordable to the local community; or (3) have the capacity to take on new cases or the case in question. As in Washington, D.C., an individual can be surrounded by attorneys but unable to obtain legal representation. This is not because lawyers are not geographically proximate. It is because of other mismatches related to the services needed and the services provided; the cost of obtaining services and the cost of providing services; and the inherent limitations (ethical, physical, etc.) on how many cases a given attorney can responsibly manage.

If there is a need in rural communities, it is not necessarily a blanket need for more lawyers everywhere.²⁰² One rural community may have a

198. See Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL’Y 453, 457 (2011). While unbundled representation did further procedural justice by affording initial access to the justice system and preventing default judgements, it did not secure more actual relief than that achieved by unrepresented pro se tenants. *Id.*

199. See D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 908 (2013).

200. See, e.g., Colleen F. Shanahan, Alyx Mark, Jessica K. Steinberg & Anna E. Carpenter, *COVID, Crisis, and Courts*, 99 TEX. L. REV. ONLINE 10–12, 16–18 (2020) (describing the growth in research and scholarship on state courts and the opportunity for transparent experimentation by courts in response to the COVID-19 pandemic).

201. *Id.* at 14–16; see, e.g., CAL. COMM’N. ON ACCESS JUST., REMOTE HEARINGS AND ACCESS TO JUSTICE DURING COVID-19 AND BEYOND 15, https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf [<https://perma.cc/Z5TU-8SDH>] (discussing best practices for remote hearings).

202. See M. Blacksell, A. Clark, K. Economides & C. Watkins, *Legal Services in Rural Areas: Problems of Access and Local Need*, 12 PROGRESS HUM. GEOGRAPHY 47, 50 (1988). A 1988 study by Watkins et al. established that geographic accessibility of legal representation actually increased in rural communities in the United Kingdom. *Id.* Rural communities had more solicitors per capita

basic, regular need for a family law practitioner to assist residents with divorce, custody, and child support. A neighboring community may need immigration attorneys due to an influx of workers with temporary legal status. Another rural community may need civil litigation attorneys to address unemployment and other public benefits during an economic downturn. Still another rural community, with a robust community economic development program and incentives, may have a need for small business, tax, and transactional attorneys to help entrepreneurs and provide long-term support to Main Street businesses. Some of these needs may remain constant, while others are context-specific and may only exist for shorter periods of time. The “more lawyers” approach to rural access to justice alone cannot be the answer.

5. *Do Rural Communities Want More Local Lawyers?*

The legal community’s theories about the relationships between access to justice and access to legal representation also assume that, all things being equal, an individual with a problem would seek out legal advice if the advice was knowledgeable, affordable, and accessible.²⁰³ However, what we know about the complex network of relationships within rural communities again clouds this seemingly obvious conclusion.

One key difference between urban and rural communities is Freudenburg’s concept of density of acquaintanceship—“the average proportion of the people in a community known by the community’s inhabitants.”²⁰⁴ Put simply, “city residents tend to know a smaller proportion of their neighbors than do persons in smaller communities.”²⁰⁵ Sociological studies use density of acquaintanceship as a lens to consider urban-rural differences in several phenomena: crime rates²⁰⁶ and youth

than urban areas, and “few people would experience any difficulty in contacting a solicitor.” *Id.* A closer analysis, though, showed that these solicitors offered very restrictive services focused on the lucrative work related to conveyance and probate, but also that there was an “almost total lack of expertise in nearly all aspects of welfare and consumer law.” *Id.* Although potential legal representation, as gauged by attorneys per capita, was plentiful, the legal services available were of little use to less affluent residents and those who did not own property. *Id.*

203. See Elizabeth Chambliss, Renee Newman Knake & Robert L. Nelson, Introduction, *What We Know and Need to Know About the State of “Access to Justice” Research*, 67 S.C. L. REV. 193, 195–96 (2016).

204. Freudenburg, *supra* note 78, at 29–30.

205. *Id.* at 27–28.

