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# Spreading Justice to Rural Montana: Rurality's Impacts on Supply and Demand for Legal Services in Montana

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## ARTICLES

### SPREADING JUSTICE TO RURAL MONTANA: RURALITY'S IMPACTS ON SUPPLY AND DEMAND FOR LEGAL SERVICES IN MONTANA

Hillary A. Wandler\*

*We face the very real possibility of whole sections of this state being without access to legal services. Large populated areas are becoming islands of justice in a rural sea of justice denied.*

—Chief Justice David Gilbertson, South Dakota Supreme Court<sup>1</sup>

*The pioneering is not over, nor have all of the opportunities for the man or woman of vision passed. This edition of "Montana" tells the story of the progress made to the present, and he who reads, if he is the same sort as the man and woman who brought this state to its present standard, will realize that the opportunities now are even greater than they have been in the past.*

—Charles D. Greenfield, Commissioner, Montana Dep't of Agriculture & Publicity, 1920<sup>2</sup>

#### I. INTRODUCTION

Buffalo Canyon Road, a narrow, straight gravel stretch, heads west off Montana Highway 191 into the heart of the Judith Basin prairie. In mid-

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\* Associate Professor, University of Montana School of Law. The Editors of the *Montana Law Review* solicited an article that explored access to justice issues in Montana, and many of them contributed excellent research for this resulting piece, including Lucas Hamilton, Calli Oiestad, and Michelle Tafoya. In addition, Professor Larry Howell and Kate Kuykendall provided valuable feedback on drafts. All remaining errors are my own.

1. Kathryn Hayes Tucker, *Rural Lawyer Recruitment Plan Flourishes in South Dakota*, Daily Report (Atlanta, Ga.) (Apr. 6, 2015) (available at <http://perma.cc/MCA3-K6SF> (<http://www.dailyreportonline.com/id=1202722724884/Rural-Lawyer-Recruitment-Plan-Flourishes-in-South-Dakota>)).

2. Mont. Dep't of Agric. & Publicity, *Resources of Montana: "The Land of Opportunity"* at Foreword (Charles D. Greenfield 1920).

July, miles upon miles of hay stretch out on either side of the road, standing full and even, making the fields look like tan-green rolling seas right up until the perfect angle reveals hundreds of straight rows. Cut hay forms orderly lines, waiting to be baled, and huge round bales dot the gently-curved horizon, deceptively small from a distance. Uniform fields and long, hot days predict a weed-free, mold-free harvest; this is good news for the Basin economy.<sup>3</sup> The expansive prairie is rimmed on the west by the powder-blue Little Belt Mountains and on the east by the deep blue-green Snowy Mountains. What few trees stand in the prairie cluster close to the farm homes spread out miles apart along the road.

Homesteaders arrived in the basin over 75 years before Judith Basin was officially recognized as a county in 1920. With the expansion of the railroad after the turn of the century, towns like Ubet, Straw, Buffalo, and Garneill grew into bustling railroad stops. “Ribbons of steel, resting heavily on cross ties brought Buffalo into existence eight years following the turn of the century in time to fulfill its predestined purpose of serving as a trading center for the surrounding homesteaders who occupied the ‘free’ land that had been parceled out by Uncle Sam in 160-acre lots,” remembered lifelong local Phil Bradley.<sup>4</sup> Another lifelong local, Sam Bradley, remembered Buffalo in the twenties as a “booming little prairie ‘city’ . . . [with] two banks, a creamery, hotel, stores, hardware, school, several passenger trains daily, garages, elevators, lumber yard, all thriving.”<sup>5</sup>

Cross the railroad tracks today and you will find a small collection of long-abandoned buildings where the railroad town once thrived. The only two buildings still open to the public are a post office and the Buffalo Community Church. Judith Basin County has one of the most rapidly-declining populations of any county in Montana. Between 2010 and 2014, it lost 3.9% of its population, the highest percentage of population loss among Montana’s 56 counties.<sup>6</sup> While the county’s population has declined, its agricul-

3. See U.S. Census Bureau, *2012 Census of Agriculture County Profile: Judith Basin County, Montana 2* (2012) (available at <http://perma.cc/37VS-LVCE> ([http://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/County\\_Profiles/Montana/cp30045.pdf](http://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Montana/cp30045.pdf))) [hereinafter *2012 Profile, Judith Basin County*] (showing Judith Basin ranks 3rd in Montana for quantity of forage land used for hay).

4. Elenor T. Townsend, *In the Shadow of the Twin Sisters* 136 (Mont. Bus. Serv. 1973) (“Authentic illustrated history of the Pioneers of Ubet, Garneill, Straw, and Buffalo in the state of Montana at the end of the nineteenth century and the outset of the twentieth century as related by the Pioneers and their descendants.”).

5. *Id.* at 146.

6. U.S. Census Bureau, *Cumulative Estimates of Resident Population Change and Rankings: April 1, 2010 to July 1, 2014 - State-County/County Equivalent*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>); select Advanced Search, enter “PEPCUMCHG” in the topic search box, enter “Montana” in the state search box, check “topics” below the search bar, select GO, select Cumulative Estimates of Resident Population Change and Rankings: April 1, 2010 to July 1, 2014 - State-County/County Equivalent (Mar. 2015).

tural sales have increased. As of the 2012 Census of Agriculture data, farms in Judith Basin were selling \$92,555,000 in agricultural products, a 70% increase from the 2007 Census.<sup>7</sup> Development of natural resources has also increased in the area. In nearby Wheatland County, private landowners contracted with the Montana Department of Natural Resources and a German company to create Montana's first major wind farm.<sup>8</sup> Private landowners in Judith Basin have been working on a similar project, forming Judith Highlands Energy, LLC with a Minnesota corporation to create a community wind farm; the project plans to develop over 500 megawatts of wind power in Judith Basin, Wheatland, Golden Valley, and Fergus Counties.<sup>9</sup> Private landowners have also granted easements to Spectra Energy for the Express Pipeline, which carries crude oil through a 500-foot-wide corridor in Judith Basin County. Over the years, the pipeline has added several 150,000-barrel storage tanks to a pump station just to the southwest of Buffalo Canyon Road.<sup>10</sup>

Although unable to sustain many local attorneys because of their small populations, with active farming communities, large average land holdings,<sup>11</sup> and massive natural resources projects in the works, rural communities like those in Judith Basin County would benefit from access to attor-

7. 2012 Profile, *Judith Basin County*, *supra* n. 3, at 1.

8. The Judith Gap Wind Farm was built in 2005, the product of an agreement between private landowners, the Montana Department of Natural Resources, and Wind Park Solutions, a German company freshly partnered with a corporate executive's distant relative in Big Sandy, Montana. Situated on both private and state trust lands about 15 miles southeast of Buffalo in Wheatland County, the 90-turbine, 135 megawatt wind farm has been operating since 2006. Weighing in at 108,000 pounds each, the turbine bases cover a collective 163,000 square feet, about three acres of land. New roads created to move and install the machines and leave access for maintenance cut more acreage from the prairie. The 1.5 MW turbines are made up of a 262-foot tower with three 126-foot-long blades; each structure stretches 400 feet into the air at the top of its arc. Though their stature may be less impressive in Germany or Chicago, where the corporations that own the Gap wind farm are located, here in Montana the turbines would tower over 120 feet above the height of the First Interstate Center in Billings, long the tallest building in the Northern Rockies and still the tallest building in Montana. *See* Gary Brester, Joel Schumacher & Cole Arthun, *Small Farm Profitability Case Study: Is the Answer Blowing in the Wind?* 7 (Agric. Mktg. Resource Ctr., Iowa St. U., Nov. 2008) (available at <http://perma.cc/WK8L-VEKT> ([http://www.agmrc.org/media/cms/BresterWindCS\\_7F81279E1CF60.pdf](http://www.agmrc.org/media/cms/BresterWindCS_7F81279E1CF60.pdf))); Central Mont., *Judith Gap Wind Farm/Energy Center*, <http://perma.cc/J6Z6-UTVA> (<http://centralmontana.com/listings/17101.htm>) (accessed Apr. 21, 2015); Chris Cioffi, *After 30 Years, First Interstate Tower Remains State's Tallest and 'a Timeless Building'*, *Billings Gaz.* (Jan. 17, 2015) (available at <http://perma.cc/R7CC-VPQN> ([http://billingsgazette.com/news/local/after-years-first-interstate-tower-remains-state-s-tallest-and/article\\_6ebd1f60-0332-581e-aec4-05fe93b05a79.html](http://billingsgazette.com/news/local/after-years-first-interstate-tower-remains-state-s-tallest-and/article_6ebd1f60-0332-581e-aec4-05fe93b05a79.html))).

9. Linda Halstead-Acharya, *Betting on the Wind: Landowners, Developers Laying Groundwork for Community Wind Farm*, *Billings Gaz.* (Jan. 16, 2010) (available at <http://perma.cc/M7XL-84EA> ([http://billingsgazette.com/news/state-and-regional/montana/landowners-developers-laying-groundwork-for-community-wind-farm/article\\_8e390e86-0266-11df-8bc2-001cc4c002e0.html](http://billingsgazette.com/news/state-and-regional/montana/landowners-developers-laying-groundwork-for-community-wind-farm/article_8e390e86-0266-11df-8bc2-001cc4c002e0.html))).

10. *See* Notice of Finding of No Significant Impact and Summary Environmental Assessment: Express Pipeline in Montana and Wyoming, 69 Fed. Reg. 59292, 59292, 59295 (Oct. 4, 2004).

11. As of 2012, the average farm in Judith Basin County was 3,193 acres, a 17% increase in farm size over the 2007 Census data. 2012 Profile, *Judith Basin County*, *supra* n. 3, at 1.

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neys fully informed and invested in local interests.<sup>12</sup> With even more extreme geographic isolation and higher relative poverty, rural communities like those in Blaine, Phillips, and Garfield Counties would also benefit from access to local legal services, particularly those available for prices below the urban market rate.<sup>13</sup> But judges and lawyers in Montana's rural communities have seen the number of resident attorneys declining along with the general population; they warn that this leads to fewer legal services rural residents—who tend to seek known quantities for all services—will trust and use.<sup>14</sup> Montana's rural judges and lawyers have encouraged all stakeholders to reverse the trend of declining numbers of rural lawyers in Montana. "Established [rural] firms need to encourage and seek out associates. Governing bodies, law schools, and community members themselves need to encourage attorneys to locate their law practice in rural Montana."<sup>15</sup>

12. Residents in Judith Basin can go to Lewistown in Fergus County for legal assistance. Lewistown is the nearest urban community to Judith Basin, about 30 miles away. But with only 18 lawyers in Lewistown, ready access to advice from a private attorney experienced in natural resources development may be difficult to obtain. See St. Bar Mont., *2015 Lawyers' Deskbook & Directory, Montana Members by City: Lewistown*, at 442. One firm has offices in both Lewistown and Stanford, and all four active attorneys listed as residing in Stanford, which is located in Judith Basin County, work for the firm. See Hubble Law Firm, PLLP, <http://perma.cc/S6AP-LAFU> (<http://www.hubblelandandlaw.com/>) (accessed Apr. 21, 2015). Though there are more of them, attorneys in the nearest urban areas are hours away. Attorneys in Great Falls (Cascade County, 8th Judicial District) are a 200-mile round trip to the northwest, and attorneys in Billings (Yellowstone County, 13th Judicial District) are a 240-mile round trip to the southeast. In researching this article, I found no data regarding whether residents in Montana's most geographically-isolated areas will readily travel for four-plus hours to obtain legal services, nor whether the average rural resident in Montana can afford to fund that travel in addition to paying urban market rates for legal services. One of the individuals Calli Oiestad interviewed in relation to this article, see *infra* n. 25, travels just under 200 miles (one-way) for legal services in the area of family law. The individual makes the 200 mile trip somewhat regularly for shopping and work necessities as well. As part of a special series on the "rural lawyer gap" in Georgia, Katheryn Hayes Tucker noted Southern Georgia residents were not necessarily convinced they needed more lawyers because they were used to traveling for most matters; however, the example demonstrates the difference in land area between Georgia and Montana—the lawyer being interviewed noted residents in Echols County, Georgia, will readily travel to the neighboring county for legal services, a drive of only about 20 minutes. Katheryn Hayes Tucker, *Here Are the Six Georgia Counties That Have No Lawyers*, Daily Report (Atlanta, Ga.) (Jan. 8, 2015) (available at <http://perma.cc/YWM4-N8TU> (<http://www.dailyreportonline.com/id=1202714378330>)).