206. See Joseph F. Donnermeyer, *The Social Organisation of the Rural and Crime in the United States: Conceptual Considerations*, 39 J. RURAL STUD. 160 (2015).

behavior,²⁰⁷ community and political engagement,²⁰⁸ and mental health treatment.²⁰⁹ However, density of acquaintanceship is more nuanced than the urban-rural dichotomy. Factors that affect density of acquaintanceship include the community's population; diversity of the community; segregation within a community; an individual's length of residence in a community; their anticipated length of residence; and, related to all of these, people's ability to create informal agreements to accomplish shared goals with predictable outcomes.²¹⁰

Notably, more than thirty years ago, residents in many rural communities were not well acquainted with the lawyers in their communities, despite the presumed high densities of acquaintanceship. In a 1986 study of four communities in western Colorado, Freudenburg looked at communities with fewer than 5,000 residents.²¹¹ Three of these communities had little to no growth, but the fourth community was a "boomtown," doubling in population due to the construction of an electricity plant.²¹² Residents were asked if they were acquainted with different types of people: Did they "know any of the following *kinds* of persons in the area[,] . . . know their names[,] and speak to them on a conversational basis?"²¹³ The question applied to twenty different types of people, ranging from plumber and coal miner to newspaper reporter and banker.²¹⁴ In both the still-rural communities and the boomtown, just over fifty percent of residents were acquainted with a lawyer in town, with that percentage being slightly higher, though not statistically significant, in the unchanged communities.²¹⁵ By comparison, more than ninety percent of residents of the rural communities knew a grocer and nearly seventy percent knew a mayor or city councilperson.²¹⁶ The only types of people who were less known than lawyers were dentists, coal company officials, county- or state-level officials, and local "hippies"—presumably

207. See D. Wayne Osgood & Jeff M. Chambers, *Community Correlates of Rural Youth Violence*, JUV. JUST. BULL. (U.S. Dept. Just. Off. Juv. Just. & Delinq. Prevention, Rockville, Md.), May 2003, <https://www.ojp.gov/pdffiles1/ojdp/193591.pdf> [<https://perma.cc/J6MT-KSFH>].

208. See Meredith Redlin, Gary Aguiar, George Langelett & Gerald Warmann, "Why Are You Still Out There?" *Persistence Among Deep Rural Communities in the Northern Plains*, 5 ONLINE J. RURAL RSCH. & POL'Y 1, 5 (2010).

209. See Emily Jordan Jensen & Tai Mendenhall, *Call to Action: Family Therapy and Rural Mental Health*, 40 CONTEMP. FAM. THERAPY 309 (2018).

210. Freudenburg, *supra* note 78, at 29–34.

211. *Id.* at 35.

212. *Id.*

213. *Id.* at 37 (quotation marks omitted).

214. See *id.* at 38.

215. See *id.*

216. See *id.*

because respondents did not know their names (likely coal company executives) *and/or* did not engage in casual conversation with them (likely local “hippies”).²¹⁷ In other words, even when there were local attorneys, residents did not know who they were in the same way they “knew” other service providers or significant individuals in the community.

Even when lawyers are “known” in the community, residents may not seek out their services. A 2007 study of advice-seeking behaviors in the United Kingdom looked not at “acquaintanceship,” but “awareness” of legal services—whether an individual was able to identify that some source of legal advice existed within two miles or five miles of their residence.²¹⁸ Although many survey participants could arguably walk to a source of legal advice, a surprising number were unaware that there was legal advice available only a relatively short distance away.²¹⁹ There were significant disparities in knowledge among respondents—sixty-five percent of respondents who had a legal service source within two miles of their home knew that fact, while thirty-five percent could not identify any legal service source within two miles of their homes, despite the proximity of a solicitor or a legal advice center.²²⁰ In the context of low- and pro-bono legal services, akin to legal aid, residents were equally unaware of the services around them: Of respondents with a Citizens Advice Bureau within two miles of their homes, forty-six percent were unaware of it, and for those with a Law Centre within two miles, eighty-three percent did not know it was there.²²¹

217. *Id.* There were clear differences between the communities with a higher density of acquaintanceship and the boomtown with a presumed lower density of acquaintanceship: In the unchanged rural communities, more than ninety percent of residents were acquainted with a grocer, while in the boomtown, only approximately sixty-three percent knew a grocer. *Id.* Nearly seventy percent of residents knew a mayor or councilperson, compared to the boomtown, where less than fifty percent knew such an official. *Id.* Unlike the other categories Freudenburg used in the boomtown study, two groups warrant a brief, parenthetical clarification: By doctors, Freudenburg meant “physician[s],” and by “local ‘hippie[s]’” Freudenburg meant individuals with “longhair.” *Id.* at 38. The boomtown study was conducted from 1977 to 1979, suggesting that any “hippie[s]” in small, rural towns were expected to be easily recognizable (at least as Freudenburg described them).

218. Patel et al., *supra* note 87, at 2084; *id.* at 2089.

219. *Id.* at 2089–90.

220. *Id.* at 2089.

221. *Id.* at 2089–90. At the time of the survey, the United Kingdom had 882 Citizens Advice Bureaux (CAB) and 60 Law Centres. *Id.* at 2087. CAB is a national charity that primarily uses trained volunteers to provide legal and other advice on issues relating to housing, public benefits, family, immigration, consumer protection, and employment. *Who We Are and What We Do*, CITIZENS ADVICE, <https://www.citizensadvice.org.uk/about-us/about-us1/introduction-to-the-citizens-advice-service/> [https://perma.cc/AVL3-Y6RV]. Law Centres, akin to organizations funded by the Legal Services Corporation, provide legal representation to individuals who cannot afford an attorney in an array of civil matters. *About Law Centres*, LAW CENTRES NETWORK, <https://www.lawcentres.org.uk/about-law-centres> [https://perma.cc/44RZ-HDNU].

One primary reason residents may not seek legal advice is high density of acquaintanceship typically means that “everyone knows everything about everyone else.”²²² Residents in rural areas and small towns “cannot depend on privacy or anonymity in public places,” and social norms require that some minimal level of acknowledgment and engagement occurs when acquaintances cross paths, regardless of the individuals’ relative positions of power or status.²²³ Taken to its extreme, this phenomenon becomes what sociologist David Showalter calls “acquainted marginality”—meaning “surveillance and stigmatization by acquaintances and authorities in everyday life”—which aggravates “the pains of poverty and discrimination.”²²⁴ In urban locations, the interactions between service provider—whether doctor, lawyer, or therapist—and recipient are typically anonymous.²²⁵ Yet in rural areas, the service provider and recipient may have “grow[n] up with one another, live[d] as neighbors, and develop[ed] multilayered relationships,”²²⁶ and they will almost certainly encounter each other in public spaces with some regularity. Showalter concludes, in the context of drug treatment, that marginalized individuals may “avoid a local provider out of fear of poor treatment or breach of confidentiality.”²²⁷ Some legal issues may be sufficiently impersonal and lack the stigma of drug treatment—like business incorporation or drafting a sales contract—such that residents might be comfortable sharing the necessary information with a local attorney. However, numerous legal issues, such as pending eviction, bankruptcy, domestic violence, or divorce due to infidelity, involve deeply personal, potentially shameful facts and emotions that a rural resident might not want to share with a local attorney, regardless of whether one is available.

The concept of density of acquaintanceship brings us full circle to Statz’s assertion that access is increased—in fact, may only be possible—because of shared experiences.²²⁸ Showalter acknowledges that “overlapping personal and professional ties” and social intimacy “can facilitate trusting therapeutic relationships.”²²⁹ However, this may be true

222. David Showalter, *Steps Toward a Theory of Place Effects on Drug Use: Risk, Marginality, and Opportunity in Small and Remote California Towns*, 85 INT’L J. DRUG POL’Y 1, 4 (2020).

223. *Id.*

224. *Id.* at 4.

225. *Id.* at 5.

226. *Id.*

227. *Id.*

228. See Statz, *supra* note 109. Statz describes “a solidarity many judges assumed with rural litigants, one born of shared grief, economic frustration, and in many ways, vulnerability.” *Id.* at 22.

229. Showalter, *supra* note 222, at 5.

primarily for individuals in rural areas who “live comfortably and enjoy supportive relationships with others.”²³⁰ Individuals with complex, messy, potentially embarrassing legal problems may not experience social intimacy in such a positive way. Those who “are deprived of [social] capital and positive social relations and who have reason to avoid interactions with powerful people” may experience social intimacy negatively, such that it “undermine[s] privacy, augment[s] surveillance, and provoke[s] defensive practices.”²³¹

In urban communities, there are more service providers of nearly every type, allowing the provider to refuse service and/or make a referral when there is a pre-existing acquaintanceship. In rural communities, however, a service provider may be forced to take on a client despite an actual or perceived conflict because there is no other service provider.²³² A 2019 study of rural legal practice in New York State found that more than one-third of the rural attorneys who completed the survey indicated they declined cases because of a conflict of interest.²³³ One attorney explained, “[t]he ethics rules are not geared to and show no understanding of small town life [They] have no idea about the reality and struggle of keeping conflicts at bay when you know everyone or their brother or parents, literally.”²³⁴

V. REFRAMING THE RURAL ACCESS TO JUSTICE CONVERSATION

Improving rural access to justice is an important and necessary goal, one to which many individuals and institutions have committed significant energy and resources.²³⁵ And while this has resulted in many meaningful improvements,²³⁶ the impact of these laudable efforts is not fully maximized due to the lack of a common understanding of access to justice and reliance on imperfect measurements.²³⁷ The emphasis on attorney numbers as a measure of access to justice means that in the rural context, the decline in attorneys has been wholly conflated with the justice

230. *Id.*

231. *See id.*

232. *Id.*

233. PERLMAN, *supra* note 70, at 10.

234. *Id.* at 9.