13. Similar to residents in Judith Basin, residents in Blaine County can go to Havre in Hill County for legal assistance. Havre is the nearest urban community. For some Blaine County residents the trip to Havre would be less burdensome than the Judith Basin residents' trip to Lewistown because Chinook (Blaine County) is only about 22 miles from Havre (Hill County). Even so, Blaine, Phillips, and Garfield Counties have higher poverty rates than Judith Basin County, and so residents of those counties may have even less ability or inclination to travel the shorter distances for legal services. See *infra* Part III.B., Figure A (providing data on extremely rural counties in Montana that also have high poverty rates and low median income).

14. John C. McKeon & David G. Rice, *Administering Justice in Montana's Rural Courts*, 70 Mont. L. Rev. 201, 219 (2009).

15. *Id.* at 219. On March 20, 2015, the University of Montana School of Law's Rural Advocacy League, in partnership with the State Bar of Montana, held a rural practice panel at UMSL to do just that—encourage law students and others in the legal community to consider rural law practice. The

Rural counties have been the focus of national attention because of their relative lack of access to legal services.<sup>16</sup> The broader legal community has set its sights on achieving “full access to justice” for residents in both urban and rural communities, focusing policy efforts based on residents’ relative income.<sup>17</sup> “Full Access to Justice” is “availability of legal assistance to poor and low-income people *everywhere* to a level needed for them to function as a responsible member, not a victim, in our society.”<sup>18</sup> Montana has taken a great interest in access to justice, and various studies of access-to-justice issues in Montana have concluded that “unaddressed legal problems can lead to even bigger problems” for Montana’s residents.<sup>19</sup> Thus, the legal community has been highly motivated to identify Montana’s poor and low-income residents who have the most unmet legal needs.

Seeing unmet legal needs in areas of Montana that have few attorneys, some may be tempted to focus policy efforts on increasing the number of attorneys in those areas. Yet, “simply increasing the number of legal profes-

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panel involved lawyers and judges from several of Montana’s rural communities, including Judge David Rice, author of the article in *supra* n. 14, regarding justice in Montana’s rural courts. Recently retired, Judge Rice became the District Judge in Havre, Montana, after practicing there for years as a private attorney, deputy county attorney, and eventually county attorney for five years. Judge Katherine Bidegaray, District Judge in Montana’s 7th Judicial District, joined the panel remotely from Sidney, Montana, a nearly 20-hour round trip to UMSL in Missoula. Rural County Attorney, Kent Sipe, contributed his perspective as a county attorney serving multiple counties in Montana (Musselshell and Golden Valley), and a Trustee for the State Bar of Montana who represents 28 counties in the Eastern half of the state. The newest lawyer on the panel, Ben Fosland, lent his perspective from serving as a county attorney in Sheridan County, a rural county located in the northeastern-most corner of Montana. After graduating from Gonzaga University School of Law in 2011, Fosland took over his grandfather’s practice in Scobey, Montana. He offers services in real estate, estate planning and probate, natural resources law, and small business planning. See Fosland Law Firm, PLLC, *Services*, <http://perma.cc/ZH55-X9F2> (<http://foslandlawfirm.com/about-the-firm>) (accessed Apr. 21, 2015). All of the panelists indicated they believe more lawyers are needed in Montana’s rural communities. It isn’t yet clear whether Montana’s non-lawyer rural residents agree.

16. See e.g. Lorelei Laird, *In Rural America, There Are Job Opportunities and a Need for Lawyers*, 100 ABA Journal 36 (Oct. 1, 2014) <http://perma.cc/AH3B-UQJE> ([http://www.abajournal.com/magazine/article/too\\_many\\_lawyers\\_not\\_here\\_in\\_rural\\_america\\_lawyers\\_are\\_few\\_and\\_far\\_between](http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between)); Grant Rodgers, *Rural Areas Face Declining Lawyer Numbers*, Des Moines Register (Nov. 2, 2014) (available at <http://perma.cc/RPY5-NSLV> (<http://www.desmoinesregister.com/story/news/investigations/2014/11/02/rural-areas-face-declining-lawyer-numbers/18362425/>)).

17. See e.g. Robert B. Kershaw, *Access to Justice in Maryland—A Visionary’s Model*, 37 Md. B.J. 50 (May/June 2004). For another example, the Legal Services Corporation Summit on the Use of Technology to Expand Access to Justice set out to identify ways technology could bring the United States closer to “providing [assistance] to 100 percent of those persons with a legal need.” See James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 Harv. J.L. & Tech. 241, 244–245 (2012).

18. *Id.* at 50 (emphasis added).

19. Carmody & Associates, *The Justice Gap in Montana: As Vast as Big Sky Country* at Executive Summary (June 2014) (available at <http://perma.cc/K9M9-YADG> (<http://courts.mt.gov/content/supreme/boards/a2j/docs/justicegap-mt.pdf>)).

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sionals working in a given place will not ensure access to justice there.”<sup>20</sup> For example, even if we increase the number of rural attorneys in Montana, those attorneys may still face social and professional isolation, lower economic opportunity, and more conflicts of interest that limit their potential clientele.<sup>21</sup> Scholars and expert legal service providers have noted these potential challenges and begun to advocate for an approach that goes “beyond simple access to lawyers and courtrooms.”<sup>22</sup> Lack of ready access to lawyers and courts, while a critical part of the problem, is a symptom of a larger issue. When 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.<sup>23</sup>

Montana has more isolated rural areas than most other states, and Montana’s attorneys cluster in its urban areas, which leaves its rural areas with relatively little access to local legal services.<sup>24</sup> This suggests that Montana’s most persistent unmet legal needs may be in its rural communities. But despite the motivation to study gaps and barriers to justice in the state, Montana still lacks a clear picture of the state’s rural legal needs and the results of leaving those needs unmet. For example, not every rural county in Montana shows signs of socio-economic deprivation; current data about unmet legal needs is too coarse to identify the volume or persistence of need by location, leaving a gap in our understanding of whether various rural communities need more legal services for poor and low-income residents, or more access to private attorneys invested in local interests. This lack of data is coupled with anecdotal reports of rural apathy or even resistance to increased legal resources in rural areas.<sup>25</sup> Remoteness “breeds a mix of in-

20. Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. Rev. 466, 478 (2014).

21. *Id.* at 504; see also McKeon & Rice, *supra* n. 14, at 213 (“Even when available, the [rural] attorney may have a conflict that prevents representation of a particular party.”).

22. Pruitt & Showman, *supra* n. 20, at 479.

23. See *e.g. id.* at 497–499 (describing the United Way’s “Community Conversations” process during which community organizers have conversations to learn about the community’s legal and non-legal needs).

24. See *infra* Part IV.B. (discussing lawyer distribution in Montana’s urban and rural judicial districts).

25. For example, as a part of the Montana Law Review’s Access to Justice Project for the Professional Responsibility course at UMSL, then-2L Calli Oiestad conducted six interviews with residents of eastern Montana regarding their perceptions of access to legal services in the eastern part of the state. Only one of the individuals had extensive experience with the legal profession, and that individual reported a “significant need” for more legal professionals in eastern Montana. The remaining individuals reported that they either had no apparent need for legal services or thought their communities did not have enough work to support more attorneys, particularly if the attorneys specialized rather than offering general legal services. Telephone Interviews by Calli Oiestad with anonymous eastern Montana residents (May 2, 2014) (copy on file with author). Other states have reported similar anecdotal evidence of apathy or resistance to increasing legal services in rural areas. See *e.g.* Tucker, *supra* n. 12 (describing

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dependence and distrust of ‘outsiders’” in Montana residents, District Judges John McKeon and Dan Rice observed in 2009.<sup>26</sup> “This independent culture is one of the greatest strengths of rural Montana. But it can represent one of the greatest challenges in administering justice in these communities.”<sup>27</sup>

To address persistent unmet needs in rural areas, Montana needs a clearer picture of the demand for and supply of legal services in rural Montana. Thus, in this article and future works, I explore the impacts of rurality on the supply of and demand for legal services in Montana and analyze potential solutions for spreading justice to Montana’s rural communities. This article focuses on the relative rurality of Montana’s communities, including population, isolation, and poverty, and the impacts of rurality on legal need and the supply of both legal services and private lawyers in rural communities. It concludes with a call for further research on the demand for legal services in the state’s most rural areas to crystalize and focus Montana’s approach to spreading justice to rural residents.<sup>28</sup>

## II. DEFINING RURALITY

Distinguishing between “urban” and “rural” is not necessarily straightforward, as different agencies in the United States use different definitions of “rural.”<sup>29</sup> Each definition is tied in some way to population density, but some also take into account other factors, including rural communities’ iso-

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a lawyer in South Georgia scoffing at the dearth of lawyers in one of its most rural areas: “A lawyer couldn’t make a living with a practice just in Echols County. It’s rural . . . pine trees and alligators.”) *Id.*; Rodgers, *supra* n. 16 (quoting a member of the Iowa State Bar Association’s Rural Practice Committee, who opined the lack of state support for increasing rural legal services was “a matter of priorities”: “I don’t think the legal profession is put on the same priority level by the Legislature as physicians and teachers and some of these other things that we need in rural Iowa . . . . In all honesty, I’m not hearing any citizens complaining about the lack of lawyers in their communities.”).

26. McKeon & Rice, *supra* n. 14, at 216.

27. *Id.*

28. In a following article, I join Montana District Court Judges McKeon and Rice, the Montana legal services community, and Montana’s Access to Justice Commission in urging all stakeholders to explore options for encouraging lawyers into rural practice, recommending a more comprehensive approach to growing the number of lawyers in solo and small practices and spreading their service to Montana’s rural communities. For information on the Montana Access to Justice Commission, including all public documents, see Montana Supreme Court, *Access to Justice Commission*, <http://perma.cc/Q949-AGY2> (<http://courts.mt.gov/supreme/boards/a2j/default.mcpX>) (accessed Apr. 21, 2015).