235. *See supra* Part I.

236. *See, e.g.,* Kittay, *supra* note 29 (describing access to justice initiatives in Illinois, Washington, and Maine).

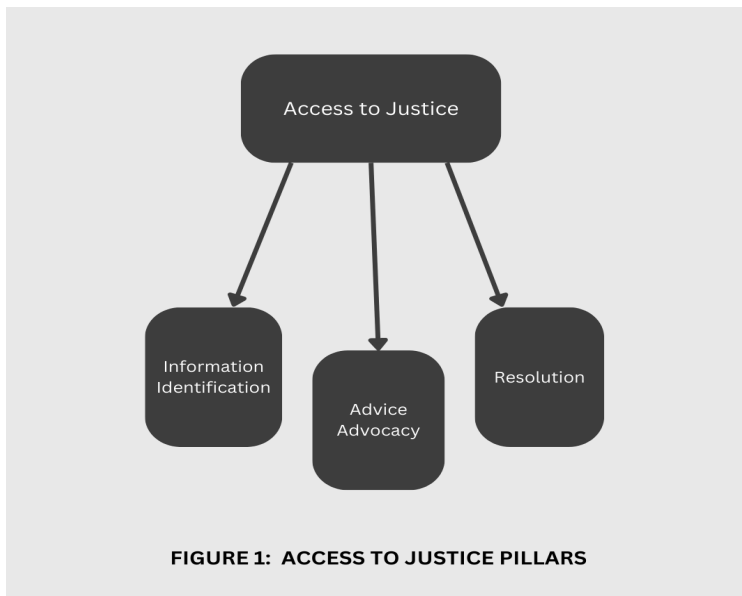
237. *See supra* Parts III–IV.

gap. As a result, the replenishment of rural attorneys has become the default intervention to improve access to justice in rural communities.²³⁸

The goal of improved rural access to justice will benefit from a more robust understanding of the concept of access to justice and an acknowledgement of the limits of traditional measures of access to justice. In this Part, we propose a model for understanding access to justice and advocate for a rethinking of both *what* we measure and *how* we measure it. We then consider the particular impact of this reframing in the rural context.

A. Proposed Conceptualization of Access to Justice

Conceptually and practically, access to justice is multifaceted and complex. Drawing from prior scholarship,²³⁹ the work of access to justice advocates, and our own experiences, we conceptualize access to justice as having three pillars as represented in Figure 1 below.



First, an individual must be empowered to access basic information that allows them to recognize that they are experiencing a problem and to identify the problem as one of a legal nature.²⁴⁰ This information may come from a variety of sources: Their own education; resources, such as a public library, the internet, or a know-your-rights presentation; or from

238. See *supra* Part I.

239. See *supra* section III.A.

240. See Blasi, *supra* note 96, at 914.

another individual, such as a friend, social worker, clerk of the court, or even an attorney. An individual's social capital will impact their ability to obtain and utilize this information to understand their problem and its nature.

Second, an individual may choose or need to take action related to their problem. This could mean seeking legal advice or pursuing litigation, but it could also mean communicating with the other person involved or engaging in informal advocacy to address the problem. When this action is a mobilization of the law, it will typically involve a greater level of knowledge, skill, or access to the system. This will often, and most conventionally, be provided by a licensed attorney, whether they are hired, court appointed, provided through a legal aid organization, or working pro bono.²⁴¹ It could also come from a non-J.D. legal professional, such as a paralegal, limited license legal technician, or domestic violence advocate.²⁴² Alternatively, some individuals will navigate legal problems themselves, either by choice or necessity, aided by self-representation resources and forms available in many jurisdictions.²⁴³ Further, many individuals will receive informal guidance from other experienced individuals. And some may employ a mix of these options. For example, an individual dealing with a family law matter could attend a legal advice clinic, file their petition pro se, or hire a lawyer for a discrete piece of the matter under a limited scope representation agreement.

The third pillar is access to resolution of the problem. In a traditional understanding of access to justice, this would consist of adjudication and enforcement through a court. However, resolution of a legal problem might also be achieved through amicable resolution of a matter without the intervention of a court or, for that matter, any lawyers. It could take the form of a friendly agreement between two neighbors after they have identified a property line issue; notably, this resolution may happen because of, or without, research on the law. It might occur through alternative dispute resolution means or court-sponsored online dispute resolution.²⁴⁴ An issue might be resolved through correspondence between two lawyers before any lawsuit is filed.

241. See, e.g., HOULBERG & DROBINSKE, *supra* note 191, at 4 (noting that “[w]ith few exceptions, anyone other than a lawyer providing legal services is engaging in the unauthorized practice of law”).

242. See, e.g., Sandefur & Denne, *supra* note 193, at 30–31 (describing the growth of allied legal professionals).

243. See generally Gough & Poppe, *supra* note 183.

244. See generally Amy J. Schmitz & John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, 23 COLUM. SCI. & TECH. L. REV. 142 (2021) (providing examples of emerging online dispute resolution tools).

One important takeaway is that traditional, formal legal actors, such as attorneys, might be relevant in any, all, or none of these pillars in any given situation.

B. Rethinking Measurement of Access to Justice

Access to justice measures have typically focused on attorney numbers, due to assumptions about the centrality of the attorney in ensuring access to justice and the availability of data on raw attorney numbers.²⁴⁵ We need to consider, however, that formal actors might not be relevant in all circumstances. As suggested above, an attorney might not be involved within any of the pillars. Essentially, we tend to measure access to justice using the data we have available, which might provide an accurate reflection in some circumstances, but likely does not in many others.

There is a need to develop access to justice metrics that correspond to a broader conceptualization of access to justice. In Figure 2 below, for example, we illustrate measures that flow from each of the pillars we describe above. In a given situation and in particular pillars, interventions *other than an attorney* may be more readily available, relevant, effective, or economical. Including those interventions (e.g., library resources; self-help desks or clinics; non-J.D. legal service providers; self-represented litigant forms and guides; online dispute resolution options) in efforts to quantify access to justice will provide a more complete picture of at least the supply-side of the lawscape.

While such expanded measurement would be extremely valuable, it would still only establish the existence and adequacy of a broader range of access to justice infrastructure (supply-side) for *identified* legal problems, which represent only part of demand. Of course, in our conceptualization, we consider access to basic legal information and the ability to identify justiciable events as pillars of access to justice. We are cognizant of the challenges in measuring unmet legal needs where problems may not have been identified or where supply-side infrastructure has not been engaged.

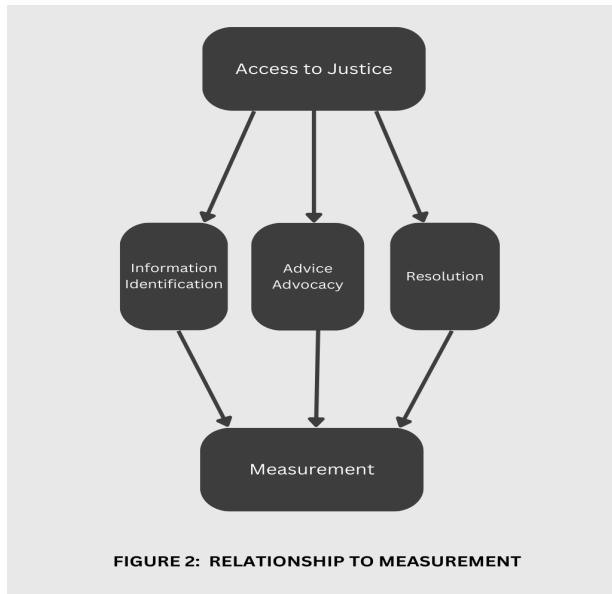
Social vulnerability may provide a useful approach to thinking about legal demand. It is a concept frequently used in geography to describe social, cultural, economic, political, and institutional processes that shape how individuals experience and recover from environmental hazards.²⁴⁶ These various dimensions are combined to anticipate differences in these

245. See *supra* section IV.A (discussing the inadequacy of current measures).

246. Seth E. Spielman, Joseph Tuccillo, David C. Folch, Amy Schweikert, Rebecca Davies, Nathan Wood & Eric Tate, *Evaluating Social Vulnerability Indicators: Criteria and Their Application to the Social Vulnerability Index*, 100 NAT. HAZARDS 417, 418 (2020).

experiences to assist in planning.²⁴⁷ Researchers describe social vulnerability as a “latent” variable, meaning it is “inherent to a person or place but not directly observable” and “can only be measured indirectly through statistical procedures.”²⁴⁸

We hypothesize that a similar approach might be used to anticipate (and plan for) “legal vulnerability” in a particular community. Census Bureau statistics and other publicly available data might be utilized to anticipate the likelihood that individuals with certain characteristics or histories in a specific place may (1) experience justiciable events; (2) have the ability to identify the event as such; and (3) access various types of resources. This demand-side predictor would then be compared to more robust measurements of available supply-side interventions in a particular place. This combination of measures could more accurately identify where gaps exist in existing legal resources and guide more effective and efficient interventions to meet specific needs.