29. See Jennifer Davis & Christopher Lohse, PowerPoint, *Understanding the Gradients of “Rural”*, (Research, Development & Dissemination, Council of Chief State School Officers, n.d.) (available at <http://perma.cc/Q5BC-YQMM> (<http://opi.mt.gov/PDF/superintendent/RuralityReport.pdf>)). A future area of study could be a comparison with international indices of rurality to find potentially-useful indices to understand Montana’s landscape. See e.g. Trutz Haase & Kathy Walsh, *Measuring Rural Deprivation: Literature Review & Issues Arising* (Jan. 2007) (available at <http://perma.cc/6YZE-XK46> (<http://trutzhaase.eu/publications/measuring-rural-deprivation/>)) (reviewing definitions of “rural” across multiple countries, including the United States).

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lation from urban areas, commuting patterns, and community access to services. For purposes of evaluating rurality's impacts on legal need in Montana, the most appropriate tool would account for Montana's larger relative land area, which has the potential to isolate communities from resources that are concentrated in urban areas, including legal services.

Under any definition of "rural," Montana is one of the most rural states in the nation. According to the U.S. Census Bureau, 44.11% of Montana's population occupies the state's "rural" areas.<sup>30</sup> Thirty-one of Montana's 56 counties have 100% rural population as defined by the U.S. Census Bureau.<sup>31</sup> The state's remaining population is concentrated in its few "urban" areas.<sup>32</sup> Using the Office of Management & Budget (OMB) definition of "rural," the only non-rural counties in Montana are the Metropolitan areas of Missoula, Cascade, and Yellowstone (including Carbon and Golden Valley Counties in its statistical area), along with the Micropolitan areas of Flathead, Lewis & Clark (including Jefferson County in its statistical area), Silver Bow, and Gallatin Counties.<sup>33</sup>

Montana is the third most rural state in the nation under various composite indices for rurality.<sup>34</sup> The state's northern and eastern areas are its

30. U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria, Percent Urban and Rural in 2010 by State*, <http://perma.cc/2MUP-8E36> (<http://www.census.gov/geo/reference/ua/urban-rural-2010.html>); *expand* Lists of Population, Land Area, and Percent Urban and Rural in 2010 and Changes from 2000 to 2010, *select* Percent urban and rural in 2010 by state (last updated Feb. 9, 2015). Using this measurement, the top ten most rural states are: (1) Maine (61.34%), (2) Vermont (61.1%), (3) West Virginia (51.28%), (4) Mississippi (50.65%), (5) Montana (44.11%), (6) Arkansas (43.84%), (7) South Dakota (43.35%), (8) Kentucky (41.62%), (9) Alabama (40.96%), and (10) North Dakota (40.1%).

31. *Id.* (*expand* Lists of Population, Land Area, and Percent Urban and Rural in 2010 and Changes from 2000 to 2010, *select* Percent urban and rural in 2010 by state and county (last updated Feb. 9, 2015)).

32. Under Census Bureau definitions, this includes the "Urbanized Areas" of Billings, Great Falls, and Missoula, as well as "Urban Clusters" like Helena and Butte, which have less than 50,000, but more than 2,500 residents. U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, <http://perma.cc/Z4U2-PNBJ> (<http://www.census.gov/geo/reference/ua/urban-rural-2010.html>) (last updated Feb. 9, 2015). An "Urban Area" has two subcategories: (1) an Urbanized Area of 50,000 or more people; and (2) Urban Clusters of at least 2,500 and less than 50,000 people. U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, <http://perma.cc/Z4U2-PNBJ> (<http://www.census.gov/geo/reference/ua/urban-rural-2010.html>) (last updated Feb. 9, 2015) (providing the definitions at the top of the page). Any area that is not categorized as an Urbanized Area or Urban Cluster is considered "rural." *See also* U.S. Census Bureau, *Urban and Rural Classification*, <http://perma.cc/XVV5-QVZ4> (<https://www.census.gov/geo/reference/urban-rural.html>) (accessed Apr. 21, 2015) (providing links to current and historical urban-rural classifications).

33. U.S. Census Bureau, *Montana—Core Based Statistical Areas (CBSAs) and Counties* (Feb. 2013) (available at <http://perma.cc/9M9A-4LYC> ([http://www2.census.gov/geo/maps/metroarea/stcbsa\\_pg/Feb2013/cbsa2013\\_MT.pdf](http://www2.census.gov/geo/maps/metroarea/stcbsa_pg/Feb2013/cbsa2013_MT.pdf))).

34. Davis & Lohse, *supra* n. 29, at 57–66. The "Course Rural Index" averages percentage of population in "rural" areas as defined by the U.S. Census Bureau, OMB, Rural-Urban Commuting Areas, Urban-Centric Locale Codes, and a weighted average index from the Index of Relative Rurality. *Id.* at 58 (describing the weighting method for IRR as multiplying the IRR of each county by the county

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most rural regardless of which definition is used, and many northern and eastern counties are considered examples of “extreme rurality” under the Index of Relative Rurality (IRR), a tool that takes into account factors of geographic isolation from urban areas.<sup>35</sup> The IRR measures a county’s “degree of rurality” using population number, population density, the county’s urbanized areas (as defined by the U.S. Census Bureau), and distance to the nearest metropolitan area (as defined by the U.S. Census Bureau and the OMB); because it includes distance and scores counties by “degree,” as well as its ability “to reflect extreme degrees of rurality,”<sup>36</sup> the IRR is a good candidate to evaluate areas in Montana isolated from legal services.<sup>37</sup> The following counties are considered “extremely” rural on the IRR: Sheridan, Daniels, Phillips, McCone, Prairie, Wibaux, Fallon, Carter, Madison, Liberty, Blaine, Wheatland, Petroleum, Garfield, Treasure, and Powder River.<sup>38</sup> In these extremely rural areas, administering and accessing the judicial system may be more challenging due to their isolation and lack of local services.<sup>39</sup>

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population and averaging across counties). Montana scores an 8.6 on the Course Rural Index, behind Vermont (9.7) and Mississippi (8.7). *Id.* at 59. The “Fine Rural Index” averages the percentage of population in “rural isolated” areas on the Rural-Urban Commuting Area codes, percentage of population in “completely rural” areas on the Rural-Urban Continuum Codes, and the percentage of population in counties with an IRR score greater than or equal to 0.6. *Id.* at 60. Montana scores a 7.3 on the Fine Rural Index, behind North Dakota (10.0) and South Dakota (9.3). *Id.* at 61. The “Extreme Rural Index” averages scores from the Rural-Urban Continuum Codes and percentage of the population in counties with an IRR score of greater than or equal to 0.8. *Id.* at 62. Montana scores a 5.3 on the Extreme Rural Index, behind North Dakota (10.0) and South Dakota (9.8). *Id.* at 63. Finally, the “Frontier Index” averages the percentage of population in counties with population density less than 7 people per square mile, using U.S. Census data, and percentage of population in “frontier” counties as defined by the National Center for Frontier Communities. *Id.* at 64. Montana scores a 7.1 on the Frontier Index, behind Wyoming (10.0) and Hawaii (7.6). *Id.* at 65. Putting all of these indices together, Montana scores a 7.1, behind only North Dakota (8.4) and South Dakota (8.2). *Id.* at 66.

35. See Brigitte Waldorf, *Measuring Rurality*, 8 InContext 1 (Jan. 2007) (available at <http://perma.cc/LT62-UACB> (<http://www.incontext.indiana.edu/2007/january/2.asp#notes>)).

36. See Davis & Lohse, *supra* n. 29, at 56.

37. Waldorf, *supra* n. 35. Taking the Index a step further, Waldorf combines it with urban influence codes to reach a conclusion about each county’s access to metropolitan areas, which even more finely demonstrates each county’s level of access to urban resources. “Rurality plays out differently for counties within the influence of a metropolitan area versus places that are far away from a metropolitan area. The most obvious reason for this difference is accessibility to the amenities of a metro area, such as airports, shopping and cultural opportunities.” *Id.* This could be said of access to legal services clustered in urban areas as well. Figure 3 in Brigitte Waldorf’s article, *Measuring Rurality*, illustrates the Rural-Metropolitan Levels. *Id.* at fig. 3.

38. See *Id.* at fig. 1 (showing “extreme” rural counties scoring greater than or equal to 0.8 on the index).

39. McKeon & Rice, *supra* n. 14, at 203.

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### III. RURALITY'S IMPACT ON THE DEMAND FOR LEGAL SERVICES

#### A. *National Evidence that Rurality Causes Persistent Unmet Legal Need*

In studying unmet rural legal needs, researchers ask what percentage of the rural population requires “legal assistance to secure basic human needs.”<sup>40</sup> Some national surveys have revealed that one-third of rural residents meet this definition and concluded a higher percentage of rural population typically leads to more unmet legal needs in a state.<sup>41</sup> In certain areas of the country, residents in geographically-isolated communities suffer from a vicious cycle of more social issues that would benefit from legal services, fewer local legal services leading to more travel and communication burdens to access those services, and lower income to bridge the gap. Other rural communities simply have too few local legal services to handle any matters; for residents in those communities, the hassle of remote access, whether through travel or technology, is enough of a hurdle to discourage them from accessing legal services for all but the most significant issues, even if they have sufficient income.<sup>42</sup>

The distance between rural and urban communities complicates access to justice.<sup>43</sup> “It is . . . a hallmark of rural living that residents must travel greater distances, at greater cost, to access all sorts of services and institutions,” like courts, lawyers, drug treatment, shelters, and health and human services.<sup>44</sup> Distance creates isolation, and isolation can impact rural residents’ ability and motivation to seek legal assistance by making transportation and communication more taxing.<sup>45</sup> Thus, service providers can expect to find that residents in remote rural communities more frequently leave legal needs unmet.

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40. Pruitt & Showman, *supra* n. 20, at 496 nn. 30, 137 (citing the California Commission on Access to Justice research showing sparse legal services for the comparatively higher legal needs in rural areas). The California Commission on Access to Justice provides an Executive Summary of its report at <http://perma.cc/UK2C-DVWH> (<http://www.calbar.ca.gov/Portals/0/documents/accessJustice/2010%20Improving%20Rural%20Report%20Executive%20Summary.pdf>).

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41. Pruitt & Showman, *supra* n. 20, at 496 nn. 30, 137.

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42. See e.g. Legal Services Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* E-5 (Sept. 2009) (showing the “hassle” of seeking legal help discouraged low-income survey respondents from seeking legal assistance in several states, including Montana).

43. Pruitt & Showman, *supra* n. 20, at 477 (“It will likely be easier to meet rural access to justice challenges in exurbia or the metropolitan periphery than in the more remote rural locale.”).

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44. *Id.* at 486–487.

45. *Id.* at 476–477 (“Physical geography will loom larger in some places than in others, and the capacity of transportation and communications infrastructure to ameliorate those challenges will vary from place to place.”).

Isolation combined with low income can create an even higher hurdle for individuals living in rural areas to access legal services; rurality combined with higher rural poverty may deprive residents of legal advice and assistance to meet basic needs.<sup>46</sup> The U.S. Census Bureau follows the OMB's policy defining "poverty," which sets thresholds by family size and composition.<sup>47</sup> Even though rural living is often more affordable, rural communities have lower median household incomes and a higher percentage of residents that fall below the poverty threshold than urban communities.<sup>48</sup> Low-income individuals living in isolated rural areas typically cannot afford to hire an attorney at the market price. Thus, as they are often too far from an urban area to conveniently access reduced-fee legal services and cannot afford to remotely access through technology, they are more likely to leave a legal need unmet.<sup>49</sup> Poor governments can also struggle to engage rural residents in services that may address the underlying causes of some of the more common rural injustices. Rural local governments can have trouble fulfilling basic governmental functions, like keeping roads in working order.<sup>50</sup> Those local governments have less ability to attract rural individuals to public engagement, which would lead them to more readily seek out and locate accessible legal services, much less legal services that take more effort to access.<sup>51</sup>

National evidence indicates socio-economic issues can lead to injustices in rural areas due to comparatively-higher poverty and isolation from

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46. Robin Runge & Christyne J. Vachon, *Planting the Seeds and Getting into the Field: The Role of Law Schools in Ensuring Access to Justice in Rural Communities*, 59 S.D. L. Rev. 616, 620 (2014) (noting statistical evidence that "[r]ural America is disproportionately poor").

47. See U.S. Census Bureau, *How the Census Bureau Measures Poverty*, <http://perma.cc/77T8-PU2S> (<http://www.census.gov/hhes/www/poverty/about/overview/measure.html>) (last updated Sept. 16, 2014). "If a family's total income is less than the family's threshold, then that family and every individual in it is considered in poverty." The definition excludes capital gains and noncash benefits, but includes all of the following as "income": earnings, unemployment compensation, workers' compensation, Social Security, Supplemental Security Income, public assistance, veterans' payments, survivor benefits, pension or retirement income, interest, dividends, rents, royalties, income from estates, trusts, educational assistance, alimony, child support, assistance from outside the household, and other miscellaneous sources.

48. USDA, Econ. Research Serv., *Rural America at a Glance: 2014 Edition* (Nov. 2014) (available at <http://perma.cc/WJQ5-EBXS> (<http://www.ers.usda.gov/media/1697681/eb26.pdf>)) (noting a rural poverty rate of 18.2% in 2013, compared to urban poverty rate of 15.4%, as well as rural median income level at 78% of the urban median income). The USDA relies on Census data to report poverty rates. See also Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 Wis. L. Rev. 969, 980 (2005) ("The gap between the urban and rural poverty rate is neither new nor diminishing. Poverty is persistently greater in rural than in urban areas. For the last forty-four years, the poverty rate of rural residents has exceeded that for urban dwellers.").

49. Carmody & Associates, *supra* n. 49, at 3–4.

50. Pruitt & Showman, *supra* n. 20, at 501–502.

51. *Id.*

basic social and economic services.<sup>52</sup> For example, researchers have found environmental justice issues related to extractive industries, poor migrant working conditions, and unmet legal needs for the elderly, disabled, and veteran populations in rural areas.<sup>53</sup> Other prevalent problems include breakdowns in employment relationships and debtor-creditor relationships, as well as low-income individuals' relationships with the government when trying to obtain services.<sup>54</sup> “[I]n situations with a known lack of access to justice, those in positions of power use the lack of a rule of law to exploit vulnerable populations.”<sup>55</sup> With relatively less access to legal help or involvement of legal professionals, those social issues may go unaddressed; the resulting lack of accountability under the law can lead to persistent injustice.

### *B. Montana's Rurality May Cause Persistent Unmet Legal Needs*

We would expect to find different types of legal need in rural Montana depending on each area's socio-economic and geographic profile. For example, some counties like Daniels and Sheridan in the 15th Judicial District are considered “extremely rural,” but are less impoverished (below-average poverty rate<sup>56</sup> and an above-average median household income<sup>57</sup>) than the average Montana county. In contrast, Blaine County is both “extremely rural” and more impoverished (above-average poverty rate and below-average median household income) than the average Montana county.<sup>58</sup>

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52. *Id.* at 500–501. Rural communities, with their lower income and fewer basic social and economic services, can be plagued by a variety of injustices. For example, some of the issues of lack of access causes in North Dakota include loss of family property, disabled individuals' inability to obtain public benefits or employment, unlawful eviction, and unaddressed domestic violence. Runge & Vachon, *supra* n. 46, at 619.

53. Pruitt & Showman, *supra* n. 20, at 487–488.

54. *Id.* at 500–501 (describing injustices like lack of employment protections such as wage and leave protections, payday lending practices, and lack of access to health and human services for children).

55. Runge & Vachon, *supra* n. 46, at 619.

56. The average poverty rate across Montana's 56 counties is 16.4%. U.S. Census Bureau, *2013 Poverty and Median Household Income Estimates - Counties, States, and National* (Dec. 2014) (available at <http://perma.cc/KC58-2BFW> (<http://www.census.gov/did/www/saipe/data/statecounty/data/2013.html>) (download Excel spreadsheet entitled “est13ALL.xls” to access data on Montana's counties)).

57. The average median household income across Montana's 56 counties is \$43,452. *Id.*

58. *Id.*

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FIGURE A<sup>59</sup>

County (Judicial District)	IRR Score Extreme Rural = ≥0.8	Poverty Percent	Median Household Income
Comparatively Impoverished “Extreme Rural” Counties			
Blaine (17th)	0.8≤ but <0.9	28.2	35,215
Garfield (16th)	0.8≤ but <0.9	17.3	38,663
Liberty (12th)	0.8≤ but <0.9	23.0	39,073
Phillips (17th)	<0.9	18.1	40,202
Wheatland (14th)	0.8≤ but <0.9	19.7	32,519
Comparatively Wealthy “Extreme Rural” Counties			
Daniels (15th)	<0.9	9.3	51,400
Fallon (16th)	<0.9	7.8	59,083
Madison (5th)	0.8≤ but <0.9	12.2	44,046
Sheridan (15th)	<0.9	10.4	50,292
Treasure (16th)	0.8≤ but <0.9	11.3	48,282
Wibaux (7th)	<0.9	11.0	43,722

It is not clear how this impacts the types of legal needs in those counties or residents' ability to pay for private legal services. We could speculate that rural residents in wealthier areas would have sufficient income to pay for local private legal services, in contrast to rural residents in more impoverished areas. Unfortunately, like rural areas across the nation,<sup>60</sup> Montana's rural communities have higher poverty rates than its urban communities. Comparing Montana's 10 core-based statistical areas (CBSAs) with its 46 rural counties, the urban counties had an average poverty rate of 15.2%, while the rural counties had an average poverty rate of 16.6%.<sup>61</sup>

59. This table is constructed from the following sources: U.S. Census Bureau, *supra* n. 56; Waldorf, *supra* n. 35. “Comparatively Impoverished” means the county has both an above-average poverty percent and a below-average median household income. “Comparatively Wealthy” means the county has both a below-average poverty percent and an above-average median household income.

60. Kathleen Miller & Bruce Weber, *Persistent Poverty Dynamics: Understanding Poverty Trends over 50 Years* (Rural Policy Research Inst., July 2014) (available at <http://perma.cc/E7T5-2M3Q> ([http://www.rupri.org/Forms/Poverty\\_MillerWeber\\_July2014.pdf](http://www.rupri.org/Forms/Poverty_MillerWeber_July2014.pdf))). Miller and Weber conclude that “[p]ersistent poverty is an enduring problem in rural America.” *Id.* at 12. They point out that counties with poverty rates of 20% or higher over five measurement years (1969, 1979, 1989, 1999, and 2009) are mostly nonmetropolitan, and counties that intermittently over those five measurement years showed poverty rates of 20% or higher were also “overwhelmingly rural.” *Id.* at 13. Montana counties showing “persistent poverty” were: Blaine, Big Horn, and Glacier. *Id.* at 8. Montana counties showing “intermittent high poverty” were: Roosevelt, Liberty, Choteau, Lake, Meagher, and Golden Valley. *See also* Porter, *supra* n. 48, at 980 (noting the persistent and widening gap between urban and rural poverty rates).

61. Memo. from Lucas Hamilton to Prof. Wandler, *Access to Justice Research Memo* (Apr. 6, 2015) (on file with author). Lucas researched rural poverty rates as part of the Montana Law Review's 2015 Access to Justice Project for UMSL's Professional Responsibility course. To calculate rural pov-

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Many rural residents across the state have enough income to disqualify them from federally-funded legal aid programs, even though they are not making a “living wage” sufficient to meet basic needs. Federal Legal Services Corporation (LSC) funding is designed to “increase the quantity and quality of legal services available to the poor.”<sup>62</sup> Only individuals or families with gross income below 125% of the federal poverty line qualify, which means in 2015, an individual must earn less than \$14,713 to qualify for legal aid, and a family of four must earn less than \$30,313.<sup>63</sup> The “Living Wage Calculator” created by Massachusetts Institute of Technology estimates that an individual would need to earn at least \$15,912 a year, and a family of four at least \$34,694 a year to meet basic needs in Montana; these amounts would not likely allow for a private attorney at market rates, but they would preclude an individual or family from obtaining federally-funded legal aid.<sup>64</sup>

Judith Basin County had a median household income of \$41,731 in the most recent Census estimate, well above the line to qualify for federal legal aid, and also above the “living wage” mark.<sup>65</sup> For counties like Blaine and Phillips, with above-average poverty and below-average income, more residents would qualify for federally-funded legal aid programs.<sup>66</sup> However, even if a higher percentage of rural residents qualifies for legal aid services,<sup>67</sup> legal aid programs serving rural areas can face many challenges in addition to the constant search for funding, including additional travel and communications burdens for the lawyer and the client.<sup>68</sup> As a result, most

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erty rates for 2013, he relied on the following sources: U.S. Census Bureau, *supra* n. 56; U.S. Census Bureau, *supra* n. 33.

62. Cabral et al., *supra* n. 17, at 243.

63. Leg. Servs. Corp., *About LSC*, <http://perma.cc/9BBZ-ZC5Z> (<http://www.lsc.gov/about/what-is-lsc>) (accessed Apr. 21, 2015); *see also* Pruitt & Showman, *supra* n. 20, at 503–504.

64. Mass. Inst. of Tech., *Poverty in America: Living Wage Calculator—Living Wage Calculation for Montana*, <http://perma.cc/THN6-2ZZQ> (<http://livingwage.mit.edu/states/30>) (accessed Apr. 21, 2015); *see also* Pruitt & Showman, *supra* n. 20, at 503–504 (noting individuals earning a “living wage” may not qualify for LSC-funded programs, “yet all would struggle to afford legal services on the private market.”).