C. *Implications for Rural Access to Justice and Attorney Recruitment*

This Article builds on the body of prior scholarship arguing that attorneys are just one of many tools available in the effort to enhance access to justice in any geographic space—urban, suburban, rural, or on a cruise ship in the middle of the ocean—and that relying exclusively on

247. *See id.* at 419.

248. *Id.*

attorney numbers is, at best, an incomplete measure of access to justice in any space.²⁴⁹ A key observation in this Article is that it is uniquely in the rural context that the phenomenon of declining attorney numbers has led these two issues—the rural attorney shortage and the justice gap—to be viewed as one and the same by so many key stakeholders. And this conflation seems to disproportionately shape rural access to justice interventions.²⁵⁰ The development of better and more diverse measures of access to justice, which reflect the multilayered nature of the concept, would hopefully guide more targeted, efficient, and effective interventions.

Our goal of disentangling the attorney shortage from the justice gap is not inconsistent with the possibility that a resident attorney can be of importance to the economic and civic vitality of a given rural community. In seeking to reframe the relationship between the rural attorney shortage and the justice gap, we are conscious that our efforts might be mistaken for an attempt to de-emphasize the importance of rural practitioners generally or to suggest the rural attorney shortage does not have consequences. We feel compelled to dispel this notion and to simultaneously urge more research into the value and importance of resident attorneys to a rural community. We also feel compelled, as legal educators, to encourage more honest reflection and open discussion about preparation for, and messaging around, rural careers in law schools.²⁵¹

The recruitment of a new practitioner may be a priority for a rural community for a variety of reasons: Drawing new business to town, maintaining the local economy,²⁵² facilitating the transfer of wealth,²⁵³

249. See *supra* sections IV.A, IV.B.3.

250. See *supra* Part I.

251. Others have noted that law schools need to “validate” rural encounters for students and have called on law schools to “consider how rural perspectives and opportunities can permeate every aspect of their mission and operation.” Pruitt et al., *supra* note 10, at 146. One aspect worth further exploration is the makeup of the legal academy. Law schools “tend to be self-perpetuating, culturally and otherwise.” *Id.* While we, as law teachers in the Midwest, can identify numerous colleagues who were raised in rural communities, we are aware of very few colleagues with meaningful rural practice experience. This likely shapes not only how rural perspectives and issues are incorporated into the curriculum, but also how rural practice is valued within the academy.

252. A 2012 American Bar Association resolution states that the presence of small-town attorneys “is directly connected to the health of the local economy.” AM. BAR ASS’N HOUSE DELEGATES, *supra* note 14, at 2.

253. An Iowa State Bar Association economic survey from 2015 showed that real estate, estate planning, and probate were the most common practice areas for attorneys in smaller communities. IOWA STATE BAR ASS’N, 2015 SALARY & ECONOMIC SURVEY 109 (2015), <https://www.iowabar.org/?pg=Reports> [<https://perma.cc/L9M7-APB5>] (select “2015 Economic Survey of Legal Practice In Iowa”). In communities with a population fewer than 4,000 people, ninety-one percent of surveyed attorneys’ practices included real estate and eighty-eight percent

supporting other aspects of community infrastructure, and providing civic leadership.²⁵⁴ However, given that a newly-recruited rural attorney *might or might not* play a meaningful role in providing civil access to justice, particularly for underserved or vulnerable populations, it is necessary to challenge Haksgaard’s assertion that “the presence of any attorney—even a private practice attorney—increases access to justice” in the rural context,²⁵⁵ and to recognize that other, perhaps more economical interventions, might have greater impact.