65. *See* U.S. Census Bureau, *2013 Poverty and Median Household Income Estimates - Counties, States, and National* (December 2014) (available at <http://perma.cc/KC58-2BFW> (<http://www.census.gov/did/www/saige/data/statecounty/data/2013.html>) (download Excel spreadsheet entitled “est13All.xls” to access data on Montana’s counties). As shown by the county’s below-average median household income, though land-rich, Judith Basin residents are comparatively cash-poor. This may be true of most Montana counties dominated by agricultural economies. Land-rich/cash-poor residents may be less able to pay market rates for legal services because of their lack of liquid assets. We should take this factor into account when further studying legal needs in Montana’s most ag-dominated counties.

66. *See* U.S. Census Bureau, *supra* n. 56.

67. Cabral et al., *supra* n. 17, at 261. For example, five million people live in rural California, and over 30% of them qualify for legal aid. *Id.*

68. *Id.* (“Legal aid programs in rural areas face even greater challenges than those in urban areas as there are fewer traditional sources of pro bono legal work and fewer funding resources.”).

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legal services concentrate in urban areas.<sup>69</sup> In addition, federal legal services funding is decreasing and limited in its reach.<sup>70</sup>

About 20 of Montana's attorneys are specifically employed to serve individuals with low income, regardless of where in the state those individuals live.<sup>71</sup> These include attorneys at Montana Legal Services Association, the Court Help Program, and other non-profit legal services organizations located in the state.<sup>72</sup> In 2014, they were assisting less than one in ten low-income Montanans.<sup>73</sup> They also technically serve an area of over 145,500 square miles.<sup>74</sup> Montana's rural judges have observed that "[m]ost rural courts have no legal aid services in the community,"<sup>75</sup> a fact that is unsurprising given Montana's land area.

Montana's rural district court judges also spend a significant portion of their time traveling, which takes a toll on the judges and the funding for courts and judicial services.<sup>76</sup> Nine rural judges serve the seven rural eastern judicial districts, covering a collective 75,858 square miles.<sup>77</sup> Montana's Constitution, Article II, Section 16, mandates that its courts "be open to every person," which requires a district court in every county.<sup>78</sup> With 56

69. For example, Montana Legal Services has main locations in three of Montana's largest urban areas: Helena (Lewis and Clark County, 1st Judicial District), Billings (Yellowstone County, 13th Judicial District), and Missoula (Missoula County, 4th Judicial District). See Mont. Leg. Servs., *Locations*, <http://perma.cc/2Z6R-QHKR> (<http://www.mtlsa.org/about-us/locations/>) (accessed Apr. 21, 2015).

70. Pruitt & Showman, *supra* n. 20, at 503–504.

71. Carmody & Associates, *supra* n. 19, at 3.

72. *Id.*

73. *Id.* Reduced funding had a negative impact on the number of attorneys employed to serve low-income Montanans, as well as the ability to reach the individuals in more remote parts of the state. See *id.* at 3–4. Montana Legal Services Association's attorneys are located in Billings, Helena, Missoula, and the Crow Reservation. *Id.* at 4. Three of the four locations are Montana's only urban areas. U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, available at <http://perma.cc/8TBB-9PNF> (<http://www.census.gov/geo/reference/ua/urban-rural-2010.html>).

74. See Cabral et al., *supra* n. 17, at 269 ("Many legal aid programs must serve large geographic areas with few attorneys. For instance, the Montana Legal Services Association ("MLSA") has twelve attorneys to cover a service area of over 145,000 square miles.")

75. McKeon & Rice, *supra* n. 14, at 213.

76. *Id.* at 203–207. On the bright side of this issue, and perhaps another opportunity for Montana to improve access in isolated rural areas, are partnerships between the state and tribal courts. In some instances, those partnerships have successfully addressed local disputes and issues that might not otherwise reach the state court system due to isolation. Pruitt & Showman, *supra* n. 20, at 509–510 (describing Alaska's partnership between state and tribal courts that allows tribal courts to handle local disputes in remote regions if the parties agree and the court approves).

77. Mont. Jud. Branch, *District Courts*, <http://perma.cc/6425-QBJB> (<http://courts.mt.gov/dcourt/default.mcp>) (interactive district map); Mont. Geographic Info. Clearinghouse, *Area of Montana Counties*, <http://perma.cc/BT9C-UHFC> ([http://geoinfo.msl.mt.gov/Home/geography/geography\\_facts/area\\_of\\_montana\\_counties](http://geoinfo.msl.mt.gov/Home/geography/geography_facts/area_of_montana_counties)) (accessed Apr. 21, 2015).

78. Montana Constitution article II, section 16, provides for "[t]he administration of justice": "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate

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district courts and only 46 district court judges, rural judges serve multiple counties.<sup>79</sup> A rural district judge serving multiple counties must travel to each county to hold regular law-and-motion dates, spending around a quarter of his or her time traveling around the state as a result.<sup>80</sup>

Additional travel burdens related to geographic isolation can delay, if not deny, justice. Traveling to and from isolated rural areas makes scheduling matters difficult for all participants in the judicial system, including residents.<sup>81</sup> The court and attorneys serving in isolated rural areas must manage calendars in multiple locations, law enforcement offices must arrange modified travel of criminal defendants and witnesses, and rural residents must plan for absence from seasonal obligations at small businesses.<sup>82</sup> As two rural judges observed, “[m]ental health and chemical dependency issues can heighten in areas of poverty and in the isolation of rural areas,” but the experts equipped to address those issues are also typically located many miles away, causing additional delays.<sup>83</sup>

In the past five years, Montana has completed two extensive surveys on access to justice; the results indicate that almost half of Montana’s low-income individuals leave at least one civil legal problem unaddressed each year.<sup>84</sup> In 2010, the Montana Justice Foundation commissioned a telephone survey of civil legal needs directed at low-income Montanans.<sup>85</sup> The survey

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employer who hired him if such immediate employer provides coverage under the Workmen’s Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.” *See also* McKeon & Rice, *supra* n. 14, at 203.

79. Mont. Code Ann. § 3–5–101 (2013) (listing Montana’s 22 judicial districts and their corresponding counties); Mont. Jud. Branch, *supra* n. 77; *see also* McKeon & Rice, *supra* n. 14, at 202–203 (describing the challenges for district court judges regularly traveling to multiple district courts over which they preside). For example, the Honorable David Cybulski is based out of Plentywood, Montana, but presides over Daniels, Sheridan, and Roosevelt Counties. *See* Mont. Jud. Branch, *15th Judicial District*, <http://perma.cc/B4M2-GBFK> (<http://courts.mt.gov/locator/dist15.mcp>) (accessed Apr. 21, 2015). The Honorable Daniel Boucher is based out of Havre, Montana, but presides over Choteau, Hill, and Liberty Counties. *See* Mont. Jud. Branch, *12th Judicial District*, <http://perma.cc/TSM4-5BVV> (<http://courts.mt.gov/locator/dist12.mcp>) (accessed Apr. 21, 2015). The Honorable Loren Tucker, who presides over Beaverhead, Jefferson, and Madison Counties, lists the court’s home base by day of the week, with the town of Dillon for Tuesdays and Thursdays, Virginia City for Mondays, and Boulder for Wednesdays. *See* Mont. Jud. Branch, *5th Judicial District*, <http://perma.cc/9C4M-SXFG> (<http://courts.mt.gov/locator/dist5.mcp>) (accessed Apr. 21, 2015).

80. McKeon & Rice, *supra* n. 14, at 204. Judge Rice recognized that travel may provide a district judge needed reflection time or time to mentally prepare for an upcoming day, but it may also present hazardous challenges due to poor weather and roads. *Id.* at 205 (describing a harrowing experience on black ice in central Montana).

81. *Id.* at 206.

82. *Id.*

83. *Id.* at 212 (describing the process of obtaining a mental competency examination for a criminal defendant when the exam had to be performed 200 miles away).

84. Carmody & Associates, *supra* n. 19, at 3.

85. Bureau of Bus. & Econ. Research, *2010 Montana Legal Needs Survey Final Report 3* (Mar. 3, 2011) (available at <http://perma.cc/P5WL-8RCK> (<http://c.ygcdn.com/sites/www.montanabar.org/re>)).

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distinguished between a “civil legal problem,” which the individual may not believe requires legal assistance, a “legal need,” which the individual does believe requires legal assistance, and an “unmet legal need,” which the individual cannot or does not address with counsel or other assistance.<sup>86</sup> The survey gathered only 207 responses from low-income Montanans, which made estimating statewide unmet legal needs difficult.<sup>87</sup> However, after weighting the data with information from the Census and U.S. National Center for Health Statistics, researchers estimated distribution of civil legal problems across Montana’s population.<sup>88</sup> The study concluded that, of Montana residents reporting a civil legal need in the last year, 77.1% reported doing nothing about that need.<sup>89</sup> The study estimated that as many as half of all Montana low-income households had at least one civil legal problem in the year prior to the study.<sup>90</sup>

In 2013, the Montana Supreme Court’s Access to Justice Commission commissioned a study of the gaps and barriers to legal assistance in Montana.<sup>91</sup> The study was designed to identify free and reduced-cost civil legal assistance available in Montana. Its focus was on Montana’s low and moderate-income population,<sup>92</sup> and it also aimed to identify barriers to access.<sup>93</sup> By revealing gaps in assistance and barriers to accessing that assistance, the study aimed to reveal factors thwarting justice<sup>94</sup> for low- and moderate-income Montanans.<sup>95</sup> The report, issued in 2014, identified a variety of factors, in addition to income and lack of free and reduced-fee legal assistance,

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source/collection/39AE2004-9834-462A-A637-F200684299B3/Appendix\_B\_to\_Petition.pdf)) [hereinafter *2010 Montana Legal Needs Survey*].

86. *Id.* at 3.

87. *Id.* at B5–B6. The response rate was 39.3%. Of 115 respondents on one question, only 13 reported having problems with mortgage or foreclosure. Only two of those reporting problems actually sought the help of legal assistance, which is interpreted as leaving approximately 84% of the reporting cohort with an “unmet legal need.” *Id.* at B5. Discrimination due to disability had similar results—out of 206 respondents to the question, only 14 reported a problem, and 13 of those (93%) did nothing about the problem. *Id.* at B12–B13. Nevertheless, extrapolating these percentages across Montana’s entire population when it is based on the reports of only 13 or 14 individuals is too shaky a foundation on which to make major policy or curricular decisions.

88. *Id.* at 4, 6.

89. *2010 Montana Legal Needs Survey*, *supra* n. 85, at 4.

90. *Id.* at 13. While the estimation is based on a small sample size, the study does suggest that Montana’s low-income population may have a pattern of doing nothing about needs like discrimination, foreclosure, predatory credit practices, and lack of access to health care.

91. Carmody & Associates, *supra* n. 19.

92. *Id.* at 5 (“In other words, are there geographic areas, specific populations or types of legal need that do not have assistance available?”).

93. *Id.* (“If there is assistance available, what keeps individuals from accessing it?”).

94. The study defined “justice” as “the legal assistance [an individual] need[s] to address the challenges that can only be solved through the legal system.” *Id.*

95. *Id.* (“The barriers and the gaps are intertwined in such a way that it can be difficult to distinguish them.”).

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that lead to gaps in access to justice for Montana's residents.<sup>96</sup> While the report focused more on income level, its analysis intersected with the urban-rural factor. Factors particularly related to rurality lead to unmet legal needs, such as funding shortages for legal services entities, Montana's large rural landscape, and problems with remote access to technology.<sup>97</sup> By showing that low-income individuals are less likely to address legal problems when they have less access to free or reduced-fee legal assistance, the study highlighted the impacts of fewer lawyers serving rural areas.<sup>98</sup>

These studies are crucial to understanding statewide legal needs, but the results are not granular enough to identify those needs by location. Thus, exploring the distribution of legal services throughout the state could also help identify potential gaps, particularly since national evidence indicates that attorneys tend to settle in urban, rather than rural areas.

#### IV. RURALITY DECREASES SUPPLY OF LEGAL SERVICES

##### A. National Evidence that Rurality Decreases Supply of Legal Services

In 2011, the New York Times reported fresh economic data showing a "lawyer surplus" across the nation; the data purported to show law schools were "churning out many more lawyers than the economy needs even in the long run."<sup>99</sup> By 2013, the newspaper had modified its message: "Rural Americans are increasingly without lawyers even as law school graduates are increasingly without jobs."<sup>100</sup> This new take on the "lawyer surplus" was perpetuated by the ABA House of Delegates' 2012 Resolution urging "federal, state, territorial, tribal and local governments to support efforts 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."<sup>101</sup> The report recounted the concentration of lawyers in urban areas across the country, noting this left rural areas without local legal services and, thus, with unmet legal needs.<sup>102</sup> In the years since that report, several rural states have studied the issue and begun efforts to reverse the trend, for the sake of both

96. *Id.* at 3–4.

97. Carmody & Associates, *supra* n. 19, at 3–4.

98. *Id.*

99. Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. Times (June 27, 2011) (available at <http://perma.cc/RAB7-P9XN> (<http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>)).

100. Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers to Pay*, N.Y. Times (Apr. 8, 2013) (available at <http://perma.cc/P4NY-UW82> ([http://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html?pagewanted=all&\\_r=1](http://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html?pagewanted=all&_r=1))).

101. ABA, *Resolution 10B 1* (2012) (available at [http://www.americanbar.org/content/dam/aba/administrative/house\\_of\\_delegates/resolutions/2012\\_hod\\_annual\\_meeting\\_10b.doc](http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2012_hod_annual_meeting_10b.doc)) [hereinafter *ABA Resolution 10B*] (adopted by the House of Delegates on August 6–7, 2012).

102. *Id.* at 2.

rural residents and new law graduates who have the skills, but not the opportunity, to help.<sup>103</sup>

The information coming from this national effort to understand rural justice gaps shows that a community's degree of rurality can be a significant factor in a new lawyer's decision about whether to set up practice in that community.<sup>104</sup> The challenges of solo or small firm practice in rural areas have been well documented. These include both economic and social factors, compounded by professional isolation—a lack of networking, mentoring, and professional development opportunities.<sup>105</sup> Studies have identified increasing law school tuition, lack of practical skills when graduating from law school, and the absence of an “ethic of service” during law school.<sup>106</sup> Critics have also targeted the divide between legal education and the skills needed in practice as a key factor in declining law school applications; this lack of skills training may combine with the financial burden of attending law school to make rural practice particularly daunting for new graduates.<sup>107</sup>

Even if more legal needs originate in the rural population, a new attorney still needs to ask just how great the need is and whether the community's needs can sustain a new practice. Past studies have shown that rural

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103. This author's next article on access to justice will explore different state and law school efforts to address rural gaps in justice. Two examples include: 1) South Dakota's “Recruitment Assistance Pilot Program,” started in 2013, which gives a lawyer financial support in return for five continuous years of practice in a rural county with a population of 10,000 or less; and 2) the collaboration between rural counties, the State Bar of South Dakota, and the Unified Judicial System using appropriated state funds. S.D. Unified Jud. Sys., *Rural Attorney Recruitment Program*, <http://perma.cc/CGD8-FGWR> (ujs.sd.gov/Information/traprogram.aspx) (accessed May 16, 2015); see also Runge & Vachon, *supra* n. 46, at 632. Another model bar associations have been trying is a summer program that gives law students first-hand experience in rural practice. *Id.* at 629–630 (describing the Iowa State Bar Association's summer clerkship program and the Nebraska State Bar Association's Rural Practice Initiative). For example, the Iowa State Bar Association's Rural Practice Committee started a program to match law students with rural attorneys. In 2014, the State Bar Foundation began funding stipends to supplement the student participants' employer-provided summer compensation in return for at least 50 hours of legal aid to the state's indigent residents, including residents in the rural areas where the students are placed. See Iowa St. Bar Ass'n, *ISBA Rural Practice Committee*, <http://perma.cc/AM76-RDSQ> ([www.iowabar.org/group/Rural-Practice](http://www.iowabar.org/group/Rural-Practice)); select “Rural Practice Committee/Iowa Legal Aid Stipend Program” (accessed May 16, 2015) (providing more information about the Rural Practice Committee/Iowa Legal Aid Stipend Program). These are only a couple of examples of a larger, national trend fueled by the ABA's focus on rural practice.

104. Laird, *supra* n. 16, at 42 (noting factors weighing against rural practice, like school debt preventing new lawyers from purchasing rural law practices outright, fewer opportunities to meet people for new lawyers who are single, and fewer professional and life opportunities for spouses and children).

105. Pruitt & Showman, *supra* n. 20, at 467.

106. *Id.* at 471–472.

107. *Id.* at 472 (“Lacking both the financial wherewithal and the practical legal skills to hang out the proverbial shingle, highly leveraged law graduates may seek large-firm experience and salaries as their only apparent choice, which necessarily places them in metropolitan areas.”).

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communities tend to resolve disputes more informally than formally.<sup>108</sup> A preference for or custom of informal dispute resolution may make solo or small firm practice less economically viable.

This unknown feeds the perception that rural practice is not as lucrative or comfortable as practice in urban areas. “Metropolitan areas are perceived to offer better opportunities and lifestyles, especially to new law school graduates.”<sup>109</sup> For students with school loans to pay off, less lucrative practice options can appear daunting, if not completely out of the question.<sup>110</sup> This can, in turn, lead students to perceive rural practice as more service-oriented because of the lower salaries and potential for economic growth in rural law practices.<sup>111</sup> If a law school fails to cultivate an “ethic of service” in its graduates, fewer of those graduates may consider “serving” as a lawyer in rural communities.<sup>112</sup>

While the legal community may look at the isolation in rural areas as a “problem” to be solved, rural communities may have the opposite view and consider it a strength that keeps the community small and, paradoxically, close.<sup>113</sup> This closeness can result in another barrier to increasing the number of attorneys in rural areas because it results in lack of anonymity.<sup>114</sup> Close neighbors or acquaintances make up the legal system, which may discourage someone from seeking legal help or even reporting crimes.<sup>115</sup> Lawyers who are well-connected in a rural community may also run into a higher number of conflicts of interest.<sup>116</sup> All of these factors have led to lawyers settling primarily in urban areas across the country.<sup>117</sup>

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108. *Id.* at 493.

109. Runge & Vachon, *supra* n. 46, at 620 (noting student concerns with rural isolation and fears of low economic return-on-investment as factors that keep new law graduates from starting rural practice). R

110. National research has shown that student debt is a real hurdle for some students to clear in order to start a rural practice; this includes both undergraduate and law school debt. *Id.* at 631–632 (“As a result [of law school and undergraduate debt], it can be challenging to consider taking on the cost of opening a practice, even in a rural community where rent and other expenses are much lower than in most urban communities.”).

111. Even legal aid programs have noted their attorneys have less interest in working in remote areas. Cabral et al., *supra* n. 17, at 261. R

112. Pruitt & Showman, *supra* n. 20, at 471–472. R

113. *Id.* at 481–482 (discussing how population sparseness often results in higher acquaintanceship and greater moral consensus).

114. *Id.* at 489–491.

115. *Id.*

116. *Id.* at 489–491. In addition to a greater number of conflicts of interest, a rural attorney may find the breadth of issues arising in those communities challenging to competently cover. See the discussion and footnotes above related to social issues in rural communities.

117. See Bronner, *supra* n. 100 (noting only 2% of small law practices are located in rural areas across the nation, but 1/5th of the country’s population resides in those rural areas). R

*B. Rurality Decreases Supply of Legal Services in Montana*

In 1965, University of Montana Law Librarian R.M. Houghton analyzed the “market for lawyers” in Montana.<sup>118</sup> He noted the statewide ratio of lawyers to residents at that time was “roughly 1:800.”<sup>119</sup> After surveying the bar membership for opinions on whether each member’s county could “use additional lawyers at the present moment,” he concluded counties with populations between 10,000 and 25,000 could use 1 lawyer for every 1,000 residents, but counties with populations lower than 10,000 required more than 1,000 residents to support one lawyer’s practice.<sup>120</sup> “Those answering the questionnaire from the most rural counties were quite uniform in their replies. Interest in having another attorney initiated when the ratio of 1:1,500 was achieved. By the time the ratio reached 1:2,000, the cry was for help!”<sup>121</sup>

Since that time, Montana’s attorneys have continued to settle into the state’s urban areas.<sup>122</sup> Montana’s rural judges serve by judicial district, and rural attorneys practice in multiple locations across counties and towns.<sup>123</sup> Just as the State Bar of Montana Membership Report is broken out by judicial district, the following data regarding the location of Montana’s active attorneys is also broken out by judicial district. Based on the above data regarding rurality, many of Montana’s judicial districts are highly rural. In contrast, six of Montana’s judicial districts have a population above the average district population of 46,526 residents:

Judicial District	Counties	Population Estimate
13	Yellowstone	155,634
4	Missoula, Mineral	116,941
18	Gallatin	97,308
11	Flathead	94,924
8	Cascade	82,344
1	Lewis & Clark, Broadwater	71,523

These six judicial districts also have an above-average number of active attorneys serving their residents; approximately 81% of Montana’s active

118. R.M. Houghton, *The Market for Lawyers in Montana*, 26 Mont. L. Rev. 189 (1965).

119. *Id.* at 191.

120. *Id.* at 191–192.

121. *Id.* at 192.

122. This appears to be a common issue in large, rural states. Attorneys in North Dakota also live primarily in urban areas; only 85 towns in North Dakota have an attorney. Runge & Vachon, *supra* n. 46, at 618. South Dakota, another of the most rural states in the nation, has also seen its attorneys cluster into urban areas; 65% are concentrated in the state’s urban areas, leaving several counties with no lawyer. Pruitt & Showman, *supra* n. 20, at 468–469.

123. *See* Mont. Jud. Branch, *supra* n. 79.

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attorneys are located in these six most-populated judicial districts.<sup>124</sup> Less than 20% of Montana's active attorneys serve the state's remaining 16 judicial districts.