There may also be a temporal element at work. It is possible that rural attorneys historically have provided access and services due to the absence of other non-attorney legal resources that were available in more populated areas.²⁵⁶ Of course, the fact that rural attorneys have provided these services in the past, in the absence of other alternatives, does not mean that replacing yesterday’s lawyer with a newly-recruited attorney is the only, or best, vehicle to provide these services going forward.²⁵⁷ In some cases, the lack of attorneys might be easier to diagnose and remedy than consideration of reforming the structures or procedures that require attorneys.²⁵⁸

included estate planning and probate. *Id.* The percentages for each of these practice areas decreased across the six population categories to just twenty-six percent and twenty-four percent of attorneys practicing in these areas, respectively, in communities over 100,000 people. *Id.*

254. See Haksgaard, *supra* note 22, at 218. Haksgaard writes:

Rural lawyers provide integral services and long-term benefits to rural communities, even if those lawyers represent only fee-paid clients in a private practice. Private practice lawyers in rural communities “assist[] the infrastructure of these rural counties to vibrantly expand and grow, rather than wither away and ultimately become uninhabited with only remnants of courthouses and what once was a thriving rural society.” In addition, rural lawyers also provide critical community services, for example by serving on local nonprofit or school boards.

Id. (alteration in original) (footnotes omitted); see also Kidder, *supra* note 8, at 126–28 (describing the community relationships and involvement of rural lawyers).

255. Haksgaard, *supra* note 22, at 215.

256. See Emily Prifogle, *Winks, Whispers, and Prosecutorial Discretion in Rural Iowa, 1925–1928*, 79 ANNALS IOWA 247, 257, 271–73 (2020). Charles Pendleton, a prosecutor in rural Storm Lake, Iowa, had a range of duties: In addition to prosecuting crimes, Pendleton “maintain[ed] a private practice” and undertook “civil responsibilities (advising the county on issues of contracts, zoning, education, mental health commitments, and so forth).” *Id.* at 253. Pendleton described also “perform[ing] all the social welfare work in the county.” *Id.* at 268. While having one individual provide so many legal and quasi-legal services to a community may have been necessary, it was far from ideal.

257. We also recognize that in some situations an attorney may be the only viable intervention in the immediate term due to structural or procedural factors, even if other interventions may prove to be more effective and/or efficient in the longer term.

258. See, e.g., Hon. David Gilbertson, *Reflections on the Rural Practice of Law in South Dakota: Past, Present, and Future*, 59 S.D. L. REV. 433 (2014) (focusing exclusively on the lack of rural attorneys without considering other structural changes or innovations). For example, the Chief Justice states: “I do not desire to be the Chief Justice who, on my watch, was charged with turning out the

Rural attorney recruitment programs can be motivated by a variety of interests.²⁵⁹ If rural attorney recruitment or incentive programs are predicated on increasing access to justice,²⁶⁰ legislatures, bar associations, and law schools must thoughtfully and critically consider how to measure the access to justice impact beyond the mere presence of the additional attorney. Stakeholders' decisions to invest time and resources in attorney recruitment programs should be based on data, not assumptions or romanticized notions of the country lawyer²⁶¹—particularly given the growing array of other potential interventions.²⁶²

A final thought relates to the diversity of rural areas and rural attorneys. We agree with the assertion that “[t]he easiest way to add a lawyer to a particular community is to educate and train a person who hails from that community and wishes to return.”²⁶³ At the same time, this means the pool of potential lawyers may be limited when “some leaders are also concerned about a lack of diverse lawyers [in rural areas] in particular.”²⁶⁴ And the diversity of rural lawyers likely has implications for access to justice. There are many historic examples, like Charles Pendleton, of small-town attorneys who occupy several roles in the community, holding particular power through the exercise of discretion, often to the exclusion

lights permanently in forty-eight courthouses because they were abandoned for lack of attorneys,” suggesting that the number of attorneys should correspond the existing number of courthouses, without interrogating structural factors such as the number of courthouses or size of judicial districts. *Id.* at 442.

259. See Goetzinger & Morris, *supra* note 9, at 447. The State Bar of South Dakota wrote that “[t]he decline of Main Street lawyers is directly connected to the health of the local economy, impacts shrinking budgets, and is key to effective advocacy to ward off discussions about courthouse closings and county consolidation.” *Id.* (citation omitted). “Real estate transactions, trusts and estates matters, family law, and business legal issues are all at risk because of the lack of lawyers.” Kittay, *supra* note 29.

260. Recruitment programs have been “articulated as increasing access to justice in rural communities.” Haksgaard, *supra* note 22, at 215; see also Runge, *supra* note 15.