Judicial District	Counties	Total Population	Active Attorneys	Residents-per-Attorney
1	Lewis & Clark, Broadwater	71,523	572	125
4	Missoula, Mineral	116,941	628	186
13	Yellowstone	155,634	531	293
18	Gallatin	97,308	332	293
8	Cascade	82,344	232	355
11	Flathead	94,924	240	396

A high resident-per-attorney ratio is one way scholars use to measure access to justice in rural areas of a state.<sup>125</sup> Three of Montana's judicial districts exceed 1,000 residents per attorney, and seven more exceed the statewide district average of 663 residents-per-attorney.<sup>126</sup>

Judicial District	Counties	Total Population Estimate	Active Attorneys	Residents-per-Attorney
14	Meagher, Wheatland, Golden Valley, Musselshell	9,396	6	1,566
16	Garfield, Rosebud, Treasure, Custer, Fallon, Powder River, Carter	29,479	25	1,179
15	Daniels, Sheridan, Roosevelt	16,821	16	1,051
17	Blaine, Phillips, Valley	18,451	20	923
9	Glacier, Toole, Pondera, Teton	31,129	36	865

124. Montana has an average of 142 active attorneys per district, but most of its districts report fewer than 100 resident attorneys. State Bar Mont., *Membership Information Report* (Dec. 19, 2014) (copy on file with author).

125. Runge & Vachon, *supra* n. 46, at 617. For example, Runge and Vachon used the calculation to demonstrate need in North Dakota's rural areas, noting the average of 1.3 lawyers for every 1,000 people in the state's rural areas. *Id.* As discussed, this equation is only one factor to consider in identifying access-to-justice issues. A state should also consider residents' lack of money to retain attorneys and attorneys' lack of expertise in certain subject matter areas (e.g., family law, veterans law), as well as attorney age in a rural area with few attorneys; when an attorney retires in a geographic location with high resident-to-attorney ratio, the impact is felt more significantly than in urban areas. *Id.* at 618.

126. U.S. Census Bureau, *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014*, Montana Counties, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>; select Advanced Search, enter "PEPANNRES" in the topic search box, enter "Montana" in the state search box, check "topics" below the search bar, select GO, select Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2004 (Dec. 2014); St. Bar Mont., *supra* n. 124; Mont. S. Ct., *Montana Judicial District Court Map*, <http://perma.cc/83HK-FVM9> (<http://courts.mt.gov/dcourt/default.mcp>) (accessed Apr. 15, 2015).

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7	Richland, McCone, Dawson, Prairie, Wibaux	25,057	30	835
21	Ravalli	41,030	52	789
22	Stillwater, Carbon, Big Horn	32,971	47	702
12	Liberty, Hill, Chouteau	24,849	36	690
3	Granite, Powell, Deer Lodge	19,268	29	664

Another calculation—the number of square miles each attorney in a district theoretically covers—also reveals that attorneys in some of Montana’s most rural judicial districts cover significantly greater land area than attorneys in more urbanized districts. Attorneys in judicial districts 14, 16, and 17 cover both substantially more land area and substantially more residents than attorneys in the most urban districts. For example, each attorney in the 14th judicial district theoretically covers 1,145 square miles and 1,566 residents, while each attorney in the 4th judicial district covers 6 square miles and 186 residents.<sup>127</sup>

Judicial District	Counties	Active Attorneys	Total Area in Square Miles	Square Miles per Attorney
14	Meagher, Wheatland, Golden Valley, Musselshell	6	6,869.00	1,145
16	Garfield, Rosebud, Treasure, Custer, Fallon, Powder River, Carter	25	22,921.50	917
17	Blaine, Phillips, Valley	20	14,512.00	726
18	Gallatin	332	2,634.00	8
4	Missoula, Mineral	628	3,841.50	6
13	Yellowstone	531	2,648.80	5

The 14th Judicial District is bordered on two sides by two of Montana’s largest urban areas, Great Falls to the northeast, and Billings to the southeast; its proximity to large, urban areas may be part of the reason so few attorneys settle in that district, if attorneys from Great Falls and Billings already provide sufficient coverage to residents in the 14th Judicial District’s counties. However, the 16th Judicial District to the east has more “extremely rural” counties relatively farther removed from urban areas of the state.

Convinced that even Montana’s most remote areas hold great promise for anyone settling there, Montana’s rural judges have nevertheless highlighted lack of sufficient legal services in Montana’s rural communities; they note understaffed county prosecutor offices, counties with no attorneys

127. Thus, each attorney in the 14th judicial district covers 190 times as many square miles and 8.4 times as many residents as each attorney in the 4th judicial district.

outside a county prosecutor, and private attorneys in rural areas who are either unwilling or unable to handle certain types of cases.<sup>128</sup> A 2004 ABA report regarding equal justice in criminal proceedings noted higher conflicts of interest in Montana's rural areas due to fewer lawyers available to handle criminal defense matters for indigent defendants.<sup>129</sup> One attorney testified to the ABA, "[l]awyers in smaller more rural counties in Montana are neither inclined nor trained to take cases when there are co-defendants or there is a conflict with the contract public defender."<sup>130</sup> The report recounted the chilling story of a Montana contract defense attorney providing "all of the representation in the county for a flat fee" whose ineffective assistance caused the wrongful imprisonment of a man for 15 years.<sup>131</sup>

Factors that dissuade graduates from out-of-state law schools from entering rural practice—like economic and social factors, professional isolation, financial constraints due to debt, the perception that rural practice is not as lucrative or even minimally financially sustainable, lack of "service ethic," and lack of practical skills<sup>132</sup>—may have comparatively less impact on students graduating from Montana's only law school, University of Montana School of Law (UMSL). UMSL's tuition and fees are approximately 53% less than the national average for public resident law school tuition and fees and approximately 22% less than the national average for public nonresident tuition and fees.<sup>133</sup> The school ranks 27th of 202 law schools in affordability of off-campus living expenses.<sup>134</sup> UMSL also deliberately cultivates an ethic of service; the Student Bar Association (SBA) has a Community Relations Coordinator who works to link students with pro bono service opportunities, and the SBA hosts a Pro Bono Fair every year.<sup>135</sup> The Montana Public Law Interest Coalition, a UMSL student

128. McKeon & Rice, *supra* n. 14, at 207.

129. ABA Standing Comm. on Leg. Aid & Indigent Defs., *Gideon's Broken Promise: America's Continuing Quest for Equal Justice* 19 (Dec. 2004) [hereinafter *Gideon's Broken Promise*].

130. *Id.*

131. *Id.* at 15.

132. *See* discussion *supra* Part IV.

133. Compare U. Mont. Sch. L., *Admissions*, <http://perma.cc/S7A6-LL2M> (<http://www.umt.edu/law/admissions/paying/default.php>) (listing UMSL's 2014–2015 average resident tuition and fees as \$11,334.76 with a total financial budget of \$26,065.76, and nonresident tuition and fees at \$29,327.56 with a total financial budget of \$44,758.56) with ABA, *ABA Approved Law School Tuition and Living Expenses Data: Fall 2013*, <http://perma.cc/23SB-VZN9> ([http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html)); *select* Fall 2013 Tuition and Living Expenses (by school) from right-hand column (accessed Apr. 15, 2015) [hereinafter *ABA Law School Tuition Data*] and ABA, *ABA Approved Law School Tuition History Data*, <http://perma.cc/23SB-VZN9> ([http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html)); *select* Law School Tuition (1985–2013; Public/Private) from right-hand column (accessed Apr. 15, 2015).

134. *Id.*

135. Memo. from Michelle Tafoya to Prof. Wandler, *Access to Justice Research Memo* (Feb. 19, 2015) (on file with author). As a part of the Montana Law Review Access to Justice Project for UMSL's Professional Responsibility course, Michelle performed research regarding UMSL's current efforts to

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group, promotes public interest law generally, including pro bono service; the student group hosts a panel on pro bono legal services every year, and it raises funds for a public interest scholarship.<sup>136</sup> UMSL is also actively involved in the state's broader access to justice efforts through faculty and student appointments on the Montana Access to Justice Commission and the Western Montana Pro Bono Committee.<sup>137</sup>

This community focus on service is part of UMSL's unique mission for administering legal education:

The University of Montana School of Law prepares students for the people-oriented practice of law by integrating theory and practice in a competency-based curriculum; serves as the academic legal center in Montana; and contributes to the development of national, state, and tribal law and legal institutions through teaching, scholarship, and service.

In pursuit of this mission, the School of Law strives to:

Develop in its students the demonstrated ability to serve society as lawyers, to represent clients generally and in particular transactions, and to seek resolution of conflicts in appropriate forums;

Foster intellectual inquiry, knowledge of the law, fundamental professional skills, perspective on the role of law and lawyers in society, and the character and values necessary to serve society;

Support scholarship and provide professional service to Montana, tribal governments and communities, the nation, and the international community;

Emphasize those areas of law significant to the Rocky Mountain West, including natural resources, environmental, and Indian law; and

Promote among students, faculty, and the profession a sense of community enriched by a diverse group of people devoted to freedom of inquiry and freedom of expression.<sup>138</sup>

As one commentator noted, UMSL's unique mission has features particularly suited to preparing law students to practice law in rural areas: "For law schools in rural areas, part of the law school's mission is to prepare students for the types of practice that are prevalent in that particular region: often,

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cultivate an ethic of service in its students and promote rural practice. In interviewing the current Community Relations Coordinator, Jeff Wilson, she found that he has developed ongoing relationships with the program leaders providing pro bono services in the Missoula area, for example assisting students with opportunities to volunteer with the Crime Victim Advocate Program in Missoula County.

136. *Id.*

137. *Id.*

138. U. Mont. Sch. L., *About, Mission & Values*, <http://perma.cc/52UB-ST2D> (<http://www.umt.edu/law/about/default.php>) (accessed Apr. 15, 2015).

that means preparing students for small firm or solo practice.”<sup>139</sup> In fact, UMSL’s mission emphasizes the “people-oriented practice of law,” which will be crucial in rural areas with higher acquaintanceship.<sup>140</sup> It also deliberately merges theory and practice, focusing on competency for practice, critical to a successful rural practice where new lawyers may be more professionally isolated and have more responsibility earlier in practice.<sup>141</sup> To this end, UMSL requires all students to participate in its clinical program during the third year, and it has a robust skills program that extends through the first two years.

While UMSL’s focus on practical skills training and intentional cultivation of an “ethic of service” should prepare its graduates to more readily set up a solo or small firm practice in a rural area than many of the nation’s law schools, its curriculum may not yet go far enough in exposing students to rural perspectives and skills necessary for successful rural practice. For example, UMSL does not regularly offer disability law, mental health law, ag law, or poverty law, all of which would be crucial foundational courses for a student planning to start a solo or small practice in an isolated rural area.<sup>142</sup>

In February, 2015, Montana’s Access to Justice Commission (Law School Partnerships Committee) and UMSL surveyed the student body regarding interest in rural and modest means practice and concepts related to solo practice incubators.<sup>143</sup> Over 57% of the student body responded to the survey. Students were asked if they were interested in starting a practice in a Montana town of 10,000 or fewer residents. The majority of students (74%) were open-minded to this type of practice, responding either “yes” or that they would like more information. Less than one-third of students (26%) responded that they had “no” interest in starting a practice in a town of 10,000 or fewer residents.<sup>144</sup>

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139. Diane E. Courselle, *When Clinics are “Necessities, Not Luxuries”: Special Challenges of Running a Criminal Appeals Clinic in a Rural State*, 75 Miss. L.J. 721, 732–733 (2006) (citing UMSL’s Mission & Values Statement).

140. Pruitt & Showman, *supra* n. 20, at 489–491.

141. *See* Courselle, *supra* n.139, at 732–733 (noting the clinical program at a rural law school “must provide students with opportunities not only to acquire legal knowledge, but also to develop independent professional judgment, practice skills, and values necessary for a future in which they may receive little additional training or mentoring”).

142. *See* Pruitt & Showman, *supra* n. 20, at 527 (“Curriculum shifts in legal education may be necessary to respond to evolving needs.”). Some courses mentioned as particularly relevant to rural practice include family law, commercial law, the law of trusts/wills/estates, elder law, disability law, and poverty law. *Id.*

143. *Student Incubator Survey—Limited Means & Rural Practice* (Spring 2015) (conducted by the Law School Partnerships Committee of the Access to Justice Commission; on file with author).

144. *Id.*

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UMSL has begun to meet the interest in rural practice with information and opportunities to engage. For example, the Rural Advocacy League, a UMSL student group, organizes a Rural Law Week that involves speakers and panels exploring legal issues in Montana's rural areas.<sup>145</sup> It has also partnered with the Montana Legal Developer Clinic to provide volunteer experiences for UMSL students providing legal services to seniors 65 and older; the clinic rotates across Montana through rural areas like Fort Benton, Red Lodge, and Townsend.

Montana law students are open minded to rural practice, and UMSL is meeting their interest with information and opportunities to engage in rural communities. As discussed above, the national legal community is also becoming more educated in the rural justice need. However, for Montana, and perhaps other large rural states, one final data point aligns with the information regarding degree of rurality and poverty, and it may be the most difficult to overcome through any programmatic efforts to spread justice to Montana's rural areas. "Natural resources have long been a major factor in rural population change."<sup>146</sup> An area's geographic (physical) characteristics may be more or less likely to draw people to settle there. Based on this concept, the United States Department of Agriculture's Economic Research Service assigns each county a "natural amenities" score between 3 (high amenities) and -2 (low amenities).<sup>147</sup> Thinking of reasons why lawyers may not choose to reside and practice in certain rural areas of Montana, we could interpret a higher rurality score as more professional isolation, higher poverty scores as less economic potential, and low natural amenities scores as less natural draw. The average natural amenities score for Montana's 56 counties is 1.36. The following table shows four counties with high rurality, higher poverty, and low natural amenities scores, contrasted with two examples of counties with lower rurality, lower poverty, and high natural amenities scores. It also shows the areas with the combined hit of rurality plus poverty plus low natural draw have far fewer attorneys.

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145. Memo. from Michelle Tafoya, *supra* n. 135.

146. David A. McGranahan, *Natural Amenities Drive Population Change 1* (Agric. Econ. Rpt. No. AER-781, Oct. 1999) (available at <http://perma.cc/9EM7-39FC> ([http://www.ers.usda.gov/media/758891/aer781a\\_1\\_.pdf](http://www.ers.usda.gov/media/758891/aer781a_1_.pdf))). For purposes of the data, an amenity is a physical "attribute that enhances a location as a place of residence," as distinguished from a place attractive to only tourists. *Id.* The scale combines "six measures of climate, topography, and water area that reflect environmental qualities most people prefer." See USDA, *Natural Amenities Scale, Overview*, <http://perma.cc/R4CT-7D4W> (<http://www.ers.usda.gov/data-products/natural-amenities-scale.aspx>) (last updated July 5, 2012).

147. See USDA, *supra* 146.

County (District)	IRR Score Extreme Rural = $\geq 0.8$ Most Urban = $< 0.1$	Poverty Percent	Median Income	Natural Amenities Score Lower Score = Fewer Natural Amenities	Residents- Per- Attorney in District
	<i>Higher Professional Isolation</i>		<i>Lower Economic Potential</i>	<i>Lower Natural Draw</i>	
Phillips (17th)	$< 0.9$	18.1	40,202	0.29	922.55
Blaine (17th)	$0.8 \leq$ but $< 0.9$	28.2	35,215	0.19	922.55
Garfield (16th)	$0.8 \leq$ but $< 0.9$	17.3	38,663	0.65	1179.16
Liberty (12th)	$0.8 \leq$ but $< 0.9$	23.0	39,073	0.45	690.25
	<i>Lower Professional Isolation</i>		<i>Higher Economic Potential</i>	<i>Higher Natural Draw</i>	
Missoula (4th)	$0.3 \leq$ but $< 0.4$	17.4	45,895	1.74	186.21
Lewis & Clark (1st)	$0.4 \leq$ but $< 0.5$	12.6	53,982	3.16	125.04

When asked what factors would weigh in a decision to start a limited means or rural practice, responding students indicated that financial considerations related to student loan debt and the ability to pay the costs of opening an office would be the most important factor, along with other financial responsibilities.<sup>148</sup> This indicates that some financial incentive or support for practicing in Montana's rural areas may help students take the next step toward rural practice. However extensive, though, programmatic efforts to support rural attorneys cannot change a rural area's natural amenities. While further study of this factor is needed, it may indicate that areas with lower natural amenities will require more extensive financial or other incentives to retain lawyers.

#### V. CONCLUSION: INFORMING & FOCUSING MONTANA'S APPROACH TO RURAL GAPS IN JUSTICE

Despite Montana's recent and relatively extensive efforts to study unmet legal needs in Montana, the studies have not focused on the actual demand for legal services in Montana's rural areas. Because this is a primary source of concern for new attorneys taking a risk on rural practice, any effort to encourage solo and small practice in Montana's rural areas

148. Financial considerations related to student loan debt and the ability to pay the costs of an office or practice weighed the heaviest, with a strong majority (64% and 63%) indicating they would each be a "major factor." Family financial responsibilities and income (55%), along with exposure to financial risk (49%), living expenses (49%), and access to start-up costs and capital (46%) were also selected as "major" factors in the decision to start a limited means or rural practice.

will need to address this information gap. In part, we are battling the fear of the unknown. New attorneys contemplating rural practice, particularly if they have never lived in a rural area, will wonder what it would be like to live and practice there, what legal issues will regularly arise, and whether rural residents prefer to use local attorneys or more urban-based attorneys.<sup>149</sup> Any program designed to connect rural legal needs with appropriate resources would benefit from concrete information about the unique legal needs in different Montana communities, including the state's most geographically isolated locations. A program also working to build new law graduates' legal, business, and leadership skills for rural practice would need this type of information in order to fully inform participants about viable opportunities and markets. Thus, more concrete, Montana-specific data would further both goals.

Montana needs more information about the legal needs in its various communities, for the sake of both residents and new attorneys contemplating rural practice. Currently, we lack enough information about rural legal needs to clearly show whether particular rural communities could sustain new lawyers.<sup>150</sup> Thus, one of the first categories of information to explore should be the actual demand for legal services in Montana's various rural communities. This should include needs in both the civil and criminal law contexts, as well as needs that may not look like or be identified as "legal," but would be more effectively addressed with the help of a lawyer.<sup>151</sup> Thoughtful exploration into the actual demand would distinguish between a "legal problem" only law-trained outsiders may see, and a "legal problem" any person in society will recognize regardless of where they come from; a need may not necessarily be unmet or legal if the individual or entity experiencing the need does not see any benefit to addressing it or seeking counsel to address it. In addition, we should gather more specific information about legal subject-matter areas with higher demand in different communities.

Additionally, we should more broadly gather information about various rural communities to inform law students and new lawyers about the standard of living in each community. For example, we should learn more about non-legal job opportunities, housing options, and school systems to

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149. Runge & Vachon, *supra* n. 46, at 621. The recent Student Incubator Survey at UMSL showed that over half of responding students had never lived in a community with 10,000 or fewer residents. This may be even more true of new lawyers entering Montana practice from out of state. R

150. We also do not know how current rural lawyers may feel about increased competition in particular communities. In gathering information about rural community needs, we must also gather information from those already practicing in those communities.

151. Pruitt & Showman, *supra* n. 20, at 499 (describing two scholars who have called for a broader definition of access to justice that explores an individual's circumstances even before he or she seeks out a lawyer and helps the individual identify legal needs and economic disadvantage in a "community focused and forward looking" process). R

help new lawyers and their families enter rural communities better informed to plug in to the professional and social life there and identify viable communities for new lawyers to settle in. Identifying volunteer opportunities in various rural communities may also help new lawyers make connections with residents who could be potential clients, professional colleagues, or just potential friends and neighbors.

New lawyers would similarly benefit from information about rural socio-economic deprivation that may give rise to both individual and community legal and leadership needs in Montana communities. Some of this information may be discovered through state and federal databases, but gathering useful and realistic information may also require longer-term commitment and presence in rural communities. We should thus work to gradually improve the feedback loop between the rural legal communities and the larger Montana legal community, including the State Bar and UMSL, helping rural communities more readily communicate needs and the legal community improve its understanding of how to sustain more and higher quality rural practices.

Finally, those gathering data should stay connected with current practitioners in rural communities across the state. If participants are to set up successful practices serving rural communities, support from attorneys already practicing in those areas is crucial. Existing rural practitioners may be willing to mentor incoming lawyers, which could provide even better opportunities for those new lawyers to build business in the rural communities. Montana's current rural practitioners would also be able to more accurately describe any unique practice skills or knowledge crucial for successful rural practice. With regular and dedicated dialogue among rural practitioners and institutions in a position to assist them, for example through regular meetings of rural legal leaders, we would more likely set new rural lawyers and rural communities up for successful collaborations.

Some states with a higher rural population have begun to create programs to entice lawyers into rural practice.<sup>152</sup> Others have suggested or begun developing experiential third year programs in rural areas, rural private apprenticeships, and rural legal services corporation apprenticeships designed to "expose more students to the challenges and rewards of rural practice," and to better prepare students for those challenges.<sup>153</sup> While Montana may learn a good deal from these programs, they are still new and relatively untested, and they do not appear to completely answer the challenges associated with rural practice, most notably professional isolation. They are also based on either state-specific data or extrapolations of na-

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152. *Id.* at 468–469, 474–475. South Dakota, Washington, and New Mexico have all taken affirmative steps to address legal needs in their states' rural populations.

153. *See id.* at 527–528.

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tional data that demonstrate the state's actual demand for legal services in rural areas, and, as discussed, Montana lacks similar concrete information about legal needs in its rural areas.

Montana's legal community should work to gather more concrete information about legal needs in rural areas specifically, especially needs in its most isolated rural areas. As we undertake this effort, we can act on the information we currently have, which is enough to warrant further exploration of programs designed to address unmet rural legal needs by encouraging new lawyers to enter the types of practices rural communities need and could sustain. While we could scaffold students solo or small firm practice through post-graduate legal training, also known as an "incubator program," a hybrid approach may be necessary to not only increase the supply of rural lawyers, but also address new law graduates' need for relatedness and mentoring in rural practice. My next article will explore a set of considerations for rural lawyer formation and suggest a more comprehensive plan that fits Montana's needs and emphasizes its strengths.