261. See generally Judy M. Cornett & Heather H. Bosau, *The Myth of the Country Lawyer*, 83 ALBANY L. REV. 125 (2020). The archetype of the “country lawyer . . . is middle-aged or older, an avuncular mix of wisdom and good humor. He is a generalist, in a small town, deeply connected to his community. He is trusted and respected. The person who is called upon when trouble threatens.” *Id.* at 125; see also Bailey Tulloch, Book Notice, *Reconstructing Rural Discourse*, 120 MICH. L. REV. 1337, 1344 (2022) (noting the portrayal of “country lawyers” in *Where the Crawdads Sing*, *To Kill a Mockingbird*, *Tutt and Mr. Tutt*, and *Anatomy of a Murder*). There is also a need for increased data on the efficacy of rural attorney recruitment programs in achieving their basic goal of recruiting and retaining attorneys to rural communities. John Hult, *Rural Lawyer Recruitment Efforts Show Local Results, but Fail to Alter Urban-Rural Divide*, S.D. SEARCHLIGHT (Jan. 15, 2023, 12:59 AM), <https://southdakotasearchlight.com/2023/01/15/rural-lawyer-recruitment-efforts-show-local-results-but-fail-to-alter-urban-rural-divide/> [<https://perma.cc/8WT5-ER4R>].

262. See *supra* section IV.B.3.

263. Pruitt, et al., *Legal Deserts*, *supra* note 10, at 147.

264. Kittay, *supra* note 29.

of marginalized groups.²⁶⁵ Deliberate recruitment or expanding access to justice interventions beyond the lawyer-only approach might allow a more diverse range of rural community members to enter the legal services profession.²⁶⁶

CONCLUSION

What we know from studies of access to justice generally, and in the rural context specifically, is that the data, quantitative and qualitative, do not speak with a singular voice. Low-income residents do not know their rights, nor do they recognize problems as justiciable—or they most certainly do. Lawyers improve outcomes in civil litigation, except when they do not. Lawyers are necessary for law reform, but we do not know exactly when we need law reform. Innovations in courts help pro se litigants, but sometimes they are more of a hindrance. Unbundled services make legal representation available to more people, which is good. But it may not improve outcomes, so does it matter? Increased awareness of available legal resources would increase the use of said resources, or would it? Geographically proximate legal services would increase the use of said services, or would it? Density of acquaintanceship and social intimacy improve legal relationships and access to justice, except when they impede relationships and discourage people from turning to local lawyers and the legal system.

What we do know is that more research is necessary, *both* research on the attorney shortage in rural areas *and* research on access to justice in rural communities, not because they are one and the same, but because each issue has the potential to impact rural residents' quality of life. There

265. See Prifogle, *supra* note 256. The concern that more “local” attorneys who return to their rural communities may, at best, improve access to justice for only certain people when the justice fits within certain shared norms, is borne out by Prifogle’s analysis of Charles Pendleton’s memoirs. *Id.* Pendleton practiced law in Storm Lake, Iowa, in the 1920s, in a fluid role as county attorney and private practitioner. *Id.* In this setting, Prifogle describes how “[s]ocial boundaries in a rural community required active safeguarding and maintenance, which included stigmatizing certain types of legal actions brought by certain types of people.” *Id.* at 254. Pendleton self-identified as the “People’s Pendleton” and “was a lawyer for the underdogs.” Emily Prifogle, Rethinking Rural: Life & Law in the Heartland 11, 13 (unpublished manuscript) (on file with authors). However, Pendleton nonetheless did not assist migrant Mexican farmworkers seeking unpaid wages from a local judge. Prifogle, *supra* note 256, at 255–56. Prifogle makes clear that Pendleton “did more than exercise discretion within the scope of criminal prosecution, he mediated disputes and performed social work—all in ways that reinforced gendered and racial biases.” *Id.* at 283.

266. One report pointed to Washington’s Limited License Legal Technician program providing “expanded legal job opportunities for women and people of color.” JASON SOLOMON & NOELLE SMITH, THE SURPRISING SUCCESS OF WASHINGTON STATE’S LIMITED LICENSE LEGAL TECHNICIAN PROGRAM, STAN. L. SCH. 17 (2021), <https://law.stanford.edu/wp-content/uploads/2021/04/LLLT-White-Paper-Final-5-4-21.pdf> [<https://perma.cc/493M-BP42>].

is an opportunity to interrogate the value a resident attorney brings to rural communities generally and more clearly understand the relationship of that attorney to access to justice. If we are to do so, it is necessary to understand access to justice in a way that better encompasses the needs of rural individuals and rural communities as potentially distinct entities. As a result, it is equally an opportunity to reassess how we measure access to justice and to design new approaches—as we plan to do with indicators of legal vulnerability—that correspond to the range of resources and interventions required to meet these needs. Whether we, as a profession, deem it necessary to preserve or break up our long-held monopoly on legal problem solving, should be a decision predicated on a more concrete and multi-faceted understanding of access to justice, particularly in rural communities.